K. Rajendran & Ors. Etc. Etc vs State Of Tamil Nadu & Ors on 15 April, 1982

Equivalent citations: 1982 AIR 1107, 1982 SCR (3) 628, AIR 1982 SUPREME COURT 1107, 1982 LAB. I. C. 876, (1983) 1 MAD LJ 19.2, (1982) 3 SCR 628 (SC), 1982 UJ (SC) 445, (1982) 2 SCJ 364, (1982) 2 LABLJ 259, (1982) 2 LAB LN 26, 1982 (2) SCC 273, (1982) 1 SERVLJ 604, 1982 SCC (L&S) 208, (1982) 2 SERVLR 196, (1982) 2 SCWR 160

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, Syed Murtaza Fazalali, A. Varadarajan

PETITIONER:
K. RAJENDRAN & ORS. ETC. ETC.

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT15/04/1982

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1982 AIR 1107 1982 SCR (3) 628
1982 SCC (2) 273 1982 SCALE (1)342
CITATOR INFO :
RF 1985 SC 724 (5)
RF 1987 SC1467 (3)
R 1989 SC1988 (18)

ACT:
Constitution of India 1950, Articles 14. 19 (1) (g), 32 and 311 (2) & Tamil Nadu Abolition of posts of part-time Village Officers Act 1981, Ss.2 (e), 3 and 5.

State enactment-Abolition of civil posts-Posts of part-time village Officers abolished-Introduction of whole-time village administrative officer-Whether valid and legal.

Civil Service-Civil post-Abolition of post-Whether government has a right-Abolition of post and abolition of

cadre-Distinction-Rights of the incumbent of the post.

HEADNOTE:

In the State of Tamil Nadu the administration was carried on at the village level by a chain of officers in regular gradation one above the other since the commencement of the Christian era. This system known as the barabaluti system consisted of twelve functionaries :(1) headman, (2) karnam or accountant, (3) shroff or notazar, (4) nirganti, (5) toty or taliary, (6) potter, (7) smith, (8) jeweller. (9) carpenter, (10) barber, (11) washerman and (12) astrologer. The first five rendered service to the Government. By the end of the nineteenth century, two Acts were enacted for the purpose of regulating the work of these village offices.

The Madras Proprietary States' Village Service Act, 1894 (Madras Act No. 11 of 1894) dealt with three classes of village officers viz. village accountants, village headman and village watchman. It provided for their appointment, remuneration and summary punishment of misconduct or neglect of duty. The Madras Hereditary Village offices Act 1895 (Madras Act No. 111 of 1895) regulated the succession to certain other hereditary village offices and provided for the appointment of persons to hold such offices and the control of the holders thereof. Under both these statutes, the village offices devolved on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamidaris. In cases to which the aforesaid two statutes were inapplicable provision was made by the Standing orders promulgated by the Board of Revenue, which were known as the Board's Standing orders for appointing village officers on a hereditary basis.

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The distinctive features of the service conditions of the village officers appointed under the aforesaid two Acts or the Board's Standing orders were that they were part-time employees of the Government, they were appointed directly by the Revenue officer, the records maintained by them could be retained in their houses, no fixed hours of duty were prescribed, they were not constituted into any distinct service, could not be transferred outside their district, and that they were paid honorarium for the services that they discharged. The Fundamental Rules applicable to all other State Government employees, the Pension Rules, and the Leave Rules were not applicable to these village officers.

This Court in Gazula Dasaratha Rama Rao v. The State of Andhra Pradesh & ors. [1961] 2 SCR 931 having held that section 6 (1) of the Madras Act No. 3 of 1895 was void as it contravened Article 16 (2) of the Constitution, instructions were issued by the Board of Revenue on March 12, 1962 that in respect of future vacancies in village offices governed

by the Madras Act No. 2 of 1894, and the Madras Act No. 3 of 1895, the appointments should be made on a temporary basis, and the State Legislature enacted the Madras Proprietary Estates' Village Service and the Madras Hereditary Village offices (Repeal) Act, 1968 repealing the 1894 and 1895 Acts. Pursuant to section 3 of this Act, the State Government promulgated that Tamil Nadu Village officers Service Rules, 1970 which provided for the constitution of the Tamil Nadu Village officers Service, consisting of (i) Village headman, additional village headman, (ii) village karnam, additional village karnam, and (iii) talayari and nirganti and the method of recruitment to the said posts.

In the year 1973, the Administrative Reforms Commission set up by the State Government recommended that the existing part-time village officers should be replaced by regular whole-time transferable public servants who should form part of the Revenue hierarchy. The State Government accepted this recommendation and promulgated on May 17, 1975 the Tamil Nadu Village officers (appointed under B.S. Os) Service Rules 1974. Thereafter on October 9, 1978 the Tamil Nadu Village officers (appointed under B.S.Os) Service Rules 1978 were issued fixing the age of retirement of village officers at 60 years.

On November 13, 1980, the Tamil Nadu Abolition of posts of part-time Village officers ordinance, 1980 was promulgated abolishing the posts of part-time village officers in the State. The ordinance was later replaced by the Tamil Nadu abolition of posts of part-time Village officers Act 1981, which provided for the appointment of Village Administrative officers. By section 3 of the Act, the posts of part-time village officers were abolished with elect from November 14, 1980 and every officer holding a post so abolished ceased to hold such post, and section S provided for payment of compensation to those who ceased to be part-time village officers.

The petitioners in their writ petition to this Court contended that the ordinance and the Act were violative of Article 19 (1) (g); Article 311 (2), and contravened Article 14 of the Constitution. The State Government contested the petitions and contended that the State Government being of the opinion that the

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system of part-time Village-officers was out-moded and did not fit in with the modern needs of village administration, after careful consideration taken the policy decision to abolish all the posts of part-time village officers on grounds of administrative necessity and to introduce a system of whole time officers to be incharge of the village administration. To achieve this, the ordinance was promulgated on November 14, 1980 which was later replaced by the Act. It was further contended, that since by the ordinance and the Act, certain posts had been abolished, the petitioners who were incumbents of the abolished posts could

not raise any of the grounds raised by them.

Dismissing the petitions,

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HELD: 1. (i) The power to abolish a civil post is inherent in the right to create it. The Government has always the power, subject to the constitutional provisions to reorganise a department to provide efficiency and to bring about economy. It can abolish an office or post in good faith. The action to abolish a post should not be just a pretence taken to get rid of an inconvenient incumbent. [643 G]

American Jurisprudence 2d vol.63 p. 648-649: H. Eliot Kaplan-The Law of Civil Service pp 214-215 referred to.

In the instant case the abolition of the posts of village officers was sought to be achieved by a piece of legislation passed by the State Legislature, namely the Tamil Nadu Abolition of posts of part-time Village officers Act, 1981. Want of good faith or malafides cannot be attributed to the Legislature. [646 A]

(ii) The Act is not violative or Article 19 (1) (g) as it does not affect the right of any of the incumbents of the posts to carry on any occupation of their choice even though they may not be able to stick on to the posts which they were holding. [647 C]

Fertilizer Corporation Kamgar Union (Regd) Sindri & ors. v. Union of India & ors. [1981] 2 SCR 52, referred to.

2. (i) The doctrine of pleasure incorporated in Article 310 cannot be controlled by any legislation; but the exercise of that power by the President or the Governor, is however made subject to the other provisions of the Constitution, one of them being Article 311, which is not made subject to any other provision of the Constitution and is paramount in the field occupied by it. [648 D-E]

(ii) The termination of service of a Government servant consequent upon the abolition of posts does not involve punishment at all and therefore does not attract Article 311(2). [654 B; 654-E]

Parashotam Lal Dhingra v. Union of India [1958] SCR 828 at 841, Moti Ram Deka etc. v. General Manager, N.E.F., Railways, Maligaon, Pandu etc.
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[1964] 5 SCR 683 and P.V. Naik 8. Ors. v. state of Maharashtra & Anr., AIR 1967 Bom. 482, referred to.

(iii) If a post is not a special post and its incumbent is a member of a cadre his rights as a member of the cadre should be considered before deciding whether he has ceased to be a government employee on the abolition of the post. On such scrutiny it is likely that the services of another member of the cadre may have to be terminated or some other member of the cadre may have to be reverted to a lower post from which he may have been promoted to the cadre in question by the application of the principle of 'last come, first go'. If, however, where the post abolished is a

special post or where an entire cadre is abolished and there is no lower cadre to which the members of the abolished cadre can reasonably be reverted, the application of this principle may not arise at all. [653 C-D]

State of Mysore v. H. Papanna Gowda & Anr. etc. [1971] 2 S.C.R. 831, referred to.

(iv) In modern administration, it is necessary to recognise the existence of the power with the Legislature or the Executive to create or abolish posts in the civil services of the State. The volume of administrative work, the measures of economy and the need for streamlining the administration to make it more efficient may induce the State Government to make alterations in the staffing patterns of the civil service necessitating either the increase or the decrease in the number of posts. This power is inherent in the very concept of governmental administration. To deny that power to the Government is to strike at the very roots of proper public administration. This power to abolish a post which may result in the holder thereof ceasing to be a Government servant has got to be recognised, but any action legislative or executive taken pursuant to that power is always subject to judicial review. (656 A))

M. Ramanatha Pillai v. The State of Kerala Anr. (1974) 1 S.C.R. 515, Champaklal Chimanlal Shah v. The Union of India [1964] S S.C.R. 190, Satish Chandra Anand v. The Union of India [1953] S.C.R. 655, Shyam Lal v. State of U.P. and Union of India [1955] 1 S.C.R. 26, State of Haryana v. Des Raj Sangar of Anr. [1976] 2 S.C.R. 1034, referred to.

Abdul Khalik Renzu & Ors. v. The State of Jammu and Kashmir A.I.R. 1965 J & K 15, overruled.

In the instant case it cannot be said that the State Act by which the village officers in the State of Tamil Nadu were abolished, contravenes Article 311 (2). [657 F]

(v) The posts of village officers which were governed by the Madras Act II of 1894, the Madras Act III of 1895 and the Board s Standing orders were feudalistic in character and the appointment to these posts were governed by the law of primogeniture, the family in which the applicant was born, the village in which he was born, and the fact whether he owned any property in the village or not. These factors are alien to modern-administrative service and clearly
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opposed to Articles 14 and16. The Administrative Reforms Commission rightly recommended their abolition and reorganisation of the village service. [657 H; 658 A C]

(vi) Having regard to the abolition of similar village offices in the neighbouring States of Karnataka and Andhra Pradesh and the agitation in the State of Tamil Nadu for reorganisation of village service, the decision to abolish the village offices which were feudalistic in character and an anachronism in the modern age cannot be said to be arbitrary or unreasonable. [660 C]

R. Shankaranarayana & Ors. v. the State of Mysore & ors. A.I.R. 1966 S.C. 1571. B.H. Honnalige Gowda v. State of Mysore & Anr., A.I.R. 1964 Mysore 84, referred to.

3. (i) Any classification under Article 14 should satisfy two tests: (i) that there exists an intelligible differentia between those who are grouped together and those who are not included in the group, and (ii) that there exists a reasonable nexus between the differentia and the object for which classification is made. [662 F]

(ii) Upto December 16, 1970 all appointments to Village officers were being made under the two Madras Acts and the Board's Standing orders on the basis of factors dealt with therein, but after December 16, 1970 recruitment was made in accordance with the Tamil Nadu Village officers Service Rules 1970. By these rules a new service of part-time Village officers was constituted and the;, persons who were appointed were paid a fixed amount every month by way of remuneration. Under the Act Of 1981 and the Rules framed thereunder the Village Administrative officers were to be appointed and to be recruited directly. The posts were no longer treated as part-time posts and holders thereof were full time government officials entitled to draw salary every month. Even though the Village officers appointed after December 16, 1970 were in a way different from the village officials appointed prior to that date the two cannot be equated with the new Village officers who were to be appointed under the 1981 Act and the rules made thereunder. It cannot therefore be stated that Article 14 of the Constitution has been violated in abolishing the posts held by those appointed after December 16, 1970. [662 H; 663 A-E; 663 H; 664A]

4 (i) The State Government will give effect to the memorandum filed on its behalf in the case of those who possess the minimum general qualification prescribed under the Act and the Rules. The State Government shall re-employ all such persons who have not crossed the age of superannuation and who are selected in the new cadre. Until they are so selected they will not be paid any remuneration. Even if they are re-employed the amount paid to them pursuant to the interim orders will not be recovered. [668 G-H; 669 A]

(ii) The compensation, if any payable by the State Government under section s of the Act to those who cease to be village officers shall be adjusted against the amount paid pursuant to the interim orders, and any amount in excess of the compensation, shall not be recoverable. [669 B-C]

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JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos 5880-82, 6176- A 77, 5921, 5922, 6220, 6426-27, 6355-56, 6264-70,6276, 6178-79, 6191, 1718 of 1980 and 220-22, 2113 of 1981.

(Under Article 32 of the Constitution) K K Venugopal, (6355-56 of 1980) (In W P. Nos. 6212, 6427 & 5880-82/80) F.S. Nariman, (In W.P. Nos. 6264-70/80) R.K Gargo, (In W.P. Nos. 6191 & 6426/80), S.N. Kackar, (In W.P. Nos: 5921/80 & 220/81 and G.L. Sanghi, (In W.P. No. 1718/81) for the Petitioners.

C.S. Vaidyanathan, Vineet Kumar, Parthasarathi, A.T.M. Sampath. Miss Lily Thomas, N.A. Subramanium, Naresh Kumar, Mahakir Singh and S. Srinivasan for the Petitioners.

Lal Narayan Singh, Attorney General (In W.P. No 5880180) M.R Banerjee, Addl. Solicitor General (In W.P. No. 6355/80) R. Rrishnamoorthy, Adv. Genl. T.N. (In W.P. Nos. 1718 & 6276/ 1980) for the Respondents. D Dr. Y. S. Chitale, (In W.P. No. 6426/80), L. M. Singhvi, (In W.P. 6264/80) Mr. Laxmi Kant Pandey and S.S. Ray, (In W.P. 6212 of 1980) for the Respondents.

A.V. Rangam, (In all matters) for the Respondents. E The Judgment of the Court was delivered by VBNKATAR MIAH. J. In these writ petitions, the petitioners who were holders of posts of part-time village officers in the State of Tamil Nadu or associations of such persons have questioned the constitutional validity of the Tamil Nadu Abolition of posts of part-time Village officers ordinance, 1980 Tamil Nadu ordinance No. 10 of 1980) (hereinafter referred to as 'the ordinance') and the Tamil Nadu Abolition of posts of part-time Village officers Act, 1981 (Tamil Nadu Act No. 3 of 1981) (hereinafter referred to as 'the Act) which replaced the ordinance. The total number of posts abolished by the Act is 23,010 In Tamil Nadu, as in other parts of India, the village has been the basic unit of revenue administration from the earliest times of which we have any record. The administration was being carried on at the lowest level by a chain of officers in regular gradation one above the other at the commencement of the Christian era. The same system has been in vogue uptil now. It was generally known as the borabaluti system ordinarily consisting of twelve functionaries. In Tamil Nadu, these functionaries were known as (I) headman, (2) karnan or accountant, (3) shroff or notazar, (4) nirganti, (5) toty or taliary, (6) potter, (7) smith, (8) jeweller, (9) carpenter, (10) barber, (11) washerman and (12) astrologer. Of them, the first five only rendered service to Government.

The headman who goes by various names such as monigar, potail, naidoo, reddy, peddakapu etc. is an important officer. He represented the Government in the village, collected the revenue and had also magisterial and judicial powers of some minor nature. As a magistrate he could punish persons for petty offences and as a Judge could try suits for sums of money or other personal property upto Rs. 10/- in value, there being no appeal against his decision. With the consent of the parties, he could adjudicate civil claims upto Rs. 100 in value. The headman has been generally one of 1 the largest landholders in the village having considerable influence over its inhabitants. The karnam or the village accountant maintained all the village accounts, inspected all fields in the village for purposes of gathering agricultural statistics, fixation of assessment and prevention and penalisation of encroachments, irregular use of water and verification of tenancy and enjoyment. The nirgantis guarded the irrigation sources and regulated the use of water. The toty or taliary assisted the village

accountant in his work. By the end of the nineteenth century, two Acts were brought into force in the Presidency of Madras for the purpose of regulating the work of some of the village officers. The Madras Proprietary states' Village Service Act, 1894 (Madras Act No. II of 1894) dealt with three classes of village officers viz. village accountants, village headmen and village watchmen or police officers in permanently settled estates, in unsettled palaiyams and in inam villages. It provided for their appointment and remuneration and for the - prevention and summary punishment of misconduct or neglect duty on their part and generally for securing their efficiency. The Madras Hereditary Village offices Act, 1895 (Madras Act No. III of 1895) regulated the succession to certain other hereditary village offices in the Presidency of Madras; for the hearing and disposal of claims to such offices or the emoluments annexed thereto; for the appointment of persons to hold such offices and the control of the holders thereof. The Village officers dealt with by this Act were (i) village munsifs, (ii) potels, monigars and peddakapus, (iii) karnams, (iv) nirgantis, (v) vettis, totis and tar dalgars and (vi) talayaris in ryotwari villages or inam villages, which for the purpose of village administration, were grouped with ryotwari villages.

Under both these statutes, the village offices were considered as hereditary in character and the succession to all hereditary village offices devolved on a single heir according to the general custom and rule of primogeniture governing succession to impartible zamindaris in Southern India. When the person who would otherwise be entitled to succeed to a hereditary village office was a minor, such minor was being registered as the heir of the last holder and some other person qualified under the statutes in question to discharge the duties of the office was being appointed to discharge the duties of the office until the person registered as heir on attaining majority or within three years thereafter was qualified to discharge the duties of the office himself when he would be appointed thereto. If the person registered as heir remained otherwise disqualified for three years after attaining majority, he would be deemed to have forfeited his right to office and on such forfeiture or on his death, the vacancy had to be filled up in accordance with the provisions of the statutes as if he was the last holder of the office. It is stated that in cases to which the above two statutes were inapplicable, provision had been made by the Standing orders promulgated by the Board of Revenue which were known as the Board's Standing orders for appointing village officers again generally on a hereditary basis. Some of the other distinct features of the service conditions of the village officers appointed under the Madras Act No. II of 1894 of the Madras Act No. III of 1895 or the Board's Standing orders were that they were part-time employees of the Government; that the records maintained by them were allowed to be retained in their houses that there was no attendance register and no fixed hours of duty were prescribed in their case. They were appointed directly by the Revenue Divisional officer and against his order, an appeal lay to the District Revenue officer and then a revision to the Board of Revenue and a second revision to Government. They were not constituted into any distinct service, There was no provision for reservation of posts of village officers G for Scheduled Castes/Scheduled Tribes and backward classes There was no minimum general qualification prescribed prior to the year 1970 for persons to be appointed as village officers under the said - statutes or the Board's Standing orders. It was enough if they were able to read and to write. No period of probation was pres-

cribed after they were appointed. The Fundamental Rules applicable to all other State Government servants, the Pension Rules and the Leave Rules were not applicable to these village officers. They

could take up part-time work or occupation after securing necessary permission from the concerned Revenue authorities. There was no age of superannuation fixed in their case and they were not entitled to retirement benefits such as gratuity and pension. All village head men including those who belonged to Scheduled Castes and Scheduled Tribes had to furnish security in the form of property or cash the estimated value of which was not less than half the amount of land revenue and loan demand of the village. They could not be transferred outside their district. In fact very rarely they were transferred. During the period of leave, no honorarium was paid to them and during the period of suspension, no subsistence - allowance was paid. The honorarium paid to them was a fixed amount with no element of dearness allowance.

In M. Ramappa v. Sangappa & Ors. where this Court had to consider whether the officers holding the hereditary village offices under the Mysore Village offices Act, 1908 which contained provisions similar to the provisions of the two Madras Acts referred to above were qualified for being chosen as members of the State Legislative Assembly, it was held that such officers who were appointed to their offices by the Government, though it might be that the Government had no option in certain cases but to appoint an heir of the last holder, held offices of profit under the State Government since they held their office by reason of appointment made by the Government and they worked under the control p and supervision of the Government and that their remuneration was paid by the Government out of the Government funds and assets. Accordingly this Court came to the conclusion that such village officers were disqualified under Article 191 (I)(a) of the Constitution from contesting at an election to the State Legislative Assembly.

In Gazula Dasaratha Rama Rao v. The State of Andhra Pradesh & Ors this Court held that section 6(1) of the Madras Hereditary Village offices Act, 1895 (Madras Act No. 3 of 1895) which Provided that in choosing Persons to fill the new village offices of an amalgamated village under that Act, the Collector should select the persons whom he considered to be the best qualified from among the families of the last holders of the offices in the villages which had been abolished as a consequence of such amalgamation was void as it contravened Article 16 (2) of the Constitution. After the above decision, instructions were issued by the Madras Board of Revenue on March 12, 1962 to the effect that in respect of future vacancies in village offices governed by the Madras Act No. II of 1894 and the Madras Act No. III of 1895 the appointments should be made on temporary basis only following the procedure prescribed under the Board's Standing order No. 156. Since it was felt that the above two Madras Acts which contained provisions providing for appointment to village offices on hereditary basis were violative of Article 16 of the Constitution in view of the pronouncement of this Court in Gazula Dasaratha Rama Rao's case (supra), the State Legislature passed the Madras Proprietary Estates' Village Service and the Madras Hereditary Village offices (Repeal) Act, 1968 (Madras Act No. 20 of 1968) repealing the above two statutes viz. the Madras Act No. II of 1894 and the Madras Act No. III of 1895. The said Act was brought into force with effect from December 1, 1968. It extended to the whole of the State of Madras, except the Kanyakumari district and the Shencottah taluk of the Tirunelveli district (vide section I (2) of the Madras Act No. 20 of 1968). Sub-section (3) of Section 2 of that Act, however, provided that every holder of a village, office, appointed under the Acts repealed by it would, notwithstanding the repeal continue to hold office subject to such rules as may be made under the proviso to Article 309 of the Constitution. Section 3 of that Act directed that any vacancy arising after the date of the commencement of that Act in the

village once referred to in subsection (3) of section 2 thereof should be filled up in accordance with the provisions of the Rules made under the proviso to Article 309 of the Constitution. On December 1, 1968, the Governor of Tamil Nadu promulgated a Rule under the proviso to Article 309 of the Constitution providing that "the Standing orders of the Board of Revenue applicable to non hereditary village offices shall apply to every holder of a village office to which the Madras Proprietary Estates Village Service Act, 1894 (Madras Act No. II of 1894) or the Madras Hereditary Village offices Act, 1895 (Madras Act No. Ill of 1895) was applicable immediately before the 1st day of December, 1968" on which date the Madras Act No. 20 of 1968 came into force. Pursuant to section 3 of the Madras Act No. 20 of 1968, the Governor of Tamil Nadu promulgated under the proviso to Article 309 of the Constitution the Tamil Nadu Village officers Service Rules, 1970 providing for the constitution of the Tamil Nadu Village officers Service consisting of (i) village headman, additional village headman, (ii) village karnam, additional village karnam and (iii) talayari and nirganti and the method of recruitment to the said posts. The said Rules came into force on December 16, 1970 and they extended to the whole of the State of Tamil Nadu except the Kanyakumari District and the Shenootah taluk of the Tirunelveli district and the city of Madras. Rule 18 of the said Rules, however, stated that nothing contained in them would apply to persons, who on the date of coming into force of the said Rules, were holding the posts of village headman or additional village headman, village karnam or additional village karnam either temporarily or permanently. Consequently the said Rules were not applied to the holders of village offices who had been appointed temporarily or permanently under the two repealed Acts and under the Board's Standing orders before the date on which the said Rules came into force. These Rules prescribed that every person who made an application for appointment the post of village headman or additional village headman or village karnam or additional village karnam should possess the following qualifications, namely (i) he should have completed the S.S.L.C. Examination held by the Government of Tamil Nadu and (ii) he should have secured a pass in the special tests specified in cl. (2) of the table given in Rule S thereof in respect of the posts specified in column (I) thereof. On the same date, the Tamil Nadu Village officers (Classification, Control and Appeal) Rules, 1970 and the Tamil Nadu Village officers Conduct Rules, 1970 promulgated under the proviso to Article 309 of the Constitution by the Governor of Tamil Nadu came into force. These Rules were applicable not merely to the village officers appointed after that date but also to those who had been appointed under the repealed Acts and under the Boards Standing order prior to December 16, 1970. The Tamil Nadu Civil Services (Classification, Control and Appeal) Rules dealt with the disciplinary proceedings that might be instituted against the village officers governed by the them. The Tamil Nadu Village officers Conduct Rules provided that the Tamil Nadu Government Servants Conduct Rules, 1960 as amended from time to time would apply to the village officers subject to the modification specified in rule 3 thereof which provided that the village officers being part- time Government servants might take up part-time work or occupation provided that (I) such part-time work or occupation did not interfere A with their legitimate duties as village officers and (2) the previous permission in writing had been applied for and obtained from the Revenue Divisional officer concerned if the work or occupation was confined to the charge village and from the District Collector concerned if the work or occupation extended beyond the charge village. From November 15, 1973 all the three sets of Rules which came into force on December 16, 1970, as stated above, became applicable to the village officers in the Kanyakumari district and the Shencottah taluk of the Tirunelveli district also. They, however, continued to be inapplicable to the city of Madras.

In the year 1973, the Administrative Reforms Commission headed by Mr. T.A. Verghese, I.C.S. recommended that the existing part-time village officers should be replaced by regular whole-time transferable public servants and that they should form part of the Revenue hierarchy, disciplined in the tradition of that department and motivated by the incentive of career advancement available in that department. They also recommended that 16,585 survey villages in the State of Tamil Nadu should be grouped into 11,9554 revenue groups. The Commission further recommended that the 11,954 revenue groups should be regrouped into larger village panchayats with a population of about 5,000 and the 8 annual panchayat tax demand of the order of Rs. 5,000. The Commission envisaged that with some marginal adjustment the enlarged village panchayat would be of the order of 4,000 in the State of Tamil Nadu and that there should be a village officer, a village clerk and a village peon in respect of each such enlarged village panchayat and on appointment to these offices, the holders of village offices appointed under, the two repealed statutes and the Board's Standing orders should be removed and the former village offices should be abolished since the Commission felt that "the administration at the grass root level, provided by the present generation of village officers with feudal traditions, is inconsistent with the-egalitarian principles aimed at in our democratic constitution". The Commission further felt that "the reform of village administration has high priority, as it would benefit the whole mass of rural population." The Commission, however, took note of the fact in paragraph 2.11 of its Report that the Government had, in the recent years, attempted to remedy the situation by repealing the Madras Hereditary Village offices Act, 1895 and by framing a set Of new service rules for village establishment under Article 309 of the Constitution. But it was of the opinion that the said Rules, however, did not go far enough as they were not applicable to the existing set of village officers. It was of the view that full-time officers could be expected to service a much larger area than the existing villages or groups of villages and such regrouping of villages into larger groups had to be done carefully taking into account local conditions such as compactness of the group, easy intercommunications, nature of land, number of holdings etc. The Commission, however, was of the view that such of those among the existing village headmen and karnams, who had passed the S.S.L.C. Examination might be considered for the posts of the village officers and village clerks on their past performance. Similarly as regards village officers working in the Kanyakumari district and the Shencottah taluk of the Tirunelveli district which came over to the State of Tamil Nadu from Kerala in 1956 on the reorganisation of States, the Commission observed that l most of the village officers of those transferred territories who were qualified and full-time Government servants should be absorbed in the new set up as envisaged by the Commission. On May 17,1975, the Governor of Tamil Nadu promulgated the Tamil Nadu Village officers (appointed under B.S. Os) Service Rules, 1974 under the proviso to Rule 309 of the Constitution in respect of the village officers appointed prior to December 16, 1970. The above Rules were, however, kept in abeyance by an order made on July 1, 1975 on receipt of representations from the village officers in regard to the fixation of the age of superannuation at SS years. On August 24,1977, the Chief Minister of Tamil Nadu announced on the floor of the Legislative Assembly that the Government proposed to set up a Committee to . examine whether the posts of karnams could be dispensed with. Thereafter on October 9,]978, the Tamil Nadu Village officers (appointed under B.S.Os) Service Rules, 1978 were issued fixing the age of retirement of the village officers at 60 years. Sub-rule (2) of & Rule I of the said Rules stated that the said Rules would apply to all village officers holding the posts of village headman or additional village headman, village karnam or additional village karnam, talayari, vetti or nirganti either permanently or

temporarily on December 16, 1970 provided that at the time of their appointment, they were qualified under the Board's Standing orders. The Government thought that the said Rules would be applicable to all village officers who were holding village offices on December 16,1970 refer-

red to in Rule 1(2). But some of the holders of the village offices who had been appointed under the Madras Act No. III of 1895 prior to the decision of this Court in Gazula Dasaratha Rama Rao's case (supra) which as rendered on December 6, 1960, filed writ petitions on the file of the High Court of Madras stating that the Tamil Nadu Village officers (appointed under the b.) Service Rules, 1978 which fixed the age of superannuation of village officers at 60 years were not applicable to them since on a true construction of the said Rules, they were inapplicable to them. The High Court of Madras allowed the said writ petitions by its judgment dated August 18, 1980 holding: "We have already extracted sub-rule (2) of rule 1 of the rules. That rule expressly states that the rules will apply to village officers, who, at the time of their appointment, were qualified under the Board's Standing orders applicable to them and their appointment had been made by the authority competent under the Board's Standing orders. In respect of these petitioners, who were appointed under the provisions of Madras Act 3 of 1895 before 6th December, 1960, there was no question of their being qualified to be appointed to the village office under the Board's Standing orders applicable to them, and their qualifications and appointment rested solely on the provisions contained in Section 10 of the Act. Consequently the petitioners herein will not answer the description contained in sub-rule (2) of rule (1) of the rules. If they do not answer the description contained in sub-rule (2) of rules, the rules are not applicable to them and therefore, they can not be required to retire under rule 4 (1) of the rules."

It would appear that some of the other village officers to whom the said Rules had been made applicable had also filed writ petitions on the file of the High Court questioning the validity of the Rules on the ground that the said Rules made a discrimination between them and the village officers who were holding office prior to December 16, 1970 to whom the said Rules were held to be inapplicable by the judgment of the High Court delivered on August 18, 1980 and those petitions were posted for hearing during the first week of December, 1 980. Before the said petitions were taken up for hearing the Governor of Tamil Nadu issued the ordinance on November 13, 1980 abolishing the posts of part-time village officers in the State of Tamil Nadu. Immediately after the promulgation of the ordinance, steps were taken to take possession of all the records with the village officers who were holding offices on that day and to replace them by Officers appointed under section 14 of the ordinance. Immediately after the promulgation of the said ordinance, some of the village officers who were affected by it questioned its validity before this Court in Writ Petitions Nos. 5880-82 of 1980 and 5921 of 1980. The other connected writ petitions came to be filed thereafter. In the meanwhile the Tamil Nadu State Legislature passed the Act which is impugned in these petitions replacing the ordinance. The petitioners have challenged in these writ petitions the Act also by seeking appropriate amendment of their petitions.

The broad features of the Act are these: The object of the Act is set out in its preamble. Because the State Government was of the opinion that the system of part-time village officers was outmoded and did not fit in with the modern needs of village administration and the State Government had after careful consideration taken a policy decision to abolish all the posts of part-time village officers on

grounds of administrative necessity and to introduce a system of whole-time officers to be incharge of village administration, the Act came to be enacted with effect from November 14, 1980 in the place of the ordinance. The Explanatory Statement attached to the ordinance also contained a statement to the same effect indicating the object of the Ordinance. The expression 'part-time village officers' is defined in section 2 (e) of the Act as village headman (including additional village (headman village) karnam (including chief karnam and additional village karnam) or Triune officer (who was exercising functions of three different village officers) appointed under the Madras Act II of 1894, the Madras Act III of 1895, the Board's Standing orders, the Tamil Nadu village Service Rules, 1970 officers Kuvalar, or any other law but does not include, Grama Kavalar Grama Paniyalar and Pasana Kavalar. Village Administrative officer means an officer appointed under section 4(1) of the Act. By sec. 3 of the Act, the posts of part-time village officers were abolished with effect from November 14, 1980 and every officer holding post so abolished ceased to hold such post. The Act provided for appointment of Village Administrative officers. Section 5 of the Act provided for payment of compensation to those who ceased to be part-time village officers calculated in accordance with the formula mentioned in it. Section 10 of the Act provided that the Act would not apply to the posts of karnams which were held by whole-time Government servants in the city of Madras and the posts of village officers and village assistants which were held by the whole-

time Government servant in the Kanyakumari district and Shencottah taluk of the Tirunelveli districts.

Three principal points are urged before us by the petitioners in these petitions (i) that the ordinance and the Act are violative of Art. 19(1)(g) of the Constitution,

(ii) that they are violative of Article 311 (2) of the Constitution and (iii) that they contravene Article 14 of the Constitution. The State Government contends that since by the ordinance and the Act, certain posts have been abolished, the officials who were incumbents of the abolished posts cannot raise any of the grounds raised by them.

Entry 41 in List II of the Seventh Schedule to the Constitution confers the power on the State Legislature to make laws with respect to State public services subject to the provisions of the Constitution. Article 309 of the Constitution provides that subject to the provisions of the Constitution, the State Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. Article 311 (2) of the Constitution states that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the State shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a L reasonable opportunity of being heard in respect of those charges. Article 14 of the Constitution guarantees equality before the law and equal protection of the laws. It is not disputed that any law that is passed in relation to a Government employee should not contravene any of these provisions-Article 19 (1)(g), Article 311 (2) and Article 14 of the Constitution. We shall now proceed to examine the case with reference to each of them.

The power to abolish a civil post is inherent in the right to create it. The Government has always the power, subject, of course, to the constitutional provisions, to reorganise a department to provide efficiency and to bring about economy. It can abolish an office or post in good faith. The action to abolish a post should not be just a pretence taken to get rid of an inconvenient incumbent. We have the following statement of the law in American Jurisprudence 2nd, Vol. 63 at Pages 648-649 :

> "37. Manner, sufficiency, validity, and effect. It is not always easy to determine whether a public office has been abolished. It is not sufficient merely to declare that a particular office is abolished, if in fact it is not abolished, and the duties thereof are continued. An office is abolished when the act creating it is repealed. But the repeal of the statute creating an office, accompanied by the re- enactment of the substance of it, does not abolish the office. Abolition of an office may also be brought about by a constitutional provision, or by a new constitution or a constitutional amendment. A non- constitutional office may be indirectly abolished as by legislating away the duties and emoluments of the office.
>
> The legislature may not evade constitutional provisions by a sham or pretended abolition of an office, as where there is mere colorable abolition of the office for the purpose of getting rid of its incumbent. This may happen where an office is abolished in terms and promptly recreated under the same or a different name, provided the legislature does not attach duties and burdens to the new office of a character such as to make it in reality a different office.
>
> Where an office is duly abolished by the legislature or the people, it ceases to exist and the incumbent is no longer entitled to exercise the functions thereof, or to claim compensation for so doing, unless he is under contract with the state so as to come within the protection of the constitutional inhibition against impairment of the obligation of contract. Since a de jure office is generally essential to the existence of a de facto officer, persons cannot act as de facto officers of an office which has been abolished."

H. Eliot Kaplan writes in his book entitled "The Law of Civil Service" at pages 214-115 thus :

> "8. "Good Faith" in Abolition of Positions-There of course, is no vested right to employment in the public service. The notion, much too prevalent, that any one who has been appointed after a competitive examination is entit-
>
> led to be retained in the service is erroneous. Where there is any reasonable justification for eliminating positions in the public service, even where such abolition of positions may be subject to judicial review, the inclination of the courts is not to interfere, avoiding substitution of judicial wisdom or judgment for that of the administrator. A position is not lawfully abolished solely because it has been left vacant for a short period of time and subsequently filled by another appointee than the one laid off and entitled to re-employment. Good faith of a head of department in

> abolishing a position on alleged grounds of economy has often been challenged. Most courts have held that the issue of good faith on the part of an administrative official is one of law solely for the court to pass on, and not an issue of fact which may be submitted to a jury for determination. The jury may determine the facts, which the court in turn may find as a matter of law constitute bad faith; but a verdict by a jury that a department head had acted in bad faith in abolishing a position was set aside as a conclusion of law, and not properly finding of fact. What constitutes bad faith as a matter of law in abolishing positions must be determined by the precise facts in each case. As a general rule, where positions are purported to be eliminated and incumbents laid off, and thereafter identical or similar positions are re-established and the positions filled by others not entitled under the Civil service law and rules to such employments, the courts will not hesitate to order re-employment of the laid off employees."

The above passages sum up the law on the question of abolition of posts in civil service as it prevails in United States of America.

In England too there is provision for compulsory premature retirement in the public interest on structural grounds, grounds of limited efficiency and redundancy. (Vide paragraph 1303, Vol. 8 Halsbury's Laws of England 4th Edn.) In the instant case, the abolition of the posts of village officers is sought to be achieved by a piece of legislation passed by the State Legislature. Want of good faith or malafides cannot be attributed to a Legislature. We have only to see whether the legislation is a colourable one lacking in legislative competence or whether it transgresses any other constitutional limitation.

So far as the argument based on Article 19 (1) (g) of the Constitution is concerned, we are bound by the view expressed by the Constitution Bench of this Court in Fertilizer Corporation Kamgar Union (Regd), Sindri & Ors. v. Union of India & Ors. in which Chandrachud, C.J. has observed at pages 60-61 thus :

> "The right to pursue a calling or to carry on an occupation is not the same thing as the right lo work in a particular post under a contract of employment. If the workers are retrenched consequent upon and on account of the sale, it will be open to them to pursue their rights and remedies under the Industrial Laws. But the point to be noted is that the closure of an establishment in which a workman is for the time being employed does not by itself infringe his fundamental right to carry on an occupation which is guaranteed by Article 19 (1) (g) of the Constitution. Supposing a law were passed preventing a certain category of workers from accepting employment in a fertiliser factory, it would be possible to contend then that the workers have been deprived of their right to carry on an occupation. Even assuming that some of the workers may eventually have to be retrenched in the instant case, it will not be possible to say that their right to carry on an occupation has been violated. It would be open to them, though undoubtedly it will not be easy, to find out other avenues of employment as industrial workers. Article 19 (1) (g) confers a broad and general right

> which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. Even under Article 311 of the Constitution, the right to continue in service falls with the abolition of the post in which the person is working. The workers in the instant case can no more complain of the infringement of their fundamental right under Article 19 (1) (g) than can a Government servant complain of the termination of his employment on the abolition of his post. The choice and freedom of the workers to work as industrial workers is not affected by the sale. The sale may at the highest affect their locum, but it does not affect their locus, to work as industrial workers. This is enough unto the day on Art. 19 (1) (g)."

In view of the above ruling, it is not possible to hold that the Act violates Article 19 (1) (g) as it does not affect the right of any of the incumbents of the posts to carry on any occupation of their choice even though they may not be able to stick on to the posts which they were holding.

We shall next examine the argument based on Article 311 (2) of the Constitution. We have already seen in the Fertilizer Corporation Kamgar Union's case (supra) the observation to the effect 'Even under Article 311 of the Constitution, the right to continue in service falls with the abolition of the post in which the person is working.' It is said that the 'act of removing a person from a chair is different from the act of removal of the chair itself' although the incumbent loses the chair in both the cases. Since it is. strenuously urged before us that there is some amount of contradiction in some of the rulings of this Court, we shall review the legal position to the extent necessary before reaching our own conclusion on the question.

The doctrine that the tenure of a holder of a civil post is dependent upon the pleasure of the Crown is peculiar to English law.

In India, Article 310 of the Constitution of India provides :

> "310 (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post . under the Union holds office during the pleasure of the President, and every Person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.
>
> (2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under the Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services af a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he

> is, for reasons not connected with any misconduct on his part, required to vacate that post."

While the doctrine of pleasure incorporated in Article 310 cannot be controlled by any legislation, the exercise of that power by the President or the Governor, as the case may be, is however made subject to the other provisions of the Constitution, one of them being Article 311, which is not made subject to any other provision of the Constitution and is paramount in the field occupied by it. The contention urged before us is that every kind of termination of employment under Government would attract Article 311 (2) of the Constitution and a termination on the abolition of the post cannot be an exception. While construing Article 311 (2) of the Constitution, as it stood then, in Parashotam Lal Dhingra v. Union of India, Das, C.J. Observed :

> "The Government cannot terminate his service unless it is entitled to do so (I) by virtue of a special term of the contract of employment, e.g., by giving the requisite notice provided by the contract or (2) by the rules governing the conditions of his service, e.g., on attainment of the age of superannuation prescribed by the rules, or on the fulfillment of rule conditions for compulsory retirement or subject to certain safeguards, on the abolition of the post or on being found guilty, after a proper enquiry on notice to him, of misconduct, negligence, inefficiency or any other disqualification."

(emphasis added) Again at pages 857-858 in the same judgment, the learned Chief Justice observed :

> "The foregoing conclusion, however, does not solve the entire problem, for it has yet to be ascertained as to when an order for the termination of service is indicted as and by way of punishment and when it is not. It has already been said that where person is appointed substantively to a permanent post in Government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily, retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311 (2)."

(emphasis added) It may be mentioned here that the words "subject to certain safeguards" found in the earlier extract are not used with reference to abolition of posts in the above extract. Later on, Das, C.J observed that the Court should apply two tests namely (1) whether the servant had a right to the post or the rank or (2) whether he had been visited with evil consequences such as loss of pay and allowances, a stigma affecting his future career in order to determine whether the removal of an officer from a post attracted Article 311 (2). The decision in Parshotam Lal Dhingra's case (supra) was reviewed by a Bench of seven Judges of this Court in Moti Ram Deka etc. v. General Manager, N.E.F. Railways, Maligaon, Pandu v. etc. In that case the question which arose for consideration was whether Rules 148 (3) and 149 (3) of the Indian Railway Establishment Code violated either Article

311 (2), or Article 14 of the Constitution. Sub-rules (1) and (2) of Rule 148 dealt with temporary railway servants and apprentices respectively. The relevant part of Rule 148 (3) read thus :

> "148 (3) other (non-pensionable) railway servant:-
>
> The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not however required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

Rule 149 was brought into force in the place of Rule 148 in the case of pensionable servants in November, 1957. Here again, sub-rules (1) and (2) of Rule 149 dealt with temporary railway servants and apprentices. Rule 149 (3) read thus:

"149 (3) other railway servants:- The services of other railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution, retirement on attaining the age of superannuation, and termination of service due to mental or physical incapacity."

The majority judgment in this case, however, observed that a Government servant on being appointed to a post permanently acquired a right to hold the post under the Rules until he attained the age of superannuation or was compulsorily retired or was found guilty of an act of misconduct in accordance with Article 311(2). It disapproved the statement found in Parshotam Lal Dhingra's case (supra) at pages 857-858 to the extent it recognised the removal of a permanent Government servant under a contract express or imp lied or a service rule. After referring to one passage at page 841 and another at page 843 in Parsotam Lal Dhingra's case, Gajendragadkar, J. (as he then was), who delivered the majority judgment in Moti Ram Deka's case (supra) observed at pages 718-719 thus:

> 'Reading these two observations together, there can be no doubt that with the exception of appointments held under special contract, the Court took the view that wherever a civil servant was appointed to a permanent post substantively, he had a right to hold that post until. he reach ed the age of superannuation or was compulsorily retired, or the post was abolished. In all other cases, if the services of the said servant were terminated, they would have to be in conformity with the provisions of Art. 311(2), because termination in such cases amounts to removal. The two statements of the law to which we have just referred do not leave any room for doubt on this point." (emphasis added) It may be noticed that removal of a Government servant from a post on its abolition is recognised in the above passage as a circumstance not attracting Article 311(2) of the Constitution. The Court after a review of all the decisions before it including the decision in Parshotam Lal Dhingra's

case (supra) held that the above two Rules 148 (3) and 149 (3) which authorised the removal officers holding the posts substantively by issuing a mere notice infringed Article 311 (2) of the Constitution. The question of abolition of posts did not arise for consideration in this case. The validity of removal of a Government servant holding a permanent post on its abolition was considered by Desai, J. and Chandrachud, J. (as he then was) in P.V. Naik & Ors. v. State of Maharashtra & Anr.(1) The learned Judges held that the termination of service of a Government servant consequent upon the abolition of posts did not involve punishment at all and therefore did not attract Article 311(2).

Since much reliance is placed by the petitioners on the decision of this Court in State of Mysore v. H. Papanna Gowda & Anr. etc.(2) it is necessary to examine that case in some detail. The facts of that case were these: The respondent in that case was holding the post of a chemical assistant in the Agricultural Research Institute, Mandya in the Department of Agriculture of the State of Mysore. Under the Mysore University of Agricultural Sciences Act, 1963 which came into force on April 24, 1964, the University of Agricultural Sciences was established. Sub-section (5) of section 7 of that Act provided:

"7. (5) Every person employed in any of the colleges specified in sub-section (1) or in any of the institutions referred to in sub-section (4) immediately before the appointed day or the date specified in the order under sub- section (4), as the case may be, shall, as from the appointed day or the specified date, become an employee of the University on such terms and conditions as may be determined by the State Government in consultation with the Board."

The Board referred to in the above sub-section was the Board of Regents of the University. By a notification dated September 29, 1965 issued under section 7(4) and (5) of that Act, the control and management of a number of research and educational institutions under the Department of Agriculture were transferred to the University. Alongwith them, the Institute in which the respondent was working was also transferred to the University. The result was that the respondent ceased to be an employee of the State Government and became an employee of the University. Thereupon he questioned the validity of sub-sections (4) and (5) of section 7 of the said Act on the ground that they contravened Article 311(2) of the Constitution before the High Court of Mysore, which upheld his plea. The State Government questioned the decision of the High Court before this Court in the above case. This Court affirmed the decision of the High Court holding that Article 311(2) of the Constitution had been contravened as the prospects of the respondent in Government service were affected. In this case the parties proceeded on the basis that there was no abolition of post as such as can be seen from the judgment of the High Court. The only ground was whether when the post continued to exist though under a different master, in this case it being the University, it was open to the State Government to transfer its employee to the control of a new master without giving an option to him to state whether he would continue as a Government employee or not. The court was not concerned about the consequences of abolition of a post as such in this case. As can be seen from the judgment of the High Court in this case (vide Papanna Gowda

v. State of Mysore(1) one serious infirmity about the impugned provisions was that whoever was holding the post in any of the institutions transferred to the University automatically ceased to be the Government servant. Even if the case was one where abolition of the post was involved, the law should have made provision for the determition of the employees in the cadre in question who would cease to be Government employees with reference to either the principle of 'last come, first go' or any other reasonable principle and given them an option to join the service under the new master instead of just transferring all the employees who were then working in the institutions to the University. The impugned provisions were not rules dealing with the age of superannuation or compulsory retirement. Nor the case was dealt with on the principle of abolition of posts. The decision in this case takes its colour from the peculiar facts involved in it. One principle that may be deduced from this decision is that if a post is not a special post and its incumbent is a member of a cadre his rights as a member of the cadre should be considered before deciding whether he has cased to be a government employee on the abolition of the post. It is likely that on such scrutiny the services of another member of the cadre may have to be terminated on its abolition or some other member of the cadre may have to be reverted to a lower post from which he may have been promoted to the cadre in question by the application of the principle of 'last come, first go'. If, however, where the post abolished is a special post or where an entire cadre is abolished cadre and there is no lower cadre to which the members of the abolished can reasonably be reverted, the application of this principle may not arise at all. In the circumstances, the petitioners cannot derive much assistance from this decision.

The question whether Article 311(2) would be contravened if Government servant holding a civil post substantively lost his employment by reason of the abolition of the post held by him directly arose for consideration before this Court in M. Ramanatha Pillai v. The state of Kerala & Anr.(1) Two points were examined in that case: (i) whether the Government had a right to abolish a post in a service and (ii) whether abolition of a post was dismissal or removal within the meaning of Article 311 of the Constitution. The Court held that a post could be abolished in good faith but the order abolishing the post might lose its effective character if it was established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311 (2). After considering the effect of the decisions in Parashotam Lal Dhingra's case (supra), Champaklal Chimanlal Shah v. The Union of India,(2) Moti Ram Deka's case (supra), Satish Chandra Anand v. The Union of India (1) and Shyam Lal v. State of U.P. and Union of India.(2) This Court observed in this case at page 526 thus:

> "The abolition of post may have the consequence of termination of service of government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the government servant. The abolition of post is an executive policy decision. Whether after abolition of the post, the Government servant who was holding the post would or could be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post."

The true effect of the decision in Moti Ram Deka's case (supra) on the question of applicability of Article 311 (2) of the Constitution to a case of abolition of post has been clearly explained in this case and we have very little to say anything further on it. Suffice it to say that the Moti Ram Deka's case (supra) is no authority for the proposition that Article 311 (2) would be attracted in such a case.

The above view was followed by this Court in State of Haryana v. Des Raj Sangar & Anr.(1) to which one of us (Murtaza Fazal Ali, J.) was a party. Khanna, J. speaking for the Court observed at pages 1037-38 thus:

> "Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith the same cannot be set aside by the court. It is not open to the court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post was only a device to terminate the services of an employee, the abolition of the post would suffer from a serious infirmity and would be liable to be set aside. The termination of a post in good faith and the consequent termination of the services of the incumbent of that post would not attract Article 311."

Before concluding our discussion on this topic, it is necessary to refer to a decision of the Jammu and Kashmir High Court in Abdul Khalik Renzu & Ors. v. The State of Jammu and Kashmir(1) to which one of us (Murtaza Fazal Ali, J. (as he then was) was a party in which the validity of the abolition of posts constituting the special police squad of the State of Jammu and Kashmir was questioned. In that case, the High Court while recognising the power of the State Government to abolish the posts and to terminate the services of the incumbents of such posts held that such action could be validly taken only subject to certain safeguards and in the absence of any such safeguards the abolition was bad. The High Court did not clearly spell out the nature and extent of safeguards referred to therein. The High Court relied on the words 'subject to certain safeguards, on the abolition of posts' in the passage occurring at page 841 in Parshotam Lal Dhingra's case (supra) which is extracted above to reach the conclusion that unless the abolition of posts was accompanied by such safeguards, Article 311 would be infringed. With respect, it should be stated that the High Court did not notice that in another passage at pages 857-858 in the same decision, which is also extracted above, the abolition of posts referred to therein was unqualified. In this passage there is no reference to any safeguards at all. Probably the 'safeguards' referred to in the passage at page 841 in Parshotam Lal Dhingra's case (supra) meant an abolition of posts which was in good faith and not a pretence of abolition of a post resorted to in order to get rid of its incumbent and the creation of the same post with a different form or name with a new incumbent. The above view of the High Court of Jammu and Kashmir is however, in conflict with the decision in Ramanatha Pillai's case (supra) and hence must be considered as having been overruled by this Court. In modern administrations, it is necessary to recognise the existence of the power with the Legislature or the Executive to create or abolish posts in the civil service of the State. The volume of administrative work, the measures of

economy and the need for streamlining the administration to make it more efficient may induce the State Government to make alterations in the staffing patterns of the civil service necessitating either the increase or the decrease in the number of posts. This power is inherent in the very concept of governmental administration. To deny that power to the Government is to strike at the very roots of proper public administration. The power to abolish a post which may result in the holder thereof ceasing to be a Government servant has got to be recognised. But we may hasten to add that any action legislative or executive taken pursuant to that power is always subject to judicial review.

It is no doubt true that Article 38 and Article 43 of the Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But these articles do not mean that every body should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a Government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the Court has no voice.

On a fair construction of the provisions of Article 311 (2) of the Constitution and a consideration of the judicial precedents having a bearing on the question, we are of the view that it is not possible to hold that the termination of service brought about by the abolition of a post effected in good faith attracts Article 311 (2). An analysis of Article 311 (2) shows that it guarantees to a person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post the right to defend himself in any proceeding leading to his dismissal, removal or reduction in rank. It requires that in such a case an inquiry should precede any such action, at that inquiry he should be informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. The second proviso to Article 311 (2) of the Constitution sets out the circumstances when that clause would not apply. These provisions show that Article 311 (2) deals with the dismissal, removal, or reduction in rank as a measure of penalty on proof of an act of misconduct on the part of the official concerned. This fact is emphasised by the introduction of the words 'an inquiry in which he has been informed of the charges against him' in Art. 311(2) when it was substituted in the place of the former clause (2) of Article 311 by the Constitution (Fifteenth Amendment) Act, 1963 which came into force on October 5, 1963. In the circumstances, it is difficult to hold that either the decision in Moti Ram Deka's case (supra) or the decision in Papanna Gowda's case (supra) lays down that the provisions of Article 311 (2) should be complied with before the services of a Government servant are terminated as a consequence of the abolition of the post held by him for bona fide reasons. In view of the foregoing, it cannot be said that the Act impugned in these petitions by which the village offices in the State of Tamil Nadu were abolished contravenes

Article 311(2) of the Constitution.

We have now to consider the submission based on Article 14 of the Constitution. This aspect of the case has to be examined from two angles- (i) whether the step taken by the Legislature to abolish the village offices in question is so arbitrary as to conflict with Article 14 of the Constitution and (ii) whether unequals have been treated as equals by the Legislature.

While dealing with the first point it is to be observed that the posts of village officers which were governed by the Madras Act II of 1894, the Madras Act III of 1895 and the Board's Standing Orders were feudalistic in character and the appointments to those posts were governed by the law of primogeniture, the family in which the applicant was born, the village in which he was born, and the fact whether he owned any property in the village or not. Those factors are alien to modern administrative service and are clearly opposed to Articles 14 and 16 of the Constitution. No minimum educational qualifications had been prescribed. It was enough if the applicants knew reading and writing in the case of some of them. The posts were not governed by the regular service rules applicable generally to all officials in the State service. Rightly therefore, the Administrative Reforms Commission recommended their abolition and reorganisation of the village service. The relevant part of the Report of the Administrative Reforms Commission reads thus:

> "The concept of service was conspicuously absent in this relationship. Village officers were part-time employees and not subject to normal civil service discipline. They do not function from public offices where they were expected to receive people and transact public business. All accounts, survey and registry records were in their private custody. Villagers had to go to the residences of Village officers and await the latter's convenience for referring to public records or for getting extracts from them. This reduced the accessibility particularly of "high caste" village officers to the poor farmers of the "backward and untouchable" communities. Their emoluments for the part-time service, were meagre and appeared to be an honorarium rather than a living wage. Communications and living conditions in villages being difficult, subordinate inspecting officers were dependent on the private hospitality of village officers during their official visits. These factors led to the village officers developing an attitude of condescension in their dealings with villagers. Even though the hereditary principle was held to be unconstitutional recently, the members of their families still get preferential treatment, even if informally, in filling up vacant offices. In recent times, village officers have generally ceased to be leading and affluent riots and are reduced to earn their livelihood largely through the misuse of their position."

The problems involved in the reorganisation of Revenue villages in Tamil Nadu were also discussed in the Report of Mr. S.P. Ambrose, I.A.S. submitted to the State Government in January, 1980. In the course of the Report, he observed:

> "4.2 Reorganization of Revenue Villages- 4.2.1. In view of the considerable increases in the total beriz of villages, particularly those with extensive irrigated areas, new rules for the regulation and distribution of water in the project areas and in old

ayacut areas, and the reduced work and responsibilities of the talayaris on account of the increase in the strength of the regular Police establishments the norms, for determining the strength of the villagee establishment, as laid down in B.P. Ms. No. 324, dated the 9th December 1910, read with B.P. Ms. No. 231, dated the 23rd February 1921, no longer held good.

4.2.2. The size of the survey villages vary widely; 4.77 hectares is the extent of the smallest village and 20,947 hectares is the extent of the biggest village. In terms of population, the smallest has population of 33, while the largest has a population of 12,777. Even though survey villages have been grouped to form convenient revenue groups for purposes of village administration, the size of revenue groups also vary widely. With the increases in the area cultivated, area irrigated (both from Government and private sources) and the number of pattas the work load in most villages has increased considerably now. The question for consideration is whether a comprehensive exercise to reorganise the revenue villages into convenient and viable village administrative units with reference to the existing work load should be attempted, and thereafter to revise the strength of the village establishment by laying down fresh norms for determing its strength. This will be a major administrative exercise. If convenient village administrative units with, more or less, equal work load are to be constituted, several factors like area cultivated (gross and net), area irrigated, crop pattern, population, number of pattadars and beriz have to be taken into account Before this is attempted, the major policy issue is whether to continue the present part-time system of village officers or to have regular, transferable Government servants as Village Officers in charge of bigger administrative units as recommended by the Administrative Reforms Commission."

Having regard to the abolition of similar village offices in the neighbouring States of Karnataka and Andhra Pradesh and the agitation in the State of Tamil Nadu for reorganisation of village service, it cannot be said that the decision to abolish the village offices which were feudalistic in character and an achronisms in the modern age was arbitrary or unreasonable. Another aspect of the same question is whether the impugned legislation is a colourable one passed with the object of treating the incumbents of village offices in an unjust way. A similar contention was rejection by this Court in B.R. Shankaranarayana and Ors. v. The State of Mysore and Ors.(1) in which the validity of the Mysore Village Offices Abolition Act (14 of 1961) which tried to achieve more or less a similar object arose for consideration, with the following observations at pages 1575-1576:

"(13) As pointed out by this Court in Gajapati Narayan Deo's case, AIR 1953 S.C. 375, the whole doctrine of colourable legislation resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant. It is open to the Court to scrutinize the law to ascertain whether the legislature by device, purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. (14) Beyond attempting the argument that the impugned Act is a piece of colourable legislation, learned

> Counsel for the appellant has not succeeded in substantiating his contention that the Act and the rules made there under are merely a device for removing the present incumbents from their office. The provisions of the Act and the rules made thereunder plainly provide for the abolition of hereditary village offices and make those offices stipendiary posts. The Act makes no secret of its intention to abolish the hereditary posts. (15) It is argued that even after abolition, the same posts are sought to be continued. It is no doubt true that the names of the offices have not been changed but there is a basic structural difference between the posts that have been abolished. The posts created by the new Act are stipendiary posts. They carry salaries according to the grades created by the rules. The incumbents are transferable and their service is pensionable. Different qualifications are prescribed for the new posts. From a consideration of the incidents attaching to the new posts it is clear that the old posts have been abolished and new posts have been created and that the whole complexion of the posts has been changed.
>
> (16) The result is that in our opinion the impugned Act cannot be held to be a piece of colourable legislation and as such invalid."

A learned discussion on all the points raised in the above case is found in the judgment of the High Court of Mysore in B.H. Honnalige Gowda v. State of Mysore and Anr.(1) Hence the above contention has to be rejected.

The next contention of the petitioners which is of some substance and which is based again on Article 14 needs to be examined here. It is seen from section 2 (e) of the Act that the expression 'part-time village officer' is defined as follows:

> "2. (e) "part-time village officer" means Village Headman (including Additional Village Headman, Village Karnam (including Chief Karnam and Additional Village Karnam) or Triune Officer appointed under-
>
> (i) the Madras Proprietary Estates') Village Service Act, 1894 (Madras Act II of 1894) or the Madras Hereditary Village offices Act, 1895 (Madras Act III of 1895);
>
> (ii) the Board's Standing orders;
>
> (iii) the Tamil Nadu Village officers Service Rules, 1970 or any other rules made under the proviso to Article 309 of the Constitution; or
>
> (iv) any other law, but does not include Grama Kuvalar, Grama Paniyalar and Pasana Kavalar;"

By section 3 of the Act, the posts held by the part- time village officers, as defined above, are abolished. As a consequence of the above provision not merely posts of officers appointed under the Madras Act No. II of 1894, the Madras Act No. III of 1895 and the Board's Standing orders prior to

December 16, 1970 but also the posts held by officers appointed after that date under the Rules made under the proviso to Article 309 of the Constitution i.e. The Tamil Nadu Village Officers Service Rules, 1970 or any other rule made by the Governor have been abolished. It is argued that the abolition of posts of officials appointed after December 16, 1970 under the Rules made under the proviso to Article 309 of the Constitution is violative of Article 14 of the Constitution. We have given our anxious consideration to this submission. Any classification should satisfy two tests-(i) that there exists an intelligible differentia between those who are grouped together and those who are not included in the group and (ii) that there exists a reasonable nexus between the differentia and the object for which classification is made. As stated earlier the object of the impugned legislation is to abolish posts which were part-time in nature and which had come into existence under laws which were feudalistic in character and to replace them by posts held by new incumbents who are recruited under it. The question for consideration is whether the grouping together of the part-time posts mentioned in section 2 (e) of the Act is unconstitutional. There is no dispute that upto December 16, 1970 all appointments to village offices were being made under the two Madras Acts referred to above and the Board's Standing orders on the basis of factors dealt with above. But after December 16, 1970, recruitment was being made in accordance with the Tamil Nadu Village Officers Service Rules, 1970 By the said Rules a new service of part-time village officers was constituted. Rule 5 thereof prescribed the minimum educational qualification and the tests which an applicant had to be eligible for being appointed. The Rules fixed the age of superannuation at 55 years. But even under these Rules, the persons who were appointed were part-time village officers who were paid a fixed amount every month by way of remuneration. The nature of duties performed by them and the responsibilities they had to discharge were also the same. The posts held by them were non pensionable posts. Under the Act and the Rules framed thereunder, the village administrative officers to be appointed are to be recruited directly. No person shall be eligible for appointment to the post of a village administrative officer unless he possesses the minimum general educational qualification referred to in Rule 12 (a) (i) of Part II of the Tamil Nadu State Subordinate Services Rules and prescribed Schedule I to the said Part II. Every person appointed to the post has within a period of one year from the date on which he joins duty to undergo the training and pass the tests prescribed by Rule 9 of the Rules made under the Act. Every person appointed as a village administrative officer is liable to be transferred from one place to another. The age of superannuation is fixed at 58 years. The said posts are no longer part-time posts and the holders thereof are full time Government officials entitled to draw salary every month in the scale of Rs. 350-10-420-15-600 and other allowances and these posts are pensionable posts. It is also to be seen from the recommendations of the Administrative Reforms Commission and other material placed before us that the revenue village will be reorganised so as to form viable administrative units which would require the services of a whole time village administrative officer. The area under a village administrative officer is much larger than many of the existing revenue villages. When such reorganisation of the village administration is contemplated, it would not be possible to allow charges of diverse sizes to continue to remain in any part, of the State of Tamil Nadu. In these circumstances, even though the village officers appointed after December 16, 1970 are in a way different from the village officials appointed prior to that date, they too cannot be equated with the new village administrative officers who will be appointed under the Act and the Rules made thereunder.

It cannot, therefore, be held that Article 14 of the Constitution has been violated in abolishing the posts held by those appointed after December 16, 1970.

The petitioners in Writ Petitions Nos. 6191, 6355 and 6356 of 1980 who are holders of village offices in Tiruttani Taluk and Pallipatu area have questioned the impugned Act on the ground that the State Legislature could not pass the law without the previous approval of Central Government as required by the proviso to sub-section (4) of section 43 of the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (Central Act 56 of 1959). The area in which these petitioners were working as village officials forms part of the transferred territories transferred from Andhra Pradesh to Tamil Nadu under the aforesaid Act. Their contention is that since they were working as village officials in the said area prior to the commencement of the above said Act the conditions of their service could not be altered to their prejudice without obtaining the previous approval of the Central Government. Section 43 of the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 reads:

> "43. Provisions relating to services-
>
> (1) Every person, who immediately before the appointed day, is serving in connection with the affairs of Andhra Pradesh or Madras shall, as from that day, continue so to serve, unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs of the other State.
>
> (2) As soon as may be after the appointed day, the Central Government shall by general or special order, determine the State to which every person provisionally allotted to Andhra Pradesh or Madras shall be finally allotted for service and the date from which such allotment shall take effect or be deemed to have taken effect.
>
> (3) Every person who is finally allotted under the provisions of sub-section (2) to Andhra Pradesh or Madras shall, if he is not already serving therein, be made available for serving in that State from such date as may be agreed upon between the two State Governments or in default of such agreement, as may be determined by the Central Government. (4) Nothing in this section shall be deemed to affect, after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of Andhra Pradesh or Madras.

Provided that the conditions of service applicable immediately before the appointed day to the case of any person provisionally or finally allotted to Andhra Pradesh or Madras under this section shall not be varied to his disadvantage except with the previous approval of the Central Government.

(5) The Central Government may at any time before or after the appointed day give such directions to either State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this section and the State Government shall comply with such directions." The answer of the State Government to the above contention is that the petitioners in these petitions are not allotted under section 43 (2) of the above said Act to the State of Tamil Nadu and hence the

proviso to sub-section (4) of section 43 is not applicable. The petitioners have not shown any such order of allotment under section 43 (2). Hence the proviso to sub-section (4) of section 43 is not attracted. Under section 43 (4) of the above said Act, the State Government is entitled to deal with all the officials in the areas transferred to them in accordance with Chapter I of Part XIV of the Constitution. The above contention is, therefore, rejected.

In the course of the hearing on a suggestion made by the Court, the learned Attorney General filed a memorandum which reads as follows:

> "All the erstwhile Village officers who possess the minimum general educational qualification as required under the Abolition Act and irrespective of their age (but subject to the rule of retirement framed under the Abolition Act and the Rules framed thereunder) will be screened by a Committee to be appointed by the Government. They need not make any application and they need not also appear for any test conducted by the Tamil Nadu Public Service Commission for the post of Village Administrative officer. Guidelines to the Committee will be as follows:-
>
> (1) Punishment (2) Physical condition.

All the persons selected by the Committee will be appointed by the competent authorities and relaxation in respect of age will be given. They will be new appointees under the Abolition Act and will be governed by the provisions of the Act and the rules made thereunder. Compensation will not be available to those who are so appointed.

The remaining vacancies will be filled up from among the candidates already selected by the Tamil Nadu Public Service Commission."

After the above petitions were filed under the interim order passed in these cases all the officials involved in these cases are being paid the honorarium by the State Government. Those who fail in these petitions would have become liable to repay the amount which they have thus drawn in excess of the compensation, if any, they may be entitled to. It is submitted by the learned counsel for the State of Tamil Nadu that the State Government will not take steps to recover such excess amount. The above statement is recorded.

The attitude displayed by the State Government in filing the memorandum referred to above and in making a statement to the effect that the amount paid pursuant to the interim orders in in excess of the compensation payable the village officials concerned will not be recovered is a highly commendable one and we record our deep appreciation for the laudable stand taken by the Government.

It was, however, strenuously urged by Shri R. K. Garg that those who have to vacate the posts would be without any work and some of them have large families and that compensation, if any, payable to them is very inadequate He urged that it was the duty of the State Government to make adequate provision pursuant to Article 38 and Article 43 of the Constitution. These Articles are in Part IV of

the Constitution. They are not enforceable by the courts but they are still fundamental in the governance of the country.

The nature of the relationship that exists or ought to exist between the Government and the people in India is different from the relationship between the ruler and his subjects in the West. A study of the history of the fight for liberty that has been going on in the West shows that it has been a continuous agitation of the subjects for more and more freedom from a king or the ruler who had once acquired complete control over the destinies of his subjects. The Indian tradition or history is entirely different. The attitude of an Indian ruler is depicted in the statement of Sri Rama in the Ramayana thus:

> Kshatrirairdharyate chapo nartshabdo bhavaideeti (Ramayana III-10-3) (Kshatriyas (the kings) bear the bow (wield the power) in order to see that there is no cry of distress (from any quarter).
>
> The duty of the administrator, therefore, is that he should promptly take all necessary steps to alleviate the sufferings of the people even without being asked to do so. While attending to his duties an administrator should always remember the great saying of the Tamil saint Tiruvalluvar:
>
> Do nought that soul repenting must deplore, If thou hast sinned, "its well if thou dost sin no more.
>
> (Let a minister never do acts of which he would have to grieve saying, "What is this I have done", (but) should he do (them), it were good that he grieved not.) (No. 655 in Tirukkural: Translation by Rev. Dr. G.U. Pope and others (Reprint 1970) p. 175). An administrator's actions should be such as he is not driven to repent for the mistakes he may have committed. But if he has committed any mistakes in the past he should try to avoid a repetition of such mistakes. It is significant that in Tamil language the equivalent of the word 'people' is 'Makkal' which is also sometimes used as the equivalent of 'children'. It is for the State Government to consider what can be done to those who fail in the petitions. This observation is made particularly in regard to those who were recruited after December 16, 1970 under the rules made under the proviso to Article 309 of the Constitution in view of the fact that their recruitment was not made on the hereditary principle. Those who have passed S.S.L.C. examination amongst them come within the scope of the statement made by the learned Attorney General. But those who have merely completed S.S.L.C. examination but not passed it fall outside the scope of that statement even though they have gained experience while they were in office. We hope and trust that the State Government will look into this matter purely from a humanitarian point of view. This is only a suggestion and not a direction.
>
> In the result the petitions are dismissed subject to the following:

(i) The State Government will give effect to the memorandum filed on its behalf which is incorporated in this judgment in the case of those who possess the minimum general qualifications prescribed under the Act and the Rules made thereunder and who were holding the posts of part-

time village officers immediately before the Act came into force. The State Government shall re-employ all such persons who have not crossed the age of superannuation and who are selected as per the memorandum in the new cadre within four months from today. Until they are so selected, they will not be paid any remuneration. Even if they are re- employed, the amount paid to them pursuant to the interim orders will not be recovered from them.

(ii) The compensation, if any, payable by the State Government under section 5 of the Act to those who cease to be village officers shall be adjusted against the amount paid pursuant to the interim orders passed in these cases. The State Government will not recover from them any amount paid to them pursuant to the interim orders passed in these cases in excess of the compensation, if any, payable to them.

(iii) The interim orders stand vacated with effect from April 15, 1982.

(iv) No costs.

N.V.K. Petitions dismissed