State Of Mysore vs R. V. Bidap on 3 September, 1973

Equivalent citations: 1973 AIR 2555, 1974 SCR (1) 589, AIR 1973 SUPREME COURT 2555, 1974 3 SCC 295, 1974 LAB. I. C. 251, 1974 3 SCC 337, 1974 (1) SCR 589, 1973 2 LABLJ 418, 1975 2 SCJ 70, 1973 2 SCWR 373

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, D.G. Palekar, Y.V. Chandrachud, P.N. Bhagwati

PETITIONER:
STATE OF MYSORE

Vs.

RESPONDENT:
R. V. BIDAP

DATE OF JUDGMENT03/09/1973

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SIKRI, S.M. (CJ)
PALEKAR, D.G.
CHANDRACHUD, Y.V.
BHAGWATI, P.N.

CITATION:
1973 AIR 2555 1974 SCR (1) 589
1974 SCC (3) 357
CITATOR INFO :
R 1974 SC 613 (45)
R 1982 SC 149 (240,708)
E 1984 SC 684 (33,34)

ACT:
Constitution of India. 1950, Arts. 316, 317 and 319-office of member and office of Chairman of Public Service Commission if different-Period for which office of Chairman can be held where member is appointed Chairman-'Ceasing to hold office as member in Art. 319, Scope of-Policy behind articles.

HEADNOTE:
Article 316(2) of the Constitution provides that a member of

a Public Service Commission should hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier.

The respondent was appointed a member of the State Public Service Commission in March 1967. About two years later he was appointed as Chairman of the Commission the question of the date from which the period of six years for which he was entitled to hold office should be counted.

HELD : The office of member is different from the office of the Chairman. and so the respondent was entitled to hold office for the period of six years its Chairman of the Commission counted from the later date when he assumed office is Chairman.

(a) Article 316 deals with the appointment of the Chairman and members of the Commission their term of office and their ineligibility for ree-appointment. It shows that a Chairman of a Public Service Commission is also a member of the Public Service Commission, that is a member can fill one of two offices-ordinary member or member-Chairman. But Ar. 316(lA) shows that the office of a member is different from that of the Chairman. [601E-G]

(b) The ineligibility provided for in Art. 316(3) is reappointment to that office. Hence the disability for re-appointment attaches to the specific office, that is no member who holds the office of just a member, pure and simple, shall be re-appointed to that office, that is, to the office of member pure and simple. But Art. 319(d), which bars a member from taking employment under Government, expressly declares by way of exception, eligibility for appointment ",is the Chairman of that or any other State Public Service Commission" on ceasing to held office as member, that is, a member of the Public Service Commission of a State, on ceasing to hold office as such, is eligible for appointment as Chairman of that Commission itself. it follows that a member when elevated to the higher office of Chairman is not reappointed but is appointed to the different office of Chairman. The prescription of the terminus a quo in Art. 316(2) is "from the date on which he enters upon his office" which, in the case of a Chairman appointed directly as such or originally as a member and later elevated to Chairman, begins when he starts functioning as Chairman. [601H-602D]

(c) Logically and legally there is automatic expiry of office of the member qua ordinary member on his assumption of office qua Chairman. When a member holding office of a member takes no the office of Chairman he by necessary implication and co instante, relinquishes or ceases to hold his office is member and the, requirement (if Art. 319 is satisfied. [602G-603H]

(d) Article 316(2) states that a member shall hold office

for term of six years or until he attains 60 years whichever is earlier: which means that on the expiration of the period of 6 years he ceases to hold office. Logically
590
therefore, Art. 319 means that a member, on ceasing to hold office as a result of his six year term expiring, shall be eligible for appointment as Chairman of the same Commission. There is no substance in the argument that, on the above interpretation, is member can be appointed, in violation of Art. 316(2). as
Chairman not merely when the six-year term expires, but also after he has attained the age of 60 years. When an ordinary member is appointed as Chairman by virtue of the permission written into Art. 319(d), what really happens is that the incumbent takes up a new office, namely, that of Chairman. This member--cum-Chairman, in terms of Art. 316(2) shall hold office. which in this case means his new office, for a term of 6 years or until he attains the age of 60 years whichever is earlier. [603D-G]
(e) It could not be argued that the cessation contemplated by Art. 319 is not the category of persons whose six-year term has expired but those who have been removed for infirmities under Art. 317, because, the wrote purpose of Art. 319 is to maintain purity is services by prohibiting temptation in future offices or employment and, it is unlikely that the framers of the Constitution would have contemplated by a special provision the appointment to higher posts of persons who were unworthy, [6O3A-D]
(f) It is true that an indefinite term of office and frequent renewals in the same State or in the Union are fraught with possible patronage and interference with the purity of the functioning of the Public Service Commission and that they should therefore be prevented by legal interdict. But in fact the number of instances when a member of a Public Service Commission had held office for more than 6 years are few. Besides, anything between 6 to 12 years may not be so very long to justify the argument of fear that the above object of a brief term would be frustrated. In the last resort, the menace to purity of these high offices comes as much from dubious pressure and patronage is from other causes and where the highest seats of power do not guard against these evil$, no constitution, no law, no court can save probity in administration. [596H-597G]
The majority view in Dhivendra Krishna v. Corpn of Calcutta, A.I.R. 1966 Cal, 290 overruled.
Upenda Pas v. State, A.I.R. 1970 Orissa 205 approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 992 of 1973.

Appeal from the judgment and order dated the June 4, 1973 of the Mysore High Court at Bangalore in Writ Petition No. 774 of 1973.

R. N. Byra Reddy, A. K. Sen, M. Veerappa, for the appellant.

S. S. Javali and B. R. Agarwala, for the respondent. L. N. Sinha, Solicitor General of India and S. P. Nayar, for Intervener No. 1.

O. P. Rana, for Intervener No. 2.

A. R. Gupta and Narayan Nettar, for intervener No. 3. The Judgment of the Court was delivered by KRISHNA IYER, J. A short issue as to the expiration of the constitutionally guaranteed tenure of office of a Member of the Public Service Commission, who, in the middle of his term, reincarnates as its Chairman and claims a fresh six- year spell, has lent itself to considerable argument at the Bar, the contributory causes being the differing views of courts, varying practices of States, apparent incongruity between the paramount purpose and the expressed language of the provisions and the slight obscurity of the relevant articles, the expert drafting and careful screening by the 'founding fathers' notwithstanding.

One Shri Bidap, the respondent in this appeal, was appointed Member of the State Public Service Commission by the Governor of Mysore on March 20,, 1967. While his term was still running, the Governor was pleased to appoint him Chairman of the Commission with effect from February 15, 1969. The State took the view that the six years assured to him by Article 316(2) commenced to run from the date he became Member simpliciter and did not receive a fresh start from the later date when he assumed office as Chairman. Government's view on the issue was revealed in answer to an interpellation in the Legislative Council made on March 17, 1973. On this-reckoning the Chairman's term would have ended on the 19th and so, the panicked respondent hastened to the High Court to avert the peril of premature ouster and sought an appropriate writ interdicting Government's move. The timely interim order and the eventual allowance of the writ petition balked the hope of Government and drove the State to this Court in quest of a final pronouncement on the constitutional question involved. While there is divergence of judicial opinion at the High Court level, the preponderance of authority, including a ruling of the Mysore High Court itself, militates against the appellant's stand- point. A broad consensus of administrative practice evolved by the Union Government in response to an opinion tendered by the Attorney General on a reference made to him at the instance of the Conference of All India Chairmen of Public Service Commissions (prompted by divergent views expressed in a full Bench judgment of the Calcutta High, Court) also goes against the appellant's position. Technically, neither the appellant nor, for that matter, any citizen is bound by administrative verdicts on questions of law and when the High Courts disagree, the law becomes uncertain necessitating resolution of the conflict by the Supreme Court. It is apt to remember the words of Rich, J-

> "One of the tasks of this Court is to preserve uniformity of determination. It may, be that in performing the task the Court does not achieve the uniformity that was desirable and what uniformity is achieved may be uniformity of error. However in

that event it is at least uniformity".(1) Moreover, in a Government of laws like ours, the last court has the last word on a given law, it being permissible to the Legislature, subject to constitutional limitations, to amend the law, if necessary. The question in the present case being one of general public importance has to be decided by this Court silencing the present and potential disputes and laying down a binding rule for the whole country.

Counsel for the appellant strenuously contends that there is high policy animating the provisions, which limit the official life of a Member of the Public Service Commission to a significantly short term of six years coupled with an almost blanket ban on the holding (1) Waghorn v. Waghorn, 65 Commw. L. R. 239, 293 (1942).

of other office or taking up of other employment under Government on ceasing to be a Member. Before, we focus on the fasciculus of Articles 316 to 319 to assess the force of this and other submissions, two basic questions fall to be considered. Is there any public policy of great moment behind these Articles and if so, what is it ? Secondly, assuming its existence and importance, could this Court, while interpreting the provisions of the Constitution, listen to such extrinsic voices, however natural logical and persuasive or be guided by the olden rule of grammatical construction which treats the text of the statute as a sort of forensic sound-proof room ?

The working life, of an Indian official in administration can easily be, and is, several times the six short years granted to a Public Service Commission Member under Art. 316(2). Further employment in public service is also not unusual for superannuated officers, particularly at the higher echelons. And yet there is substantial, although not total, prohibition of subsequent employment in public service of Commission Members written into the Constitution by Art. 319. The learned counsel rightly stresses that the Public Service Commission has vast powers of recruitment of candidates for an immense and increasing host of Government posts which in a country with considerable unemployment are prom to be abused if too close and too long a familiarity with certain sectors were to be established. The prospect and peril of the Executive, tempting with renewals of membership to influence the incumbents may corrupt that institution, which must zealously be kept above suspicion. This is the reason detre of the narrow period prescribed by Art. 316(2), the taboo on reappointment in Art. 316(3) and on taking up of any Government service clamped down by Art.

319. This view gains strength from the proceedings of the Constituent Assembly, particularly the speech of Dr. Ambedkar. Maybe there is plausibility in the point that the three limitations on the office of membership (made a shade more rigorous in the case of chairmanship) were directed towards obviation of abuse. Even so, is that a dominant concern of court in the interpretation of the statute or altogether irrelevant? Are Constituent Assembly Debates and objects in the mind of lawmakers put out of the judicial area of vision by the classical exclusionary rules which are part of our legal heritage from the British? Anglo-American jurisprudence, unlike other systems. has generally frowned upon the use of parliamentary debates and press discussions as throwing light upon the meaning of statutory provisions. Willes, J. in Miller v. Tayler,(1), stated that the sense and meaning of an Act of Parliament must be collected from what it says when passed into law, and not from the history of changes it underwent in the House where it took its rise. That history is not

known to the other House or to the Sovereign. In Assam Railways and Trading Co. Ltd. v. I.R.C.,(2) Lord Writ in the Privy Council said:

> "It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the report of commissioners (1) [1769] 4 Burr, 2303, 2332.
>
> (2) [1935] A. C. 445 at p. 458.

is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted". The rule of grammatical construction has been accepted in India before and after Independence. In the State of Travancore-Cochin and others v. Bombay Company Ltd., Alleppey,(1) Chief Justice Patanjali Sastri delivering the judgment of the Court, said :-

> "It remains only to point out that the use made by the learned Judges below of the speeches made by the members of the Constituent Assembly in the course, of the debates on the draft Constitution is unwarranted. That this form of extrinsic aid to the interpretation of statutes is not admissible, has been generally accepted in England, and the same rule has been observed in the construction of Indian statutes See Administrator General of Bengal v. Prem Lal Mullick, 22 nd. Appl. 107 (P.C.) at p. 118. The reason behind the rule was explained by, one of us in Gopalan v. Slate of Madras, (1.950) S.C.R. 88 thus :
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> "A speech made in the course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect the inarticulate mental process lying behind the majority vote which carried the, bill. Nor is it reasonable to assume that the minds of all those legislators were in accord".

Or, is it is more tersely, put in an American case-

> "Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other-United States v. Trans- Missouri Freight Association, (1897) 169 U.S. 290 at p. 318 (sic)".

This rule of exclusion has not always been adhered to in America, and. sometimes distinction is made between using such material to ascertain the purpose of a statute and using it for ascertaining its meaning. It would seem that the rule is adopted in Canada and Australia-see Craies on Statute Law, 5th Edn. p. 122 (pp. 368-9)".

In the American jurisdiction, a more natural note has sometimes been struck. Mr. justice Frankfurter was of the view(2) that-

> "If the purpose of construction is the ascertainment of meaning, nothing that is logically relevant should be excluded, and yet, the Rule of Exclusion, which is

> generally followed in England, insists that, in interpreting statutes, the proceedings in the Legislatures, including speeches delivered when the statute was discussed and adopted, cannot be cited in courts".
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> (1) AIR 1952 S. C. 366.
>
> (2) See reference in The Indian Parliament and the Fundamental Rights-Tagore Law Lectures-Chapter VI. p. 141.

Crawford on Statutory Construction at page 388 notes that-

> "The judicial opinion on this point is certainly not quite uniform and there are American decisions to the effect that the general history of a statute and the various steps leading up to an enactment including amendments or modifications of the original bill and reports of Legislative Committees can be looked at for ascertaining the intention of the legislature where it is in doubt; but they hold definitely that the legislative history is inadmissible when there is no obscurity in the meaning of the statute".

The Rule of Exclusion has been criticised by jurists as artificial. Ile trend of academic opinion and the practice in the European system suggest that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. Recently, an eminent Indian jurist has reviewed the legal position and expressed his agreement with Julius Stone and Justice Frankfurter.(1) of course, nobody suggests that such extrinsic materials should be decisive, but they must be admissible. Authorship and interpretation must mutually illumine and interact. There is authority for the proposition that resort may be had to these sources with great caution and only when incongruities and ambiguities are to be resolved.(2) There is a strong case for whittling down the Rule of Exclusion followed in the British courts and for less apologetic reference to legislative proceedings and like materials to read the meaning of the words of a statute. Where it is plain, the language prevails, but where there is obscurity or lack of harmony with other provisions and in other special circumstances, it may be legitimate to take external assistance such as the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters. The law of statutory construction is a strategic branch of jurisprudence which must, it may be felt, respond to the great social changes but a conclusive pronouncement on the particular point arising here need not detain us because nothing, decisive as between the alternative interpretations flows from a reliance on the Constituent Assembly proceedings or the broad purposes of the statutory scheme.

A few excerpts from the drafting preludes to the framing of the Constitution from the masterly study by B. Shiva Rao and relevant quotes from a few important speeches in the House may be apposite and illuminating. The Royal Commission on Superior Services in India, popularly called the Lee Commission (1924) observed(3) "Wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it as far as possible from political or personal influences and give it that position of stability and security (1) The Indian Parliament and

the Fundamental Rights-Tagore Law LeCtures, p. 148.

(2) A. K. Gopalan v. State of Madras, AIR 1950 S. C. 27.

(3) The Framing of India's Constitution-A Study, pp. 724-725.

which is vital to its successful working as the impartial and efficient instrument by which governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the "spoils system" has taken its place, an inefficient and dis- organised civil service has been the inevitable result and corruption has been rampant".

As a result of these recommendations Public Service Commissions were set up in the country with the objectives outlined by the Lee Commission. B. Shiva Rao has drawn attention to the doings of the drafting committee(1) -

> ".... Santhanam, Ananthasayanam Ayyangar, Mrs. Durgabai and T. T. Krishnamachari suggested an amendment to lay down... that a member of a State Commission would on retirement be ineligible, for any office other than the Chairman or a member of the Union Commission or the Chairman of a State Commission. The principle of this amendment was accepted by the Drafting Committee which incorporated it in suitable terms in the revised draft of the article moved by Ambedkar in the Constituent Assembly on August 22, 1949".

Dr. Ambedkar introducing the provisions spoke "Now I come to the other important matter relating to the employment or eligibility for employment of the members of the Public Services Commission-both the Union and State Public Services Commissions. Members will see that according to article 285, clause (3), we have made both the Chairman and the Members, of the Central Public Services Commission as well as the Chairman of the State Commission and the members of the State Commission, ineligible for reappointment to the same posts : that is to say, once a term of office of a Chairman and Member is over, whether he is a Chairman of the Union Commission or the Chairman of a State Commission we have said that he shall not be reappointed. I think that is a very salutary provision, because any hope that might be held out for reappointment, or continuation in the same appointment, may act as a sort of temptation which may induce the Member not to act with the same impartiality that he is expected to act in discharging his duties. Therefore, that is a fundamental bar which has been provided in the draft article".

Mr. Jaspat Roy Kapoor tabled several amendments in support of which the spoke at length. One of the amendments, which was turned down by the House but highlights portions of the area of the present controversy and his speech in support thereof, may be excerpted(3) here :

> (1) The Framing of India's Constitution-A Study-p. 734. (2) Constituent Assembly Debates (Vol. 9) 1949. p. 575. (3) Constituent Assembly Debates (Vol. 9) (1949) p. 58 1.

"That at the end of the proposed new article 285-C, the following proviso be added:- Provided that a member's total period of employment in the different public service commissions shall not exceed twelve Years".

"This amendment is more than important than my other amendments. I was confirmed in this view from what I heard Dr. Ambedkar say this morning in moving his own amendment. He said, while explaining article 285 that a person shall not hold office as a Member of a Public Service Commission for more than six years. That of course is partially provided in clause (3) of article But that clause refers only to the reemployment of a person to that particular post. So far as the other posts are concerned, that clause does not apply. So according to article 285-C a member of a Public Service Commission can continue to be a Member of one or other of the public service commissions for any number of years. I say 'any, number of years' because, for six years one can be a member of a State Public Service Commission. Thereafter, for another six years, he can be the Chairman of a State Public Service Commission. It comes to twelve years. Thereafter again he can be.....

"I submit this is not a satisfactory state of affairs."

Shri H. V. Kamath adverted, in his speech, to this topic then he said(1) :

"It is agreed on all hands that the permanent services play an important role in the administration of any country. With the independence of our country the responsibilities of the services have become more onerous. They- may make or mar the efficiency of the machinery- of administration-call it steel frame or what you will-a machinery which is so vital for the peace and progress of the country."

"If a member of the Public Service Commission is under the impression that by serving and kowtowing to those in power he could get an office of profit under the Government of India or in the Government of a State, then I am sure he would not be able to discharge his functions impartially or with integrity".

"The public here have sometimes been made to feel that family or group interests have been promoted at the expense of the national; and to protect the Ministers against such a charge, it is necessary that the Public Service Commissions must be kept completely independent of the executive.. . " .lmo From these parliamentary proceedings the focal point of constitutional vigilance becomes manifest. An indefinite term of office and frequent renewals for any, incumbent in the same State or in the Union linked up with tendencies of superannuating officials to prospect (1) Constituent Assembly Debates (Vol. 9) (1949) pp. 586,

589.

for post-retirement posts are fraught with possible patronage and interference with the purity of the Commission's functioning and should be prevented by legal interdict. Art. 316(2) sets a limit of six years for the office of a Member of a Public Service Commission and an outer limit of 60 years of age (65 in the case of the Union Public Service Commission). There is an express bar on reappointment on the expiration of the first term Art. 316(2). There is a further prohibition against the, securing of any State employment by Members of the Commission on ceasing to be such Members, subject to a few exceptions (Art. 319). if the argument of the appellant were to be accepted. a Member, be he Chairman or not, or one or the other in succession, will get a total term of six years only. That is to say', even in the middle of his term as Member, if he is appointed Chairman, he wilt get only a run of six years to serve from the date he became an ordinary Member. On the other hand, if the rival contention of the respondent were to prevail, in the case of a Member of a State Public Service Commission, there is a possibility of his getting a maximum of six years as ordinary Member and another six years as Chairman of the Commission in the Same State. of course, we are not concerned with the prospect of appointments in other States as the mischief sought to be prevented is the possibility, of abuse by too long a ten-are in the same State. The situation in which a Member may thus enjoy a twelve-year term is so rare and, perhaps, may fall to the good fortune of only a few exceedingly good Members- and, indeed, anything between six to twelve years may not be so very long in the effective life of a public servant-that the apprehension of the object of a brief term being frustrated does not disturb us. In this context, it is reassuring to note that in twelve states and the Union there have been, as disclosed by Ext. 'G', only two instances beyond eight years of tenure and only 19 cases where more than a six year term is seen to have been obtained. May be Ext. 'G' is not exhaustive, and incidentally it indicates the practice which has prevailed in the country during the last over two decades of reading Art. 319(d) as, enabling a fresh term of office from the date of appointment as Chairman. it is clear that though mere practice cannot legitimise what is illegal it contradicts the consternation raised by the appellant of likely misuse of power. In the last resort the menace to purity of these high offices comes as much from dubious pressures and patronage as from other causes and where the highest seats of power do not guard against these evils, no constitution, no law, no court can save probity in Administration. We cannot assent to the appellants argument of fear.

Nor is this question of law res integra. The Calcutta High Court had considered it in a Full Bench decision reported in AIR 1966 Cal. 290. The majority view was that the term of office of six years was to be computed from the date of the appointment as Member of the commission and even if, in midstream he was made Chairman. time ran out finally at the end of the first six years. The minority opinion handed in by Mitter, J. took a contrary view based on an harmonious reading of Arts. 316 and 319 reaching the result that a Member appointed as Chairman inaugurates a new term from the later date. The Mysore High Court was confronted with this question in Writ petitions Nos. 6492, 5031 and 3758 of 1969. There the challenge to the validity of the Chairman's continuance in office was made by certain disappointed applicants for the post of District Educational officer. The High Court followed the minority view of Mitter, J. and the respondent in this appeal has produced a copy of the Mysore Judgment as Ext. 'B' along with his Writ Petition since the ruling has not been reported. The Orissa High Court also fell in line with Mysore, dissenting from the majority judgment in the Calcutta case. That decision, reported in AIR 1970 Orissa 205, reads into the appointment of a Member as Chairman an ipso facto cessation of his former office as Member when he enters upon

the duties of his new office, and thus seeks to reconcile Art. 316 with Art. 319. The High Court of Patna responded to this issue in a like manner in a judgment rendered in C.W.J.C. 1997 of 1970 (reproduced at pages 54 to

61. of vol. II of the paper-book). It may be noticed that a special leave Petition against this judgment was dismissed in line by- the Supreme Court (the said order is Ext. 'C' in the writ petition).

It now remains to understand the ratio of those decisions in the light of the anatomy of the constitutional scheme contained in Arts. 316 to 319. At this stage we may read Arts. 316, 317 and 319 in extenso :

316 (1) Appointment and terms of office of Members.

The Chairman and other Members of a Public Service Commission shall be appointed in the case of the Union Commission or a Joint Commission by the President, and in the case of a State Commission, by the Governor of the State :

Provided that as nearly as may be one half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

(1A) If the office of the Chairman of the Commission becomes vacant or if any, such Chairman is by reason of absence or for any other reason unable to perform the duties of his' office, those duties shall, until some person appointed under clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose. (2) A member of a Public Service Commission shall bold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier :

Provided that-

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor of the State, resign his office;

(b) a member of a Public Service Commission, may be removed from his office in the manner provided in clause (1) or clause (3) of Article

317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for reappointment to that office. Removal and suspension of a Member of a Public Service Commission.

317(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service ,Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by, reason of infirmity of mind or body.

(4) It the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the, Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incor- porated company', he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

Prohibition as to the holding of office by members of Commission on ceasing to be such members.

319. On ceasing to hold office-

(a) the Chairman of the Union Public Service Commission shall be ineligible, for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as, the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public, Service Commission or as the Chairman of a State public Service Commission, but not, for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be, eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

It is obvious from the language of the articles, admitted by both sides and accepted by all the decisions that a Chairman also is a Member. The appellant's argument is that Art. 316(2) fixes a term of office of six years for a member, who ex hypothesi includes a Chairman, and so the incumbent, be he member simpliciter or member-cum-Chairman or for part of the period member and later Chairman, cannot exceed the legal span of six years in all, membership being a common denominator covering both offices. The framers have taken care to limit the life of member to a term of six years. And wherever (unlike in Art. 316(2) distinct treatment for the two offices is intended, clear language separately dealing with them, or by making references, has been used, as is so evident from Arts. 316 (1A), 317 and 319). To fortify the reasoning, reliance is placed on Art., 3 61 (3) which places an embargo on reappointment on expiry, of the term of office of member (which expression covers Chairman). A larger-than-six-year term by taking on Chairmanship to membership would violate sub-art. 2 and subvert sub-art. 3 of Art. 316., runs the submission. So presented, the' argument seems impressive. But this apparent tenor gets a severe jolt when we turn to Art. 319(1) (d), for, if full credit were to be given to the opening words, "on ceasing to hold office" a member of a Public Service Commission is declared to be eligible for appointment as its: Chairman at the expiration of his six- year term as ordinary member. A member ceased to hold office when six years of service are over and remotely when he is removed for infirmities (Art. 317). To deny this effect to the provision, which is an integral part of the scheme, and to confine its operation to recondite instances of insolvents, delinquents and imbeciles dealt with in Art. 317 is to argue Art. 319 into a reductio ad absurdum. A closer probe into the key Articles 316 and 319 informed by the brooding presence of a constitutional purpose behind them, may now be undertaken. A subject-wise dichotomy suggests that Art. 316 deals with the appointment of the Chairman and members of the Commission, their term of office and their ineligibility for re-appointment, while Art. 319 relates to a different topic viz., the prohibition, with narrow exceptions, against further employment in State service. Concern for purity of the office and vulnerability to abuse of powers are writ large on these provisions. Even so, a few legal ideas, pervading the articles will dissolve the difficulties conjured up

based On Art. 31.6(2) and (3). Let us itemise them.

(1) A Chairman is also a member, as the very first words of Art. 316 indicate.

(2) Nevertheless, the office of member is different from that of Chairman and so also the duties attached to each, as is eloquently evident from Art. 316(1A).

Thus while both are members, they hold different offices. Sub-Art. (2) sanctions the holding of office by, a: member for six years "from the date on which he enters upon his office" which is signified by his entering 'on the duties thereof', to adopt the language of (1A). An office, as is thus self-evident, has duties and a member simpliciter has certain duties while a Chairman has other duties of. office. The offices are different though both the holders are generally members. The Prescription of the terminus a quo in (2) is 'from the date on which he enters upon his office' which, in the case of a Chairman appointed directly as such or originally as member and later elevated as Chairman, begins when he starts functioning as Chairman. So far is clear.

Article 316(3) neatly fits in and indeed the draftsman has perspicaciously focussed attention here on the office of a person (as distinct from membership) and the incumbent's ineligibility to reappointment to that office. The cardinal point is the identity of the office and the injunction is against reappointment to that particular office. A member can fill one of two offices-as an ordinary member ,or as a member-Chairman and the disability for reappointment attaches to the specific office. The distinction is fine but real. No member who holds the office of just a member pure and simple shall' be re-appointed to that office i.e. to the office of member pure Ind simple. The offices being different it is semantically wrong to describe the appointment of a member to the office of Chairman as reappointment. To re-appoint to an office predicates the previous holding of that identical office. Re-, as a prefix has the sense of 'again'. it follows straight from this that an ordinary member when elevated to the higher office of Chairman is not reappointed and does not contravene Art. 316(2) or (3) even if it be on he full course of six years of the office of ordinary member having run out.

Now let us study the ambit and limitations of Art. 319. It primarily enumerates the prohibitions attached to the holders of offices of Chairman and member of Public Service Commissions but carves ,out a few 'savings' to the 'dents'. We are directly concerned with sub-cl. (d) which bars a member from taking up employment under Government but expressly declares, by way of exception, eligibility for appointment "as the Chairman of that or any other State Public Service Commission", an ceasing to hold office as member (See the careful accent on office and appointment without the re). The fair meaning of this provision is that a member of Public Service Commission of a State on ceasing to hold office as such is eligible for appointment as Chairman of that Commission itself. Ordinarily when a member has run out his term under Art. 316(2), he ceases to hold office. Art. 316(2) states that a member shall hold office for a term of six years which means that on the expiration of that period he ceases to hold office. So the normal way a member ceases to hold office is by his six-year term spending itself out (or by his crossing the age bar of 60 or 65 as the case may be). Logically, therefore, Art. 319 means that a member on ceasing to hold office, as a result of his six-year term expiring, shall be eligible for appointment as Chairman of the same Commission.

There is no contravention of Art. 316(3) which prevents reappointment to the same office. In the present case, the office of member is different from the office of the Chairman and so there is no re-appointment to that office when a member is made Chairman. Similarly, Art. 316(2) is not breached because there is a six-year term for each office. The counter argu- ment on the basis of Art. 316(2) and (3) fails to explain Art. 319 (1)(d) which expressly authorises appointment of a member as Chairman on ceasing to hold office. The very strained argument that the cessation contemplated is not the straightforward category of persons whose six-year term has expired, but the condemned and recondite category covered by Art. 317(3) is too jejune for judicial acceptance. For one thing it is extraordinary to think that persons covered by Art. 317(3) will at all be considered for appointment to a higher post of Chairman. That sub-Article speaks of removal of a member because of insolvency or objectionable engagement in paid employment outside the duties of his office or ineffectiveness to continue in office by reason of infirmity of mind or body. The argument is only to be mentioned to be rejected and it is hardly fair to the framers of the Constitution to think that they would have contemplated such unworthies to be appointed to higher posts by a special provision under Art. 319 while the whole purpose of that Article is to maintain purity in service by prohibiting temptation for future offices or employment. The learned Advocate General urged that Art. 316(2) would be stultified by the interpretation we adopt of Art. 319. If a member can be appointed as Chairman on ceasing to hold office under Art. 316 (2), he could as well be appointed so not merely when his six-year term has expired but also after he has attained the age of sixty years. There is a fallacy in this submission. which will be apparent on a careful reading of Art. 316(2). That sub-article says that a member shall hold office for six years or until he attains sixty years, whichever is earlier. When an ordinary member is appointed chairman by virtue of the permission written into Art. 319(d), what really happens is that the incumbent takes hold of a new office, namely, that of Chairman. He is a member all the same, as we have earlier seen. This member-cum-Chairman in terms of Art. 316(2) shall hold office, which in this case means his new office, for a term of six years or until he attains the age of sixty years. If he is appointed Chairman 'past sixty, the appointment will be still-born because by the mandate of Art. 316(2) he shall hold office only until he attains the age of superannuation. This date having already transpired, he cannot hold the office at all.

Another conundrum raised is as to how when an ordinary member in the course of the six-year period is appointed Chairman we can read into such an appointment as 'ceasing to hold office' as member this being a requirement for Art. 319 to apply. The obvious answer is that when a member holding the office of a member takes up the office of Chairman, he, by necessary implication and co instante, relinquishes or ceases to hold his office as ordinary member. It is incon- ceivable that he will hold two offices at the same time and that will also reduce the number of members of the Public Service Commission. Therefore, logically and legally we may spell out an automatic expiry of office of the member qua ordinary member on his assumption of office qua Chairman. Nor is the public mischief sought to be avoided by Arts. 316 and 319 defeated by this interpretation. In any case they cannot serve indefinitely, nor remain for anything like twentyfive or thirty years which is the normal tenure of a Government servant.

The various rulings we have adverted to earlier substantially adopt the arguments we have set out, although in some of them there is marginal obscurity. The thrust of the reasoning accepted in all but the Calcutta case substantially agrees with what has appealed to us. For these reasons we dismiss the

appeal with costs. V.P.S. Appeal dismissed.