

15 -ാം കേരള നിയമസഭ

9 -ാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 31

08-08-2023 - ൽ മറുപടിയ്ക്ക്

മാതൃവകുപ്പിൽ തിരിച്ചെത്തുന്ന ജീവനക്കാരുടെ സീനിയോറിറ്റി നൽകുന്നതിൽ കാലതാമസം

ചോദ്യം		ഉത്തരം	
ശ്രീ തോമസ് കെ തോമസ്		ശ്രീ പിണറായി വിജയൻ (മുഖ്യമന്ത്രി)	
(എ)	<p>മാതൃവകുപ്പിൽ നിന്ന് പി.എസ്.സി. യുടെ പുതിയ അഡ്വൈസിൽ മറ്റൊരു ജോലിയിൽ പ്രവേശിക്കുന്ന ഒരു വ്യക്തിക്ക് കെ .എസ്. ആന്റ് എസ്. എസ്. ആർ. ചട്ടം 8 പ്രകാരം തിരികെ മാതൃ വകുപ്പിൽ എത്തുമ്പോൾ സീനിയോറിറ്റി യഥാസമയം പുന:സ്ഥാപിച്ചു നൽകാതെ ബുദ്ധിമുട്ടിക്കുന്നത് ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ; എങ്കിൽ ആയതു പരിഹരിക്കാൻ എന്തൊക്കെ നടപടികൾ സ്വീകരിക്കുമെന്ന് വ്യക്തമാക്കുമോ;</p>	(എ)	<p>സീനിയോറിറ്റിയും മറ്റ് സർവീസ് ആനുകൂല്യങ്ങളും നഷ്ടപ്പെടാതെ 5 വർഷത്തിനുള്ളിൽ മാതൃവകുപ്പിൽ തിരികെ പ്രവേശിക്കുന്നതിനുള്ള വ്യവസ്ഥകൾ കേരള സ്റ്റേറ്റ് & സബോർഡിനേറ്റ് സർവീസസ് റൂൾസ് ഭാഗം രണ്ടിലെ ചട്ടം 8-ൽ ഉണ്ട്. 5 വർഷത്തിനു ശേഷമാണെങ്കിൽ തിരികെ പ്രവേശിക്കാനുള്ള അവകാശം മാത്രമാണ് നിലനിർത്തിയിട്ടുള്ളത്. പ്രസ്തുത ചട്ടവുമായി ബന്ധപ്പെട്ട് സർക്കാർ പുറപ്പെടുവിച്ചിട്ടുള്ള ഉത്തരവുകളുടെയും സർക്കുലറുകളുടെയും കോടതി ഉത്തരവുകളുടെയും പകർപ്പുകൾ അനുബന്ധമായി ചേർക്കുന്നു.</p>
(ബി)	<p>കെ.എസ്. ആന്റ് എസ്. എസ്.ആർ ചട്ടം 8 പ്രകാരം മാതൃവകുപ്പിൽ തിരിച്ചു എത്തുന്ന ഒരു ജീവനക്കാരന് സീനിയോറിറ്റി നൽകുന്നത് സംബന്ധിച്ച നടപടിക്രമങ്ങൾ എന്തെന്ന് വ്യക്തമാക്കുമോ; ഇത് സംബന്ധിച്ച് സർക്കാർ ഇറക്കിയിട്ടുള്ള വിവിധ ഉത്തരവുകളുടെ കോപ്പികളും കോടതി ഉത്തരവുകളും ലഭ്യമാക്കുമോ;</p>	(ബി)	<p>സീനിയോറിറ്റിയും മറ്റ് സർവീസ് ആനുകൂല്യങ്ങളും നഷ്ടപ്പെടാതെ 5 വർഷത്തിനുള്ളിൽ മാതൃവകുപ്പിൽ തിരികെ പ്രവേശിക്കുന്നതിനുള്ള വ്യവസ്ഥകൾ കേരള സ്റ്റേറ്റ് & സബോർഡിനേറ്റ് സർവീസസ് റൂൾസ് ഭാഗം രണ്ടിലെ ചട്ടം 8-ൽ ഉണ്ട്. 5 വർഷത്തിനു ശേഷമാണെങ്കിൽ തിരികെ പ്രവേശിക്കാനുള്ള അവകാശം മാത്രമാണ് നിലനിർത്തിയിട്ടുള്ളത്. പ്രസ്തുത ചട്ടവുമായി ബന്ധപ്പെട്ട് സർക്കാർ പുറപ്പെടുവിച്ചിട്ടുള്ള ഉത്തരവുകളുടെയും സർക്കുലറുകളുടെയും കോടതി ഉത്തരവുകളുടെയും പകർപ്പുകൾ അനുബന്ധമായി ചേർക്കുന്നു.</p>
(സി)	<p>ഇത് സംബന്ധിച്ച് നിരവധി വ്യവഹാരങ്ങൾ നടക്കുന്ന സാഹചര്യത്തിൽ ഈ ചട്ടത്തിന്റെ പ്രയോഗം സംബന്ധിച്ച് വിശദമായ ഒരു സ്പെഷീകരണ ഉത്തരവ് ഇറക്കുന്നതിന് എന്തൊക്കെ നടപടികൾ സ്വീകരിക്കുമെന്ന് വ്യക്തമാക്കുമോ?</p>	(സി)	<p>കേരള സ്റ്റേറ്റ് & സബോർഡിനേറ്റ് സർവീസസ് റൂൾസ് ഭാഗം രണ്ടിലെ ചട്ടം 8-ന്റെ പ്രയോഗം വ്യക്തമാക്കിക്കൊണ്ടുള്ള ഉത്തരവുകളും സർക്കുലറുകളും നിലവിലുണ്ട്.</p>

സെക്ഷൻ ഓഫീസർ



KERALA GAZETTE

കേരള ഗസറ്റ്

EXTRAORDINARY

അസാധാരണം

PUBLISHED BY AUTHORITY

ആധികാരികമായി പ്രസിദ്ധപ്പെടുത്തുന്നത്

Vol. II	Thiruvananthapuram,	17th June 2013	No. } 1728
വാല്യം 2 }	Monday	2013 ജൂൺ 17	
	തിരുവനന്തപുരം,	27th Jyaishta 1935	നമ്പർ }
	തിങ്കൾ	1935 ജ്യേഷ്ഠം 27	

GOVERNMENT OF KERALA

Personnel and Administrative Reforms (Rules) Department

NOTIFICATION

G. O. (P) No. 19/2013/P&ARD. Dated, Thiruvananthapuram, 14th June, 2013.

S. R. O. No. 479/2013.—In exercise of the powers conferred by sub-section (1) of section 2 of the Kerala Public Services Act, 1968 (19 of 1968), read with section 3 thereof, the Government of Kerala hereby make the following rules further to amend the Kerala State and Subordinate Services Rules, 1958, namely:—

RULES

1. *Short title and commencement.*—(1) These rules may be called the Kerala State and Subordinate Services (2nd Amendment) Rules, 2013.
- (2) They shall come into force at once.

2. *Amendment of the rules.*—In Part II of the Kerala State and Subordinate Services Rules, 1958, in rule 8,—

(a) in Note (1) for the words “by Government or other competent authority” the words “by Government or other competent authority on behalf of the Government” shall be substituted;

(b) after Note (2), the following Note shall be inserted, namely:—

“(3) A member of a service appointed to another service in the exigencies of public service in the manner as specified in Note (1) above shall, unless otherwise specified by the Government at the time of relief, be eligible for the benefits in respect of seniority, probation and appointment as full member in such service as envisaged under this rule, only in the event of his reappointment to such service of the parent Department is before the confirmation of his service in the latter Department or within five years from the date of his relief from the parent Department whichever is earlier. In respect of reappointment after the said period, he shall be eligible to rejoin the service of parent Department as the junior most in the class, category, grade or post in which he was a probationer or an approved probationer on the date of his relief.”

By order of the Governor,

T. J. MATHEW,
Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

Invoking the Note (1) under rule 8 of Part II of the Kerala State and Subordinate Services Rules, 1958, a large number of persons who had got themselves relieved from the service of State Government Departments to take up any other post under another Department of the Government are reappointed to their parent service, sometime after a very long period, claiming all the service benefits envisaged therein such as seniority, promotion, probation and appointment as full member which he would have enjoyed but for his absence causing unsettlement of settled seniority positions in these Departments often resulting in large scale reversions and unnecessary litigations. Therefore, the Government have decided to prescribe a time limit for the full operation of the provision and to make the Note (1) more clear.

The notification is intended to achieve the above object.



GOVERNMENT OF KERALA

Personnel and Administrative Reforms (Rules) Department

CIRCULAR

No. 2517/R1/2013/P&ARD. Dated, Thiruvananthapuram, 8th February, 2013.

Sub:— Personnel and Administrative Reforms Department—Kerala State and Subordinate Services Rules, 1958—Re-appointment under rule 8 of Part II, Kerala State and Subordinate Services Rules—Clarification—Reg.

Rule 8 of Part II, Kerala State and Subordinate Services Rules envisages that the absence of a member of a service from duty in such service for the reasons cited therein shall not, if he is otherwise fit, render him ineligible in his turn,—

- (a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer.
- (b) for promotion from a lower to a higher category in such service; and
- (c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate,

as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence.

2. Based on the above rule position, a 'member of a service' in one Department who after moving on to another Department returns to the service in the first Department shall be entitled to re-appointment in the same class, category, grade or post in the same service in the first Department under clause (a) and he shall be entitled to all promotions within the same 'service' in the first Department that would have accrued to him but for his absence from such a service. His promotions under clause (b) in the first Department shall be limited to grades or categories or posts within such 'service', of which he was a member at the time of his relief from that Department.

3. As per the second proviso under rule 8 (c), Part II, Kerala State and Subordinate Services Rules, a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed under sub-rule (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service in which he is a probationer or an approved probationer.

4. According to rule 2 (15), Part I Kerala State and Subordinate Services Rules, 'Service' is classified as "State Service" and "Subordinate Service" as the case may be.

5. Rule 8 is applicable to a member of a service absent from duty in such 'service'. A Government servant who left a "Subordinate Service" in his parent Department for taking up appointment in another subordinate or state service has the right for seniority on his re-appointment, only in the subordinate service of the Parent Department from which he left. The availability of the benefit of the rule is limited to the post borne on the cadre of a 'service' namely, "Subordinate" or "State service" and not extended to all posts in the Department. He cannot automatically claim and acquire the benefit of seniority in the "State Service" of the Parent Department unless he was an approved candidate for appointment at the time of his relief from the Parent Department in the State Service. Even then for appointment in the "State Service" he has to be re-appointed in the Parent Department in the "Subordinate Service", and he has to relinquish his membership in the latter service as provided in the second proviso to Rule 8. If he was not an approved candidate for appointment in the "State Service" at the time of his relief in the Parent Department, he has to get his probation declared in the "Subordinate Service", get selected by the Departmental Promotion Committee after assessment of his merit and ability, relinquish his membership in the latter service and get appointed to each post borne on the cadre of the "State Service". His seniority in the "State Service" in the Parent Department shall be determined by the date of order of his appointment to "State Service" as envisaged in Rule 27 (a) Part II, Kerala State and Subordinate Services Rules. The Rule does not envisage protection of seniority in another service namely "State Service". The Hon'ble High Court in Writ Appeal No. 1414, 1385, 1825 and 1823/11 dated 29-6-2012 has also observed as follows,—

"However it is needless to say that the authorities who consider the representations for repatriation of the respondent/writ petitioners, have to take into account the relevant rules keeping in mind the State Service and Subordinate Service"

6. There are occasions when a Government Servant gets relieved from the Parent Department in the "Subordinate Service" and after a long period of absence gets reappointed to the Parent Department on request, claims the benefits of seniority and appointment direct to the posts in the "State Service" also based on the post held by his junior in the "Subordinate Service" in the Parent Department at the time of his relief from the "Subordinate Service". The junior in this case who continued in the Parent Department might have got selected by the Departmental Promotion Committee to each post borne on the cadre of the "State Service" after getting his probation declared in each post and merit and ability assessed by the Departmental Promotion Committee and his seniority reckoned as per Rule 27 (a) Part II, Kerala State and Subordinate Services Rules. The re-appointee claims the benefit of seniority and appointment notionally in the "State Service" also, by skipping the procedure and criterion of seniority laid down in the Rules for such appointment in the "State Service" and also without relinquishing the membership in the latter service as envisaged in the second proviso to Rule 8 (c). This has created embarrassing situations to Government and has led to large number of litigations. This causes discontent among the Government Servants who continues in the Parent Department. The re-appointee one day, on his re-appointment after a long period of absence in the Parent Department often gets appointed to the highest post borne on the cadre of the "State Service" of the Parent Department overlooking the claims of those who have been appointed to the posts in the "State Service" as per seniority in the "State Service" after following the procedure prescribed in the Rules, causing their reversion and upsetting the settled seniority. Appointment of a person who has been absent for a very long time in the Parent Department to higher posts without any experience in that Department also affects the efficiency of the service. This often persuades Government Servants to hop from one Department to another in Government Service, in search of promotional avenues. This is not what is intended by the rule.

7. In the circumstances, Government hereby clarify that a 'member of a service' in one Department who after moving on to another Department, returns to the service in the first Department, shall be entitled to re-appointment, only in the same class, category, grade or post in the same service namely "State" or "Subordinate Service" as the case may be in the first Department under Rule 8, Part II, Kerala State and Subordinate Services Rules and he shall be entitled for all promotions within the same service (State or Subordinate) in the first Department that would have accrued to him but for his absence from such a service. A Government Servant who left the Parent Department from the "Subordinate Service" shall not be eligible for the benefit of seniority and appointment in the "State Service" by virtue of his re-appointment in the Parent Department under Rule 8, Part II, Kerala State and Subordinate Services Rules.

K. JOSE CYRIAC,
Chief Secretary to Government.

To

All Heads of Departments and Offices.

All Departments/All Sections (including Law & Finance) of Government Secretariat.

The Secretary, Kerala Public Service Commission, Thiruvananthapuram (with C. L).

The Principal Accountant General (Audit), Kerala, Thiruvananthapuram (with C. L).

The Accountant General (A & E), Kerala, Thiruvananthapuram (with C. L).

The Registrar, All Universities (with C. L).

The Secretary, Kerala Legislature Secretariat (with C. L).

The Secretary to Governor, Raj Bhavan, Thiruvananthapuram (with C. L).

The Registrar, High Court of Kerala, Ernakulam (with C. L).

The Registrar, KAT, Thiruvananthapuram (with C. L).

The Advocate General, Kerala, Ernakulam/Thiruvananthapuram Branch (with C. L).

The Registrar, Kerala Lok Ayukta, Thiruvananthapuram (with C. L).

The Secretary, Human Rights Commission, Thiruvananthapuram (with C. L).

The Secretary, Ombudsman for Local Self Government, Thiruvananthapuram (with C. L).

The State Chief Information Commissioner (with C. L).

The General Manager, KSRTC, Thiruvananthapuram (with C. L).

The Secretary, KSEB, Thiruvananthapuram (with C. L).

All Additional Chief Secretaries/Principal Secretaries/Secretaries/Special Secretaries/Additional Secretaries/Joint Secretaries/Deputy Secretaries/Under Secretaries to Government.

The PS to Speaker/The PS to Deputy Speaker of the Legislative Assembly.

The PS to Chief Minister and all other Ministers.

The PS to the Leader of Opposition.

The Additional Secretary to Chief Secretary.

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GOVERNMENT OF KERALA

Personnel And Administrative Reforms (Rules) Department

CIRCULAR

No. 6419/R1/2016/P&ARD.

Dated, Thiruvananthapuram, 18th May, 2016.

**Sub:—Personnel and Administrative Reforms Department—
Reappointment under Rule 8 of Part II KS & SSRs, 1958—
Clarification—Reg.**

Several instances have come to the notice of Government that requests for re-appointment under Rule 8 Part II KS & SSRs are denied on the interpretation that 'No Objection Certificate' from the competent authority of the former department is required to take up appointment in the latter department, otherwise it shall not be deemed to be an appointment made in the exigencies of public service in terms of the Note 1 below the 4th proviso to Rule 8 Part II KS&SSRs and such persons are not eligible for reappointment to the former service, in terms of Rule 8 Part II KS&SSRs.

2. The Rule 8 of Part II KS & SSRs, 1958 envisages that the absence of a member of a service from duty in such service for the reasons cited therein shall not, if he is otherwise fit, render him ineligible in his turn for reappointment, for promotion from a lower to a higher category in such service and for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate, as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence. The 4th proviso to Rule 8 insists that this rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service not being Military Service, solely on his own application, unless

such appointment is made in the exigencies of public service. The Note 1 under 4th proviso clarifies that an appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority on behalf of the Government shall be deemed to be an appointment made in the exigencies of Public Service for the purpose of this rule.

3. In Judgment dated: 11-4-2014 in OP (KAT) No. 2369/2012, the Hon'ble High Court has also held that the petitioner thereon is entitled to reappointment as Junior Inspector/Auditor, as the appointment of the petitioner in pursuant to the application invited by the PSC shall be deemed to be an appointment made in the exigencies of public service for the purpose of Rule 8 of Part II of KS & SSRs.

4. Since Public Service Commission is the competent authority to invite application for appointment to Public Services, an application made in pursuance of application invited by the Kerala Public Service Commission has to be treated as an application made in exigencies of Public Service as defined in Note 1 below the 4th proviso to Rule 8 Part II KS & SSRs. Therefore in such cases, insisting "No Objection Certificate" from the former department, to take up appointment in the latter department, in order to get the benefit of reappointment to former department under Rule 8 Part II KS & SSRs is not correct.

5. In the above circumstances, Government hereby clarify that NOC is not at all required for reappointment to the former department under Rule 8 Part II KS&SSRs in cases where appointment made to the latter department was in pursuance of PSC notification inviting application for appointment. All Additional Chief Secretaries/Principal Secretaries/Secretaries, all Heads of Departments and Appointing Authorities including Advice Sections of the Personnel and Administrative Reforms Department are requested to note the position and they are hereby directed to ensure that no one is denied of the right for reappointment under Rule 8 Part II KS & SSRs by insisting No Objection Certificate.

SATYAJEET RAJAN,
Principal Secretary to Government.

To

- All Head of Departments and Offices.
 All Departments /All Sections (including Law & Finance) of Govt. Secretariat.
 The Secretary, Kerala Public Service Commission, Thiruvananthapuram (with C. L.).
 The Principal Accountant General (Audit), Kerala, Thiruvananthapuram (with C.L.).
 The Accountant General (A& E), Kerala, Thiruvananthapuram (with C.L.).
 The Registrar, All Universities (with C.L.).
 The Secretary, Kerala Legislature Secretariat (with C.L.).
 The Secretary to Governor, Raj Bhavan, Thiruvananthapuram (with C.L.).
 The Registrar, High Court of Kerala, Ernakulam (with C.L.).
 The Registrar, KAT, Thiruvananthapuram (with C.L.).
 The Advocate General, Kerala, Ernakulam/Thiruvananthapuram Branch (with C.L.).
 The Registrar, Kerala Lok Ayukta, Thiruvananthapuram (with C.L.)
 The Secretary, Human Rights Commission, Thiruvananthapuram (with C.L.).
 The Secretary, Ombudsman for Local Self Government, Thiruvananthapuram (with C. L.).
 The State Chief Information Commissioner (with C.L.).
 All Additional Chief Secretaries/ Principal Secretaries/Secretaries/ Special Secretaries/Additional Secretaries/Joint Secretaries/ Deputy Secretaries/ Under Secretaries to Government.
 The P. S. to Speaker/The P. S. to Deputy Speaker of the Legislative Assembly.
 The P. S. to Chief Minister and all other Ministers.
 The P. S. to the Leader of Opposition.
 The Additional Secretary to Chief Secretary.
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.HARIPRASAD**

FRIDAY, THE 11TH DAY OF APRIL 2014/21ST CHAITHRA, 1936

OP(KAT).No. 2369 of 2012 (Z)

**[AGAINST T.A.NO.1870/2012 OF THE KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM (W.P.(C).NO.3983 OF 2011]**
.....

PETITIONER/APPLICANT:

**SUVEEN S.KAMATH.
GAYATHRI, T.D.SOUTH, C.M.C 27,
CHERTHALA, ALAPPUZHA.**

BY ADV. SRI.P.C.SASIDHARAN.

RESPONDENTS/RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
CO-OPERATION (C) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM - 695 001.**

BY SR.GOVERNMENT PLEADER SRI. NOBLE MATHEW.

**THIS O.P KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN
FINALLY HEARD ON 20-02-2014, THE COURT ON 11-04-2014
DELIVERED THE FOLLOWING:**

Prv.



2014:KER:16450

O.P.(KAT).NO.2369/2012-Z:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P.1 TRUE COPY OF W.P.(C).NO.3983 OF 2011.
- EXT.P.2 TRUE COPY OF COUNTER AFFIDAVIT FILED BY 2ND RESPONDENT.
- EXT.P.3 TRUE COPY OF THE JUDGMENT OF THE HON'BLE KERALA ADMINISTRATIVE TRIBUNAL IN T.A. NO.1870 OF 2012.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE.

Prv.



“CR”

Thottathil B.Radhakrishnan

&

A.Hariprasad, JJ.

=====

OP(KAT).No.2369 of 2012

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Dated this the 11th day of April, 2014

Judgment

Thottathil B.Radhakrishnan, J.

1.Petitioner challenges an order of the Kerala Administrative Tribunal.

2.Heard the learned counsel for the petitioner and the learned Senior Government Pleader.

3.In his pursuit for employment, petitioner applied for being considered to the post of Junior Inspector/Auditor in the Co-operative Department in the Government of Kerala in response to the relevant notification issued by the Kerala Public Service Commission, “PSC”,



OPKAT2369/12

-: 2 :-

for short. He also made a separate application for being considered for appointment to the post of Clerk/Cashier in the District Co-operative Bank, Alappuzha, hereinafter, "DCB", by direct recruitment, in terms of a different notification issued by the PSC.

4. At the first instance, PSC advised for the appointment of the petitioner as Junior Inspector/Auditor. The Registrar of Co-operative Societies, for short, "RCS", issued Ext.P1 appointment order on 25.10.2008 and the petitioner joined in that post.

5. Petitioner was also included in the PSC's rank list for the post of Clerk/Cashier in the DCB. On 14.5.2010, PSC advised the DCB for petitioner's appointment to that post. DCB appointed him in that post on 11.6.2010. Petitioner was relieved from the Co-operative Department in Government at his instance on 12.7.2010 and he joined the DCB.



6. Thereafter, on 2.12.2010, the petitioner represented to the RCS seeking permission to rejoin the Co-operative Department as Junior Inspector/Auditor. In its nutshell, the claim of the petitioner was to rejoin duty in the Co-operative Department in Government in terms of Rule 8 of Part II of Kerala State and Subordinate Services Rules, for short, "KS&SSR". RCS rejected that request as per communication dated 7.1.2011. Challenging that, and praying for a direction to the respondents to allow him to rejoin in the Co-operative Department, the petitioner filed a writ petition before this Court. RCS filed counter affidavit to the writ petition, supporting the impugned decision and contending that Rule 8 cannot be pressed into service for the petitioner to come back from the DCB to a Department in Government because DCB is a co-operative society registered under the Kerala Co-operative Societies Act, 1969, hereinafter, "KCS Act" and service under it



OPKAT2369/12

-: 4 :-

cannot be treated as equivalent to Government service. The writ petition was transferred to the Tribunal on its constitution. Tribunal dismissed the transferred application holding that the petitioner is not entitled to invoke Rule 8. Hence this original petition.

7. It is argued on behalf of the petitioner that the expanse of Rule 8 and the amplitude of the field to which it applies has been narrowly construed by the RCS and the learned Tribunal ignoring the phrase "or for any other reason" in the opening paragraph of that Rule. It is further argued that the fourth proviso and Note I to Rule 8 of Part II of KS&SSR explaining as to what is "exigency of public service", show that the petitioner was statutorily entitled to come back to the Co-operative Department in Government with the support of that Rule. Reference was also made to the decision of the Supreme Court of India in Ali v. State of Kerala [2003(2) KLT 922] which, among other



OPKAT2369/12

-: 5 :-

things, dilated on the scope of the proviso and the utility of a proviso as a legislative tool.

8. On behalf of the State, the learned Senior Government Pleader, supporting the decision of the Tribunal and that of the RCS, argued that Rule 8 can be understood only in the manner in which the Tribunal has viewed it and the service in a co-operative society cannot be treated as service which was in exigency of public service.

9. Rule 8 of Part II KS&SSR reads as follows:

“8. Members absent from duty.-The absence of a member of a service from duty in such service, whether on leave, other than leave without allowances for taking up other employment on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn-



- (a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer;
- (b) for promotion from a lower to a higher category in such service; and
- (c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate;

as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence:

Provided that subject to the provisions of rule 18 he shall satisfactorily complete the period of probation on his return;

Provided further that a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed



OPKAT2369/12

-: 7 :-

under clause (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service in which he is a probationer or an approved probationer:

Provided further that this rule shall not have retrospective effect so as to disturb the decisions taken by the Travancore-Cochin Government in respect of the Travancore-Cochin personnel:

Provided also that this rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service, not being Military Service, solely on his own application, unless such appointment is made in the exigencies of public service.

Note.-(1) An appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of Public Service for the purpose of this rule.

(2) The benefit of this rule shall not be



OPKAT2369/12

-: 8 :-

available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service.”

10. Tribunal took the view that the term “another service” in the fourth proviso to Rule 8 is service in the State Government, having regard to the definition of the term “service” in Rule 2(15) of Part I KS&SSR and that even if the service in DCB is to be presumed to be a service under the State, appointment in DCB cannot be treated as an appointment in exigency of public service. So holding, the Tribunal affirmed the view of the RCS that the petitioner, having been appointed to DCB, is not entitled to reappointment in the Co-operative Department in Government in terms of Rule 8 of Part II of KS&SSR.

11. Rule 8 of Part II of KS&SSR provides that the absence of a member of a service from duty in



such service, whether on leave, or on deputation or for any other reason shall not, if he is otherwise fit, render him ineligible, in his turn, for the different matters provided in that rule, as if he has not been absent. That provision does not depend upon whether his lien in a post borne on the cadre of such service is suspended or not. However, that rule will not apply where the absence of that member from duty in such service was on account of leave without allowances for taking up other employment on foreign service. The phrase "for any other reason" in Rule 8 is sufficient legislative material to hold that a member of a service, except one who had gone on leave without allowances for taking up other employment on foreign service, will be entitled to invoke Rule 8. The fourth proviso to that rule provides that the said rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service, not being Military Service,



solely on his application, unless, such appointment is made in the exigencies of public service. Therefore, a member of a service whose absence from duty in such service is by reason of his appointment to Military Service will be eligible to invoke Rule 8. The question that immediately arises is as to what would be the meaning of the term "another service" occurring in the fourth proviso to Rule 8. When the phrase "not being Military Service" is included in that proviso to cull out an exception to the operation of that rule in contradistinction to the term "another service" occurring in that proviso, it has to be understood that for the purpose of that proviso, the term "another service" includes a service other than a State or a Subordinate Service in the State Government. If that were not so, the use of the term "not being Military Service" was not necessary. We converge on this interpretative conclusion because of the fact that the principal part of Rule 8 provides its



application to those who are absent from duty in a service even on deputation or for any other reason. “Military Service” is defined in Rule 2 (9A) of Part I to mean service in the Armed Forces under the Ministry of Defence, Government of India, whether as a combatant or a non-combatant, for a continuous period of not less than 6 months, but does not include service in para military forces, namely Assam Rifles, Defence Security Corps, General Reserve Engineer Force, Jammu and Kashmir Militia, Lok Sahayak Sena and Territorial Army. Such services which are grouped into the definition of the term “Military Service” can never form part of a State or a subordinate service under the State Government. They are entirely within the legislative and executive domain of the Union of India in terms of the distribution of legislative and executive powers in terms of the Constitution of India. Therefore, the use of phrase “not being Military Service” in the fourth proviso to Rule 8 cannot be treated as



creating an exemption or exception or carving out a distinction from the term “another service” which immediately precedes the use of the term “not being Military Service” except where the term “another service” in that proviso is intended to include a service other than a State or a Subordinate Service in the State Government. The term “service” is defined in Rule 2(15) of Part I KS&SSR to mean a group of persons classified by the State Government as a State or a Subordinate Service, as the case may be. If that definition is imported to the term “another service” in the fourth proviso to Rule 8, definitely, Military Service should also fall within that term since, otherwise, Military Service is excluded from the term “another service” occurring in that proviso. Therefore, unless the term “another service” occurring in the fourth proviso can also take within its sweep the term “Military Service”, the rule cannot be operated if the word “service” in the term “another service” in that proviso was to be



OPKAT2369/12

-: 13 :-

applied on the basis of the definition of the word “service” in Rule 2(15) of Part I KS&SSR. Therefore, the word “service” in the phrase “by reason of his appointment in another service” immediately preceding the phrase “not being Military Service” in the fourth proviso to Rule 8 is one to which the definition of “service” as contained in section 2(15) of Part I KS&SSR cannot be applied in the subject or context. The application of that definition clause to the fourth proviso to Rule 8 would be repugnant to the context in consideration.

12. Rule 2 of Part I KS&SSR opens by saying that the definitions provided in that rule would apply “unless there is anything repugnant in the subject or context”. Even in the absence of an express qualification to that effect, such a qualification is always implied. Repugnancy of a definition arises when the definition does not agree with the subject or context. When the application of the definition to a term in a



provision containing that term makes it unworkable, the definition becomes inapplicable to that provision because of the contrary context. See the erudite classic text: Principles of Statutory Interpretation by Justice G.P.Singh, 13th Edition (2012) and the precedents referred to therein, particularly Vanguard Fire and General Insurance Co. Ltd., Madras v. Fraser & Ross [AIR 1960 SC 971], Knightsbridge Estates Trust Ltd. v. Byrne [(1940) AC 613], State Bank of India v. Yogendra Kumar Srivastava [(1987) 3 SCC 10], Special Officer and Competent Authority Urban Land Ceilings Hyderabad v. P.S.Rao [(2000) 2 SCC 451]. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in



different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words, 'unless there is anything repugnant in the subject or context'. The meaning to be ordinarily given to a term which has been defined in a particular legislation is that given in the definition clause. But this is not inflexible and there may be sections in that legislation where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely 'unless there is anything repugnant in the subject or context'. In view of that qualification in the definition clause, the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances - See



OPKAT2369/12

-: 16 :-

Vanguard Fire and General Insurance Co. Ltd., Madras (supra) followed in whirlpool Corporation v. Registrar of Trade Marks [(1998) 8 SCC 1]. The aforesaid position was considered in Sales Tax Commr., Gujarat v. Union Medical Agency (AIR 1981 SC 1), in para. 14 whereof, the Apex Court reiterated and laid down well settled principle that when a word or phrase has been defined in the interpretation clause, prima facie, that definition governs whenever that word or phrase is used in the body of the statute, but, where the context makes the definition clause inapplicable, a defined word, when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause and it has to be differently construed and applied. This is why all definitions given in an interpretation clause are, therefore, normally enacted subject to the usual qualification “unless there is anything repugnant in the subject or context” or “unless the context otherwise requires”. Even in



the absence of an express qualification to that effect, such a qualification is always implied. Though we have stated earlier that this is the law, we reiterate it, in view of the profuse support for this proposition by judicial precedents, that too, by the Hon'ble Supreme Court, which amount to law laid in terms of Article 141 of the Constitution of India.

13. The language of a proviso is to be construed in relation to the subject-matter covered by the section to which the proviso is appended. While a proviso does not travel beyond the provision to which it is a proviso, and, is intended to carve out an exception to the main provision to which it has been enacted as a proviso, the operation of a proviso has to be clearly deciphered for the application of that proviso, because the normal function of a proviso is to except something out of the main provision to which that proviso is made, or to qualify something enacted therein which, but for the



OPKAT2369/12

-: 18 :-

proviso, would be within the purview of the enactment - See for support Dwarka Prasad v. Dwarka Das Saraf [AIR 1975 SC 1758], Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa [(1987) 2 SCC 469], Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax [AIR 1955 SC 765] and Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer [AIR 1966 SC 12].

14. In the context and the setting in which the fourth proviso to Rule 8 is made, the term "another service, not being Military Service" definitely takes within its sweep, services other than the State or a Subordinate Service in the State Government, except those members of a State or a Subordinate Service in the State Government who were absent from duty on leave without allowances for taking up other employment on foreign service. It will definitely take in those who are absent from the Service or a Subordinate Service in the State Government for any reason other than those



OPKAT2369/12

-: 19 :-

specifically excluded in the opening paragraph of Rule 8 of Part II KS&SSR.

15. The next issue is as to whether appointment of the petitioner to the DCB is an appointment made in the exigencies of public service. Note I to Rule 8 provides that an appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of public service. It is a deeming provision. If the factors enjoined as per that Note are satisfied, the legislative compulsion is that it shall be deemed to be an appointment made in the exigencies of public service for the purpose of Rule 8. The purpose of that legal fiction is to bring such appointees as would fall under Note I also into the field of operation of Rule 8 of Part II KS&SSR thereby extending to them the benefit of the eligibility in terms of that rule. Having thus ascertained the purpose of that deeming



provision, the court has to apply that legal fiction. It is well settled that when a state of affairs is legislatively ordained to be deemed, that shall be so done and such fictional status shall pervade unconditionally and freely within the domain to which such presumptive status applies. See for support - State of Bombay v. Pandurang Vinayak [AIR 1953 SC 244], American Home Products Corporation v. Mac Laboratories [AIR 1986 SC 137], P.E.K.Kalliani Amma v. K.Devi [AIR 1996 SC 1963], Mundri Lal v. Sushila Rani [(2007) 8 SCC 609], Rajendraswami v. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad [AIR 1965 SC 502] and Manorey Alias Manohar v. Board of Revenue (U.P.) [(2003) 5 SCC 521], following the oft-quoted words of Lord Asquith in East End Dwelling Co. Ltd. v. Finsbury Borough Council [1952 AC 109 (HL)] that "if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also image as real the consequence and



incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it-. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.” Therefore, if an appointment is made in pursuance of applications invited by “other competent authority”, that is sufficient foundation to operate the deeming provision contained in that Note. PSC is the competent authority in terms of the provisions of the Kerala Co-operative Societies Act and the rules thereunder to invite applications for appointments to the Clerk/Cashier in the DCB. The appointment of the petitioner in the DCB is pursuant to the applications invited by the PSC which is the competent authority to invite such applications. If that were so, the rigour of the fiction created by the legislative rule enjoins



OPKAT2369/12

-: 22 :-

the petitioner's appointment in DCB as one made in exigencies of public service. That legal effect cannot be whittled down by any reasoning process depending upon whether the resultant situation of a person returning to the State Government service would amount to deprivation of rights or expectations of any other person.

16.Hence, the service in the DCB falls within the term "another service" in the fourth proviso to Rule 8 and the appointment of the petitioner in the DCB pursuant to the applications invited by the PSC shall be deemed to be an appointment made in the exigencies of public service for the purpose of Rule 8 of Part II of KS&SSR.

17.For the aforesaid reasons, the findings of the learned Tribunal, contrary to the above, are not in consonance with the provisions of Rule 8 of Part II of KS&SSR, including its fourth proviso and Note I to that rule. The decision of the RCS affirmed by the learned Tribunal is also not



OPKAT2369/12

-: 23 :-

sustainable. Hence, the impugned order of the Tribunal and the decision of the RCS impugned before the Tribunal are liable to be set aside and the petitioner is entitled to the relief that he had sought for in the writ petition that was transferred to the Tribunal.

In the result, this original petition is allowed quashing the order of the Kerala Administrative Tribunal in T.A.No.1870 of 2012 and the decision contained in the communication dated 7.1.2011 issued by the RCS, impugned in the transferred application before the Tribunal. It is declared that the petitioner is entitled to re-appointment as Junior Inspector/Auditor in the Co-operative Department in the Government and all other matters as enjoined by Rule 8 by treating him as eligible in his turn, if he is otherwise fit. The RCS is directed to reconsider the case of the petitioner in the light of what is aforesaid and the declarations contained herein and issue a decision on the petitioner's



OPKAT2369/12

-: 24 :-

request on his representation dated 2.12.2010 which was Ext.P7 in WP(C).No.3983 of 2011 of this Court (T.A.No.1870 of 2012 of the Kerala Administrative Tribunal), within an outer limit of 45 days from the date of receipt of a copy of this judgment, without fail. The petitioner is directed to mark appearance in the Office of the RCS on 28.4.2014.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
A.Hariprasad
Judge

Sha/

-true copy-

PS to Judge

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 18TH DAY OF JANUARY 2018 / 28TH POUSHA, 1939

WP(C).No. 37006 of 2016

PETITIONER:

SANTHOSH T.N,
LOWER DIVISION CLERK, PIRAYIRI GRAMA PANCHAYAT,
KODUNTHIRAPPULLI, PALAKKAD DISTRICT, PIN-678 004.

BY ADVS.SMT.N.SANTHA
SRI.K.A.BALAN
SRI.V.VARGHESE
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.K.N.REMYA
SMT.L.ANNAPOORNA
SRI.S.DEEPAK

RESPONDENT(S) :

1. HIGH COURT OF KERALA,
REPRESENTED BY ITS REGISTRAR (SUBORDINATE JUDICIARY),
ERNAKULAM, KOCHI, PIN-682 031.
2. THE DIRECTORS OF PANCHAYATS,
DIRECTORATE OF PANCHAYATS,
THIRUVANANTHAPURAM, PIN-695 033.
3. DEPUTY DIRECTOR OF PANCHAYATS,
PALAKKAD, PIN-678 001.

R1 BY ADV. SRI.V.A.MUHAMMED
R2 & R3 BY GOVERNMENT PLEADER SRI.B.UNNIKRISHNA KAIMAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2018, THE COURT ON 18-01-2018 DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE SERVICE DETAILS OF THE PETITIONER ARE CERTIFIED BY THE SECRETARY TO VADAVANNOOR GRAMA PANCHAYAT.
- EXHIBIT P2 TRUE COPY OF THE APPOINTMENT ORDER NO.E2- 1683/14 DATED 28-08-2014 OF THE DEPUTY DIRECTOR OF PANCHAYATS, PALAKKAD.
- EXHIBIT P3 TRUE COPY OF THE ORDER NO.A1-05033/2014 DATED 23-09-2014 OF THE DISTRICT JUDGE, PALAKKAD.
- EXHIBIT P4 TRUE COPY OF THE REPRESENTATION DATED 17-12-2014 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE LETTER NO.C1-18616/2015 DATED 28-05-2015 OF THE 1ST RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE EXPLANATION DATED 22-06-2015 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE LETTER NO.C1-18616/2015 DATED 19-10-2016 OF THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

“CR”

P.V.ASHA, J.

W.P.(C) No.37006 of 2016

Dated this the 18th day of January, 2018

JUDGMENT

The question arising in this case is whether a person appointed through Public Service Commission initially as a Police Constable, thereafter as Last Grade Servant in Civil Judicial Department and thereafter as LD Clerk in the Panchayat Department, all by way of direct recruitment can be denied re-appointment in the Civil Judicial Department under the 2nd Proviso to Rule 8 of Kerala State and Subordinate Service Rules, 1958 (hereinafter referred to as 'KS&SSR').

2. The service details of the petitioner are the following: Based on advice memo dated 06.07.1998 issued by the Kerala Public Service Commission ('PSC' for short) petitioner was appointed as Police Constable in Kerala Police Subordinate Service. On appointment, he joined duty on 1.12.1998. While working there, he got advice memo for appointment as Last Grade Servant in the Last Grade Service of the Civil Judicial Department on 20.09.2000. On appointment he joined on 20.11.2000. He got promotion as Process Server on 31.01.2001. Further promotion was as Attender Grade II in the Civil Judicial Subordinate Service in June 2007. He continued in that post from 27.06.2007 upto 08.01.2008. He got further promotion and joined as Attender Grade I on 09.01.2008 and continued in that post till his

promotion as Amin. While working as Amin from 04.09.2008 he got promotion as LD Clerk as per order dated 13.10.2013. He joined as LD Clerk on 28.10.2013. While so he was appointed as LD Clerk in Panchayath Department as per Ext.P2 order dated 28.08.2014, through PSC. As per Ext.P3 order dated 23.09.2014, the District Judge, Palakkad relieved him with effect from 24.09.2014 to join duty as LD Clerk in the Panchayat Department.

3. While working in Panchayath Department, petitioner submitted Ext.P4 application before the 1st respondent, through proper channel, requesting to allow him to rejoin as LD Clerk in Palakkad District in the Civil Judicial Department, under Rule 8 of Part II KS&SSR. But as per Ext.P5 letter dated 28.05.2015, the 1st respondent informed the 2nd respondent that petitioner is not entitled to re-appointment in Civil Judicial Department under Rule 8 in the light of the 2nd proviso to that rule, according to which petitioner's lien was only in the Police Department. It was stated that as per that proviso a member of service appointed to another service and is a probationer or approved probationer in the latter service shall not be appointed under clause (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service. It was stated that as per the 2nd proviso petitioner's lien was only in the Police Department. The 2nd respondent

was asked to inform the same to the petitioner and to obtain objection if any on it from him. Petitioner thereupon submitted Ext.P6 objection pointing out that his lien continued in the Civil Judicial Department only; alternatively he stated that he was liable to be confirmed in the category of LD Clerk in the Civil Judicial Department and therefore in the light of the amendment effected to Rule 8 in the year 2013, he was not liable to relinquish his membership in Civil Judicial Department. But it was rejected as per Ext.P7 order. Writ petition is filed challenging Ext.P7 order and seeking direction to the 1st respondent to re-appoint him in Civil Judicial Department as LD Clerk .

4. The 1st respondent filed a counter affidavit stating that the benefit of Rule 8 is only for appointment in the parent Department in which the employee 1st got appointment in exigencies of public service; if the employee wants to take a third appointment he has to forego his rights in the 2nd Department; therefore petitioner could join duty in the Panchayath Department only if he relinquished his membership in the Judicial Department where he received 2nd appointment through PSC; by accepting appointment in Panchayath Department, the 3rd appointment through PSC, his membership in the Judicial Department ceased to exist; Rule 8 protects only the rights in the parent Department (1st Department); the petitioner was not confirmed in the Civil Judicial Department of

Palakkad District at the time when he was relieved; on account of the promotions he got in the Department, it cannot be said that he became a full member; the amendment carried out to Rule 8 in the year 2013 also does not help the petitioner, as it only provides that a member of service appointed to a service under the exigencies of service shall be eligible for reappointment under Rule 8 with protection of seniority only if his re-appointment is within the prescribed period of 5 years. It is stated that there were 159 LD clerks in the Department as against 64 posts. Even if the seniors of petitioner were confirmed against those 64 posts petitioner could not have been confirmed.

5. Sri.Varghese, the learned Counsel for the petitioner argued that Rule 2(15) of KS&SSR as well as Rule 2(f) of Kerala Civil Service (Classification Control &Appeal) Rules, 1960 defines service as a group of persons classified by the State Government as a State or Subordinate Service, as the case may be. In this case petitioner's first appointment was to the Police Subordinate Service as Police Constable. Thereafter his appointment was to Last Grade Service in Civil Judicial Department. Last Grade Service is not one classified under the KCS(CC&A) Rules or KS&SSR. Therefore according to him the 2nd appointment cannot be said to be 'to another service'. When he got promotion as Attender Gr.II, he became a member of Subordinate Service. As he got further promotions

in that Subordinate Service upto LD Clerk, he was a full member of that service. He got appointment in Panchayat Subordinate Service when he was working as LD Clerk in a Subordinate Service. Since the appointments were to Subordinate Service itself it was not necessary for him to relinquish his membership.

6. The Learned Counsel for the first respondent asserted that petitioner cannot come back to the 2nd Department since his 3rd appointment was on deemed relinquishment in the Judicial Department and therefore he can seek re-appointment only in the first Department.

7. In order to determine the issue it is necessary to examine the 2nd Proviso to Rule 8 of KS&SSR, based on which the impugned orders are issued. The 2nd proviso reads as follows:

"Provided further that a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed under clause C to any other service for which he may be an approved candidate unless he relinquishes membership in the latter service in which he is a probationer or an approved probationer. "

8. Petitioner's appointment in each of the Departments was on account of appointment by direct recruitment from open market through PSC. He never got any appointment either by virtue of his membership in any of these services. As per Rule 2(9) of Part I of KS&SSR, a member

of service means a person appointed to that service and who has not been substantively transferred or reduced to another service, who has not resigned, retired, removed not dismissed. Under Rule 2(13) of Part I KS&SSR, a person is said to be recruited by transfer if his appointment to the service is in accordance with the orders issued or rules prescribed for recruitment by transfer to the service and if at the time of his first appointment thereto (a) he is a full member of or an approved probationer in any other service, the rules for which prescribed a period of probation for members thereof or (b) he is the holder of a post in any other service for which no probation is prescribed and has put in satisfactory service in that post for two years on duty within a continuous period of three years. Therefore when the 2nd proviso to Rule 8 refers to a member of service who is appointed to another service and continues to be a probationer or approved probationer in the "another service", the words and expressions "appointed to another service can only mean appointed by transfer to another service. Such an appointment to another service can only if the rules governing the method of appointment to that "another service" provides for the same and in that case a member of service who has completed probation can be appointed to the "another service". In this case petitioner's appointment from the post of Police Constable to the Last Grade Service was not an appointment by transfer.

The further conditions in 2nd proviso is that if such a member of service who got appointed to “another service” continues as a probationer or an approved probationer in that “another service” and he wants an appointment to yet another service under clause (c), he has to relinquish his membership in the “another service”.

9. Now it is necessary to have a look at clause (c) of Rule 8. Rule 8 of KS&SSR , reads as follows:

"8. The absence of a member of a service from duty in such service, whether on leave, other than leave without allowances for taking up other employment, on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn,-

(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer;

(b) for promotion from a lower to a higher category in such service; and

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate; as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but

for his absence:

Provided further that a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed under clause (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service in which he is a probationer or an approved probationer:

Provided further that this rule shall not have retrospective effect so as to disturb the decisions taken by the Travancore - Cochin Government in respect of the Travancore - Cochin personnel:

Provided also that this rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service not being Military service, solely on his own application, unless such appointment is made in the exigencies of public service.

Note 1..An appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of Public Service for the purpose of this rule.

Note 2..The benefit of this rule shall not be available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service.

10. Appointment through Public Service Commission is an

appointment in exigency of service as per Note 1 of the Rule. Therefore Rule 8 is applicable to those who are absent on account of appointment through PSC, as held by this court in the judgment in ***Balakrishnan Nair V Ram Mohan Nair : 1998(1) KLT 766*** and affirmed by the Apex Court in in ***Ali V State of Kerala & others : 2003(2)KLT 922 (SC)***. For the purpose of this case, clause (C) of Rule 8 can be read as :

The absence of a member of a service from duty in such service, whether on leave, or----on any other reason [(on appointment through PSC (in exigency of service)] shall not, if he is otherwise fit, render him ineligible in his turn,-

(a) xxxx(b) xxxxx

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate; as the case may be, in the same manner as if he has not been absent.

xxxx

11. In effect clause (c) only provides for an appointment by transfer to another service. Absence of a member on account of an appointment through PSC will not stand in the way of his right to be appointed by transfer to another service in case he is eligible for such a transfer for which he is an approved candidate. Such a re-appointment is envisaged only for the members of a service. The eligibility for a transfer to another service by virtue of his membership in a service will not be lost on

account of his absence.

12. The benefit of Rule 8 is for 3 different types of appointments. Even if a member of service is absent on account of the reasons stated therein which includes on appointment through PSC to another post, the absence will not render him ineligible for

(1) reappointment to the very same service in the class or grade

(2) promotion in that service

(3) for appointment in a substantive vacancy in another service for which he may be an approved candidate.

13. Now it is necessary to have a look at the 2nd proviso to Rule 8. It can be seen that the restriction is only for an appointment under clause (c) ie for appointment to yet another service for which he would have been eligible in his capacity as a member of the 1st service, had he continued without absenting himself either by availing leave or by deputation or by appointment in exigency of service (through PSC). That appointment can only be an appointment by transfer.

"Provided further that a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed under clause C to any other service for which he may be an approved candidate unless he relinquishes membership in the latter service in which he is a probationer or an approved probationer.

14. A reading of the Rule 8 as a whole with reference to the

definition of 'member of service', 'appointed to the service', and 'recruited by transfer' given under the provisions contained in sub rule (9),(1) and (13) of Rule 2 of KS&SSR, would show that appointments to different services-all by way of direct recruitment do not require any relinquishment from any of the services in order to join another/3rd service. The contention that Civil Judicial Department is his 2nd service and petitioner got appointment to the 3rd service - the Panchayat Department only on deemed relinquishment of his membership in the 2nd service is unsustainable. Petitioner never got any such appointment as envisaged under the 2nd proviso or under Rule 8 so far. Petitioner seeks only a re-appointment in Civil Judicial Department to the very same post in which he was working. Even now he does not seek an appointment even to any other post to which he would have been eligible had he continued there. Originally he was a member of service in the Police Department. He got relieved and joined the Civil Judicial Department not by virtue of the fact that he was a member of service of the Police Department. He did not seek any re-appointment or promotion or appointment to another service by coming back to Police Subordinate Service. He became a member of service in Civil Judicial Department through Public Service Commission. By that appointment alone it cannot be said that he was appointed to another service as envisaged in Rule 8

or clause C. He did not become an approved candidate to another service by virtue of his membership in Police Department. His next appointment in Panchayat Department was also not on account of the fact that he was a member of service in either the Civil Judicial Department or the Police Department. His appointment in Panchayat Department was also through PSC based on direct recruitment from open market, as in the case of his appointment as Police as well as Last Grade Servant. That appointment to Panchayat Department was not one made under clause (c) of Rule 8 of KS&SSR. Though he was appointed in the Last Grade Service in the Civil Judicial Department, he got further promotions/appointment in the Subordinate Service of the Civil Judicial Department. His appointment to Panchayat department was not on account of his membership in the service of the Civil/Judicial Department under clause (c) of Rule 8. He got relieved from the Civil Judicial Department and joined Panchayat Department, on his 3rd appointment based on direct recruitment through PSC. Within one year of his appointment in the Panchayat Department he requested for re-appointment in Civil Judicial Department under Rule 8.

15. The question of relinquishment did not arise in the case of the petitioner to join the Panchayat Department since it was not an appointment under clause (c) of Rule 8 or any of the provisions in Rule

8; it was not an appointment by transfer but by direct recruitment. Even when the petitioner requested for a re-appointment, he did not seek an appointment under clause (c); his request was only for allowing him to re-join as LD Clerk, which comes under clause (a). The restriction under the 2nd proviso will apply in a case where an employee who got appointment in another service and continuing as probationer/approved probationer 'in that another service', wants appointment 'in any other service' by virtue of his membership in the first service on account of which he became an approved candidate to that service. In this case petitioner did not get appointment in Panchayat Department because of his membership in any of the service. Relinquishment is necessary only for any appointment under clause (c) of Rule 8. Appointment under clause (c) is only appointment to another service for which member of the first service became eligible. Such a contingency never arose in this case. When the petitioner is not a person 'appointed to Civil Judicial Department' on account of the fact that he was a member of service in the Police Department and his further appointment in the Panchayat Department is also not by virtue of his membership in Police Department or Civil Judicial Department, there was no question of relinquishment or deemed relinquishment as provided in the 2nd proviso as contended by the respondents.

16. The request of petitioner is rejected on misinterpretation of rules. As the only reason stated is 2nd Proviso to Rule 8 and that reason is found unsustainable, there cannot be any further objection to allow the request of the petitioner.

Ext.P7 order is therefore quashed. There shall be a direction to the 2nd respondent to pass fresh orders on Ext.P4 representation for re-appointment as LD Clerk in the Civil Judicial Department in accordance with Rule 8 of KS&SSR, within a period of one month from the date of receipt of a copy of the judgment.

Writ Petition is accordingly allowed.

sd/-

P.V.ASHA
JUDGE

rkc

The words and figures **"the 2nd respondent"** occurring in the penultimate paragraph of the judgment dated 18.01.2018 in WP(C) No.37006/2016 are corrected and substituted as **"first respondent"** vide order dated 27.02.2018 in I.A.No.2638 of 2018 in WP(C) No.37006 of 2016.

sd/-

Registrar (Judicial)

Kerala High Court

Saifuddin vs State Of Kerala on 19 July, 2006

Equivalent citations: 2006 (3) KLT 873

Author: K Radhakrishnan

Bench: K Radhakrishnan, V Ramkumar

JUDGMENT K.S. Radhakrishnan, J.

1. This matter has been placed before us on a reference made by Justice K. Balakrishnan Nair after having noticed that the Full Bench of this Court in Balakrishnan Nair v. Ram Mohan Nair 1998 (1) KIT 766 had not considered the correctness or otherwise of the judgment of the Division Bench in W.A .Nos. 1380 of 1994 and connected matters and also with regard to the interpretation of Clause (c) of Rule 8 of the Kerala State and Subordinate Service Rules and hence felt that an authoritative pronouncement is necessary on the scope of Clause (c) of Rule 8 of K.S. & S.S.R by a larger Bench.

2. The Full Bench of this Court in Balakrishnan Nair's case, 1998 (1) KLT 766 supra, has specifically considered the scope of Clauses (a) and (b) of Rule 8 of the General Rules which enables a member of a service who is absent from duty in such service to return back to that service if he is not otherwise ineligible. The question as to whether such a person is eligible for appointment to a substantive or officiating vacancy in another service was not the issue which came up for consideration before the Full Bench. Division Bench of this Court in WA No. 1380 of 1994 decided on 23rd February 1986, prior to the decision of the Full Bench, had taken a contrary view in the case of ministerial staff of the police/vigilance department who had left to join K. S. E. Board, General Education Department etc. The Bench took the view that unless they continue in the parent department they cannot aspire for the post of Sub Inspector of Police which is to be filled through Public service Commission. Similar view has been taken by another Division Bench in W.A. No. 1437 of 2003 and W.A. No. 1440 of 2003. Few of the other judgments cited before us are relating to the appointment to the post of Clerk/Cashier in the District Co-operative Bank. Interpreting the provision, a Bench of this Court in Vijayan v. Kerala Public Service Commission 2005 (1) KIT 440 took the view that the object of Rules 186 and 187 of the Co-operative Societies Rules is to provide an avenue for appointment to the persons working within the district in the societies affiliated to the District Co-operative Bank. Similar is the view taken by two other Division Benches in W. A .2048 of 2005 and Biju v. State of Kerala 2005 (4) KLT Short Notes 84 page 62. Cases dealing with co-operative societies fall on a different facts situation and can be easily distinguished on facts and on law, unlike the judgment in W.A. Nos. 1380 of 1994, 13 of 1995, 13852 of 1994 and the judgment in W.A. No. 1437 of 2000 and W.A. No. 1440 of 2003.

3. Petitioner in W.P.C. No. 34556 of 2004 commenced service as Lower Division Clerk in the Municipal Common Service with effect from 6.7.1968. He was promoted as U.D. Clerk on 25.3.2001 and completed probation in that cadre on 6.5.1992. The Kerala Public Service Commission invited applications for appointment to the post of Municipal Secretary Grade III as per notification published in the gazette dated 20.11.2001 and the petitioner submitted application in January 2002.

4. The Public Service Commission by order dated 10.12.2003 had advised the petitioner for appointment to the post of Secretary, Grama Panchayat. Based on the said advice petitioner was

appointed by the Director of Panchayats as Panchayat Secretary by Ext. P2 order dated 10.12.

2003. Pursuant to the said order he was relieved from the post of U. D. Clerk from the Municipal Common Service on 30. 12.2003 to enable them to join duty as Panchayat Secretary. Petitioner joined duty as Panchayat Secretary on 31.12.2003.

5. The Public Service Commission later conducted the written test for selection to the post of Municipal Secretary Grade III on 25.02.2004. Petitioner had already applied for that post while he was continuing as U. D. Clerk in the Municipal Common Service. Written test was held on 25.02.2004. Petitioner came out successful and was included in the short list of candidates eligible to be called for interview which was published on 29.09.2004. Petitioner then submitted Ext. P4 representation on 20.10.2004 before the second respondent, Director of Urban Affairs requesting him to repost him in the Municipal Common Service. Later Deputy Director of Panchayats, Alappuzha addressed the Director of Panchayats, Thiruvananthapuram requesting him to relieve the petitioner from Panchayat service to rejoin the Municipal Common Service. Later by Ext.P8 order dated 20.6.2005 petitioner was reposted in the Municipal Common Service.

6. The Public Service Commission in the meanwhile published rank list for appointment to the post of Municipal Secretary was published by the Public Service Commission. Petitioner's name was not included in it on the ground that he had ceased to be member of the Municipal Common Service and hence his candidature cannot be considered as per Municipal Common Service Rules. Public Service Commission has taken up the stand that the petitioner was a member of the Municipal Common Service but when he was appointed as Panchayat Secretary and he lost his lien in the parent department and therefore was ineligible to apply to the post of Municipal Secretary Grade III in the Municipal Common Service. In such circumstances petitioner approached this Court seeking a writ of mandamus directing the P.S.C to include the petitioner's name in the rank list for appointment to the post of Municipal Secretary Grade III (Departmental) on the basis of his performance in the written test and interview and also for other consequential reliefs.

7. Sri K. Jaju Babu, counsel appearing for the petitioner placed considerable reliance on the decision of this Court in O.P. No. 13547 of 1997 and also the Full Bench decision of this Court in Balakrishnan Nair 's case, supra. Counsel submitted petitioner is a permanent member of Municipal Common Service and at the time of submitting the application he was holding substantive appointment in the post of U.D.C in the Municipal Common Service. Counsel submitted that the mere fact that he was subsequently appointed as Secretary, Grama Panchayat would not take away his lien. In the Municipal Common Service and therefore he is entitled to apply to the post of Municipal Secretary Grade III.

8. Sri Roy Chacko, Senior Government Pleader, appearing for the first respondent supported the case of the petitioner and submitted that even though petitioner was relieved from the department for obtaining another job his lien has not been lost and therefore he is eligible to apply for the post of Municipal Secretary Grade III.

9. Sri P.C. Sasidharan, Standing Counsel appearing for the Public Service Commission, on the other hand, contended that on the appointment of the petitioner as Secretary to Grama Panchayat, he ceased to be an employee of Municipal Common Service. Counsel submitted that the petitioner is no more available in the source for recruitment and he became ineligible to be considered for the quota reserved for employees of the Municipal Common Service. Counsel placed strong reliance on the decision of this Court in W.A. No. 1380 of 1994 and connected matters. Counsel also made reference to the decision in Vijayan v. Kerala Public Service Commission 2004 (1) KLT 440 and the decision in W.A. No. 2048 of 2005. Counsel submitted that the Full Bench had no occasion to consider the scope of Clause (c) of Rule 8 of the General Rules and consequently the principle laid down is not applicable to the facts of this case. Counsel submitted that the moment petitioner has left Municipal Common service he has lost his lien in that service and also does not remain in the source from which recruitment is to be made.

10. We may at the outset point out that the principle laid down by the Full Bench in Balakrishnan Nair's case is equally applicable to Clause (c) of Rule 8 of the General Rules of the K.S. & S.S.R. We may extract relevant portion of Rule 8 for easy reference.

8. Members absent from duty: The absence of a member of a service from duty in such service, whether on leave, other than leave without allowances for taking up other employment on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn-

(a) for reappointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer:

(b) for promotion from a lower to a higher category in such service; and

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate: as the case may be in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence:

1.

2. Provided that subject to the provisions of Rule 18 he shall satisfactorily complete the period of probation on his return:

3. Provided further that a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed under Clause (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service in which he is a probationer or the approved probationer:

Provided further that this rule shall not have retrospective effect so as to disturb the decisions taken by the Travancore-Cochin Government in respect of the Travancore-Cochin personnel:

Provided also that this rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service not being Military Service, solely on his own application, unless such appointment is made in the exigencies of public service.

Note 1: An appointment made in pursuance of application invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of Public Service for the purpose of this rule.

Note 2: The benefit of this rule shall not be available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class category in the same service.

(emphasis supplied) Interpreting the above Rule, Full Bench held as follows:

The above Rule enables a member of a service who is absent from duty in such service to return back to that service, if he is not otherwise ineligible. On return, he is eligible (1) for appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer; (2) for promotion from a lower to a higher category; and (3) for appointment to any substantive or officiating vacancy.

Full Bench has also considered the question as to whether employee retains lien in the parent department. Interpreting Rule 18(a) of Part I K.S.R. Full Bench held as follows:

From a reading of the above rule, the following position emerges. When an officer is appointed substantively to a permanent post, he acquires a lien on that post and ceases to hold the lien which he acquired previously on any other post. If Rule 16 stood as such, the argument of the respondents could have been accepted that when the appellants were appointed substantively to a permanent vacancy in the Co-operative Department, they lost their lien in the Rural Development Department. But Rule 16 is not absolute. The lien has to be suspended by the Government under Rule 18 and before suspending the lien the Government has to consider the result of the suspension. The lien of an officer cannot be suspended or terminated without his consent.

Apex court in *Ali v. State of Kerala* 2003 (2) KLT 922 affirmed the decision of the Full Bench in *Balakrishnan Nair's* case and held that it is a settled position in law; that a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier. Further, apex court also affirmed the principle laid down by the Full Bench that so long as employee is not confirmed he retains his lien in the parent department. Above principle, in our view, would also apply while we interpret Clause (c) of Rule 8 as well.

11. Rule 8 specifically deals with members who are absent from duty. Evidently they form a class by themselves. Rule 8 specifically says that the absence of a member of a service from duty whether on leave, other than leave without allowance for taking up other employment on foreign service or on deputation or for "any other reason" and whether his lien in a post borne on the cadre of such service is suspended or not "shall not" render him ineligible in his turn for reappointment to a

substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer and so also for promotion from a lower to a higher category in such service. The expressions "any other reason", "shall not render him ineligible in his turn" etc. give a reassurance to members who are absent from duty and that they would not be ineligible in their turn when their claim falls under category (a) to (c).

12. The Rule making authority has given an assurance statutorily that the claim of members who are absent from duty would not be lost and they would be treated as if they were not absent from duty. The expressions "in the same manner as if he has not been absent" require emphasis, which make it further dear that they would not render ineligible for appointment to any substantive or officiating vacancy in another service though they were absent from duty in their parent department. Further it is also stated in Clause (c) of Rule 8 that such persons shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which they would have enjoyed but for their absence. The third proviso as well as note (1) makes the position further dear and re-emphasises the statutory assurance given to members who are absent from duty.

13. We are of the view that the principles laid down by the Full Bench in Balakrishnan Nair's case which was affirmed by the apex Court in All's case would apply with all force when we consider the scope of Clause (c) of Rule 8. Full Bench as well as the apex Court reiterated the position of law stating that a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier. The mere completion of probation of a member who is absent from duty of another service does not result in automatic confirmation in that service. Constitution Bench of the apex Court in Secretary, State of Karnataka v. Umadevi (2006) 4 SCC 1 : 2006 (2) KLT (SC)(SN) 55 took the view that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments, meaning thereby the mere fact that a person has been regularised in service does not mean that he has been confirmed in that service. Apex court in Triveni Shankar Saxena v. State of UP. (1992) Supp. 1 SCC 524 examined the concept of lien in government service and observed that a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier. The above position has been reiterated by the apex court in a recent judgment in S. Narayana v. MdAhmedulla Khan 2006 AIR SCW 2872.

14. We are of the view that the members who are absent from duty would render them ineligible to get the benefit of Clauses (a) to (c) of Rule 8 only by way of confirmation in another post in another department. The mere absence of members in service shall not render them ineligible in their turn to stake their claim under Clauses (a) to (c). Members of service shall retain to their parent department their lien since they have not been confirmed to any other service while they were absent from the parent department. Above being the legal position, we are of the view the judgment in W.A. No. 1380 of 1994 rendered on 23rd February 1996 and WA No. 1437 of 2003, W.A. No. 1440 of 2003 do not lay down the law correctly in view of the principle laid down by the Full Bench in Balakrishnan Nair's case which was confirmed by the apex court in All's case and also on the basis of the decision of the apex court in Umadevi's case, Triveni Shankar Saxena's case and S. Narayanan's case. The Judgment rendered relating to the employees of Co-operative Societies stand on a different footing on facts and law. The judgment in O.P No. 13457 of 1997, in our view, lays down the

law correctly.

15. Under such circumstances, we are inclined to allow both these Writ Petitions and we hold that the petitioner in W.P.(C) No. 34556 of 2004 still remains his lien in the Municipal Common Service and he is fully eligible to be considered for appointment to the post of Municipal Secretary Grade II (Departmental). Petitioner in W.P.(C) No. 34110 of 2005 also retains his lien in his parent department and hence he is also entitled to be considered for the post of Assistant Engineer (Civil).



2020:KER:12439
CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 27TH DAY OF FEBRUARY 2020 / 8TH PHALGUNA, 1941

OP(KAT).No.321 OF 2015(Z) IN WP(C). 17193/2008

AGAINST THE ORDER/JUDGMENT IN TA 6781/2012 OF KERALA
ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM

PETITIONER/S:

A.AJITH KUMAR
AGED 52 YEARS
DEPUTY RANGER, PARUTHIPPALLY RANGE, THIRUVANANTHAPURAM.

BY ADVS.
SRI.ELVIN PETER P.J.
SRI.K.R.GANESH
SRI.T.G.SUNIL (PRANAVAM)

RESPONDENT/S:

1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT, FOREST AND
WILDLIFE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.

2 THE CHIEF CONSERVATOR OF FORESTSADMINISTRATION
THIRUVANANTHAPURAM, PIN-695001.

R1-2 BY GOVERNMENT PLEADER

OTHER PRESENT:

SR.GP SRI.P.N.SANTHOSH

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY
HEARD ON 27.02.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



"C.R."

JUDGMENT

Dated, this the 27th day of February, 2020

Vinod Chandran, J.

The petitioner was the applicant before the Tribunal and is aggrieved with the rejection of his claim. The claim before the Tribunal was for seniority and promotion on his being repatriated to the Department from which he moved, on exigency of service, to another Department.

2. The incumbency details of the applicant is as follows: The applicant was appointed as a Forester on 16.03.1991. By Ext.P1 order dated 31.07.1993 his probation was declared with effect from 25.03.1993. Later he obtained appointment as a Lower Division Clerk (LDC) in the Archives Department as L.D Typist as advised by the Kerala Public Service Commission (for short "KPSC"). Later he went over to the Tourism Department on inter-departmental Transfer as LDC on 16.11.1996.



In the year 2002, he sought repatriation to the parent Department, ie, the Forest Department. By Ext.P4 dated 17.12.2004 the petitioner was repatriated to the parent department.

3. In the parent department he sought promotion as in the case of his immediate junior in service, while he was continuing as Forester. The petitioner was promoted as Deputy Ranger on 12.05.2006 but the retrospective claim, from the date of promotion of his immediate junior, was declined as per Ext.P9 dated 14.02.2007. There was an appeal filed before the Tribunal, in which Ext.P11 order was passed. The applicant before the Tribunal claimed that he has to be promoted with effect from 29.11.2002 as a Deputy Ranger as was done in the case of his immediate junior in the cadre of Forester as also the monitory benefits paid to him from 12.05.2006 on which date he was promoted as a Deputy Ranger in the Forest Department. The Tribunal relied on the second



proviso to Rule 8(c) and applied the principle insofar as the applicant having been transferred to the third department and thus dis-entitled for the benefit under Rule 8.

4. The learned Counsel for the petitioner claimed the benefit as has been granted by the Full Bench in 1998(1) KLT 766 (FB) (Balakrishnan Nair v. Ram Mohan Nair). The Full Bench decision has been approved by the Hon'ble Supreme Court in [(2003)2 KLT 922] Ali v State of Kerala.

5. The learned Government Pleader specifically points to Ext.P11 to contend that he was never made a full member of the service and in the absence of such an order under Rule 24 of Kerala State & Subordinate Services Rules [for short 'KS&SSR'] going by Paragraph 13 of Balakrishnan Nair there could be no consideration of retrospective promotion.

6. We do not think Exhibit P11 can be sustained on the ground that the petitioner was not



a full member of the service in the Forest Department. We have already referred to the order declaring his probation with retrospective effect, on which date he becomes a full member.

7. Rule 8 has been elaborately considered by the Full Bench and we quote the following:

The above Rule enables a member of a service who is absent from duty in such service to return back to that service, if he is not otherwise ineligible. On return, he is eligible for appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer; (2) for promotion from a lower to a higher category; and (3) for appointment to any substantive or officiating vacancy. The Rule contemplates a situation when the member is absent from duty on leave, on foreign service, or on deputation or for any other reason. The fourth proviso to R.8 is as follows:

"Provided also that this rule shall not apply in the case of a member of a service whose absence from duty in



such service is by reason of his appointment to another service not being Military Service, solely on his own application, unless such appointment is made in the exigencies of public service".

The proviso noticed hereinabove itself stands against the claim of the petitioner, since his departmental transfer was not on exigency of service. On a consideration of Rule 8 it was found that when in exigencies of service a repatriation is made to a parent department, the Government servant is entitled to all the benefits in the parent department as if he had not been absent from the service. In fact, the general understanding of the word public exigencies would have prompted this Court, to opine that it could only be on administrative exigencies, when the movement from one department to the other is at the instance of the Government. However, the Full Bench noticed Note 1 to Rule 8, which deems any appointment made in pursuance of applications invited,



sponsored or recommended by Government or other competent authority on behalf of the Government, as an appointment made in the exigencies of public service.

8. The petitioner moved from the Forest Department as an LDC to the Archives Department on an advice issued by the KPSC which is a recruitment by the said agency on behalf of the Government. Hence his movement from the Forest Department to the Archives Department would be on exigency of service as has been stipulated in Note 1 Rule 8 of the KS&SSR. However, his further movement to Tourism Department, was not on exigency of service and was on inter-departmental transfer, by reason of a voluntary application made.

9. Now we come to the question of the second proviso to Rule 8(c) which is as follows:

"Provided further that a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service shall not be appointed



under clause (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service in which he is a probationer or an approved probationer."

The Tribunal found that on applying the principle in the extracted proviso there could be no retrospective promotion granted to the petitioner since he had moved into a third service. The proviso is very clear insofar as when a person has moved from X service to Y service on exigency of service and again moves to Z service, the appointment in Z service can only be after relinquishment of his claim in the earlier service ie: the Y service. When the claim in Y service is relinquished, he no longer can claim the benefit of appointment to that service on public exigency, for repatriation under Rule 8. The petitioner who moved from the Forest Department to the Archives Department, on exigency of service, as contemplated in Rule 8 of KS&SSR, exercised option for



inter-departmental transfer and moved to the Tourism Department. While continuing in the Tourism Department he could not have claimed repatriation to the Archives Department for reason of both the second and fourth provisos to Rule 8. Any request made for repatriation to the Archives Department would not be permissible since the movement from Archives Department to the Tourism Department was not on exigency of service and on an application made by the petitioner. A request for repatriation to the Forest Department as was made in the present case also was not permissible since the petitioner having moved from Archives Department to Tourism Department, by operation of both the second and fourth provisos makes inapplicable Rule 8, in the petitioners case.

10. However, the Government has granted him such repatriation. The petitioner is not entitled to be repatriated, since he had moved from the second department where he was moved on



exigency of service as defined under Note 1 to Rule 8, by making a voluntary application for inter-departmental transfer to the Tourism Department. The petitioner then relinquished his earlier lien and also the benefit under Rule 8.

11. The learned Counsel for the petitioner also relies on 2006(3) KLT 873 (Saifuddin v. State of Kerala). Paragraph 11 of the judgment explains the expression 'any other reasons'. We do not think the same has any application herein because we found that there is a specific bar in the fourth proviso to Rule 8. In the present case, the last movement being on application made for inter departmental transfer, there is no application of Rule 8. The Government erroneously repatriated the petitioner though he was not entitled to the same. The petitioner would not get the benefit flowing from Rule 8, though he had been erroneously repatriated. We fully agree with the order of the Tribunal.



Original Petition (KAT) would stand dismissed.

No order as to costs.

Sd/-

K. Vinod Chandran,
Judge

Sd/-

P.V.Kunhikrishnan,
Judge

jma

**APPENDIX****PETITIONER'S/S EXHIBITS:**

- ANNEXURE A TRUE COPY OF TA NO.6781/2012 BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.
- EXHIBIT P1 TRUE COPY OF THE ORDER DATED 31.7.93 OF THE CONSERVATOR OF FORESTS, KOLLAM.
- EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 20.2.03 IN O.P.6005/02 OF THIS HON'BLE COURT.
- EXHIBIT P3 TRUE COPY OF THE JUDGMENT DATED 13.7.2007 IN W.P(C)23343/04 OF THIS HON'BLE COURT.
- EXHIBIT P4 TRUE COPY OF THE ORDER DATED 17.12.04 OF THE CONSERVATOR OF FORESTS, KOLLAM.
- EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 13.1.2005 FILED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 14.3.2008 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P7 TRUE COPY OF THE REPRESENTATION DATED 13.11.2006 FILED BY THE PETITIONER TO THE 1ST RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE JUDGMENT DATED 20.12.2006 IN W.P. (C) 33900/2006 OF THIS HON'BLE COURT.
- EXHIBIT P9 TRUE COPY OF THE ORDER DATED 14.2.2007 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P10 TRUE COPY OF THE JUDGMENT DATED 12.4.2007 IN W.P. (C) 12861/2007 OF THIS HON'BLE COURT.
- EXHIBIT P11 TRUE COPY OF ORDER GO (RT)



NO.639/07/F&WLD. DATED 17/11/2007
ISSUED BY THE 1ST RESPONDENT.

ANNEXURE B TRUE COPY OF THE COUNTER AFFIDAVIT
FILED BY THE 1ST RESPONDENT IN WPC NO
17193/2008 BEFORE THE HON'BLE COURT.

ANNEXURE C TRUE COPY OF THE ORDER DATED 14.7.2005
IN TA NO 6781/2012 BEFORE THE HON'BLE
KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.

Kerala High Court

Gracen Charles vs State Of Kerala on 28 October, 2000

Author: K A Gafoor

Bench: K A Gafoor

JUDGMENT K.A. Abdul Gafoor, J.

1. The petitioner is presently working as Medical Officer (Netra). She is in that post since 1.8.1996, on appointment on substantive basis and on advise by the Public Service Commission, as she was an approved candidate for such appointment. In terms of R. 3 of the KS & SSR being an appointee on advise by the P.S.C., that is a substantive appointment against a post on the cadre strength and thereby the petitioner acquires a lien in that post. At the time of that appointment, the petitioner had been working as Medical Officer (Ayurveda) in the same service from 11.6.1990 onwards. The post the petitioner occupied from 1.8.96 is a higher post than the Medical Officer (Ayurveda) taking, into account the pay scale. Both the posts are in the same service. The petitioner, due to inconvenience felt by her requested to revert back to the post of Medical Officer (Ayurveda). It was examined in the light of R. 8 of KS & SSR and was turned down on the ground that the petitioner was never been absent from the service. She was present in either of the two posts at all point of time in the service. The order was passed as per Ext. P3. This is assailed in this O.P.

2. When it is admitted that both the posts are in the same service, R. 8 cannot be applied to come over the earlier post because R. 8 applies only in the case of the absence of a member of service from duty. The petitioner had never been absent from duty in the service even for a single day. In such circumstances assistance cannot be drawn from R. 8, to revert back to the post of Medical Officer (Ayurveda).

3. It is further submitted that the petitioner had acquired a permanent lien as Medical Officer (Ayurveda) on appointment on 11.6.1990. That lien cannot be cut off merely because of appointment as Medical Officer (Nethra) on 1.8.1996. Therefore the petitioner can go over to that post. This contention also cannot be accepted because the appointment as Medical Officer (Netra) on 1.8.1996 was on substantive basis. On appointment against a post on substantive basis, one acquires a lien on that post. On acquiring a lien over a post, all the lien the incumbent had earlier got terminated. As per R. 16 Part I K.S.R. an officer on substantive appointment to a permanent office acquires a lien on that post and ceases to hold any lien previously acquired on other post. Thus on the petitioner's substantive appointment as Medical Officer (Nethra), consequent on advise by the PSC, on 1.8.96, the lien the petitioner did have as Medical Officer (Ayurveda) got terminated. He ceased to hold lien on that post from the date of appointment on substantive basis as a Medical Officer (Nethra). So the petitioner cannot revert back as Medical Officer (Ayurveda), depending upon the lien that he had once against the post of Medical Officer (Ayurveda).

4. O.P. fails and is dismissed.

1998 (1) KLT 766 (FB)

K.K. Usha, K.S. Radhakrishnan & S. Sankarasubban, JJ.

Balakrishnan Nair v. Ram Mohan Nair

State & Subordinate Services Rules, 1958 (Kerala), R. 8 - Member of a service getting appointment in another service on the basis of applications invited by Government or when he is sponsored or recommended by Government - Is entitled to get the benefit of the main section.

Rule 8 enables a member of a service who is absent from duty in such service to return back to that service, if he is not otherwise ineligible. On return, he is eligible for appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer; (2) for promotion from a lower to a higher category; and (3) for appointment to any substantive or officiating vacancy. The Rule contemplates a situation when the member is absent from duty on leave, on foreign service, or on deputation or for any other reason. The meaning of the above proviso is that if a member of a service is appointed in the exigencies of public service, then he will be entitled to get the benefit of the main Section. What is exigency in public service is clarified by Note 1 to R. 8. Note 1 says that an appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of public service for the purpose of this rule. Thus, if a member of a service gets appointment in another service on the basis of the applications invited by Government or when he is sponsored or recommended by the Government or competent authority he is entitled to get the benefit of the main section. Note 2 denies the benefit to a member of a service when he is appointed to another post in the same service.

It is an admitted fact that all the appellants were originally appointed as Village Extension Officer in the Rural Development Department. The post of Junior Inspector including Junior Auditor and Junior Special Inspector is a post under the Kerala Co-operative Subordinate Service. Appointment to this post is made as follows: (1) direct recruitment (2) recruitment by transfer from Upper Division Clerks/Upper Division Typists employed in the Co-operative Department and (3) recruitment by transfer from among Gramasevaks. These appointments are to be made in the ratio of 2:2:1. Thus, 20% of the vacancies of Junior Inspectors are to be filled up by transfer of Village Extension Officers to the Co-operative Department. Applications were invited on behalf of the Government by the Public Service Commission. Appellants and others applied for the posts. They were selected and appointed to the posts. Thus, those appointments are made in pursuance of the applications invited by Government. In such a case, their appointments are deemed to be made in the exigencies of public service. If that be so, the appellants are entitled to the benefit of R. 8, if other conditions are satisfied. (paras. 8 & 9)

W.A. Nos. 69 & 171/95 & O.P. No. 6619/95.

Decided on 6th April, 1998.

Service Rules, (Kerala), Rr. 16 & 18, Part I - Village Extension Officers of Rural Development Department appointed in Co-operative Department in exigencies of service - Lien when can be said to be lost.

When an officer is appointed substantively to a permanent post, he acquires a lien on that post and ceases to hold the lien which he acquired previously on any other post. If R. 16 stood as such, the argument of the respondents could have been accepted that when the appellants were appointed substantively to a permanent vacancy in the Co-operative Department, they lost their lien in the Rural Development Department. But R. 16 is not absolute. The lien has to be suspended by the Government under R. 18 and before suspending the lien the Government has to consider the result of the suspension. The lien of an officer cannot be suspended or terminated without his consent. Note 1 of R. 8 clearly states that when a member of a service gets an appointment in another Department on the invitation of the Government or on being sponsored or recommended by the Government, such appointment will be deemed to be exigencies of service.

The lien of a member of a service to a post in the parent Department is not lost automatically when he joins another Department. The lien can be terminated only after hearing the concerned person. By mere completion of probation it cannot be said that a person has been substantively appointed to a permanent post. Unless a person is confirmed under R. 24 of K.S.S.R., it cannot be said that the person has been substantively appointed to a permanent post. In the present case, we find that the appellants have not been confirmed in the Co-operative Department. Hence they have no lien in the Co-operative Department. Their lien in the Rural Development Department has not been terminated. In that view of the matter, sending them back to the parent Department is legal. (paras. 11, 19 & 26)

W.A. 175/80, W.A. 305/83, 980/87 & 486/89

Overruled

AIR 1976 SC 367; 1976 SC 1199; 1989 SC 1985;

1992 SC 496; (1996) 10 SCC 734 & 1989 (1) KLT 518

Referred to

Service Rules (Kerala), R. 24, Part II - An employee does not get automatic confirmation unless under R. 24, he is confirmed in the post, even after completion of probation.

Even if it is admitted for argument sake that the appellants have completed their probation that doesn't enable them to get automatic confirmation unless under R. 24 of Part II of K.S.S.R. they are confirmed in that post. An order has to be passed appointing the approved probationer as a full member of a service on a substantive vacancy. The order is the order of confirmation even though such a term does not find a place in the K.S.S.R.. The order of confirmation is necessary for the conferment of full membership of a service in the class or category for which a person is selected. The mere fact that an employee is allowed to continue in the post after the expiry of the specific period of probation it cannot be held that he should be deemed to have been confirmed. Thus, so far as the present case is concerned, the appellants have not been confirmed in the post in the Co-operative Department. Under R. 16 Part I of K.S.R., a member of a service

loses his lien previously acquired in other post only when he is appointed substantively to a permanent post. Since at the time when the order of reversion was passed the appellants have not been confirmed under R. 24, it cannot be said that they lost their lien in the parent department. (para. 13)

ILR 1985 (1) Ker. 488

Referred to

Service Rules (Kerala), R. 8 fourth proviso & Note 1 - Municipal Common Service is also a Public Service.

It is true that if one goes by the definition of the term 'service' in R. 2(15) of K.S.S.R. Municipal Common Service is not included in the same. But R. 2 starts by saying "in these rules unless there is anything repugnant, the subject or context". Hence the meaning of a word may vary from the meaning given in the definition, if the context requires a different meaning to be given. The mention of 'Military Service' in the proviso is an indication to show that the term 'service' is not confined to State & Subordinate Service. Further, according to the proviso and Note 1, appointment made in the exigencies of Public Service on the application or recommendation of the Government or competent authority will be deemed to be absence from duty from the parent service. The term 'Public Service' has a wider concept than the term 'service' mentioned in clause 15 of R. 2 K.S.S.R.. It cannot be denied that Municipal Common Service is not a Public Service. The Kerala Municipal Common Service is constituted in exercise of the powers conferred by sub-s. (2) of S. 90 of the Kerala Municipal Corporation Act, 1961. The Municipal Common Service is also a Public Service. (paras. 32 & 33)

*N.N. Sugunapalan, Alexander Thomas,
Leslie Stephen, Lilly Leslie & Sasi*

For Appellants

*C.P. Sudhakara Prasad, Elvin Peter,
K.P. Dandapani, M.R. Sabu,
S.P. Aravindakshan Pillai, Santhosh Mathew,
V. Chitambaresh & T.V. Ajayakumar*

For Respondents

JUDGMENT

S. Sankarasubban, J.

The above cases have been referred to the Full Bench as the correctness of the Division Bench judgment in W.A. 175/80, 305/83, 980/87 was doubted. The question turns round the true scope and content of R. 8 Part II of the Kerala State and Subordinate Services Rules (hereinafter referred to as 'the K.S.S.R.').

2. We shall first deal with the Writ Appeals. Both the Writ Appeals are filed against the judgment of the learned single Judge in O.P. No. 6380/89. In W.A. No. 69/95, there are 15 appellants of which appellants 1 to 4 are respondents 3, 5, 11 and 17. The rest

of the appellants filed the appeal after getting leave from the Division Bench, The additional fifth respondent got himself impleaded in W.A. No. 69/95. W.A. No. 171/95 is filed by respondents 8, 10, 19, 22 to 26 in the Original Petition. Petitioners in O.P. No. 6380/89 were Village Extension Officers of the Rural Development Department. They joined as Village Extension Officer Grade II. Third respondent in the Original Petition also joined as Village Extension Officer, Grade II. Third respondent is impleaded in the Original Petition in a representative capacity.

3. The grievance of the petitioner is as follows: The third respondent and others were selected for appointment in the Co-operative Department as Junior Inspector/Junior Auditor. After they were selected for appointment, the above persons joined the service of Co-operative Department. They relinquished their rights in the Rural Development Department. The lien, if any, in the Rural Development Department had been terminated. Hence, the case of the petitioners is that the services of the above persons in the Rural Development Department should not be taken into consideration. But contrary to this, the names of the third respondent and others were still retained in the seniority list of Village Extension Officers Grade II in the Rural Development Department and they were also given promotion as Village Extension Officers while allowing them to continue in other duties. They challenged Exts. P2 to P5 by which these Officers were given promotion in the parent Department. In the Original Petition, there is a further allegation that the above persons are ordered to be reverted to the Rural Development Department. Hence, the prayer in the Original Petition was to quash Exts. P2 to P5 and also to quash the reversion granted to such persons to Rural Development Department.

4. Respondents 1 and 2 in the Original Petition, viz., State of Kerala and Commissioner for Rural Development have filed a joint counter affidavit. In that counter affidavit, it is stated as follows: 20% of the post of Junior Inspectors/Auditors in the Co-operative Department are reserved for Village Extension Officers. These appointments are to be made by transfer. Accordingly, persons like the third respondent and others, who were qualified to become Junior Co-operative Inspectors, applied to the Public Service Commission and they were selected for being appointed as Junior Inspectors. Counter affidavit says that it is not necessary to relinquish their rights in the Department for relieving them from the Department. They are at liberty to come back to this Department so long as they do not require a lien or confirmation in other Departments and they are willing to be reverted to this Department. The lien of those Villages Extension Officers, who are on other duty in other Departments have not been cut-off or suspended by this Department as per R. 18 of the Service Rules (hereinafter referred to as the 'KSR'). It is because of the above facts that those Officers were given promotions in the parent Department. In paragraph 3 of the counter affidavit, it is stated as follows:

"Relinquishment of the right in this Department is not a condition for accepting appointment in other Departments and to relieve them from this Department. They have lien in this Department so long as they do not acquire lien or confirmation in other Departments. Their lien in this Department have not been cut-off or suspended as per R. 18 of the Kerala Service Rules."

In paragraph 4 of the counter affidavit, it is stated that as per the provisions in R. 8 of the General Rules of K.S.S.R., those Village Extension Officers who are appointed by transfer in the Departments like Co-operation, Industries, Agriculture, etc are eligible for re-appointment in the parent Department and getting promotion from a lower to a higher category.

5. Counter affidavits were also filed on behalf of some of the respondents wherein the main contention urged is that the lien in the Rural Development Department is not automatically cut off when they joined the Co-operative Department. Further case is that even in the Co-operative Department they have not been confirmed. Further they relied on R. 8 of the General Rules of K.S.S.R. for their coming back to the parent Department. The learned single Judge after hearing the parties allowed the Original Petition. The learned single Judge relying on the Division Bench decision in W.A. No. 980/87 took the view that when a member of a service takes appointment in another service, he automatically relinquishes his rights in the parent Department. According to the learned Judge, a person cannot have lien on two Departments simultaneously. Further, the learned single Judge was of the view that if such persons were allowed to come back in the parent Department, that will affect the prospects of the incumbent in the parent Department. Hence, the learned single Judge quashed Exts. P2 to P5 and also gave a direction not to include the names of the third respondent and others in the seniority list and promotion list of the parent Department. It is against the above decision that the appeals are filed.

6. When the appeals came up before the Division Bench, it was submitted that a similar question arose for consideration in O.P. No. 6619/95 and that Original Petition had been referred to a Full Bench for consideration. In view of the above fact, the Writ appeals were also referred for consideration by a Full Bench. As already stated, O.P.No. 6619/95 was referred to the Full Bench, since the correctness of the Division Bench decision in W.A. No. 980/87 was doubted. As a matter of fact, the learned single Judge had relied on the judgment in W.A.No. 980/87 for allowing the Original Petition.

7. Sri. N.N. Sugunapalan and Sri. Sasi appeared for the appellants in both the appeals. Sri. Elvin Peter appeared for the 5th respondent in W.A. No. 69/95. They argued for the position that the learned single Judge was wrong in allowing the Original Petition. They argued that W.A. No. 980/87 has not considered the true impact of R. 8 of the General Rules of K.S.S.R. and also the provisions regarding lien in the Kerala Service Rules. Learned Government Pleader also supported the arguments of the

appellants. Sri. V. Varghese argued for the respondents. He contended that when a member of service takes appointment in another service, it can be presumed that he had relinquished his rights in the parent Department. According to him, when a person goes from the parent Department and joins another Department, he goes there on the basis that he can have better prospects there. He cannot be subsequently allowed to come back to the parent Department. Learned counsel strongly relied on the observations of the Supreme Court in *Ramlal Khurana v. State of Punjab* - AIR 1989 SC 1985 - wherein it was held that "generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears. The principle being that no Government servant can have simultaneously two liens against two posts in two different cadres. It is a well accepted principle of service jurisprudence". Learned counsel on the basis of the above observations submitted that the judgment of the learned single Judge was correct.

8. Before we consider the decisions on the question, we shall look into the relevant Rules. R. 8 of the General Rules of K.S.S.R. on which reliance is placed by the appellants is as follows:

"8. **Members absent from duty**:- The absence of a member of a service from duty in such service, whether on leave, other than leave without allowances for taking up other employment on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn-

- (a) for reappointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer;
- (b) for promotion from a lower to a higher category in such service; and
- (c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate;

as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence:

1.
2. Provided that subject to the provisions of R. 18 he shall satisfactorily complete the period of probation on his return;
3. Provided further that a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed under clause (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service in which he is a probationer or he approved probationer;

Provided further that this rule shall not have retrospective effect so as to disturb the decisions taken by the Travancore-Cochin Government in respect of the Travancore-Cochin personnel:

Provided also that this rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service not being Military Service, solely on his own application, unless such appointment is made in the exigencies of public service.

Note 1: - An appointment made in pursuance of application invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of Public Service for the purpose of this rule.

Note 2: The benefit of this rule shall not be available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service".

The above Rule enables a member of a service who is absent from duty in such service to return back to that service, if he is not otherwise ineligible. On return, he is eligible for appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer; (2) for promotion from a lower to a higher category; and (3) for appointment to any substantive or officiating vacancy. The Rule contemplates a situation when the member is absent from duty on leave, on foreign service, or on deputation or for any other reason. The fourth proviso to R. 8 is as follows:

"Provided also that this rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service not being Military Service, solely on his own application, unless such appointment is made in the exigencies of public service".

The meaning of the above proviso is that if a member of a service is appointed in the exigencies of public service, then he will be entitled to get the benefit of the main section. What is exigency in public service is clarified by Note 1 to R. 8. Note 1 says that an appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of public service for the purpose of this rule. Thus, if a member of a service gets appointment in another service on the basis of the applications invited by Government or when he is sponsored or recommended by the Government or competent authority he is entitled to get the benefit of the main Section. Note 2 denies the benefit to a member of a service when he is appointed to another post in the same service. In the present case, we are not concerned with Note 2. Learned counsel for the appellants submitted that in view of Note 1 the appellants and similarly situated persons are entitled to the benefit of R. 8, if the conditions in R. 8 are satisfied.

9. It is an admitted fact that all the appellants were originally appointed as Village Extension Officers in the Rural Development Department. The post of Junior Inspector including Junior Auditor and Junior Special Inspector is a post under the Kerala Co-operative Subordinate Service. Appointment to this post is made as follows: (1) direct recruitment (2) recruitment by transfer from Upper Division Clerks/Upper Division Typists employed in the Co-operative Department and (3) recruitment by transfer from among Gramasevaks. These appointments are to be made in the ratio of 2:2:1. Thus, 20% of the vacancies of Junior Inspectors are to be filled up by transfer of Village Extension Officers to the Co-operative Department. Applications were invited on behalf of the Government by the Public Service Commission. Appellants and others applied for the posts. They were selected and appointed to the posts. Thus those appointments are made in pursuance of the applications invited by Government. In such a case, their appointments are deemed to be made in the exigencies of public service. If that be so, the appellants are entitled to the benefit of R. 8, if other conditions are satisfied.

10. The next question to be considered is after the appellants were selected for appointments in the Co-operative Department and after they joined the Co-operative Department whether they are entitled to come back to the Rural Development Department. The answer to this question depends upon whether the appellants have relinquished their rights or put it in the service language "their lien" in the Rural Development Department once they joined the Co-operative Department pursuant to their selection and appointment in that Department. If lien is not lost in the parent Department, the appellants will be entitled to come back on the basis of R. 8. So, the question for consideration is whether the appellants lost their lien in the Rural Development Department when they joined the Co-operative Department. In that context, it is also necessary to consider whether the appellants had obtained a lien in the post to which they were appointed in the Co-operative Department. We shall refer to the relevant provisions in this context.

11. K.S.R. deals with "lien" of a Government servant to the post to which he is appointed. R. 16 Part I of K.S.R. says that unless in any case it be otherwise provided in these Rules, an officer on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post. R. 18(a) of Part I of K.S.R. is as follows:

"The Government shall suspend the lien of an officer on a permanent post which he holds substantively if he is appointed in a substantive capacity-

- (1) to a permanent post outside the cadre on which he is borne, or
- (2) provisionally to a post on which another officer would hold a lien had his lien not been suspended under this rule.

(b) The Government may, at their option, suspend the lien of an officer on a permanent post which he holds substantively, if he is transferred to foreign service or in circumstances not covered by clause (a) of this rule, is transferred, whether in a substantive or officiating capacity to a post in another cadre, and if in any of these cases there is a reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.

From a reading of the above rule, the following position emerges. When an officer is appointed substantively to a permanent post, he acquires a lien on that post and ceases to hold the lien which he acquired previously on any other post. If R. 16 stood as such, the argument of the respondents could have been accepted that when the appellants were appointed substantively to a permanent vacancy in the Co-operative Department, they lost their lien in the Rural Development Department. But R. 16 is not absolute. The lien has to be suspended by the Government under R. 18 and before suspending the lien the Government has to consider the result of the suspension. The lien of an officer cannot be suspended or terminated without his consent.

12. The next question for consideration is whether the appellants have been appointed substantively to a permanent post in the Co-operative Department. In this context, the counter affidavit filed by the Government assumes importance. In paragraph 2 of the counter affidavit, it is stated that it is not necessary to relinquish their rights for relieving them from this Department. They are at liberty to come back to this Department so long as they do not acquire lien or confirmation in other Departments. The lien of the Village Extension Officers have not been cut off or suspended by this Department as per R. 18 of K.S.R.. Counter affidavit also relies on R. 19(a) of K.S.R.. In paragraph 7 of the counter affidavit filed on behalf of respondents 4 to 18 in the Original Petition, it is stated as follows:

"The additional respondents appointed in the Co-operative Department, as Junior Co-operative Inspectors in officiating posts still continue to be in officiating capacity. They continue their lien in the Rural Development Department. None of them have received any communication suspending or terminating their lien in the Rural Development Department as per R. 19 of Part I K.S.R.. Even with the permission of the additional respondents their lien cannot be cut off rendering them without lien in any department".

Thus, on facts, it is seen that the appellants have not been confirmed in the Co-operative Department and their lien in the parent Department has not been terminated.

13. Counsel for one of the respondents in the appeal submitted that most of the appellants have completed their probation and hence they should be deemed to be substantively appointed to a permanent post and hence according to the counsel, their lien in the parent Department is terminated as per R. 15 of K.S.R.. Counsel is not right in his submission. He was not able to produce any order passed by the Co-operative Department confirming the appellants in their posts. Even if it is admitted for argument

that the appellants have completed their probation that does not enable them to get automatic confirmation unless under R. 24 of Part II of K.S.S.R. they are confirmed in that post. R. 24 of K.S.S.R. is as follows:

"24. **Appointment of full members :** (a) Subject to the provisions of R. 8 an approved probationer shall be appointed to be a full member of the service in the class or category for which he was selected, at the earliest possible opportunity, in any substantive vacancy which may exist or arise in the permanent cadre of such class or category and if such vacancy existed from a date previous to the issue of the order of appointment, he may be so appointed with retrospective effect from the date or, as the case may be, from any subsequent date from which he was continuously on duty as a member of the service in such class or category or in a higher class or category".

This shows that an order has to be passed appointing the approved probationer as a full member of a service on a substantive vacancy. The order is the order of confirmation even though such a term does not find a place in the K.S.S.R.. The order of confirmation is necessary for the conferment of full membership of the service in the class or category for which a person is selected. As has been held in *Rajmohan v. Asst. General Manager* - ILR 1985 (1) Kerala 488 - from the mere fact that an employee is allowed to continue in the post after the expiry of the specific period of probation it cannot be held that he should be deemed to have been confirmed. Thus, so far as the present case is concerned, the appellants have not been confirmed in the post in the Co-operative Department. Under R. 16 Part I of KSR, a member of a service loses his lien previously acquired in other post only when he is appointed substantively to a permanent post. Since at the time when the order of reversion was passed the appellants have not been confirmed under R. 24, it cannot be said that they lost their lien in the parent Department.

14. Thus, on going through the provisions of K.S.S.R. and K.S.R., we find that there is no inhibition for a member of a service, who got appointment in another service, to come back to the parent Department. The only condition being that before he comes back, he should not have lost his lien in the parent Department. The above being the provisions under the relevant Rules, we shall now consider the correctness of the judgments in the Writ Appeals.

15. In W.A. No. 175/80, the appellant was an Assistant Librarian Grade II in the Kerala University. Thereafter, he was promoted as Assistant Librarian Grade I. Subsequently, he applied for the post of Lecturer in the Department of Library Science and he was selected and appointed to that post. From the judgment it appears that the appellant had completed his probation in the post of Lecturer. Meanwhile, the Assistant Librarian Grade I in the University was promoted as Deputy Librarian as a result of the amendment of the Rules. Appellant challenged the promotion and wanted that he

should be promoted as Deputy Librarian. On a perusal of the judgment, it is seen that R. 8 of K.S.S.R. was not considered. The Division Bench took the view that the functions of an Assistant Librarian and the Lecturer are different. Hence, the Bench presumed that when the appellant offered himself for recruitment to the post of Lecturer in Library Science, he had relinquished the post of Assistant Librarian Grade I. The judgment further says that inference is drawn with reference to the facts and circumstances of the case and particularly from the conduct of the appellant himself. Thus, we find that the Division Bench had not discussed the provisions and the rules in the K.S.R. or K.S.S.R. and merely assumed that the appellant had relinquished his lien in the parent Department when he was appointed as Lecturer. We are of the view that this decision cannot be an authority for the position that a member of a service on being appointed to another service is disabled from returning from the original Department.

16. The next judgment is the judgment in W.A.No. 305/83. In this case, the appellant was Lower Division Clerk in the Revenue Department. While so, applications were invited for the post of Library Assistant in Vikram Sarabhai Space Centre. He made an application for the said post and was selected and appointed on a provisional basis. Subsequently, his services in the VSSC stood terminated. Thereafter, he made a representation to the Government for taking him back to the Revenue Department contending that he has lien therein and has therefore a right to rejoin duty. Government turned down his request. Hence, he approached the court for the reliefs. The single Judge dismissed the Original Petition. Hence, the matter was taken in appeal. The Bench took the view that the appellant took up appointment in the V.S.S.C. and for that he was not recommended by the Government or any competent authority under the Government. Further, it was of the view that the V.S.S.C. is not an organisation belonging to the State Government. Thereafter, it took an inference that when the appellant took up appointment in the V.S.S.C., he relinquished his job in the Revenue Department. It is not clear from the facts whether the service in the V.S.S.C. is taken in by R. 8 of K.S.S.R. It is further seen from the judgment that the appellant claimed his right under R. 8 K.S.S.R. The Division Bench brushed aside his contention under R. 8 on the ground that absence of service from the Revenue Department for taking up employment elsewhere cannot be deemed to be absence of duty under R. 8 of K.S.S.R. The Bench took the view that it is a case of relinquishment of job to take up another assignment.

17. We don't approve the above general statement that whenever a person is absent from the Department for taking up employment in another Department there is a relinquishment of job in the parent Department. When the benefit of Note 1 of R. 8 was claimed, it was rejected on the ground that there was no evidence to show that the Government sponsored or recommended him for appointment. In the same judgment, the court relied on the judgment in W.A.No. 175/80 and finally dismissed the appeal. We are of the view that the observations in the above judgment cannot be taken as laying

down the correct law with regard to the interpretation of R. 8. We overrule the above judgment in so far as it states that whenever a member of a service takes up job in another service, he is deemed to have relinquished his lien in the parent Department.

18. The next judgment is the judgment in W.A. No. 980/87. In this case, the appellant was Lower Division Auditor in the Local Fund Audit Department. Subsequently, he was promoted as Upper Division Auditor. While so, certain vacancies arose in the posts of Junior Co-operative Inspectors in the Co-operative Department. These posts were advertised by the Public Service Commission. Appellant being duly qualified to the post, applied for the same. He was duly selected by the Public Service Commission, and he was appointed as Junior Inspector of Co-operative Societies. He earned the promotion as Senior Inspector. While he was thus serving as Senior Inspector, he made a request to the Government to revert him to the Local Fund Audit Department and to accord him all promotions and positions which he would have occupied had he been continued in the Local Fund Audit Department. That representation was allowed by the Government and a direction was given to revert him to the parent Department. This was challenged by the petitioners in the Original Petition. Petitioners contended that their prospects in the Department have been affected by the order of reversion of the appellant. The learned single judge allowed the Writ Petition against which W.A.No.980/87 was filed.

19. The Division Bench relied on the earlier decisions in W.A.No. 305/83 and W.A. No. 175/80. It took the same view as in the earlier decisions that when a person who was serving in one Department applies for job to another Department and accepts that appointment having been selected for that post and joins that Department, such a person cannot still be regarded as having certain rights in the parent Department. The Bench held that the Local Fund Audit Department and the Co-operative Department are two different independent and separate Departments. An employee in one Department has therefore, no right to claim any post in the other Department This conduct of the appellant makes it abundantly clear that when he joined the Co-operative Department as Junior Inspector, he relinquished his right to the post which he held in the Local Fund Audit Department. That is the only reasonable inference that is possible having regard to the circumstances. The question of pressing into service the benefits flowing from R. 8 does not arise in this case, since it was of the view that R. 8 will not be applicable in a case of relinquishment of job to take up another assignment". With great respect we are of the view that the above observations have been made without reference to R. 8 of K.S.S.R. and the relevant Rules regarding termination of lien in the K.S.R. Note 1 of R. 8 clearly states that when a member of a service gets an appointment in another Department on the invitation of the Government or on being sponsored or recommended by the Government, such appointment will be deemed to be exigencies of service. Hence, the Division Bench was not correct in stating that when a person takes up appointment in another service,

he is not absent from duty in the parent Department. So also the general observation that whenever a member of a service take up appointment in another Department, he relinquished his rights in the present Department is not correct as it is not in accordance with Rr. 15 to 20 of K.S.R. In W.A. No. 305/83 the Division Bench relied on the earlier decision in W.A.Nos. 175/80 & 980/87. For the reasons already given, the above decision cannot be an authority regarding the interpretation of R. 8.

20. Another judgment relied on was the judgment in W.A. No. 486/89. But it is a case of transfer in the same service. According to Note 2 of R. 8 of K.S.S.R., which came into force from 19.8.1986, the benefit of R. 8 is not available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service. The Division Bench held that the conditions in Note 2 of R. 8 were satisfied. We approve the judgment only to that extent. The other observations in the above judgment regarding R. 8, with great respect, it is submitted, are not correct.

21. Now let us consider the view taken by the Supreme Court in various decisions. In *T.R. Sharma v. Prithvi Singh* - AIR 1976 SC 367 - Supreme Court was considering this particular question with regard to Punjab Civil Services Rules. Under R. 3.12 unless otherwise provided, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post. Under R. 3.14(a) when a person, who is holding substantively a permanent post, takes up a permanent post outside the cadre on which he is borne, the competent authority shall suspend the lien of a Government servant on the permanent post which he got. R. 3.15(a) says that except under certain circumstances a Government servant's lien on a post may, in no circumstances, be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. In that case, it was held by the Supreme Court thus:

"When the appellant was appointed as Block Development and Panchayat Officer in a substantive permanent capacity, his case squarely fell within the ambit of R. 3.14(a)(2) as the post of Block Development and Panchayat Officer was outside the cadre of Agricultural Inspectors to which the appellant belonged. In the circumstances, it was imperative for the competent authority to suspend the lien of the appellant on the permanent post of Agricultural Inspector which he had held substantively. The competent authority, however, failed to suspend the lien of the appellant on the post of Agricultural Inspector. The appellant plainly cannot suffer because of such inaction or omission on the part of the competent authority. A reading of the rule leaves no doubt that a duty is cast upon the competent authority to suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. The imperative nature of the rule is also clear from the use of the word "shall" in clause (a) as against the use of the word "may" in clause (b) of that rule. The appellant, in our opinion, cannot be penalised

because of the omission of the competent authority to act in accordance with the mandatory provisions of R. 3.14(a)(2)".

22. *State of Haryana v. D.R. Sangar* - AIR 1976 SC 1199 - was also a case where the Supreme Court was interpreting R. 3.14 of the Punjab Civil Service Rules. There, the respondent joined as a Clerk in the Panchayat Department of the then Punjab Government. In due course, he was promoted and confirmed as Head Assistant. In 1961 he was appointed as Officer on Special Duty (Elections). The post of Officer on Special Duty (Elections) was an ex-cadre post, while that of Superintendent was included in the cadre. The post of Officer on Special Duty was redesignated as Panchayat Raj Election Officer. Respondent held the post of Panchayat Raj Election Officer till 1964 temporarily. Thereafter, he was confirmed as Panchayati Raj Election Officer with effect from September 19, 1964. On the reorganisation of the erstwhile State of Punjab, the post of Planning Officer was allocated to the State of Punjab, while that of Panchayati Raj Election Officer was allocated to the State of Haryana. Subsequently, it was redesignated as Deputy Director Panchayat. It seems that the Governor of Haryana, by an order, abolished the post of Panchayati Raj Election Officer. Consequent upon the abolition of the post of Panchayati Raj Election Officer, the respondent's service was dispensed with. Respondent challenged the notification of abolition. He also contended that his service should not have been terminated, but he should be sent back to the original Department. Supreme Court upheld the order of abolition of the post. Regarding the contention of the respondent that he should go to the parent Department, this is what the Court observed:

"There appears to be, however, considerable force in the second contention advanced on behalf of the respondent that on the abolition of the post of Panchayati Raj Election Officer, his services should not have been terminated. According to Clause (a) (2) of R. 3.14 of Punjab Civil Services Rules Vol. 1 Part I as applicable to Haryana State a competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. According to clause (e) of that rule, a Government servant's lien which has been suspended under clause (a) of that rule shall revive as soon as he ceases to hold a lien on the post of the nature suspended in sub-clauses (1), (2) or (3) of that clause. The above provisions were considered by us in the case of *T.R. Sharma v. Prithvi Singh*, Civil Appeals Nos. 354 and 355 of 1971 decided on 17.11.1975 = (reported in AIR 1976 SC 367) and it was held that in the absence of a written request by the employee concerned, the lien on the post permanently held by him cannot be terminated. It is nobody's case that any written request was made by the respondent for terminating his lien on the post of Head Assistant. As such, the lien of the respondent on the post of Head Assistant should be held to have immediately revived as soon as the post of Panchayati Raj Election Officer was abolished".

Thus, in the above decision, the Supreme Court followed its earlier decision reported in AIR 1976 SC 367 that since the lien in the parent Department was not terminated, the respondent was entitled to go back to the parent Department.

23. *Ramlal Khurana v. State of Punjab* - AIR 1989 SC 1985 - is another decision of the Supreme Court interpreting the Punjab Civil Service Rules. In fact, certain observations of the above judgment were relied on by the respondent to contend that a member of a service loses his service automatically when he takes up appointment in another service. Relevant passage appears in paragraph 8. But a reading of the judgment shows that these observations were made with regard to the facts of that case. Further, their Lordships also referred to the earlier decision of the Supreme Court in AIR 1976 SC 367 and stated that the decision does not apply to the facts of that case. In the above decision, the appellant who entered into service as a Clerk in the Police Department, appeared for selection to the post of Excise Sub Inspector. He was selected and appointed as Excise Sub-Inspector. He continued in the post for a number of years. In October, 1963 he was repatriated to his parent Department. He challenged this by filing a suit and sought for a declaration that the order of reversion was illegal. The learned subordinate Judge accepted his claim and decreed the suit. He continued to hold the post in the Excise Department. Subsequently, the Excise Commissioner made an order compulsorily retiring him from service. He challenged the validity of the order on the ground that the Excise Commissioner was not competent to make that order since he belonged to Police Department. According to him, his lien in the Police Department was not removed and therefore the Inspector General of Police was alone competent to deal with him. Appellant relied on the decision of the Supreme Court in AIR 1976 SC 367. But the Supreme Court held that by virtue of the decree in the suit his reversion to the parent Department was held as illegal. Hence, he continued to hold the post in the Excise Department. It was in the above circumstances that the Supreme Court held that the appellant lost his lien in the parent department.

24. The decision in *Dr. S.K. Kacker v. All India Institute of Medical Sciences* - (1996) 10 SCC 734 - was cited on behalf of the respondents. In that case what happened was that Dr. Kacker, who was working as Professor and the Head of the E.N.T. Department in the All India Institute of Medical Sciences, was appointed to the post of Director of the same Institute after selection. He assumed the office. Since the tenure of the post was for five years, it came to an end on 15.10.1995. The question that came up for consideration was whether on the expiry of five years, as Director he would be entitled to go back as Professor and Head of the E.N.T. Department till he attains his superannuation. Supreme Court negated the contention of the appellant. It relied on Fundamental Rule 14-A(d) which is as follows:

"A Government servant's lien on a Post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne".

The post of Director was not in the same cadre as the post of Professor. Therefore, the Court took the view that on his appointment to the permanent post as a Director,

he lost his lien on the post as a Professor. It was in the above circumstances that the Supreme Court held that the appellant lost his lien in the post of Professor.

25. In *Triveni Shankar Saxena v. State of U.P.* - AIR 1992 SC 496 - The Supreme Court referred to the decision in *P.L. Dhingra v. Union of India* - AIR 1958 SC 36 - which was to be following effect:

"a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier."

Another decision cited was *Sarala v. State of Kerala* - 1989 (1) KLT 518. There the Court held that the fourth proviso to R. 8 of K.S.S.R. applies only to such a member of a service who absent from duty in that service and not those absent from one category in the service to another category in the same service. It was held that the petitioner was not absent from the service. Hence, the benefit under R. 8 of K.S.S.R. was not given to the petitioner therein. The facts in that case are different from the facts in the present case.

26. Thus, on the basis of the above decisions and the relevant Rules in the KSR and K.S.S.R., we are of the view that the lien of a member of a service to a post in the parent Department is not lost automatically when he joins another Department. The lien can be terminated only after hearing the concerned person. By mere completion of probation it cannot be said that a person has been substantively appointed to a permanent post. Unless a person is confirmed under R. 24 of K.S.S.R., it cannot be said that the person has been substantively appointed to a permanent post. In the present case, we find that the appellants have not been confirmed in the Co-operative Department. Hence they have no lien in the Co-operative Department. Their lien in the Rural Development Department has not been terminated. In that view of the matter, sending them back to the parent Department is legal.

27. In the above view of the matter, we set aside the judgment of the learned single Judge. It is submitted for some of the appellants that they have already retired from service and they could not get the benefit of the order of reversion because of the stay granted by this Court. In the result, we pass the following Order:

28. All those persons in whose favour orders have been passed reverting to the Rural Development Department will be allowed to join the Rural Development Department immediately. They will be entitled to all the benefits in the Rural Development Department including all promotions which would have accrued to them had they joined the Rural Development Department. Regarding those persons who had retired, they will be treated as having joined back the Rural Development Department and their pensionary benefits will be calculated on the basis of the benefits that would have accrued to them if they were in the service of Rural Development Department from the date of order of reversion.

O.P. No. 6619/1995

29. In this Original Petition, petitioner prays for a writ of mandamus or other appropriate writ, direction directing respondents 1 and 2 not to permit the fourth respondent to join duty as Upper Division Typist in the Collectorate, Pathanamthitta. Petitioner and the fourth respondent were selected and appointed as Lower Division Typist in the District Collector's Office, Pathanamthitta. Petitioner was 14th in the select list while the fourth respondent was 4th. According to the petitioner, both the petitioner and the fourth respondent completed their probation in the category of Lower Division Typist as is revealed by Ext. P2. Subsequently, the fourth respondent was promoted as Upper Division Typist. By Ext. P3 order the fourth respondent was relieved of his duties in the Collectorate, Pathanamthitta in order to enable him to join as Lower Division Clerk/Bill Collector in the Municipal Common Service. Accordingly, fourth respondent joined the Municipal Common Service. Grievance of the petitioner is that the fourth respondent is trying to come back to the Collectorate, Pathanamthitta and this will jeopardise his prospects in the Collectorate. Ext. P5 is the representation filed by the petitioner before the District Collector requesting that the fourth respondent may not be taken back in the Collectorate.

30. A counter affidavit has been filed on behalf of the fourth respondent. According to him, even before he was appointed as Lower Division Typist in the Collectorate, he had applied for the post of Lower Division Clerk/Bill Collector in the Municipal Common Service. But the appointment was made only after he joined the Collectorate. He joined the Municipal Common Service on 12.7.1971. But when he joined, it was found that he was a loser of nearly Rs. 215/- per month towards his salary. Therefore, within ten days of his joining the Municipal Common Service, he filed a representation to the Director of Municipal Administration seeking permission to return to his parent Department. In the same way he has filed representation on 22.7.1991, 19.12.1991, 5.1.1993 and 9.7.1993. Thereafter he received Ext. R4(d) dated 17.10.1994 from the District Collector, Pathanamthitta stating whether he was still interested in coming back to the Collectorate. By Ext. R4(e) dated 19.4.1995 fourth respondent was reverted to the parent Department. Counsel for the fourth respondent submits that it was because he found it difficult to continue in the Municipal Common Service due to reduction in his salary that he wanted to come back to the parent department.

31. All the contentions which were raised in the above Writ Appeals were also raised in the present case. From the facts of this case, it is clear that the fourth respondent has not been confirmed in the Municipal Common Service. Hence he is entitled to come back to the parent Department. The additional contention raised by the counsel for the petitioner was that R. 8 does not take in Municipal Common Service. Counsel for the petitioner invited us to the definition of 'service' in R. 2(15), which is as follows :

"Service" means a group of persons classified by the State Government as a State or a Subordinate Service as the case may be".

Counsel for the petitioner submitted that the Municipal Common Service is not a state or a Subordinate Service classified by the State Government. Hence the contention is that the petitioner cannot avail of the benefit of R. 8. It is true that if one goes by the definition of the term 'service' in R. 2(15) of KSSR, Municipal Common Service is not included in the same. But R. 2 starts by saying "in these rules unless there is anything repugnant, the subject or context". Hence the meaning of a word may vary from the meaning given in the definition, if the context requires a different meaning to be given.

32. Now we shall examine R. 8 to find out whether the term 'service' will include services other than the services classified as State and Subordinate Service. The fourth proviso and Note 1 to R. 8 throw light on this aspect. They are as follows:

"Provided also that this Rule shall not apply in the case of a member of a service whose absence from duty in such service is by reason of his appointment to another service not being Military Service, solely on his own application, unless such appointment is made in the exigencies of Public Service".

Note 1: An appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of Public Service for the purpose of this rule".

The mention of 'Military service' in the proviso is an indication to show that the term 'service' is not confined to State and Subordinate Service. Further, according to the proviso and Note 1, appointment made in the exigencies of Public Service on the application or recommendation of the Government or competent authority will be deemed to be absence from duty from the parent service. The term 'Public service' has a wider concept than the term 'service' mentioned in clause 15 of R. 2 K.S.S.R. It cannot be denied that Municipal Common Service is not a Public Service. The Kerala Municipal Common Service is constituted in exercise of the powers conferred by sub-s. (2) of S. 90 of the Kerala Municipal Corporations Act, 1961. S. 90 of the Kerala Municipal Corporations Act is as follows:

"90. Constitution of a Common Municipal Service :-

- (1) Notwithstanding anything contained in sub-s. (1) of S. 91 of the Kerala Municipalities Act, 1960 (Act 14 of 1961) the Government may constitute the employees under the Municipal Councils and Corporations in the State into a common Municipal service for the State, subject to such rules as may be prescribed by the Government in this behalf.
- (2) The Government may make rules to regulate the recruitment and conditions of service of officers and servants of Municipal Corporations".

R. 3 of the Kerala Municipal Common Service Rules states that on and effect from the first day of November 1967, the employees of the Municipal Councils and Corporations holding the posts specified by the Government, by order in this behalf, shall be constituted into a common service for the State. Under Clause (2) of R. 3, the Government is given the power to arrange for the preparation of a combined gradation list of the persons holding the posts included in the common service. R. 4 enables the Government or the Director or any other Officer authorised by the Government to transfer an employee holding any post included in the common service from one local authority to another. The pay and allowance are to be disbursed at the rates fixed by the Government. The recruitment committee for the purpose of recruitments to the posts included in the common service is to be constituted by the Government. Under R. 8 recruitment is to be made in accordance with the provisions of the Common Service Rules and such other orders as the Government may from time to time issue. R. 10 deals with appointing authority. The person competent to appoint any employee shall be notified by the Government. Qualifications for the different posts are to be prescribed by the Government. Under R. 12, the Government may for special reasons and in the exigencies of service, appoint any person from the service of the Government to any of the posts under a local authority included in the common service on foreign service conditions. R. 14 of the Rules makes the Kerala State and Subordinate Services Rules applicable in the case of employees of the common service.

33. Supreme Court had occasion to consider whether the Panchayat service constituted under S. 203 of the Gujarat Panchayats Act is a civil service. Dealing with this question, the Court held as follows:

“the true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages and remuneration. It is further held that the relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances”.

The Court then considered the provisions of the Panchayats Act and held as follows:

“It may be noted that the Panchayat service contemplated under S. 203 of the Panchayat Act is a single service for the whole State and it is not a collection of distinct and separate services of such individual panchayat. That panchayat service is a service under the State is again emphasised by S. 206 which authorises the State Government to pool together four classes of persons mentioned therein who originally belonged to four different sources and to allocate them

to the Panchayat Service and one class of such persons are those who belong to the State Service. Unless the Panchayat Service is held to be a State Service, inclusion of officers and servants in the State Service will be unconstitutional”.

It was further observed thus:

“State Public Services may be constituted or established either by a law made by the State Legislature or by rules made under the proviso to Art. 309 of the Constitution or even by an executive order made by the State Government in exercise of its powers under Art. 162 of the Constitution. The recruitment and conditions of service of the officers and servants of the State Government may also be regulated by statute, rules or executive orders. The administration of a service under a State involves broadly the following functions: (i) the organisation of the civil service and the termination of the remuneration, conditions of service, expenses and allowances of persons serving in it; (ii) the manner of admitting persons to civil service; (iii) exercise of disciplinary control over members of the service and power of transfer, suspend, remove or dismiss them in the public interest as and when occasion to do so arises. In the instant case, the Panchayat Service is constituted by the Panchayats Act and the State Government is empowered to make orders and rules regarding its organisation and management. It is true that in S. 203 of the Panchayats Act, it is stated that the Panchayat Service shall be distinct from the State Service. Having regard to the broad feature of the Panchayat Service, we are of the view that the said declaration appears to have been made only to distinguish the Panchayat Service from other services of the State attached to the several departments which are under the direct control of the State Government. If the members of the Panchayat Service are not to be the members of a service under the State Government but are to be the officers and servants of the Panchayat unit to which they are allotted then sub-ss. (2), (2-A) and 4(a) of S. 203 of the Panchayats Act would to some extent become unworkable as every time there is a transfer of an officer borne on the Panchayat Service there would be a change of master”.

On an examination of the Kerala Municipal Common Service Rules, we are of the view on the basis of the above Supreme Court decision that the Municipal Common Service is also a public service. Thus, the fourth respondent will be allowed to join the Collectorate, Pathanamthitta as per Ext. R4(e) order. He will be entitled to all the benefits which would have accrued to him had he joined the Collectorate immediately Ext. R4(e) order.

34. In the above view of the matter, we allow the Writ Appeals and dismiss the Original Petition with the directions given above.

R. 3 of the Kerala Municipal Common Service Rules states that on and effect from the first day of November 1967, the employees of the Municipal Councils and Corporations holding the posts specified by the Government, by order in this behalf, shall be constituted into a common service for the State. Under Clause (2) of R. 3, the Government is given the power to arrange for the preparation of a combined gradation list of the persons holding the posts included in the common service. R. 4 enables the Government or the Director or any other Officer authorised by the Government to transfer an employee holding any post included in the common service from one local authority to another. The pay and allowance are to be disbursed at the rates fixed by the Government. The recruitment committee for the purpose of recruitments to the posts included in the common service is to be constituted by the Government. Under R. 8 recruitment is to be made in accordance with the provisions of the Common Service Rules and such other orders as the Government may from time to time issue. R. 10 deals with appointing authority. The person competent to appoint any employee shall be notified by the Government. Qualifications for the different posts are to be prescribed by the Government. Under R. 12, the Government may for special reasons and in the exigencies of service, appoint any person from the service of the Government to any of the posts under a local authority included in the common service on foreign service conditions. R. 14 of the Rules makes the Kerala State and Subordinate Services Rules applicable in the case of employees of the common service.

33. Supreme Court had occasion to consider whether the Panchayat service constituted under S. 203 of the Gujarat Panchayats Act is a civil service. Dealing with this question, the Court held as follows:

“the true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages and remuneration. It is further held that the relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances”.

The Court then considered the provisions of the Panchayats Act and held as follows:

“It may be noted that the Panchayat service contemplated under S. 203 of the Panchayat Act is a single service for the whole State and it is not a collection of distinct and separate services of such individual panchayat. That panchayat service is a service under the State is again emphasised by S. 206 which authorises the State Government to pool together four classes of persons mentioned therein who originally belonged to four different sources and to allocate them

to the Panchayat Service and one class of such persons are those who belong to the State Service. Unless the Panchayat Service is held to be a State Service, inclusion of officers and servants in the State Service will be unconstitutional”.

It was further observed thus:

“State Public Services may be constituted or established either by a law made by the State Legislature or by rules made under the proviso to Art. 309 of the Constitution or even by an executive order made by the State Government in exercise of its powers under Art. 162 of the Constitution. The recruitment and conditions of service of the officers and servants of the State Government may also be regulated by statute, rules or executive orders. The administration of a service under a State involves broadly the following functions: (i) the organisation of the civil service and the termination of the remuneration, conditions of service, expenses and allowances of persons serving in it; (ii) the manner of admitting persons to civil service; (iii) exercise of disciplinary control over members of the service and power of transfer, suspend, remove or dismiss them in the public interest as and when occasion to do so arises. In the instant case, the Panchayat Service is constituted by the Panchayats Act and the State Government is empowered to make orders and rules regarding its organisation and management. It is true that in S. 203 of the Panchayats Act, it is stated that the Panchayat Service shall be distinct from the State Service. Having regard to the broad feature of the Panchayat Service, we are of the view that the said declaration appears to have been made only to distinguish the Panchayat Service from other services of the State attached to the several departments which are under the direct control of the State Government. If the members of the Panchayat Service are not to be the members of a service under the State Government but are to be the officers and servants of the Panchayat unit to which they are allotted then sub-ss. (2), (2-A) and 4(a) of S. 203 of the Panchayats Act would to some extent become unworkable as every time there is a transfer of an officer borne on the Panchayat Service there would be a change of master”.

On an examination of the Kerala Municipal Common Service Rules, we are of the view on the basis of the above Supreme Court decision that the Municipal Common Service is also a public service. Thus, the fourth respondent will be allowed to join the Collectorate, Pathanamthitta as per Ext. R4(e) order. He will be entitled to all the benefits which would have accrued to him had he joined the Collectorate immediately Ext. R4(e) order.

34. In the above view of the matter, we allow the Writ Appeals and dismiss the Original Petition with the directions given above.

CASE NO.:
Appeal (civil) 5072 of 1999

PETITIONER:
Ali M.K. and Ors.

RESPONDENT:
State of Kerala and Ors.

DATE OF JUDGMENT: 22/04/2003

BENCH:
SHIVARAJ V PATIL & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T

WITH

CIVIL APPEAL NO. 5073 OF 1999

ARIJIT PASAYAT, J.

In these appeals the scope, content and ambit of Rule 8, Part II of the Kerala State and Subordinate Service Rules, 1958 (in short the 'KSSR') is the pivotal issue. Full Bench judgment of the Kerala High Court is under challenge.

Parties are litigating in the following factual background. Non-official respondents and the appellants were originally appointed in the Rural Development Department on different posts. Subsequently, the said respondents joined the services of the Co-operative Department. A fixed percentage of posts in the Co-operative Department are to be made by transfer. Non-official respondents applied to the Kerala Public Service Commission (in short the 'Commission') and on being selected joined the Co-operative Department. Question arose whether the benefit of Rule 8 of the KSSR is available to a person who is appointed to a post in another service and whether the lien of such a member continued in the former service. Controversy was whether their names were to be included in the promotion list. A learned Single Judge took the view that their names could not be included. Foundation for this view was a Division Bench judgment in an earlier case.

Judgments of the learned Single Judge were challenged in Writ Appeals before the Division Bench. The matter was referred to a Full Bench to be heard along with an Original petition which was earlier referred to such Bench, as correctness of some earlier decisions was doubted. Parties before the Full Bench focused their attention on Rule 8 of the KSSR. While the appellants herein submitted that same was not applicable to the non-official respondents, the latter contended that it was applicable. The Full Bench by the impugned judgment accepted the contention of the non-official respondents. Appellants, as noted above, have questioned correctness of the Full Bench's decision.

According to the learned counsel for the appellants Rule 8 has no application to the facts of the present case since no person can have lien over two substantive posts in two different services. The non-official respondents have acquired lien on posts in the Co-operative Department and, therefore, they cannot be considered along with the appellants for the promotion and other service benefits in the Rural Development Department. With reference to Rules 24 and 28 of the KSSR, he submitted that the non-official respondents have been appointed in posts which were substantive in nature and character and, therefore, they had lost their lien over the posts in the Rural Development Department. They had on their own applied for absorption in the Co-operative Department and by no stretch of imagination, can their appointment be considered to be in exigencies of public service.

In response, learned counsel for the non-official respondents submitted that Note I appended to Rule 8 made the position clear that Rule 8 is applicable to their cases. The Full Bench has recorded a categorically finding that there was no material to show that they had been confirmed in the Co-operative Department as there was no order of confirmation. This is a factual finding recorded. Therefore, the Full Bench's decision is on terra firma.

Since Rule 8 of the KSSR is the touchstone on which the respective stands are to be tested, it would be appropriate to quote the same. The same reads as follows:

"Rule 8: Members absent from duty:- The absence of a member of a service from duty in such service whether on leave, other than leave without allowances for taking up other employment on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn -

(a) for re-appointment to a substantive or officiating vacancy in the clause, category, grade or post in which he may be a probationer or an approved probationer;

(b) for promotion from a lower to a higher category in such service and

(c) for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate; as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence:

provided that subject to the provisions of Rule 18 he shall satisfactorily complete the period

of probation on his return;

provided further that a member of a service who is appointed to another service, and is a probationer or an approved probationer in the latter service, shall not be appointed under clause (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service in which he is a probationer or he approved probationer:

Provided further that this rule shall not have retrospective effect so as to disturb the decision taken by the Travancore Cochin Government in respect of the Travancore Cochin personnel:

Provided also that this rule shall not apply in the case of a member whose absence from duty in such service is by reason of his appointment to another service not being Military Service, solely on his own application, unless such appointment is made in the exigencies of public service.

Note 1:- An appointment made in pursuance of applications invited sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of public service for the purpose of this rule.

Note 2:-The benefit of this rule shall not be available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service."

The last proviso to Rule 8 consists of two parts. The first part is that the rule has no application where a member of a service is appointed to another service solely on his application. The second part is an exception to general prescription and is applicable if the appointment is made in the exigencies of public service.

Note I is of considerable significance. It is a deeming provision and provides that the appointment made in pursuance of an applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of public service for the purpose of Rule 8.

It would be appropriate to note the effects of a

proviso and a deeming provision.

The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins v. Treasurer of Survey* [1880 (5) QBD 170, (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha* (AIR 1961 SC 1596) and *Calcutta Tramways Co. Ltd. v. Corporation of Calcutta* (AIR 1965 SC 1728)); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in *West Derby Union v. Metropolitan Life Assurance Co.* (1897 AC 647) (HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See *A.N. Sehgal and Ors. v. Raje Ram Sheoram and Ors.* (AIR 1991 SC 1406), *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors.* (AIR 1991 SC 1538) and *Kerala State Housing Board and Ors. v. Ramapriya Hotels (P) Ltd. and Ors.* (1994 (5) SCC 672).

"This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant" (Coke upon Littleton 18th Edition, 146)

"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails... But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in *Forbes v. Git* [1922] 1 A.C. 256).

A statutory proviso "is something engrafted on a preceding enactment" (*R. v. Taunton, St James*, 9 B. & C. 836).

"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in *Re Barker*, 25 Q.B.D. 285).

A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (See *Jennings v. Kelly* [1940] A.C. 206).

So far as Rule 8 is concerned, the proviso referred to above operates in cases where even though the member of a service is appointed in another service on the basis of his own application, same is in the exigencies of public service. Therefore, the vital question is whether the appointment is made in the exigencies of public service. For that purpose, Note I assumes significance. It is, as noted above, a deeming provision. Such a provision creates a legal fiction. As was stated by James L.J. in *Ex parte, Walton, In re, Levy* [1881 (17) Ch D 746] "when a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate (See *Hill v. East and West India Dock Co.* (1884 (9) AC 448 (H.L.)), *State of Travancore Cochin and Ors. v. Shanmugha Vilas Cashewnut Factory* (AIR 1953 SC 333), *American Home Products Corporation v. Mac Laboratories Pvt. Ltd. and Anr.* (1986 (1) SCC 465) and *Smt. Parayankandiyal Eravath Kanapraivan Kalliani and Ors. v. K. Devi and Ors.* (AIR 1996 SC 1963). In an oft-quoted passage, Lord Asquith stated, "if you are bidden to treat an imaginary state of affairs as real you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had, in fact, existed must inevitably have flowed from or accompanied it...." The statute states that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs." (See *East End Dwelling Co. Ltd. v. Finsbury Borough Council* (1951 (2) All ER 587).

"The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible" (per Lord Radcliffe in *St. Aubyn (L.M.) v. A.G.* (No.2) (1951) 2 All E.R. 473 (HL))

"Deemed", as used in statutory definitions "to extend the denotation of the defined term to things it would not in ordinary parlance denote, is often a convenient device for reducing the verbiage of an enactment, but that does not mean that wherever it is used it has that effect; to deem means simply to judge or reach a conclusion about something, and the words 'deem' and 'deemed' when used in a statute thus simply state the effect or meaning which some matter or thing has the way in which it is to be adjudged; this need not import artificially or fiction; it may simply be the statement of an undisputable conclusion" (per Windener J. in *Hunter Douglas Australia Pty v. Perma Blinds*, (1970) 44 A.L.J.R. 257),

When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant

consequences, but it is not that something else (per Cave J., R. v. Norfolk County Court, 60 L.J.Q.B. 380).

"When a statute gives a definition and then adds that certain things shall be 'deemed' to be covered by the definition, it matters not whether without that addition the definition would have covered them or not": (per Lord President Cooper in Ferguson v. McMillan, 1954, S.L.T. 109).

Whether the word "deemed" when used in a statute established a conclusive or a rebuttable presumption depended upon the context (See St. Leon Village Consolidated School District v. Ronceray [1960] 23 D.L.R. (2 d) 32).

"I...regard its primary function as to bring in something which would otherwise be excluded" (per Viscount Simonds in Barclays Bank v. I.R.C. [1961] A.C. 509).

"Deems" means "is of opinion" or "considers" or "decides" and there is no implication of steps to be taken before the opinion is formed or the decision is taken." (See R v. Brixton Prison Governor ex.p. Soblen (1962) 3 All E.R. 641)

The Full Bench as a matter of fact found that Note I applies because the appointments of the non-official respondents in the Co-operative Department were made in pursuance of applications invited, sponsored and recommended by the Government. In view of this factual finding, the conclusions are in order.

A faint attempt was made to submit that the non-official respondents had lost their lien as they were appointed to posts of substantive nature. Reference was made to Rule 28 to submit that on completion of probation and in case of promotion, it is to be presumed that there was substantive appointment. The Full Bench has recorded a factual finding that non-official respondents have not been confirmed in the posts in the Co-operative Department. It has been specifically recorded that no material was placed to show that any order has been passed by the Co-operative Department confirming the concerned employees in their posts. With reference to Rule 24 it was noted that mere completion of probation does not result in automatic confirmation. It is a settled position in law that a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier. [See Triveni Shankar Saxena v. State of U.P. (AIR 1992 SC 496) and Parshotam Lal Dhingra v. Union of India (AIR 1958 SC 36)]

Above being the position, the Full Bench's decision does not suffer from any vulnerability to warrant interference. The appeals are dismissed, but in the peculiar circumstances, there will be no order as to costs.