The Madras Law Journal

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*O. Chinnappa Reddy and A. P. Sen, JJ.*

D. Ramaswami .. *Appellant**

v.

State of Tamil Nadu .. *Respondent.*

Fundamental Rules, rule 56 (d)—*Promotion of a Government servant in spite of an adverse entry in his file — No entry to discredit him after promotion—Compulsory retirement soon after promotion—Legality.*

The effect of an adverse entry in the confidential file of the appellant was blotted out by the promotion of the appellant to a selection post which was a very responsible and much desired post in that cadre. After his promotion there was no entry in the service book to his discredit or hinting even remotely that he had outlived his utility as a Government servant. If there was some entry, not wholly favourable to the appellant after his promotion, one might hark back to similar or like entries in the past, read them all in conjunction and conclude that the time had arrived for the Government servant to quit service. But, with nothing of the sort, it is indeed odd to retire a Government servant a few months after promoting him to a selection post. In the face of the promotion just a few months earlier and nothing even mildly suggestive of ineptitute or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service.

[*Paras*. 3, 4.]

*C.A. No. 3436 of 1979.
28th January, 1982.

Cases referred to:—

Swami Saran Saksena v. *State of U. P.*, (1980) 1 S.C.C. 12: (1980) 1 S.C.R. 923: A.I.R. 1980 S.C. 269; *Baldev Raj Chadha* v. *Union of India*, (1981) 1 S.C.J. 293: (1980) 4 S.C.C. 321: (1981) 1 S. C. R. 430: A.I.R. 1981 S.C. 70; *State of Punjab* v. *Dewan Chuni Lal*, (1970) 3 S.C.R. 694: (1971) 1 S.C.J. 238: A.I.R. 1970 S.C. 2086; *Union of India* v. *M. E. Reddy*, (1980) 1 S.C.R. 736: (1980) 2 S.C.C. 15: A.I.R. 1980 S.C. 563.

The Judgment of the Court was delivered by

Chinnappa Reddy, J.—An order of premature retirement following close upon the heels of promotion and appointment to a coveted selection post is bound to perplex any right-thinking man and make him wonder whether the right hand knows what the left hand has done. If in the month of May a Government servant is found to possess such high merit and ability, which naturally includes integrity, as to entitle him not merely to be promoted to a selection post but to be appointed to a very responsible and much desired post in that cadre, what could have happended between May and September to merit his being weeded out altogether from service in September under the rule which enables the Government to retire a Government servant in the public interest after he has attained the age of 50 years or after he has completed 25 years of qualifying service. One would expect that some grave and grim situation had developed in the interregnum to warrant the pursuit of such a drastic course. But surprisingly, we found nothing whatsoever had happened in this case during that period. Let us look at the totality of the facts.

2. The appellant appears to have had quite a noteworthy career. Starting at the lowest rung as a Lower Division Clerk in 1953, he was promoted as an Assistant Commercial Tax

Officer in 1954, next as a Deputy Commercial Tax Officer in 1957, then as a Joint Commercial Tax Officer in 1962, thereafter as a Commercial Tax Officer in 1966, later as an Assistant Commissioner of Commercial Taxes in 1972 and finally as a Deputy Commissioner of Commercial Taxes on 7th May, 1975. On promotion as Deputy Commissioner of Commercial Taxes he was posted as Member of the Sales Tax Appellate Tribunal in the same cadre. On 20th September, 1975, he was retired under Fundamental rule 56 (*d*) His Service Book shows that he had an excellent record of service. He had earned several encomiums, commendations and appreciations. The several promotions gained by him reflect his good record of service. But there was one dark spot. In 1969 when he was working as Commercial Tax Officer it was noted in his Confidential file by the Deputy Commissioner of Commercial Taxes as follows:

> "The Commercial Tax Officer is a very intelligent and capable officer who kept the entire district under his control in perfect discipline. Unfortunately, his reputation is not at all good. There were complaints that he used to threaten dealers and take money. The entire matter is under investigation by the Vigilance and Anti-Corruption Department".

There was an enquiry by the Directorate of Vigilance and Anti-Corruption. Charges were framed against the appellant by the Board of Revenue. The explanation of the appellant was obtained. The Full Board of Revenue then reported that the charges should be dropped. The Government accepted the report of the Full Board and dropped the charges making the following order on 29th November, 1974:—

> "As the preliminary enquiry disclosed a *prima facie* case of corruption, a detailed enquiry was taken up by the Directorate of Vigilance and Anti-Corruption. Out of eleven allegations levelled against Thiru D. Ramaswami, seven allegations were not substantiated, in the enquiry made by the Directorate of Vilgilance and 'Anti-Corruption'. The Government, examined the report of the Directorate and considered that there was a *prima facie* case in respect of certain allegations and this was sufficient to proceed against Thiru D. Ramaswami. The Board of Revenue (CT) was therefore requested to frame charges straightway as for a major penalty against Thiru D. Ramaswami on the basis of allegations levelled against him. The Board accordingly framed charges against him in respect of allegations substantiated, obtained his explanation and sent its report thereon. The Full Board considered that all the charges framed against Thiru D. Ramaswami in consequence of the detailed enquiry conducted by the Vigilance Department cannot be pursued and proved. The Full Board has therefore expressed the view that the said charges may be dropped. The Government accept the views of the Full Board and direct that all the charges framed against Thiru D. Ramaswami be dropped".

The effect of the order of 29th November, 1974 of the Government was to grant absolution to the appellant from the repercussions of the note of the Deputy Commissioner of Commercial Taxes, made in 1969. If there was any ambiguity about the effect of the Government Order, it was cleared by the circumstance that within a few months, on 7th May, 1975, he was promoted as Deputy Commissioner of Commercial Taxes and posted as Member, Sales Tax Appellate Tribunal, a prestigious post. It has to be mentioned here that the post of a Deputy Commissioner of Commercial Taxes is a selection post. Under rule 36 (*b*) (*i*) of the Tamil Nadu General Rules for the State and Subordinate Services:

> "Promotions in a service or class to a selection category or to a selection grade shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal".

Under rule 2 (*b*) of the Tamil Nadu Special Rules for Commercial Taxes Service:

> "All promotions shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal."

3. So, what do we have? There was an adverse entry in the confidential file of the appellant in 1969. The basis of the entry was knocked out by the order, dated 29th November, 1974 of the Government, and effect of the entry was blotted out by the promotion of the appellant as Deputy Commissioner. After his promotion as Deputy Commissioner there was no entry in the Service Book to his discredit or hinting even remotely that he had outlived his utility as a Government servant. If there was some entry, not wholly favourable to the appellant after his promotion, one might hark back to similar or like entries in the past, read them all in conjunction and conclude that the time had arrived for the Government servant to quit Government service. But, with nothing of the sort, it is indeed odd to retire a Government a few months after promoting him to a selection post. In the present case, we made a vain search in the service record of the appellant to find something adverse to the appellant apart from the 1969 entry. All that we could find was some stray mildly deprecating entries such as the one in 1964 which said:

> "He is sincere and hardworking. He manages his office very well. He exercises adequate control over subordinates. He maintains a cordial relationship with public.
>
> Because of his stiff attitude some of the assessees complain about him stating that he is rude in his behaviour. This perhaps is due to his unbending attitude. With a little more tact he will be an asset to the Department."

One curious feature of the case is that while the 1969 entry noted that an enquiry was pending with the Vigilence and Anti-Corruption Department in regard to the allegations against the appellant, the ultimate result of the enquiry which was that the charges should be dropped was nowhere noted, in the personal file of the appellant. One wonders whether the failure to note the result of the enquiry in the personal file led to the impugned order!

4. In the face of the promotion of the appellant just a few months earlier and nothing even mildly suggestive of ineptitude or inefficiency thereafter, it is impossible to sustain the order of the Government retiring the appellant from service. The learned counsel for the State of Tamil Nadu argued that the Government was entitled to take into consideration the entire history of the appellant including that part of it which was prior to his promotion. We do not say that the previous history of a Government should be completely ignored, once he is promoted. Sometimes, past events may help to assess present-conduct. But when there is nothing in the present conduct casting any doubt on the wisdom of the promotion, we see no justification for needless digging into the past.

5. The learned counsel for the appellant relied on the decisions in *Swami Saran Saksena* v. *State of Uttar Pradesh*[1], *Baldev Raj Chadha* v. *Union of India*[2], *State of Punjab* v. *Dewan Chuni Lal*[3]. While the learned counsel for respondent relied on the decision in *Union of India etc.* v. *M. E. Reddy*[4]. All the decisions have been considered by us in reaching our conclusion. The appeal is allowed. G. Ms. No. 1112, dated 19th September, 1975, Commercial Taxes Religious Endowments Department, Government of Tamil Nadu is quashed. The appellant will be reinstated in service and paid the arrears of salary due to him under the Rules. He is entitled to his costs.

V.K. —— *Appeal allowed*

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1. (1980) 1 S.C.C. 12: (1980) 1 S.C.R. 923: A.I.R. 1980 S.C. 269.
2. (1980) 4 S.C.C. 321: (1981) 1 S.C. J. 293: (1981) 1 S.C.R. 430: A.I.R. 1981 S.C. 70.
3. (1970) 3 S.C.R. 694: (1971) 1 S.C. J. 238: A.I.R. 1970 S.C. 2086.
4. (1980) 2 S.C.C. 15: (1980) 1 S.C. R. 736: A.I.R. 1980 S.C. 563.

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:—*D.A. Desai and R.B. Misra, JJ.*

Prasad and others .. *Appellants**

v.

V. Govindaswami Mudaliar and others .. *Respondents.*

(A) *Constitution of India* (1950), *Article* 133 —*Appeal under—Finding of fact arrived at by High Court—Interference with by Supreme Court—When permissible.*

The contention that a finding of fact cannot be interfered with by the Supreme Court has no force when the finding is being reversed on the ground that material circumstances have been ignored by the High Court. [*Para.* 55.]

(B) *Transfer of Property Act* (*IV of* 1882), *section* 53 — *Sale deed executed nominally to stave off creditors—Express understanding with vendees to reconvey after pressure of creditors subsided —Held sale vitiated—No relief in equity could be granted to vendees even in respect of debts of vendor paid off by them.*

Held, that the sale deed dated 22nd August, 1955 was true and it was supported by consideration but only in part and that even the recited consideration in the sale deed was thoroughly inadequate; that the sale deed was executed only nominally for a collateral purpose and with as view to stave off creditors with the express understanding that the propertie sold would be reconveyed to the vendors after the pressure of the creditors had subsided; that in view of this there was no question of giving any equities to the vendees even if some of the amounts paid by the vendees to some of the creditors of the vendor were genuine. If the transaction of sale was itself vitiated for the reasons given above, no relief in equity could be granted to the vendees. [*Paras.* 54, 56.]

(C) *Hindu Law — Joint family—Alienation of joint family property by father to discharge antecedent debts— If and when binding on sons —'Antecedent debt'—Meaning of.*

A natural guardian of a Hindu minor has power in the management of his estate to mortgage or sell any part thereof in case of necessity or for the benefit of the estate. If the alienee does not prove any legal necessity or he does not make reasonable enquiries, the sale is invalid. But the father in a joint Hindu family may sell or mortgage the joint family. property including the sons' interest therein to discharge a debt contracted by him for his own personal benefit and such alienation binds the sons provided: (*a*) the debt was antecedent to the alienation and (*b*) it was not incurred for an immoral purpose. The validity of an alienation made to discharge an antecedent debt rests upon the pious duty of the son to discharge his father's debt not tainted with immorality. [*Paras.* 57, 58.]

'Antecedent debt' means antecedent in fact as well as in time, that is to say, that the debt must be truly independent of and not part of the transactions impeached. The debt may be a debt incurred in connection with a trade started by the father. The father alone can alienate the sons' share in the case of a joint family. The privilege of alienating the whole of the joint family property for payment of an antecedent debt is the privilege only of the father, grandfather and great grandfather *qua* the son or grandson only. No other person has any such privilege. [*Para.* 59.]

There is another condition which must be satisfied before the son could be held liable, *i.e.*, that the father or the manager acted like a prudent man and did not sacrifice the property for an inadequate consideration. [*Para.* 63.]

In the present case the consideration for the sale was thoroughly inadequate and hence cannot be upheld. [*Para.* 63.]

Cases referred to:—

Sidheswar Mukherjee v. *Bhubneshwar Prasad Narain Singh*, 1953 S.C.J. 700 ; (1953) 2 M.L.J. 789 : 1954 S.C.R. 177 : A.I.R.

*C. As. Nos. 1102 and 1103 of 1970. *8th December* 1981,

1953 S.C. 487; *Mussamut Nanomi Babuasin* v. *Modun Mohun*, (1885) 13 I.A. 1 : I.L.R. 13 Cal. 21; *Brij Narain* v. *Mangla Prasad*, L.R. 51 I.A. 129 : 46 M.L.J. 23 : 19 L. W. 72 : A.I.R. 1924 P.C. 50; *Shanmukam* v. *Nachi Ammal*, (1937) 1 M.L.J. 278 : 44 L.W. 738 : A.I.R. 1937 Mad. 140; *Dudh Nath* v. *Sat Narain Ram*, A.I.R. 1966 All. 315 (F.B.).

The Judgment of the Court was delivered by

Misra, J. — The present appeals by certificate are directed against the judgment dated 6th November, 1968 of the Madras High Court.

2. The dispute between the parties centres around 48.70 acres of land, partly wet and partly dry in village Pichanur, Gudiyattam Taluk, North Arcot District and one house in Gudiyattam town. Admittedly the said properties belonged to one Varadayya Chetty. He had two sons, K.V. Purushotham and K.V. Sriramulu. K.V. Purushotham in his turn had four sons while K.V. Sriramulu had three sons. They constituted a joint Hindu family. The family owned and possessed 48.70 acres of land and three houses. Varadayya Chetty died about 30 years prior to the institution of the suits giving rise to these appeals. At the time of his death his eldest son K.V. Purushotham was the only adult male member, the other son, K.V. Sriramulu being only 4-5 years old. Purushotham thus came into the sole management of the entire family affairs and he brought up his younger brother Sriramulu. Their ancestral family business (Kulachara) was that of tobacco and money lending.

3. It appears that immediately after the second world war Purushotham started a new business of lungi. In connection with his new venture he borrowed money from others either on promissory notes or on the security of the family properties. He, however, suffered loss in that business. When his creditors began to press for immediate discharge of the debts, K.V. Purushotham and his brother K.V. Sriramulu on their behalf and on behalf of other minors in the family entered into an agreement on 7th July, 1955 with V. Govindaswami Mudaliar, V. Shanmugha Mudaliar and V. Nataraja Mudaliar, sons of Vandinakuppam Venugopala Mudaliar. This agreement was evidenced by a writing, Exhibit B-4. Under the agreement K.V. Purushotham and K.V. Sriramulu were to sell their entire property, except one acre of land, and a house, to Mudaliar brothers for a sum of Rs.14,000 to discharge their debts. They received a sum of Rs.500 by way of advance and the balance of Rs. 13,500 was to be paid within two months. It was further stipulated that in case the vendees defaulted they would lose the advance money, on the other hand if the vendors defaulted they would have to pay to the vendees a liquidated damage of Rs.2,000.

4. Pursuant to the aforesaid agreement, a sale deed was executed on 22nd of August, 1955 marked Exhibit B-5 for an enhanced consideration of Rs. 16,500. The sale deed referred to various debts owed by the vendors which were to be discharged by the vendees and the balance, if any, was to be paid to the vendors. The recital in the sale deed indicated that Rs. 250 was paid in cash to the vendors at the time of execution of the sale deed. The sale deed further recites that the vendors have not shown the exact amount of debts which the vendees have agreed to pay. The amounts specified therein are only approximate. The sale deed further authorised the vendees to discharge the mortgage debts mentioned in the sale deed in the first instance, if they had no sufficient funds to clear off all the debts at one time and clear off the ordinary debts later.

5. The validity of the aforesaid sale deed, Exhibit B-5 dated 22nd August, 1955 and a mortgage deed Exhibit B-49 in favour of A.M. Vasudeva Mudaliar had been challenged by the sons of K.V. Purushotham and K.V. Sriramulu respectively by two suits: Suit No. 107 of 1958 and Suit No. 108 of 1958. There was yet another suit by one of the creditors, M. V. Chinnappa Mudaliar for annulment of the said sale. As mentioned earlier, the original suit No. 107 of 1958 was filed by the four sons of Purushotham impleading Purushotham and Sriramulu as defendants Nos. 1 and 2 and three minor sons of Sriramulu as defendants Nos. 3 to 5 under the guardianship of their mother;

V. Govindaswami Mudaliar, V. Shanmugha Mudaliar and V. Nataraja Mudaliar, the three vendees as defendants Nos. 6 to 8 in Suit No. 107 of 1958 and defendants Nos. 8 to 10 in Suit No. 108 of 1958; A.M. Vasudeva Mudaliar, defendant No. 9 and the Official Receiver of the North Arcot District as defendant No. 10.

6. Suit No. 108 of 1958 was filed by the three minor sons of Srinamulu. The plaintiffs and other defendants of original Suit No. 107 of 1958 were impleaded as defendants in this suit. The relief claimed in these suits was for partition after setting aside the sale deed dated 22nd of August, 1955. Exhibit B-5 and the mortgage deed Exhibit B-49 in favour of A.M. Vasudevan Mudaliar. The allegations in the plaint of the two suits are on the same pattern. It will, therefore, suffice to refer to the allegations made in Suit No. 107 of 1958.

7. It is alleged in the plaint that the ancestral property of the family consisted of 48 acres and 70 cents of land and three houses detailed in Schedules B and C to the plaint. The said land fell in two blocks, one consisting of 43 acres, 21 cents and the other of 5 acres 49 cents. There were two wells in the first block and one well in the second block. There were two pumpsets with electric motors installed in the two wells in the first block at a cost of Rupees, 3,000 each. The net cultivation yield from the land in any case would not be less than Rs. 6,000 per year which was more than sufficient for the maintenance of the family leaving even some surplus. The father of the plaintiffs started a new business of lungi which was not the business 'Kulachara' of the family. In connection with the new venture he had to borrow large sums of money either on promissory notes or on the security of the aforesaid property. In course of the said business Purushotham sustained a heavy loss. When the mortgagees and unsecured creditors started pressing for immediate discharge of the debts, defendants 6 to 8, who happened to be friends of Purushotham, induced him to create a nominal sale of the house and the entire land, except an acre, in order to stave off the immediate pressure, Purushotham seemed to have and consequently executed first an agreement to sell and then a registered sale deed, dated 22nd of August, 1955 for a nominal consideration of Rs.16,500 in respect of the entire land in Schedule B with electric pump sets, with the exception of one acre, and a house which is item No. 1 of Schedule C. Defendants 6 to 8 represented that they would execute a formal deed of reconveyance of the properties after the pressure from creditors was staved off. The sale deed was not supported by consideration and even the recited consideration of Rs.16,500 was grossly inadequate and extremely low considering the extent of land and the house and their market value. The entire joint family property was not worth less than Rs.35,000 and its annual yield was worth more than Rs. 6,000. The house mentioned as item No. 1 of Schedule C was also worth Rs.5,000 though the consideration for the same in the sale deed was only Rs. 2,000. Defendants 1 and 2 continued in possession of the properties sold, for about a year when suddenly defendants Nos. 6 to 8 conceived the idea of defrauding the defendants 1 and 2 and by force and violence trespassed upon the lands and took forcible and unlawful possession thereof along with the standing crops worth Rupees 6,000. Defendants 1 and 2 were, however, still in possession and enjoyment of the house mentioned in item No. 1 of Schedule C. Defendants 6 to 8 were bound to deliver the possession of the land to the plaintiffs and defendants 1 to 5 together with the mesne profits from June, 1956, the date of trespass.

8. It was further alleged that except the two mortgages mentioned in the sale deed the other debts shown as consideration were false and fictitious. Even the said mortgages were paid by defendants 6 to 8 out of the standing crops. There was absolutely no necessity for borrowing the large sums considering the large income from the joint family properties. Even if the alleged debt due on the promissory note executed by defendant No. 1 in favour of the 9th defendant was true, it was not binding on the plaintiffs to the extent of the cash consideration as it was not for necessity. Defendant No. 2 joined the execution of sale deed and the ort-u

gage deed at the behest of the 1st defendant and on misrepresentations made by defendants Nos. 6 to 8 and in fact he had not derived any benefit from the borrowings. As M.V. Chinnappa Mudaliar had filed a petition against Purushotham, being Insolvency Petition No. 20 of 1955, and Purushotham was adjudged insolvent; so the Official Receiver was impleaded as a defendant in this case.

9. The third suit being suit No. 4 of 1960 was filed by M.V. Chinnappa Mudaliar, a creditor of defendants K.V. Purushotham and K. V. Sriramulu against the vendees V. Govindaswami Mudaliar and his two brothers arrayed as defendants 1 to 3. He first filed an insolvency petition in which Purushotham was adjudged as insolvent. The said creditor had approached the Official Receiver for filing a suit for the annulment of the said sale but as Official Receiver demanded a lot of expenses he, therefore, sought the permission of the Insolvency Court to file suit No. 4 of 1960 himself for a declaration that the sale deed dated 22nd of August, 1955 executed by Purushotham in favour of vendees was void or voidable at the instance of the creditors of Purushotham and for annulment of the same. According to him Purushotham had borrowed a sum of Rs. 1,000 from him and had executed a bond for that amount on 17th September, 1947, carrying interest at 13 annas per cent. per mensem. Barring some payments a substantial amount was still due from him as principal and on account of interest in the middle of 1955. Purushotham, however, executed a sham, nominal and fraudulent sale deed, dated 22nd August, 1955 in respect of almost all the family properties in favour of the defendants Nos. 1 to 3 with an intent to defeat and delay his creditors, including the plaintiff. It was also pleaded that property worth Rs.50,000 was alienated for a nominal price obviously for discharge of fictitious debts. So, the plaintiff claimed a relief under section 53 of the Transfer of Property Act.

10. The claim of the plaintiffs in all the three suits was resisted by the transferees. In substance their defence was that the alienation by Purushotham was for payment of antecedent debts which were untainted by illegality or immorality; that the father under the Hindu Law possessed a special power to alienate joint family property including the shares of his sons for payment of his own debts not incurred for immoral or illegal purposes; that in exercise of that power he had sold all his interest and the interest of his minor sons, that a registered agreement of sale was entered into on 7th of July, 1955, and the period of two months was provided for the performance of the contract and the vendees had investigated before entering into the transaction; that the transaction was a normal, regular and *bona fide* one; that the vendees had in fact paid off the full consideration applying it for discharge of antecedent debts obtaining from several creditors vouchers for such due payment and cancellation. A. M. Vasudevan Mudaliar who had been arrayed as defendant No. 9 in Suit No. 107 and as defendant No. 7 in Suit No. 108 of 1958 resisted the claim of the plaintiffs in those suits on the ground that the mortgage in his favour was incurred for the discharge of antecedent debts and for the need of the Hindu family, which was binding upon the members of the family. The plaintiffs in both the suits Nos. 107 and 108 of 1958, the sons of the vendors, were bound by the said alienation.

11. The pleadings of the parties gave rise to a number of issues. Some of the issues were common in all the three suits. On the request of the parties all the three suits were jointly tried.

12. Before the trial commenced a joint memo. was filed in Original Suit No.4 of 1960 whereby the parties agreed that the evidence in Original Suit No. 4 of 1960 regarding lack of consideration for the sale deed, dated 22nd of August, 1955 and the value of the properties be treated as evidence in Original Suits Nos. 107 and 108 of 1958. They also agreed that the midence regarding the mortgage, deed, dated 2nd of March, 1952 be treated as common evidence for Original Suits Nos. 107 and 108 of 1958. After this statement by the counsel for the parties, the original issues framed in the three suits were recast and additional issues were also framed.

13. The Subordinate Judge came to the following conclusions in suit No. 4 of 1960:

(1) At the time of execution of the sale deed, Exhibit B-5, the fourth defendant, that is Purushotham, owed some creditors in whose favour he had executed Exhibits A-3, A-4, A-12, A-13 and the bond debts involved in Exhibits A-7 to A-11, but no provision had at all been made for those creditors either in the agreement of sale Exhibit B-4. dated 7th of July, 1955 or in Exhibit B-5, the sale deed, dated 22nd of August, 1955.

(2) Exhibit B-54, the letter written by Purushotham in favour of Veerasami Naidu, dated 27th of July, 1955 along with other oral evidence clearly establishes the intention of Purushotham to defeat and delay the claim of some of the creditors in screening his property by a nominal sale in favour of defendants 1 to 3.

(3) The ingredients of section 53 (1) of the Transfer of Property Act have been satisfied by the plaintiff inasmuch as impugned transfers have been made with intent to defeat or delay the creditors of the transferor. The Court, however, came to the conclusion that the suit was wrongly framed inasmuch as the plaintiff did not seek any relief on behalf of or for the benefit of all the creditors and, therefore, the Court decreed the suit No. 4 of 1960 as against defendants 1 to 3, that is, alienees annulling the sale transaction, dated 22nd August, 1955 as fraudulent preference under section 54 of the Provincial Insolvency Act, in so far as the insolvent's share was concerned.

14. His conclusions in suits Nos. 107 and 108 of 1958 were as follows:—

(1) The value of the land and house including the pump sets, wells etc. comprised in Exhibit B-5 could have been in August, 1955 worth any where between Rupees 35,000 to Rs. 50,000 but the same had been sold at a grossly low and inadequate price of Rs. 16,500.

(2) Purushotham and Sriramulu with the help of Shri Rangaswami, who was their friend, approached the verdees for help and on their suggestion they agreed to execute a nominal sale of all their properties with an understanding for reconveyance after ten years on payment of the sums advanced by them and that in that connection they had thought of executing the two bogus bonds, one in favour of Veeraswami Naidu, D.W. 12, and another, in favour of Deivasigamani Mudaliar, D.W. 3 and certain other documents to make the sale probable.

(3) The sale deed, dated, 22nd August, 1955 is true and it is supported by consideration but only partly. It is, however, liable to be set aside wholly as an imprudent transaction.

(4) The mortgage deed, dated 2nd of March, 1952 is true and binding only so far as shares of K. V. Purushotham and Sriramulu are concerned and the extent of Rs. 2,000 so far as the plaintiffs in Original Suit No. 107 of 1958 are concerned.

(5) The alienees under the sale transaction, dated 22nd of August, 1955 are not entitled to any equities in this suit. But the alienee under Exhibit B-49 would be entitled to have his two items of house allotted to the share of K.V. Purushotham and K.V. Sriramulu to work out his equities but this will be easily done in the final decree proceedings in Original Suits Nos. 107 of 1958 and 108 of 1958.

(6) The plaintiffs would be entitled to past profits from the alienees of the sale transaction, dated 22nd of August, 1955 from the year 1956-57 as it is in evidence that they entered possession in that year.

15. On these findings the Subordinate Judge passed a preliminary decree for partition and division of their respective shares in suits Nos. 107 of 1958 and 108 of 1958 which was 25th and 3/8th respectively in both the suits after setting aside the sale transaction, dated 22nd of August, 1955 and directing the alienees to work out their remedies outside the scope of these suits and declaring that the alienation, dated 2nd March, 1952 was binding only on the shares of K. V. Purushotham and K. V. Sriramulu and to the extent of Rs. 2,000. The plaintiffs were held entitled to a decree for past profits from 1956-57 as against the alienees of the sale transaction, dated 22nd August, 1955, the quantum to be determined in a separate enquiry in the final

decree proceedings as was agreed to by the parties under Order 20, rule 12, Civil Procedure Code. The Court declined to give any relief to the alienees even in respect of the amount actually paid by them to discharge some of the debts incurred by Purushotham on the ground that the transaction has been vitiated by fraud.

16. The alienees-defendants feeling aggrieved by the judgment and decree of the Subordinate Judge preferred appeals in all the three suits. The mortgagee Vasudevan Mudaliar, however, submitted to the judgment and decree and did not prefer any appeal presumably because he could realise the amount due to him by virtue of the decree granted to him. The High Court was, therefore, concerned only with the validity of the sale deed Exhibit B-5 in favour of the appellants.

17. The High Court reversed the findings of the trial Court in suits Nos. 107 and 108 of 1958 and set aside the decree passed by the Subordinate Judge but confirmed the finding and decree in suit No. 4 of 1960. The High Court came to the conclusion that the purchase of the suit land under Exhibit B-5 was for a reasonable price and the consideration of Rs.16,500 mentioned in Exhibit B-5 was not a grossly low price. The lungi business started by Purushotham was new venture of Purushotham and not his family business. His father had only tobacco and money-lending business. The genuine debts mentioned in Exhibit B-5 were antecedent debts from the point of view of the plaintiffs in Original Suit No. 107 of 1958. Therefore, they are binding on them. As the debts evidenced by Exhibits B-13 and B-14 were genuine debts the alienation, Exhibit B-5, is clearly binding on the plaintiffs in Original Suit No. 107 of 1958 as the sale deed was executed by their father in discharge of antecedent debts. The alienation under Exhibit B-5 can be supported not only against the plaintiffs in Original Suit No. 107 of 1958 but also against the plaintiffs in Original Suit No.108 of 1958 as it was made in discharge of antecedent debts of their respective fathers.

18. On these findings the High Court allowed the appeals filed by the alienees in suits Nos. 107 and 108 of 1958 but dismissed the appeal filed in suit No. 4 of 1960. The plaintiffs have now come in appeal to challenge the judgment of the High Court.

19. The contention raised on behalf of the appellants is that the High Court has omitted to take into consideration various circumstances which had been taken into consideration by the trial Court and as such the findings of the High Court on material issues are vitiated. The High Court further omitted to consider whether the impugned sale was an imprudent transaction, if not fictitious. The counsel for the respondents, on the other hand has contended that the findings recorded by the High Court are pure findings of fact based on appraisal of evidence and this Court cannot reverse the findings recorded by the last Court of facts. We have to consider the findings of the High Court in the light of the contentions raised by the parties.

20. The question for consideration in these appeals is about the genuineness of the sale deed Exhibit B-5, dated 22nd of August, 1955 executed by Purushotham and Sriramulu in favour of respondents 1 to 3. As stated earlier, the sale deed was challenged by the plaintiffs on grounds : (*a*) that it was executed only nominally for a collateral purpose and with a view to stave off creditors with the express understanding that the properties sold would be re-conveyed to the vendors after the pressure of the creditors had subsided, (*b*) that even the recited consideration in the impugned sale deed was grossly inadequate; (*c*) that the debts under the promissory notes Exhibit B-13 in favour of Veeraswami Naidu and Exhibit B-14 in favour of Deivasigamani Mudaliar were fictitious.

21. The burden squarely lay on the vendees to prove that the impugned sale deed was valid and binding on the plaintiffs and their respective shares. To discharge this burden the vendees have produced both oral and documentary evidence. The vendors have also produced both oral and documentary evidence in support of their case.

22. Before dealing with the oral evidence of the parties in detail, it is pertinent to refer to Exhibit B-54 which is the most important document supporting the vendors. This is an inland letter dated 27th of July, 1955 written by K.V. Purushotham in Telugu to Veeraswami Naidu. If this letter is proved to be genuine it will give a death blow to the case of the vendees. This letter has been relied upon by the trial Court but has been discarded by the High Court. As this letter is revealing one it will be appropriate to quote the letter *in extenso*.

"Gudiyattam,
27th July, 1955.

Letter written by Gudiyattam K.V. Purushotham with salutations to elder brother Sri B. Veeraswami Naidu of Manthangal village. Here all are keeping good health with your blessings. Please write to me your and your children's welfare.

In respect of the debts due to the creditors by me here, I and your son-in-law T.G. Rangaswami Naidu went to see Vaithana Kuppam Venugopala Mudali and his sons V. Govindaswami Mudali and brothers and had a talk with them in respect of the debts due by me. They said to us that I should execute a sale deed in respect of my properties in their favour and that after the creditors' demands (troubles) subside the amount that they would be giving us shall be repaid within a period of 10 years and that on such repayment they would reconvey the property conveyed in their favour. As all of us have desired I and my younger brother entered into an agreement on 7th July, 1955 agreeing to execute a deed of sale in pursuance of the talk we had.

Sale deed remains to be executed. In this connection (regard) I and my younger brother both have to create some nominal bonds fixing up to some dates and then set up as though these bonds were cancelled on payments being made by those persons and that those items might be recited in the sale deed to be executed. For resorting to this, we all decided and fixed you up as one such (person) in whose favour bonds have to be drawn up to a fixed date. If such bonds are drawn up in favour of respectable persons like you and if all of us join together, then the other creditors cannot do anything. As you are a trusted person these could be done in your favour as stated. They have agreed to give us great help in this matter. Further he is a very good friend of us. If the amount to which they are entitled to, is paid back within 10 years, without fail, then they will reconvey by way of deed of sale in our favour. They will not fail in their words. All of us have decided that a bond should be executed in your favour nominally fixing up to a particular date for a sum of Rs. 2,500. Thereafter on some other date you have to make an endorsement of payment on the bond and return the bond after cancelling the same. Further I and my younger brother have executed a nominal bond for Rs. 1,000 on 15th December, 1954 in favour of C.R. Deivasigamani too *i.e.*, his junior paternal uncle *viz.*, V. Govindaswami Mudali's mother's sister's husband. Your son-in-law T.G. Rangaswami Naidu has attested as a witness in that.

In respect of the bond in your favour, you have to send a notice to us. V. Govindaswami Mudali, son of Venugopal Mudali told me that such a notice is essential that should be on record to strengthen the sale deed. Further, we are also told that you should write a letter to your son-in-law T.G. Rangaswami Naidu asking him to make demands regarding the amount due to you. The main reason for doing all these is to stop the trouble given by the other creditors to whom I owe.

Therefore, with a view to meet you in person, discuss and arrange regarding the aforesaid matter, I and your son-in-law. T.G. Rangaswami Naidu are going over to your village tomorrow. You will have no difficulty in this matter. Therefore, I request that you and your senior son-in-law Raghavalu Naidu to remain in the house. We will inform you the rest of the matters in person. We request you to show

faith or kindness (in Telugu) towards this poor family.

Thus with salutations.

Sd/- K.V. Purushotham."

23. The reasons which impelled the High Court to discard this letter are as follows : (1) the author of this letter K.V. Purushotham did not appear in the witness box; (2) the document does not come from proper custody; (3) there is no reason why the letter should have been sent from Gudiyattam to Manthangal village when one could reach the latter village from Gudiyattam within a short time by a bus or other conveyance; (4) the letter was posted on 28th July, 1955 at 5 P.M. and reached its destination on 4th August, 1955 as it appears to have been detained at Ranipet in the interval then how did they come to prepare Exhibit B-20 and Exhibit B-48 even on 30th July, 1955; (5) in Exhibit B-54 Purushotham had expressed that he would be meeting D.W. 12, Veeraswami Naidu, on the very next day and thus there was no real necessity to write the letter Exhibit B-54; (6) if Purushotham conspired with the son-in-law of D.W. 12, Veeraswami Naidu to bring into existence fictitious promissory notes, it is unlikely that they would announce it in the letter Exhibit B-54 when they were not sure of the attitude of D.W. 12, Veeraswami Naidu, unless they wanted to create evidence for the purpose of the case ; (7) there was no necessity for Purushotham and Sriramulu to bring into existence fictitious promissory notes in favour of D.W. 3. Deivasigamani and D.W. 12, Veeraswami Naidu, as they would have easily mentioned the other undisputed debts owed by them to support the recitals of consideration in the sale deed. The counsel for the respondents has reiterated the same reasons for discarding Exhibit B-54.

24. The first ground which weighed with the High Court for discarding the letter Exhibit B-54 is that the author of this letter K.V. Purushotham did not appear in the witness box and the document does not come to Court from a proper custody. No such objection was raised on behalf of the vendees in the trial Court regarding the admissibility of the letter. The evidence of D.W. 13 and D.W. 18 has clearly proved the handwriting of K.V. Purushotham in Exhibit B-54. The observation of the High Court that the letter might have been written subsequently is conjectural one. No such case was even set up by the vendees in the written statement or in the evidence. Exhibit B-54 is an inland letter bearing the postal stamps and it could not have been fabricated.

25. A capital has been made out of the delayed delivery of the letter on 4th August, 1955. The letter was posted on 28th of July, 1955 at 5 P.M. and it reached its destination on 4th August, 1955. It appears to have been detained at Ranipet in the interval. The High Court has attached undue importance to the fact that if Exhibit B-54 reached the addressee on 4th of August, 1955 then how did they come to prepare Exhibits B-20 and B-48 even on the 30th of July, 1955. The difficulty is solved if we keep in mind the fact that in the last paragraph of the letter the addressee was informed that they were all coming to meet him (D.W. 12) at his place the next day. If in accordance with the recital of the letter Purushotham had reached the next day, 29th of July, 1955, there was nothing improbable in the preparation of the two documents on 30th July, 1955.

26. There is a slight inconsistency in the evidence of D.W. 12 when he says that only on the receipt of Exhibit B-54 other documents were prepared. But the evidence of D.W. 12, which otherwise appears to be natural, cannot be discarded marely on this slight inconsistency.

27. The other reason which has appealed to the High Court for not believing Exhibit B-54 is that if Purushotham was to meet Veeraswami Naidu the very next day, then there was no real necessity to write the letter Exhibit B-54. It could not be expected that the letter would be so unduly delayed and if Purushotham has taken precaution by writing a letter and also by going to his place it cannot detract from the value of Exhibit B-54.

28. The observation of the High Court that there was no necessity for Purushotham and Sriramulu to bring into exis-

ence fictitious promissory notices in favour of D.W. 3, Deivasigamani and D.W. 12, Veeraswami Naidu as they could have easily mentioned the other undisputed debts owed by him to support the recital of the consideration in the sale deed, also does not hold good inasmuch as there is ample evidence on the record to warrant the conclusion that the promissory notes in favour of D.W. 3, Deivasigamani and D.W. 12, Veeraswami Naidu were fictitious. Most of the debts have neither been referred to in the deed of agreement for sale nor in the sale deed and it was purposely done.

29. If the High Court had taken into consideration the aforesaid tell-tale circumtances there would have been not difficulty in accepting Exhibit B-54 as genuine.

30. The circumstances which should have been taken into consideration by the High Court before reversing the findings recorded by the trial Court are as follows.

31. In connection with the lungi business started by K.V. Purushotham he had to borrow money from various creditors. When the new business of lungi ended in loss there was pressure from the creditors for the discharge of the debts. K. V. Purushotham was thus in a tight corner. As a prudent man, he would have liked to save his property to the extent he possibly could and pay off the various debts incurred by him. Curiously enough Purushotham and his brother, Sriramulu sold away the entire landed property of about 47 acres and odd, leaving behind only an acre, and a house, owned by the joint family for a paltry sum of Rs. 16,500. Out of the total consideration of Rs. 16,500 the vendees were asked to discharge the various debts mentioned in Exhibit B-5, the sale deed. On an examination of the sale deed, Exhibit B-5 as well as the deed of agreement Exhibit B-4, it is clear that all the debts incurred by Purushotham were not shown in those deeds. Exhibit B-4 detailed only two mortgage debts while Exhibit B-5 specified five items of debts. Admittedly there were other debts also incurred by K.V. Purushotham. It passes one's comprehension why would K. V. Purushotham and his brother Sriramulu sell away the entire landed property of 47 acres leaving behind only one acre, and a house, without making a provision for the discharge of all the outstanding debts. Not only that, there was a stipulation in the sale deed Exhibit B-5 that the vendees may first pay debts under the mortgage if the vendees had no money to discharge all the debts at one and the same time and to clear off the ordinary debts at a later date.

32. What was the earthly reason for executing the sale deed of almost, all the property owned by the family? If Purushotham wanted to save his reputation by paying off all the creditors then there should have been provision made for discharge of all the debts and at least they should have been specified either in the agreement to sell or in the sale deed, Exhibit B- 5. Admittedly there were other debts besides the debts specified in the sale deed, Exhibit P-5, K.V. Purushotham owed to other creditors in whose favour he had executed promissory notes Exhibits, A-3, A-4, A-12 and A-13, and the bond debts involved in Exhibits A-7 to A-11 but these debts have not been shown either in Exhibit B-4 or Exhibit P-5 specially when the debts were to be discharged by the vendees under the terms of of the sale deed as part of the consideration. if almost the entire property of the joint family was to be sold for the discharge of his debts, and yet a substantial part of the debt remains undischarged, there was no positive gain to the vendors in disposing of almost the entire property of the joint family.

33. The stipulation in the sale deed that the vendees might pay off only the secured debts and clear off the other ordinary debts at their leisure itself indicates that there was no anxiety on the part of the vendors to clear off all the debts. It does not stand to reason why should the vendors adopt such an attitude. These circumstances speak for themselves.

34. If we consider Exhibit B-54 in the light of these circumstances, the letter appears to be a sequel to what has been agreed upon between K. V. Purushotham and the vendees or their father. The

vendees persuaded Purushotham to execute a sale deed of almost his entire family property under the pretext of assistance to him with the stipulation that they would re-convey the property to the vendors after the pressure from the creditors was over. This can be the only reason why the vendors would agree to dispose of the entire joint family property for a paltry consideration of Rs. 16,500 out of which only Rs. 500 by way of advance and Rupees 250 at the time of execution of the sale went to the vendors according to the recital in the sale deed itself. The balance of the sale consideration is alleged to have been used by the vendees for paying off some of the creditors. The attempt on behalf of the vendees has been to show that they persuaded the creditors either to forgo the interest or to reduce the principal amount and thus they had cleared off the dues of the various creditors. In proof of this they tried to file the receipts and vouchers from the creditors most of which have been attested by the vendees' own kith and kin. Some of the documents which have been attested by these witnesses, have been belied by D.W. 12 at least in respect of Exhibit B-13. He clearly admitted that Purushotham never borrowed any amount from him nor did he pay any amount towards any loan to him. He has given the full account of how Govindaswami Mudaliar and some other persons came to the mango thope of his son-in-law and met him there, They asked him to sign the endorsement of discharge in Exhibit B-13. At first he protested and refused but on tthe assurance of other persons who were there he had to sign the document on their persuasion on the ground that they were setting up these documents in connection with a sale. The same position has been admitted by even Rangaswami Naidu, D. W. 18.

35. It is true that Purushotham, the author of the letter himself has not come to the witness box but the letter has been proved by the addressee himself, D.W.12, Veeraswami Naidu. He also identified Exhibits B-48 and B-48A, the two cards containing his signatures, one addressed to K. V. Purushotham and the other to his brother, K.V. Sriramulu. But he admitted that he head signed these post-cards without knowing their contents. This gives a clue how the vendees have been out to get attestations of the endorsements of discharge from creditors in respect of got-up documents. The High Court has attached undue importance to the fact that Exhibit B-54 has not come to the Court from proper custody, that is, it should have come to the Court through Veeraswami Naidu but instead it was produced by his son-in-law, D.W. 18. Keeping in view the relationship between Veeraswami Naidu and his son-in-law, the production of the letter by his son-in-law cannot be said to be from an improper custody. His two sons-in-law have also appeared as witnesses as D.W. 13 and D. W. 18. D.W. 13, Rajavelu, deposed that on the day Exhibit B-54 was received by D.W. 12 he was present. According to him on that day Govindaswami Mudaliar and Purushotham came to their place, and Purushotham informed Veeraswami, his father-in-law that as a support for a sale deed they had got up a bond in his favour. He dittoes what has been said by Veeraswami Naidu. The other son-in-law, Rangaswami Naidu D.W. 18, also appeared as witness. He owns land adjacent to the suitland. He also deposed that the bond debt mentioned in Exhibit B-5 in favour of D.W. 12 and the bond debt in favour of D.W. 3, Deivasigamani were got up ones. He also identified Exhibit B-54 as a letter written by Purushotham to his father-in-law, Veeraswami Naidu.

36. The various other reasons given by the High Court for discarding Exhibit B-54 are only flimsy and the circumstances enumerated above make the letter Exhibit B-54 a plausible and natural letter. An adverse inference could have been drawn for non-appearance of Purushotham but the other evidence in the circumstances in our opinion warrant the conclusions drawn by the trial Court and we choose to accept the findings of the trial court.

37. This leads us to the other oral and documentary evidence.

38. The vendees have produced seven witnesses besides one of them as D.W.1 Govindaswami Mudaliar, D.W. 1, has substantiated the case set up by the ven-

dees in their written statement. He, however, for the first time deposed that the family business of the vendors, has been weaving and lungi, although this was not their case even in the written statement. He deposed that after the sale the vendees took possession of the land and the house and later on leased out the land to Deivasigamani *vide* Exhibit B-37, on an annual rent of Rupees 1,400 and the house on a monthly rent of Rs. 12 *vide* Exhibit B-41 and that from the time of purchase the vendees have been paying the kists and taxes for the land and the house.

39. The other witnesses produced by the vendees are RatnaMudaliar, D.W. 2; Deivasigamani Mudaliar, D.W. 3; G. Rajan D.W. 4; Govindappa Mudaliar D.W. 5; Vasudevan Mudaliar, D.W. 6; Punyakoti Chettiar, D.W. 7 and V.C. Manivannan, D.W. 8, Ratna Mudaliar D.W.2, lives only three houses away from the house of Venugopal Mudaliar. He had attested Exhibit B-4 and Exhibit B-5 and also the endorsement of discharge in Exhibits. B-9, B-14, B-15 and B-17. He had also attested the endorsements in Exhibit B-37, Exhibit B-41. It was suggested to him that his signatures had been taken on the documents he had attested at a later date. He denied this suggestion. He could not, however, describe the circumstances under which the endorsement of the discharge in Exhibit P-9 came to be written. He was so intimate with the vendees that he was asked to attest so many documents but he evaded to reply to the question whether Deivasigamani was employed in the shop of Govindaswamy Mudaliar when Deivasigamani himself has admitted that he was in the service of D.W.1.

40. Deivasigamani Mudaliar, D.W. 3, has also attested Exhibit B-5 and the endorsement of discharge in Exhibit B-9 and Exhibit B-13. He is also an attestator of the endorsement of discharge in Exhibit B-12. He has admitted that he was related to D.W. 1, the vendee, and also that he was in the service of Govindaswami Mudaliar five years back as his Gumastha. He also admits that he had taken certain lands on lease from the vendees. He appears to have been present on each and every crucial occasion for attesting the documents. He being a close relation and also a servant of defendant No. 1, he is bound to echo the voice of his master.

41. G. Rajan D.W. 4, attested the endorsement of discharge in Exhibit B-13, which was a promissory note executed in favour of Veeraswami Naidu. He admitted in cross-examination that he used to call on D. W. 1, off and on and he happens to be his friend. His evidence also gives the impression that he has come to oblige D.W. 1.

42. Govindappa Mudaliar, D.W. 5, has attested Exhibits B-4 and B-5 and the endorsement of discharge of a bond Exhibit B-9 to Sambayya Chetty. He admitted that he was a regular visitor to the house of D.W. 1. He used to go there to read newspapers. He is also at the house of D.W. 1 ,on crucial occasions reading newspapers.

43. Vasudevan Mudaliar, D.W. 6, has deposed that K. V. Purushotham and K.V. Sriramulu had borrowed money from him in 1952 and they had mortgaged a house and a vacant site under Exhibit B-49. Exhibit B-50 was a prior promissory note executed by K.V. Purushotham. In renewal of that bond and for a further advance of Rs. 2,000 Exhibit B-49 was executed for Rs. 4,000. He admitted in his cross-examination that there were other big money lenders *viz.*, M. A. Govindaraju Chettiar, Managing Director of Rajeshwari Mills. Gudiyattam; Motiyappa Mudaliar was also equally well-to-do man and had got money lending business; Rajupati Rajagopal Naidu and others. But K.V. Purushotham had not borrowed any money from any of those persons. He also admitted in the cross-examination that the value of land within the radius of five miles of Gudiyattam had risen in the course of five or six years. He further deposed that his first cousin Vasudeva Mudaliar had purchased six acres for Rs.24,000 within two years. He did not deny the suggestion that the transaction might be four years back. The statement was

made on 8th of August, 1961 and about four years back would take us to 1956-57.

44. Punyakoti Chettiar, D.W.7 deposed that Purushotham and his brother Sriramulu had borrowed Rs.2,500 from him and executed a bond Exhibit, B-12. They had also executed Exhibit B-16 for Rs. 200 He further deposed that at the time of discharge of Exhibits B-12 and B-16 three persons had come to his place. They were Raju Naickar, E.A. Ponnusami Mudaliar and Venugopal Mudaliar. But in cross-examination h positively admitted that neither Raju Mudaliar nor Deivasigamani were present at the time of discharge and attested the endorsement in Exhibit B-12. In the endorsement of discharge, however, one Raju Naidu had attested. He, however, admitted in cross-examination that Rangasami Naidu and Ponnusami Mudaliar alone were present at the time of discharge cf Exhibit B-12 but neither Raju Mudaliar nor Deivasigamani Mudaliar, who have attested Exhibit B-12 were present at the time of discharge.

45. V. C. Man vannan, D.W. 8 is the Secretary of the Land Mortgage Bank, Vellore. He speaks of the circumstances under which the mortgage in favour of his bank was discharged. According to him Venugopal Mudaliar, the father of Govindaswami Mudaliar, came to the bank at the time of the discharge. He enquired whether the penal interest could be given up. He represented that remission, if any, made would enure to the benefit of Purushotham when he gets resale. He also admitted that the valuation of the property was that of the pre-war period and after the war prices had risen three to four times.

46. A scrutiny of the evidence produced on behalf of the vendees, reveals that the witnesses are interested in the vendees and they are out to oblige them. In some cases it is even doubtful whether the attesting witnesses were present at the time of attestation. The possibility of obtaining their signature at a later date cannot be ruled out.

47. As against the evidence of the alienees, the evidence supporting the vendors proves that the properties included in the sale deed Exhibit B-5 were worth somewhere between Rs.40,000 to Rs. 50,000. The Village Munsiff and Karnam of Pichanur were examined as D.W. 10 and D.W. 17 respectively. According to D.W.10 the land belonging to the vendors included in the sale deed has a total area of about 46 to 47 acres. They are situated in two blocks, one block consisting of 42 acres and the other block consisting of the balance. Two electric pumps were exisitng in the block of 42 acres. He himself owns land adjacent to the suit land, owning about 40 acres. According to him, 20 acres out of 42 acres 'block were fit for wet cultivation *viz.* ragi, paddy, plantain and other wet crops could be raised, while in the dry lands dry crops like red gram, groundnut, horse gram etc., could be grown. He further deposed that in 1955-56 the 20 acres in which wet crops could be raised was worth Rs.1500 per acre while the land in which dry crops could be raised was worth Rs.300 to Rs. 400 per acre. According to him it would cost Rs. 2,500 or more to construct each well and Rs. 1,000 or so to construct the pumping set shed. There were about 300 and odd palmyrah trees each of which would fetch Rs. 5 or so. Besides there were tamarind and banian trees. One tamarind tree would fetch about Rs. 250 and one banian tree would fetch about Rs. 100.

48. He further deposed that for about a year after the sale the vendors alone continued to be in possession and thereafter the vendees took forcible possession which resulted in a criminal complaint by K. V. Purshottam. This witness is a Village Munsif and there is no reason to doubt his veracity. He has got his own land near the land in suit.

49. The evidence of D.W. 17 is also to the same effect. He is a fairly aged person and Karnam of Pichanur for the past 40 years. The trial Court has observed in its judgment that it was very much impressed by the demeanour of this witness which impressed the Court as a person speaking the truth. He substantially supported the evidence of D.W. 10. Kuppayya Naidu, D.W. 11 is the lessee of defendants 1 to 3. He also supports the evidence of D.W. 10 and D.W.

17 with regard to the valuation of the property.

50. D.W. 14 Changayya Naidu, is the president of the village Panchayat board. He is also an adjacent owner. He had purchased land admeasuring two acres and odd in 1958 for Rs. 4,000 Exhibit B-55 being the registration copy of the sale deed. He also speaks of some purchase of 3 acres and odd adjacent land in the name of his undivided brother vide Exhibit B-56, in 1960 for Rs. 9,000. He is very positive in saying that the land of the vendors could be valued at Rs. 50,000 in 1955.

51. T.L. Narayanasami Chowdri D.W. 15 is the Director of Gudiyattam Taluka Land Mortgage Bank. He stated that he had purchased 25 to 30 acres of dry land for a sum of Rs. 56,500 under Exhibit B-57 in the year 1960 in the name of his undivided brother. Under another sale deed Exhibit B-58, dated 19th of March, 1958, 13 acres and odd were purchased by them for Rs. 26,000. The land purchased under Exhibit P-57 was situated only at a distance of one furlong from the suit land and similar to the suit land.

52. Anjaneyalu Naidu, D.W. 16, also owns land adjacent to the land owned by the vendors. He also gave evidence with reference to Exhibits B-59, B-60 and B-61. Under Exhibit, B-59, dated 2nd June, 1953, he had purchased 2.77 acres for Rs. 2,500 under Exhibit B-60, dated 14th February, 1957, he had purchased 2.27 acres for Rs. 3,500 and under Exhibit B-61, dated 22nd June, 1960, he had purchased 3.27 acres for Rs. 7,000. All these lands according to him were punja (dry) lands similar to the lands owned by vendors. He further deposed that in the year 1952-53 or so the fertile part of the disputed land could fetch Rs.1,500 to Rs.2,000 while the punja (dry) lands could fetch Rs. 750 to Rs. 1,000 per acre.

53. From the aforesaid evidence it can easily be concluded that the land comprised in Exhibit B-5 was fertile land capable of giving a net return of not less than Rs. 2,000 to Rs. 2,500 per year In this state of the evidence, we agree with the conclusion drawn by the Trial Court that the property in dispute was worth Rs. 40,000 to Rs. 50,000 but it was sold only for Rs. 16,500 which is an inordinately inadequate consideration.

54. From the evidence discussed above, both oral and documentary and circumstantial, we in agreement with the trial Court hold that the sale deed, dated 22nd of August, 1955 is true and it is supported by consideration but only in part and that even the recited consideration in the sale deed is thoroughly inadequate; that the sale deed was executed only nominally for a collateral purpose and with a view to stave off creditors with the express understanding that the properties sold would be reconveyed to the vendors after the pressure of the creditors had subsided; that the debts under the promissory notes Exhibit B-13 in favour of Veeraswami Naidu and Exhibit B-14 in favour of Deivasigamani Mudaliar were fictitious.

55. The contention of the counsel for the respondents that finding of fact cannot be interfered with by the Court has no force as the finding is being reversed on the ground that material circumstances have been ignored by the High Court.

56. In view of the finding arrived at there is no question of giving any equities to the vendees even if some of the amounts paid by the vendees to some of the creditors of Purshotham were genuine. If the transaction of sale is itself vitiated for the reasons given above, no relief in equity could be granted to the vendees.

57. Now the question crops up about the pious liability of the sons to discharge the antecedent debts of the father. The legal position under the Hindu law is quite clear. A natural guardian of a Hindu minor has power in the management of his estate to mortgage or sell any part thereof in case of necessity or for the benefit of the estate. If the alienee does not prove any legal necessity or that he does not make reasonable enquiries, the sale is invalid.

58. But the father in a joint Hindu family may sell or mortgage the joint family property including sons' interest therein to discharge a debt contracted by him for

his own personal benefit and such alienation binds the sons provided (*a*) the debt was antecedent to the alienation, and (*b*) it was not incurred for an immoral purpose. The validity of an alienation made to discharge of antecedent debt rests upon the pious duty of the son to discharge his father's debt not tainted with immorality.

59. "Antecedent debt" means antecedent in fact as well as in time, that is to say, that the debt must be truly independent of and not part of the transactions impeached. The debt may be a debt incurred in connection with a trade started by the father. The father alone can alienate the sons' share in the case of a joint family. The privilege of alienating the whole of the joint family property for payment of an antecedent debt is the privilege only of the father, grandfather and great-grandfather *qua* the son or grandson only. No other person has any such privilege. K.V. Purushotham had contracted the debt in connection with his new personal business and to clear all those debts he had executed the impugned sale deed. Obviously, therefore, the debt in question was antecedent debt so far as his sons were concerned and, therefore, they were under a pious obligation to pay off those debts. It was open to the father to execute a sale deed in respect of the shares of his sons also unless it was shown that the debt was tainted with immorality or was for an illegal purpose. It is not the case of the sons of Purushotham that the debt was contracted for an illegal or immoral purpose. Obviously the sale would be binding on the sons of Purushotham. But the same is not the position with regard to the sons of his brother, K.V. Sriramulu who were the plaintiffs in suit No. 108 of 1958. It has been found as a fact that lungi business was the individual or private business of Purushotham. In view of the factual position it could not be said that Sriramulu had alienated the joint family property in the capacity as a father of his sons for discharging any antecedent debt incurred by him merely because he has also joined Purushotham in executing the impugned sale. The share of the sons of Sriramulu could not have been alienated by Purushotham for discharging his antecedent debt.

60. In *Sidheshwar Mukherjee* v. *Bhubneshwar Prasad Narain Singh*[1] this Court laid down the law in the following terms:

"A person who has obtained a decree against a member of a joint Hindu family for a debt to him is entitled to attach and sell the interest of his debtor in the joint family property, and if the debt was not immoral or illegal, the interest of the judgment-debtor's sons also in the joint family property would pass to the purchasers by such sale even though the judgment-debtor was not the karta of the family and the family did not consist of the father and sons only when the decree was obtained against the father and the properties were sold. It is not necessary that the sons should be made parties to the suit or the execution proceedings. The rule laid down by the Privy Council in *Nanomi Babuasin's case*[2] is not restricted in its application to cases where the father was the head of the family and in that capacity could represent his sons in the suit or execution proceedings, for, subject to the right of the sons to assert and prove that the debt contracted by their father was not such as would be binding on them under the Hindu Law, the father, even if he was not the karta could represent his sons as effectively in the sale or execution proceedings as he could do if he was the karta himself."

61. In *Brij Narain* v. *Mangla Prasad*[3] the Judicial Committee, upon a consideration of the authorities, laid down the following propositions :

"(1) The managing member of a joint undivided estate cannot alienate or burden the estate *qua* manager except for purposes of necessity, but (2) if he is the father, and the other members are his sons, he may by incurring debt, so long as it is not for an immoral purpose,

1. 1953 S.C.J. 700: (1953) 2 M.L.J. 789: 1954 S.C.R. 177: A.I.R. 1955 S.C. 487.

2. I.L.R. 13 Cal. 21: (1885) 13 I.A. 1.

3. 46 M.L.J. 23: 19 L.W. 72: 51 I.A. 129: A.I.R. 1924 P.C. 50.

lay the estate open to be taken in execution proceedings upon a decree for payment of that debt, (3) If he purports to burden the estate by a mortgage, then unless that mortgage is to discharge an antecedent debt, it would not bind the estate, (4) Antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached, (5) There is no rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead."

62. In *Shanmukam* v. *Nachu Ammal*,[1] a Division Bench of Madras High Court laid down :

"The doctrine of pious obligation of a son to pay his father's debts cannot be restricted to cases where the father also happens to be the manager. If this limitation was well-founded it would also follow that the father's power of disposing of the son's share for the satisfaction of his own debts must be likewise limited. There cannot be any justification for such limitation when it is remembered that the son's obligation to pay his father's debts was under the original Smritis independent of possession of assets of joint family property. It depends purely upon the relationship of father and son. It is only by case law developed during the early part of nineteenth century and by statute law in the Bombay Presidency that the liability of the son for father's debts was limited to assets and to joint family property. The true basis of the obligation therefore is the relationship of father and son and not the accident of the father being the manager of the joint Hindu family."

63. There is, however, another condition which must be satisfied before the son could be held liable, *i.e.*, that the father or the manager acted like a prudent man and did not sacrifice the property for an inadequate consideration, In *Dudh Nath* v. *Sat Narain Ram*[1], a Full Bench of the Allahabad High Court observed :

"In order to uphold an alienation of a joint Hindu family property by the father or the manager it is not only necessary to prove that there was legal necessity but also that the father or the manager acted like a prudent man and did not sacrifice the property for an inadequate consideration. A Hindu father or a manager of a joint Hindu family is expected to act prudently. However great the necessity may be, if the joint family property is sacrificed for an inadequate consideration it would be a highly imprudent transaction and it would be a case where, though for necessity, the father or the guardian has not acted for the benefit of the estate or the members of the joint Hindu family. The father or the manager is not the sole owner of the property. In fact until the partition takes place even his share does not stand demarcated. The ownership vests in all the co-parceners taken together as a unit. The father and the manager, therefore, only represent the co-parceners. Consequently the coparceners stand bound by the act of the father or the manager of the family only to the extent the act is prudent or for the benefit of the coparceners or the estate."

In the instant case on the finding arrived at that the consideration for the sale deed Exhibit B-5 was thoroughly inadequate, the sale cannot be upheld.

64. For the reasons given above the appeals must succeed. They are accordingly allowed and the judgment of the High Court, dated 6th November, 1968, is set aside, and that of the trial Court is restored. In the circumstances of the case the parties should bear their own costs.

V.K. ——— *Appeals allowed.*

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1. (1937) 1 M.L.J. 278: 44 L.W. 738: A.I.R. 1937 Mad. 140.

1. A.I.R. 1966 All. 315.

THE SUPREME COURT OF INDIA.

(Criminal Appellate Jurisdiction.)

PRESENT:— *O. Chinnappa Reddy and R. B. Misra, JJ.*

Kannan and another .. *Appellants**

v.

State of Tamil Nadu .. *Respondent.*

Penal Code (XLV of 1860), *section* 302—*Murder — Sentence—Accused junior partner in the perpetration of crime—More than 7 years elapsing since imposition of death penalty—Sentence reduced to one of imprisonment for life.*

Notwithstanding the fact that the accused were directly responsible for the murder of one of the victims, they were not the moving spirits of the band of criminals but were really 'junior partners' in the perpetration of the crime. Their appearance on the scence was itself at a late stage and they were instruments in the hands of their fellow accused. In addition, more than seven years have elapsed since the imposition of the death penalty on them. In the circumstances, the sentence of imprisonment for life should be substituted for the sentence of death imposed on them [*Para* 1.]

The Judgment of the Court was delivered by

Chinnappa Reddy, J.—Criminal Appeal No. 694 of 1979 is by Kannan and Special Leave Petition No. 1839 of 1981 is by Lakshmanan, the 7th and 6th accused respectively in a case tried by the learned IV Additional Sessions Judge, Madras Division. They along with 5 others were convicted by the learned Sessions Judge on various counts of conspiracy, murder, robbery, abduction etc., and sentenced to death. Having gone through the record, we find that the evidence fully justified the convictions. The only question which requires consideration is that of sentence. The murders were committed for gain and pursuant to plans hatched by some of the fellow accused. The one redeeming feature, so far as these two accused are concerned, is that, notwithstanding the fact that they were directly responsible for the murder of one of the victims, they were not the moving spirits of the band of criminals but were really 'junior partners' if one may use such an expresion, in the perperation of the crimes. Their appearance on the scene was itself at a late stage and from the evidence it would appear that they were instruments in the hands of and under the domination of their fellow accused. In addition, there is also the circumstance that more than seven years have elapsed since the imposition of the death penalty on them. Taking into account, all the circumstances, we think that the sentence of imprisonment for life should be substituted for the sentence of death in the case of the two accused Kannan and Lakshmanan. Criminal Appeal No. 694 of 1979 filed by Kannan is allowed to this extent. Special Leave Petition No. 1839 of 1981 is allowed and the appeal of Lakshmanan is also allowed to the extent indicated

V.K. ——— *Order accordingly.*

* Crl.A.No 694 of 1979 and S.L.P. (Crl.) No. 1839 of 1981.

24th March, 1982.

THE SUPREME COURT OF INDIA.

(Civil Appellate Jurisdiction.)

PRESENT:— *S. Murtaza Fazl Ali, E. S. Venkataramaiah and A. Varadarajan, JJ.*

K. Rajendran and others etc. etc. .. *Petitioners**

v.

State of Tamil Nadu and others .. *Respondents.*

(A) *Tamil Nadu Abolition of Posts of Part-time Village Officers Act (III of* 1981)—*Validity—If contravenes Article* 19 (1) (g) *of Constitution of India* (1950).

It is not possible to hold that the Tamil Nadu Abolition of Posts of Part-time Village Officers Act, 1981, violates Article 19 (1)(*g*) of the Constitution of India as it does not affect the right of any of the incumbents of the posts to carry on

*W.Ps. Nos. 5880-82, 6176-77, 5921-22, 6220, 6426-21, 6355-56, 6264-70, 6276, 6178-79, 6191, 1718 of 1980 and 220-22 and 2113 of 1981. *15th April,* 1982.

any occupation of their choice even though they may not be able to stick on to the posts which they were holding.

[*Para.* 18.]

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 *mala fides* cannot be attributed to a Legislature.

[*Para* 16.]

(B) *Tamil Nadu Abolition of Posts of Part-time Village Officers Act* (III *of* 1981)—*Validity—Right of Government to abolish a post—Judicial review—Abolition of post — If attracts Article* 311 (2) *of the Constitution of India* (1950)-*Tamil Nadu Act* III *of* 1981, *if violative of Article* 311 (2) *of the Constitution of India* (1950).

The Government has always the power, subject, of course, to the constitutional provisions, to re-organise 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. Thus 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 any action, legislative or executive, taken pursuant to that power is always subject to judicial review.

[*Paras.* 12, 33.]

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) of the Constitution. 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. It is difficult to hold that either the decision in *Moti Ram Deka's case*, (1964) 5 S.C.R. 683: A.I.R. 1964 S.C. 600, or the decision in *Papanna Gowda's case*, (1969) Lab. I.C. 730: (1968) Serv. L.R. 50, 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 this view it cannot be said that the Tamil Nadu Abolition of Posts of Part-time Village Officers Act, 1981, by which the village officers in the State of Tamil Nadu were abolished contravenes Article 311 (2) of the Constitution of India.

[*Para.* 35.]

(C) *Tamil Nadu Abolition of Posts of Part-time Village Officers Act* (III *of* 1981) — *Validity—If contravenes Article* 14 *or* 16 *of the Constitution of India* (1950).

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. These factors are alien to modern administrative service and are clearly opposed to Articles 14 and 16 of the Constitution. Rightly therefore, the Administrative Reforms Commission recommended their abolition and reorganisation of the village service. It cannot be said that the decision to abolish the village officers which were feudalistic in character and anachronisms in the modern age was arbitrary or unreasonable. Nor is it a colourable. piece of legislation passed with the object of treating the incumbents of village officers in an unjust way.

[*Paras.* 37, 39, 40.]

Even with regard to village officers appointed after 16th December, 1970, though they 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 Act III of 1981 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 16th December, 1970. [*Para.* 42.]

(D) *Andhra Pradesh and Madras* (*Alteration of Boundaries*) *Act* (*LVI of* 1959), *section* 43 (4) *proviso — Applicability.*

Where it is not shown that the petitioners were allotted to the State of Tamil Nadu under section 43(2) of the Act, the proviso to section 43(4) would not be attracted. In such a case the State Government is entitled to deal with all the officials in the areas transferred to them in accord-

ance with Chapter I of Part XIV of the Constitution. [*Para.* 44.]

(*E*) *Constitution of India* (1950), *Articles* 38 *and* 43 —*Scope* —*Enforceability.*

Articles 38 and 43 of the Constitution 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. [*Para.* 48.]

Cases referred to:—

M. Ramappa v. *Sangappa*, 1959 S.C.J. 167 : 1959 S.C.R. 1167 : A.I.R. 1958 S.C. 937; *Gazula Dasaratha Rama Rao* v. *State of Andhra Pradesh*, (1961) 1 M.L.J. (S.C.) 63 : (1961) 1 An.W.R. (S.C.) 63 : (1961) 1 S.C.J. 310 : (1961) 2 S.C.R. 931 : A.I.R. 1961 S.C. 564; *Fertilizer Corporation Kamgar Union (Regd.) Sindri* v. *Union of India*, (1981) 1 S.C.C. 568 : (1981) 2 S.C.R. 52 : A.I.R. 1981 S.C. 344; *Parashotam Lal Dhingra* v. *Union of India*, 1958 S.C.J. 217 : 1958 S.C.R. 828 : A.I.R. 1958 S.C. 36; *Moti Ram Deka* v. *General Manager, N.E.F. Rly.*, (1964) 5 S.C.R. 683 : A.I.R. 1964 S.C. 600; *P.V. Naik* v. *State of Maharashtra*, A.I.R. 1967 Bom. 482; *State of Mysore* v. *H. Papanna Gowda*, (1971) 2 S.C.J. 367 : (1971) 2 S.C.R. 831 : A.I.R. 1971 S.C. 191; *Papanna Gowda* v. *State of Mysore*, (1969) Serv. L.R. 50 : (1969) Lab. I.C. 730; *Ramanatha Pillai* v. *State of Kerala*, (1974) 1 S.C.R. 515 : (1973) 2 S.C.C. 650 : A.I.R. 1973 S.C. 2641; *Champaklal* v. *Union of India*, (1964) 5 S.C.R. 190 : A.I.R. 1964 S.C. 1854; *Satish Chandra* v. *Union of India*, 1953 S.C.J. 323 : 1953 S.C.R. 655 : A.I.R. 1953 S.C. 250; *Shyam Lal* v. *State of U. P.*, 1954 S.C.J. 493 : (1954) 1 M.L.J. 730 : (1955) 1 S.C.R. 26 : A.I.R. 1954 S.C.369; *State of Haryana* v. *Des Raj*, (1976) 2 S.C.C. 844 : (1976) 2 S.C.R. 1034 : A.I.R. 1976 S.C. 1199; *Abdul Khalik* v. *State of Jammu and Kashmir*, (1964) Kash. L.J. 366 : A.I.R. 1965 J. & K. 15 (F.B.); *B.R. Sankaranarayana* v. *State of Mysore*, (1966) 2 S.C.J. 329 : A.I.R. 1966 S.C. 1571; *K.C. Gajapati Narayan Deo* v. *The State of Orissa*, 1953 S.C.J. 592: 1954 S.C.R. 1 : A.I.R. 1953 S.C. 375; *Honnalinga Gowda* v. *State of Mysore*, A.I.R. 1964 Mys. 84.

K.K. Venugopal (In W.P. No. 6355-56 of 1980) (In W.P. Nos. 6212, 6427 and 5880-82 of 1980), *F.S. Nariman* (In W.P. Nos. 6264-70 of 1980), *R.K. Garg* (In W.P. Nos. 6191 and 6426 of 1980), *S.N. Kackar* (In W.P. Nos. 5921 of 1980 and 220 of 1981) and *G. L. Sanghi*, Senior Advocates (In W.P. No. 1718 of 1981.

C. S. Vaidyanathan, Vineet Kumar, B. Parthasarathi, A.T.M. Sampath, Miss Lily Thomas, N. A. Subramanium, Naresh Kumar, Mahabir Singh and *S. Srinivasan*, Advocates (with them), for Petitioners.

Lal Narayan Sinha, Attorney-General (In W.P. No. 5880 of 1980), *M.K. Banerjee*, Additional Solicitor General (In W.P. No. 6355 of 1980). *R. Krishnamurthy*, Advocate General, Tamil Nadu (In W.P. Nos. 1718 and 6276 of 1980), *Y.S. Chitale* (In W.P. No. 6426 of 1980), *L. M. Singhvi* (In W.P. No. 6264 of 1980), with *Laxmi Kant Pandey* and *S. S. Ray*, Senior Advocates (in W.P. No. 6212 of 1980), *A. V. Rangam*, Advocate (In all matters) with them, for Respondents.

The judgment of the Court was delivered by

Venkataramaiah, 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 X 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 III of 1981) (hereinafter referred to as 'the Act') which replaced the Ordinance. The total number of posts abolished by the Act is 23,010.

2. 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 vague up till now. It was generally known as the barabaluti system ordinarily consisting of twelve functionaries. In Tamil Nadu, these functionaries were known as (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,

Of them, the first five only rendered service to Government.

3. 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 up to Rs.10 in value, there being no appeal against his decision. With the consent of the parties, he could adjudicate civil claims up to Rs.100 in value. The headman has been generally one of 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 Estates' Village Service Act, 1894 (Madras Act II of 1894) dealt with the three classes of village officers *viz.*, village accountants, village headman and village watchman 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 of duty on their part and generally for securing their efficiency. The Madras Hereditary Village Offices Act, 1895 (Madras Act 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.

4. 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 the 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 II of 1894 or the Madras Act 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 this 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 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 prescribed 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 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 headmen 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.

5. In *M. Ramappa* v. *Sangappa*[1], 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 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 (1) (*a*) of the Constitution from contesting at an election to the State Legislative Assembly.

1. 1959 S.C.J. 167: 1959 S.C.R. 1167: A.I.R. 1958 S.C. 937.

6. In *Gazula Dasaratha Rama Rao* v. *State of Andhra Pradesh*[1], this Court held that section 6 (1) of the Madras Hereditary Village Offices Act, 1895 (Madras Act III 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 12th March, 1962, to the effect that in respect of future vacancies in village offices governed by the Madras Act II of 1894 and the Madras Act 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*[1], the State Legislature passed the Madras Proprietary Estates' Village Service and the Madras Hereditary Village Offices (Repeal) Act, 1968 (Madras Act XX of 1968) repealing the above two statutes *viz.*, the Madras Act II of 1894 and the Madras

1. (1961) 1 M.L.J. (S.C.) 63: (1961) 1 An.W.R. (S.C.) 63: (1961) 1 S.C.J. 310: (1961) 2 S.C.R. 931: A.I.R. 1961 S.C. 564.

Act III of 1895. The said Act was brought into force with effect from 1st December, 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 1 (2) of the Madras Act XX 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 office referred to in sub-section (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 1st December, 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 II of 1894) or the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895) was applicable immediately before the 1st day of December, 1968" on which date the Madras Act XX of 1968 came into force. Pursuant to section 3 of the Madras Act XX 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 16th December, 1970, and they extended to the whole of the State of Tamil Nadu except the Kanyakumari District and the Shencottah 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 to 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 column (2) of the table given in rule 5 thereof in respect of the posts specified in column (1) 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 Board's Standing Order prior to 16th December, 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 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 (1) such part-time work or occupation did not interfere 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 Dis-

trict Collector concerned if the work or occupation extended beyond the charge village. From 15th November, 1973, all the three sets of Rules which came into force on 16th December, 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.

7. 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 11,954 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 annual panchayat tax demand of the order of Rs. 5,000. The Commission envisaged that with some marginal adjustments 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 grassroot 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 Officers 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 inter-communications, 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 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 17th May, 1975, the Governor of Tamil Nadu promulgated the Tamil Nadu Village Officers (appointed under B.S.O.s) Service Rules, 1974 under the proviso to Article 309 of the Constitution in respect of the village officers appointed prior to 16th December, 1970. The above Rules were, however, kept in abeyance by an order made on 1st July, 1975, on receipt of representations from the village officers in regard to the fixation of the age of superannuation at 55 years. On 24th August, 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 9th October, 1978, the Tamil Nadu Village Officers (appointed under B.S.O.s) Service Rules, 1978, were issued fixing the age of retirement of the

village officers at 60 years. Sub-rule (2) of rule 1 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 16th December, 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 16th December, 1970, referred 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*[1], which was rendered on 6th December, 1960, filed writ petitions on the file of the High Court of Madras stating that the Tamil Nadu Village Officers (appointed under the B.S.O.s) 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 18th August, 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 III 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 rule 1 of the Rules, the Rules are not applicable to them and, therefore, they cannot be required to retire under rule 4 (1) of the Rules."

8. 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 16th December, 1970, to whom the said Rules were held to be inapplicable by the judgment of the High Court delivered on 18th August, 1980 and those petitions were posted for hearing during the first week of December, 1980. Before the said petitions were taken up for hearing, the Governor of Tamil Nadu issued the Ordinance on 13th November, 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.

9. The broad features of the Act are these: The object of the Act is set out 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 neces-

1. (1961) 2 S.C.C. 931: A.I.R. 1961 S.C. 564.

sity and to introduce a system of whole-time officers to be in charge of village administration, the Act came to be enacted with effect from 14th November, 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 officer' 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 Officers Service Rules, 1970, 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 section 3 of the Act, the posts of part-time village officers were abolished with effect from 14th November, 1980, and every officer holding a 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 servants in the Kanyakumari district and Shencottah taluk of the Tirunelveli district.

10. Three principal poin are urged before us by the petitioners in these petitions—(*i*) that the Ordinance and the Act are violative of Article 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.

11. 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 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.

12. 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 re-organise 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 2d, Volume 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 a mere colourable 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."

13. H. Eliot Kaplan writes in his book entitled "The Law of Civil Service" at pages 214-215 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 entitled 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 then 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 facts 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 departmental 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."

14. 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.

15. 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, Volume 8 Halsbury's Laws of England 4th Edition.)

16. 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 *mala fide* 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.

17. 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* v. *Union of India*[1], in which Chandrachud, CJ., has observed thus:

> "The right to pursue a calling or to carry on an occupation is not the same thing as the right to 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 fertilizer 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 Article 19 (1) (*g*)."

18. 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 incumbent 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.

19. 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*[1] 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.

20. 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.

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

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1. (1981) 1 S.C.C. 568 : (1981) 2 S.C.R. 52 : A.I.R. 1981 S.C. 344, 348.

1. (1981) 1 S.C.C. 568 : A.I.R. 1981 S.C 344.

"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 of 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."

22. 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*[1], Das, CJ., observed :

"The Government cannot terminate his service unless it is entitled to do so: (1) 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 fulfilment of the 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." (Italics added).

23. 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 inflicted as and by way of punishment and when it is not. It has already been said that where a 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 serivce rules read with Article 311 (2)." (Italics added).

24. 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, CJ. 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 furture career in order to determine whether the removal of an officer from a post attracted Arti-

1. 1958 S.C.J. 217: 1958 S.C.R. 828: A.I.R. 1958 S.C. 36.

cle 311(2). The decision in *Parashotam Lal Dhingra's case*[1], was reviewed by a Bench of seven Judges of this Court in *Moti Ram Deka* v. *General Manager, N.E.F. Rly.*[2]. 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 servants.* — 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".

25. 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 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."

26. The majority judgment in this case, however, observed that a Government servant on being appointed to a post permanenetly 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 *Parashotam Lal Dhingra's case*[1], to the extent it recognised the removal of a permanent Government servant under a contract express or implied or a service Rule. After referring to one passage in *Parashotam Lal Dhingra's case*[1], Gajendragadkar, J. (as he then was), who delivered the majority judgment in *Moti Ram Deka's case*[2], observed 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 reached 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 Article 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." (Italics added).

27. 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 *Parashotam Lal Dhingra's case*[1], held that the above two rules 148 (3) and 149 (3) which authorised the removal of 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

1. 1958 S.C.J. 217: A.I.R. 1958 S.C. 36.
2. (1964) 5 S.C.R. 683: A.I.R. 1964 S.C. 600.

1. 1958 S.C.J. 217: 1958 S.C.R. 828: A.I.R. 1958 S.C. 36.
2. (1964) 5 S.C.R. 683: A.I.R. 1964 S.C. 600.

he then was) in *P. V. Naik* v. *State of Maharashtra*[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).

28. Since much reliance is placed by the petitioners on the decision of this Court in *State of Mysore* v. *H. Papanna Gowda*[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 14th April, 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."

29. The Board referred to in the above sub-section was the Board of Regents of the University. By a notification, dated 29th September, 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. Along with 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 determination 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 con-

1. A.I.R. 1967 Bom. 482.
2. (1971) 2 S.C.J. 367: (1971) 2 S.C.R. 831: A.I.R. 1971 S.C. 191.

1. (1969) Serv. L. R. 50 at 59 : (1969) Lab. I. C. 730.

sidered before deciding whether he has ceased 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 members 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. In the circumstances, the petitioners cannot derive much assistance from this decision.

30. The question whether Article 311 (2) would be contravened if a 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 *Ramanatha Pillai* v. *State of Kerala*[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 *Parushotam Lal Dhingra's case*[2]; *Champaklal* v. *Union of India*[3], *Moti Ram Deka's case*[4], *Satish Chandra* v. *Union of India*[5]; and *Shyam Lal* v. *State of U.P.*[6], this Court observed in this case thus :

"The abolition of post may have, the consequence of termination of service of a 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."

31. The true effect of the decision in *Moti Ram Deka's case*[1], 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*[1], is no authority for the proposition that Article 311 (2) would be attracted in such a case.

32. The above view was followed by this Court in *State of Haryana* v. *Des Raj*[2], to which one of us (Murtaza Fazl Ali, J.) was a party. Khanna, J., speaking for the Court observed 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 or the point as to whether a post should or should not be abolished. The decision to abolish the post should, however,

1. (1974) 1 S.C.R. 515: (1973) 2 S.C.C. 650: A.I.R. 1973 S.C. 2641.
2. 1958 S.C.J. 217: A.I.R. 1958 S.C. 36.
3. (1964) 5 S.C.R. 190: A.I.R. 1964 S.C. 1854.
4. A.I.R. 1964 S.C. 600.
5. 1953 S.C.R. 655: 1953 S.C.J. 323: A.I.R. 1953 S.C. 250.
6. 1954 S.C.J. 493: (1954) 1 M.L.J. 730: (1955) 1 S.C.R. 26: A.I.R. 1954 S.C. 369.

1. A.I.R. 1964 S.C. 600.
2. (1976) 2 S.C.C. 844: (1976) 2 S.C.R. 1034: A.I.R. 1976 S.C. 1199.

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."

33. 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* v. *State of Jammu and Kashmir*[1], to which one of us (Murtaza Fazl 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 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 ocurring in *Parashotam Lal Dhingra's case*[2], 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 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 in *Parashotam Lal Dhingar's case*[1], 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*[2] 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 purusant to that power is always subject to judicial review.

34. 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 everybody should be provided with a job and 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 out-

1. 1964 Kash.L.J. 366: A.I.R. 1965 J. & K. 15 (F.B.).
2. 1958 S.C.J. 217: 1958 S.C.R. 828, 841: A.I.R. 1958 S.C. 36,

1. 1958 S.C.J. 217.
2. (1973) 2 S.C.C. 650: A.I.R. 1973 S.C. 2641.

side 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.

35. 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 enquiry in which he has been informed of the charges against him' in Article 311 (2) when it was substituted in the place of former clause (2) of Article 311 by the Constitution (Fifteenth Amendment) Act, 1963 which came into force on 5th October, 1963. In the circumstances it is difficult to hold that either the decision in *Moti Ram Deka's case*[1] or the decision in *Papanna Gowda's case*[2] 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.

36. 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.

37. 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. These 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 wer 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 :

1. (1964) 5 S.C.R. 683: A.I.R. 1964 S.C. 600.
2. 1969 Lab.I.C. 730.

"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 filing up vacant offices. In recent times, village officers have generally ceased to be leading and affluent ryots and are reduced to earn their livelihood largely through the misuse of their position."

38. 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. *Re-organisation 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 village establishment, as laid down in B.P. Ms.No. 324, dated the 9th December, 1910, read with B.P. Ms.No. 231, dated 23rd February, 1921, no longer hold good.

4.2.2. The size of the survey villages vary widely; 477 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 a 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 therafter to revise the strength of the village establishment by laying down fresh norms for determining its strength. This will be a major administrative exercise. If convenient village administrative units with, more or less, equal work-load are to be consituted, 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."

39. 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 anachronisms 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 rejected by this Court in *B.R. Shankaranarayana* v. *State of Mysore*[1], in which the validity of the Mysore Village Offices Abolition Act (XIV of 1941) which tried to achieve more or less a similar object arose for consideration, with the following observations:

> "(13) As pointed out by this Court in *Gajapati Narayan Deo's case*[2], 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 thereunder 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 intentian 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 and the posts that have been created. 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."

40. A learned discussion on all the points raised in the above case is found in the judgment of the High Court of Mysore in *Honnalige Gowda* v. *State of Mysore*[1]. Hence the above contention has to be rejected.

41. 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

1. (1966) 2 S.C.J. 329: A.I.R. 1966 S.C. 1571.
2. 1953 S.C.J. 592: 1954 S.C.R. 1: A.I.R. 1953 S.C. 375.

1. A.I.R. 1964 Mys. 84.

made under the proviso to Article 309 of the Constitution; or

(iv) any other law,

but does not include Grama Kavalar, Grama Paniyalar and Pasana Kavalar."

42. 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 16th December, 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 16th December, 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 up to 16th December, 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 16th December, 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 pass 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 (2) (*i*) of Part II of the Tamil Nadu State Subordinate Service Rules and prescribed in 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 materials placed before us that the revenue villages 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 16th December, 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 16th December, 1970.

43. 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 the 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 LVI 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 abovesaid 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 finaly 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."

44. 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 abovesaid Act to the State of Tamil Nadu and hence the proviso to sub-section (4) 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 abovesaid 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.

45. 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. Guideliners 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."

46. After the above petitions were filed under the interim orders 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.

47. 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 excess of the compensation payable to 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.

48. 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.

49. 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 :

क्षत्रियैर्धार्यते चापो नार्तशब्दो भवेदिति

(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).

50. 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

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By

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Though the basic objectives of lawyers and social workers are said to be the same, *i.e.*, doing service to Society, social workers in India share with the general public much ignorance about lawyers and carry with them much distrust of lawyers. Thus there is a clash of objectives in their basic approach towards clients' needs.

In India, social workers develop ways of circumventing legal problems, rendering the solution for the problems of the public or clients more bleak.

No doubt a solution other than a legal solution to the problems of the clients may suit their cases since legal answer in any particular case need not necessarily be the best. For example the client may like to settle the issue and avoid legal process and be willing to refer the matter to the Legal Aid Board, who can tackle the job more effectively as an institution; or to refer an evicted family to a Housing Board; or a person dismissed from service to the Employment Exchange, who are supposed to do the service assigned to them effectively under statutory control. The clients may well be satisfied with such non-legal solution and avoid Court proceedings. This is due to the fact that in India legal solution through Court of law is often slower, time-consuming and more expensive to achieve. Social workers are not conscious of the whole range of choice and the likely outcome of various types of problems confronting the citizens or clients and hence they are ill equipped to assure the best type of solution to them.

Some particular points may be touched briefly having a bearing on future relationship between lawyers and social workers:

(1) Social work training, both courses and in-service should pay more attention to professional and general law.

(2) Information about law, legal aid, and the social security system must be readily available and up-to-date.

(3) Social workers must be recruited from the members of the legal profession who have the necessary legal knowledge and background.

(4) Consideration could be given to integrate the Department's Legal Studies into the structure of the Department *i.e.*, Bar Council and Legal Aid Clinics run under State Government patronage.

(5) Legal aid service personnel should have contact with solicitors to facilitate referral to a solicitor.

With the advent of Tamil Nadu State Legal Aid and Advice Board with its 127 centres, functioning at all levels, all over the State, comprising District Committees, Taluq Committees and Legal Aid Centres under the administrative control of judicial officers run and equipped with retired judicial officers and Court clerks at present perhaps with the lawyers of their choice, besides safeguarding the public interest by sponsoring their case before the judiciary, can absorb and put into service the members of the legal profession who undoubtedly have sufficient knowledge of law, train them, and recruit them to implement the social service through legalised process. There is no comprehensive code for legal aid at present in India. Parliament is yet to enact legislation in this respect. I am sure that the Tamil Nadu State Legal Aid and Advice Board formed under the Societies Registration Act with noble object will have no dearth of resources in funds or legal personnel to mobilise on a state-wide front to cater to the needs of the citizens who deserve legal aid, always remembering that there is no *quid pro quo* as far as the receipients are concerned. As pointed by Mr. P. Ramakrishnan, Chairman, Tamil Nadu State Legal Aid and Advice Board, in one of his articles published in 'Equal Justice', the official journal of Tamil Nadu State Legal Aid and Advice Board 'a great deal is dependent upon the strategy related to local conditions, the personnel to be chosen, as instrument and the disinterested dedication of those in-charge to the goals to be achieved.

REMEDY WORSE THAT THE MISCHIEF; NEEDLESS COST OF LITIGATION; A REPRESENTATION.

By

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The former rule was that printed copies of the judgments under appeal should be applied for and issued and supplied for filing appeal. Now to remedy the delay in getting printed copies and the cost involved, the High Court has dispensed with supply of printed copies for appeal. But a more costly process has been introduced. Now along with the original certified copy of the judgment under appeal, four typed copies on blue paper one side only together with as many typed copies of judgment as there are respondents have to be supplied. What the appeal Court is going to do except in regard to division bench cases of the High Court—with 4 more copies of the lower Court judgment is not quite apparent. Blue paper in the market is prohibitively costly and to get so many copies typed costs more than the original printing charges.

If spare copies as per rules are applied for by any party how to furnish the spare copies is a problem.

The new rule which proposed to remedy the former evil has become more expensive than the former and has to be amended and suitably altered. Once certified copy of the judgment under apeal is filed, no further copies need be called for in appeal. The respondents may be made to purchase their own copies from the lower Court as appeal is only a continuation of the trial and one interested in supporting the impugned lower Court judgment must enable himself at his own cost to get the requisite copies. It is submitted that the matter requires consideration by the High Court.

[END OF VOLUME (1983) 1 M. L. J. (JOURNAL).]