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C. P. DAMODARAN NAYAR AND P. S. MENON

v.

STATE OF KERALA AND OTHERS

December 20, 1973

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[P. JAGANMOHAN REDDY AND P. K. GOSWAMI, JJ.]

States Reorganisation Act, 1956, Ss. 115 and 117—Madras State judicial Service Rules, 1953, r. 11—Applicability to officers allotted to Kerala—Seniority according to decision of Central Government—Right of State Government to constitute new cadres—'KLM' principle and its scope.

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Under s. 115(5) of the States Reorganisation Act, 1956, the Central Government may establish one or more Advisory Committees for the purpose of assisting it in regard to, (a) the division and integration of services among the new States, and (b) the ensuring of fair and equitable treatment to all persons affected. Under s. 177 the Central Government may give such directions to any such State Government as may appear to be necessary for the purpose of giving effect to the provisions of the Act and the State Government shall comply with such directions. Accordingly, a meeting of the Chief Secretaries of the various States that were to be effected by the reorganisation was held in May, 1956, at the invitation of the

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Central Government, and certain decisions were taken as to the general principles that should be observed with regard to the integration work. The Central Government thereafter informed the State Governments that they had decided that the work of integration of services, equation of posts and relative seniority should be dealt with by the State Governments in the light of those general principles. In 1962, the Central Government, after considering the representations of the officers made under s. 115(5) of the Act, in modification of the earlier principle excluding periods for which an appointment is held as a purely stop gap or fortuitous arrangement in fixing seniority, decided that the officers allocated to Kerala State

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from the former Madras State may be allowed benefit of emergency service towards seniority in the equated category if such service would have been regularised from the date of their emergency appointment and counted for seniority in Madras, on Ist November, 1956, had those officers remained in Madras. The respondent-State accepted this decision of the Central Government.

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The appellant was selected as a District Munsiff by the Madras Public Service Commission and was posted as such on May 26, 1951, and he has been in continuous service since then. Consequent upon a decision of the Supreme Court of India, the Madras State Judicial Service Rules (Madras Rules) were framed in 1953, but were given retrospective effect from March 1951, and the service of the appellant and others was regularised as from October 6, 1951. The State of Kerala came into being on November 1, 1956, and the appellant was finally allotted Kerala with effect from October 24, 1956. On March 26, 1966, the respondent-State published the final integrated list of the Travancore-Cochin and Madras personnel of the Judicial Officers as on November 1, 1956, showing respondents 6 and 7, whose dates of commencement of continuous service were July 20, 1951,

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and October 1, 1951, respectively, as senior to the appellant, on the basis that October 6, 1951, was assigned to him as the date of commencement of his continous service being the date of his appointment to the post in the equated category as on November 1, 1956. The respondent-State, on October 20, 1959, also provided that some posts of District and Sub-divisional Magistrate of 'executive origin' would be constituted as a separate service outside the civil judiciary, while being eligible for appointment as subordinate judges and Munsiffs respectively. The appellant filed a writ petition in the High Court questioning *inter alia* (1) the

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rank and place of seniority given to him in the final list on the ground that the date of commencement of his continuous service is May 26, 1951; and (2) the order of the respondent-State providing a special cadre for magistrates of executive origin, on the ground that, if that order was implemented there was the likelihood of sub-divisional Magistrates securing promotion over munsiffs with longer service. The High Court dismissed the petition.

In appeal to this Court,

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HELD : (1)(a) Rule 11 of the Madras Rules deals with temporary appointments. But it is not at all relevant for the purpose of fixing the seniority of the appellant. It is inapplicable to the appellant after his final allotment to the State of Kerala and after the clear decision of the Government of India allowing the benefit of emergency service in regard to seniority, which was accepted by the Kerala Government. [875 H]

(b) Assuming that the rule and the earlier decision of the Government of India in confirmity with the agreement with the Chief Secretaries referring to purely stop-gap or fortuitous arrangements may be invoked, they are inapplicable to the appellant, because, it cannot be held that the appellant's service is either filled 'owing to an emergency' or that it was held as a 'purely stop-gap or fortuitous arrangement.' The appellant had been appointed in a regular manner through the Public Service Commission and his appointment could not have been made as a 'purely stop-gap or fortuitous' one. The Government of India had also accepted the position that an allotted employee should not suffer any disadvantage if he would not have been subjected to a like handicap in his parent State. The correspondence between the Madras and Kerala Governments after the Central Government communicated its decision that the allocated officers should be allowed the benefit of emergency service in regard to seniority, showed that the position in Madras State was that continuous service of the officer, whether regular, temporary or emergency, would have been taken into account for the purpose of seniority. The appellant had been in continuous service from May 26, 1951. Therefore, the conclusion is irresistible, that the appellant was entitled to the assignment of May 26, 1951, for the purpose of seniority, and the appellant in the connected appeal, would be entitled to the assignment of February 12, 1955. [876 C—G]

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(2) There is no force in the contention regarding the reservation of the separate cadre for the District Magistrate and sub-divisional Magistrates of executive origin. It is open to the State Government to constitute as many cadres as they choose according to administrative convenience and expediency. [876 H]

(3) As regards the appellant in the connected appeal he would not be entitled to an earlier date as the date of continuous appointment on the ground that an officer junior to him who was provisionally allotted to the State of Kerala along with him at the initial stage when the new State was constituted was assigned 1-7-1954 as his date of continuous service; because, the 'KLM principle' was not applicable to that appellant. According to the principle the seniority of the Travancore-personnel as between themselves, or of the Cochin personnel as between themselves could not disturbed while determining the relative seniority of the Travancore and Cochin personnel in any class. But the officer who was junior to the appellant had arranged for a mutual transfer with an officer from Madras and could not be held to be in service in Kerala for the purpose of the final integrated list. The question of *inter se* seniority cannot arise when there is nothing to fix such *inter se* seniority of the appellant vis-a-vis his junior. Therefore the benefit of the principle cannot be claimed by the appellant. [877C; 878B]

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2629 & 2630 of 1969.

From the judgment and order dated the 2nd April, 1969 of the Kerala High Court at Ernakulam in Original Petition Nos. 2709 and 2708 of 1966, and

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Civil Appeal Nos. 304 & 305 of 1972.

Appeals by special leave from the judgment and order dated the 2nd April, 1969 of the Kerala High Court in Original Petition Nos. 2708 of 1966 and

Sardar Bahadur, and *C. P. Damodaran Nayar*, appellant appeared in person, (in C.As. 2629/69 & 305/72).

A *K. T. Harindra Nath* and *Vishnu Bahadur Saharya*, for the appellant (in C.A. 2630/69).

V. A. Seiyid Mohmud and K. C. Dua, for respondent Nos. 1 & 4 (in C.A. 2629/69 and respondent Nos. 1 & 3 (in C.A. 2630/69).

Gobind Das and S. P. Nayar, for respondent No. 2 (in C.As. 2629 and 2630).

B *A. V. Rangam* and *A. Subhashini*, for respondent No. 3 (in C.A. 2629/69).

P. C. Chandi, for respondent No. 3 (in C.A. 304/72) and respondents Nos. 1 & 4 (in C.A. 305/72).

K. M. K. Nair, for respondent No. 5 (in C.A.A. 2629/69)

C *S. Gopalakrishnan*, for respondent Nos. 6 & 7 (in C.A. 2629/69).

The Judgment of the Court was delivered by

GOSWAMI, J. These appeals by certificate are directed against the judgmeat of the Kerala High Court in several writ applications D filed there challenging the final integration list of judicial officers allotted to Kerala State under the States Reorganisation Act, 1956, briefly the Act. The appellant in Civil Appeal No. 2629 of 1969, which we will take first, was a practising Advocate. He was recruited along with 82 others by the Madras Public Service Commission, briefly the Commission, and was temporarily appointed as a District Munsiff by the Madras Government on November 25, 1950. This E appointment was under rule 7A of the Madras State Judicial Service Rules, then in force. The Madras High Court posted him for training which commenced on January 16, 1951 and while undergoing training he was posted as District Munsiff at Calicut where he took charge of this post on May 26, 1951. Since then he has been in continuous service as Munsiff, subordinate Judge, District Magistrate and as District Judge. One B. Venkataramans, who had not been F selected as District Munsiff along with the appellant and others in 1950, challenged the selection made by the Commission in a writ petition before this Court. This Court allowed the petition and the decision is reported in *V. Venkataramana* v. *The State of Madras & Another.*(1) This Court held that the Communal G.O. of the Madras Government which besides making reservation of posts for Harijans and backward Hindus, as sanctioned by cl. (4) of Art. 16, G also made reservation of posts for other communities viz. Muslims, Christians, Non-Brahmin Hindus and Brahmins was repugnant to the provisions of Art. 16 and was as such void and illegal. The Court, however, did not cancel all the appointments made during the year but directed the Government to consider and dispose of the application of Venkataramana on its merits and without applying the rule of communal rotation. It may be mentioned that the appellants H here and other successful candidates were not joined as respondents in the said writ petition before this Court. Venkataramana was

(1) A.I.R. 1951 [illegible].

accordingly selected and appointed as District Munsiff and he took charge of his office on October 6, 1951. Consequent upon the decision in that case the Madras State Judicial Service Rules (briefly the Madras Rules) were framed on October 6, 1953 under Article 234 read with Article 309 of the Constitution. These Rules came into effect retrospectively from March 22, 1951. It is averred that appointment of the appellant is thus under rule 11(2) of the Madras Rules. On November 2, 1953, the Madras Government directed that the services of the appellant along with other candidates be regularised w.e.f. October 6, 1951, the same date from which Venkataramana's appointment has been so done (vide Ext. P-7). It is also mentioned in this order that the 82 officers mentioned in the schedule to the order including Venkataramana (serial No. 27) and the appellant (serial No. 72) will commence probation from that date. The Government, however, sanctioned increment in the time scale to the appellant and the other District Munsiffs appointed in 1950 and 1951 from the date of commencement of continuous service (vide Ext. P-6). Consequent upon the passing of the States Reorganisation Act on August 31, 1956, 51 judicial officers including the appellant belonging to different cadres like District Judge, District Magistrate, Sub-Judge, Munsiff and Sub-Magistrate were transferred from the Madras State to the Kerala State on September 11, 1956. The appellant was finally allotted to Kerala w.e.f. October 24, 1956, as per order of the Government of India dated August 24, 1960, under the Act. The State of Kerala was brought into being w.e.f. November 1, 1956. We may note here that the new Kerala State was formed under section 8 of the Act comprising the territories of the existing State of Travancore-Cochin, excluding the territories transferred to the State of Madras by section 4; and the territories comprised in Malabar district, excluding the islands of Laccadive and Minicoy and Kasaragod taluk of South Kanara district.

The Government of Kerala passed an order (Ext. P-16) regarding reorganisation of judicial services. After the reorganisation of States, principles were evolved and formulated by the Central Government at the conference of Chief Secretaries of the different States regarding integration of services. The Kerala Government framed principles and procedures regarding integration of services of Travancore-Cochin personnel with the personnel allotted from Madras (vide Ext. P-13). The Madras Government also framed general principles for integration of services by their order dated July 17, 1957 (vide Ext. P-14). The Government of Kerala issued orders regarding equation of posts in the Judicial Department for the purpose of integration of services on May 27, 1958 (vide Ext. P-17). The equation was as follows :

"*Travancore-Cochin*

(i) District Judge-I Grade—Rs. 800—1000.	District Judges-II Grade—Rs. 1000—1800.
District & Sessions Judge, II Grade—Rs. 500—800.	District Magistrate (Judl.)—Grade—500—700 plus Spl. pay Rs. 50/-.

A (iii) District Magistrate Sub Judges on—Rs. 550—700.
Grade— Rs. 500—800.
Addl. District and Sessions
Judges and Sub-Judges
Grade—Rs. 450—600.

B (iv) Sub Divisional Magistrates District Munsiff and Sub-Divisional Magistrate Rs. 300—700.
I Grade—Rs. 450—600.
Munsiffs and Sub-Divisional Magistrate
Grade II on—Rs. 250—500.

(v) Sub Magistrate Sub Magistrates
Rs. 200—300. Rs. 200—300."

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The appellant preferred an appeal against this order through the Kerala High Court and the Government of Kerala to the Advisory Committee constituted by the Central Government under section 115(5) of the Act challenging among other things that the principles evolved for the equation of posts were illegal and unjust. Meanwhile D the Government of Kerala on September 24, 1959, ordered that it would not be proper to equate the District Magistrates and the Sub-Divisional Magistrates of Grades I and II of 'executive origin' belonging to the erstwhile Travancore-Cochin State with the Civil Judicial Officers and that the same should be kept separate until the Magisterial Officers were induced into the Civil Judiciary in the manner prescribed under Article 234 of the Constitution. By the E same order it was provided that the three posts of the District Magistrates (actually four since one was omitted through mistake) and eight posts of Sub-Divisional Magistrates of the Travancore-Cochin area would be constituted as a separate service outside the Civil Judiciary so as to enable the incumbents to continue in their posts (vide Ext. P-21). On the same date, the Government of Kerala passed an order under Article 234 of the Constitution by which the F salaried Magisterial Officers of the former Travancore-Cochin State in the categories of District Munsiffs and Sub-Divisional Magistrates were made eligible for appointment to the categories of Subordinate Judges and Munsiffs respectively (vide Ext. P-27). The appellant preferred an appeal against the order (Ext. P-21) on October 20, 1959 (vide Ext. P-22). He pointed out that if the aforesaid order (Ext. P-21) was implemented there was likelihood of the Sub-G Divisional Magistrates who had got far less service than that of the Munsiffs securing promotion over such Munsiffs. The Kerala Government passed a final order regarding the equation of posts in the judiciary on July 24, 1961 (vide Ext. P-23) and informed the appellant that the appeals had been rejected by the Government of India. The Government of Kerala published the preliminary integrated list of Judicial Officers on April 24, 1962 (vide Ext. P-24). H The appellant preferred an appeal against this list (vide Ext. P-25). Other officers also filed representations and appeals against the same. In the preliminary integrated gradation list of the Travancore-Cochin and Madras personnel as on November 1, 1956, the appellant was

shown against serial No. 44 and his date of commencement of continuous service as well as the date of appointment to the post of equated category was shown as May 26, 1951. Respondents 6 and 7 were shown below him against serial Nos. 46 and 47 respectively in the list. Their dates of commencement of continuous service are July 20, 1951 and October 1, 1951 respectively and the same are the dates of appointment to the post of equated category in the list. After publication of the preliminary integrated list, the Government of Kerala issued two orders on May 16, 1962 and May 10, 1963 (vide Exts. R-1 and R-2) respectively. R-2 has superseded the earlier order R-1 and some other orders. We may quote the relevant portion of the order in Ext. R-2 which rans as follows :—

"The Government of India have considered the representations of the officers and have decided as follows :—

(i) The officers allotted to Kerala from Madras may be allowed the benefit of emergency service towards seniority in the equated category if such service would have been regularised from the date of their emergency appointment and counted for inter-state seniority in integration in Madras on 1-11-1956 had they remained in Madras.

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This decision of the Government of India was accepted by the Kerala Government. On the subject of taking into account the emergency service there was correspondence between the Central Government and the Government of Kerala (vide Ext. P-32 dated March 1, 1962). On the same subject matter there were two letters from the Government of Madras addressed to the Kerala Government (vide Exts. P-34 dated July 20, 1963 and P-35 dated November 7, 1963) to the Secretary, Allotted Agricultural Officers' Association, Calicut. The Kerala Government also on February 11, 1966, framed certain ad-hoc rules (vide Ext. P-28) for absorption of Criminal side Judicial Officers of the Travancore-Cochin Branch who were kept in a separate cadre. These rules inter-alia provided that for the purpose of determining seniority the date of commencement of continuous service in the post of District Magistrate shall be deemed to be the date of first appointment to the category of Sub-Judge. The appellants' appeals were ultimately rejected by the Government of India. On March 26, 1966, the Government of Kerala published the final integrated list of the Travancore-Cochin and Madras personnel of the Judicial Officers as on November 1, 1956 (vide Ext. P-31) showing respondents 6 and 7, who were junior to him as per the preliminary integrated list, now placed above him in the final list. In the preliminary list although his date of commencement of continuous service was shown as May 26, 1951, he was assigned in the final list October 6, 1951 being the date of his appointment to the post in the equated category as on November 1, 1956. In the above

A background, the appellant filed a writ application in the High Court of Kerala praying for restraining the State Government and the Registrar of the High Court from implementing Ext. P-31, the final list, and to award to the appellant appropriate rank and seniority above respondents 6 and 7, amongst other prayers. His application came up before a Full Bench of the High Court and the same was rejected. The respondents were impleaded in the High Court in a B representative capacity and the High Court's order under or. 1 r.8, Civil Procedure Code, were obtained and the notice was published in the newspaper.

Several questions were raised before the High Court, but the appellant here has made two main submissions :

C (1) His seniority in service in the integrated judicial service in Kerala should be counted from May, 26, 1951, the date on which he joined service and from which he has continuously been working.

(2) There is no justification in law for creation of a separate cadre for Magistrates of the executive origin and for reserving four posts of District Magistrates, D exclusively in favour of Sub-Divisional Magistrates of executive origin.

The appellant's grievance is that he should have been assigned May 26, 1951 instead of October 6, 1951. It is clear that under section 115(5) of the Act "the Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in E regard to—

(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and F the proper consideration of any representation made by such persons".

Under section 117 of the Act, "the Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose G of giving effect to the foregoing provisions of this Part and the State Government shall comply with such directions". In accordance with the provisions of this Act, a meeting of the Chief Secretaries of the various States that were to be affected by the reorganisation, was held on May 18-19, 1956, at the invitation of the Central Government. In this meeting certain decisions were taken as to the general principles that should be observed with regard to the integration work. The H Government of India thereafter informed the State Government that they had decided that the work of integration of services should be dealt with by the State Governments in the light of general principles already decided in the meeting of the Chief Secretaries. With regard

to the principle for determining equation of posts and relative seniority, the following conclusions were reached at the conference of the Chief Secretaries : A

"It was agreed that in determining the equation of posts, the following factors should be borne in mind :—

(i) the nature and duties of a post;

(ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; B

(iii) the minimum qualifications, if any, prescribed for recruitment to the post;

(iv) the salary of the post; C

It was agreed that in determining relative seniority as between two persons holding posts declared equivalent to each other, and drawn from different States, the following points should be taken into account :—

(i) Length of continuous service, whether temporary or permanent, in a particular grade; this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement; D

(ii) age of the person; other factors being equal, for instance, seniority may be determined on the basis of age.

Note : It was also agreed that as far as possible, the inter se senority of officer drawn from the same State should not be disturbed". E

This position was altered, as already noted earlier, when the Central Government after considering the representations of the officers made under section 115(5) of the Act decided that "the officers allocated to Kerala State from former Madras may be allowed the benefit of emergency service towards seniority in the equated category if such service towards service (sic) would have been regularised from the date of their emergency appointment and counted for inter-state seniority in integration on 1st November 1956, had these officers remained in Madras" (vide Ext. P-33 dated 16-2-1963 which modified Ext. P-32 dated 1-3-1962). We have also referred to a letter from the Government of Madras to the Kerala Government dated July 20, 1963 (Ext. P34) wherefrom the following extract is relevant :— F G

"According to sub-paragraph (2) of paragraph 1 of the said G.O. the date from which an allottee to this State from the former Travancore-Cochin State was continuously holding the corresponding post in the former Travancore-Cochin State, is taken into account for the purpose of fixing his seniority in the equated cadre in this state. Therefore, for drawing up the integrated gradation list under sub-paragraph (3) of paragraph 1 of the said G.O., only continuous service

A whether regular, temporary or emergency of the allottees is taken into account".

Hence the position in Madras is that continuous service of the appellant "whether regular, temporary or emergency" would have been taken into account for the purpose of seniority. It is also clear and not even disputed that the appellant has been in continuous service from B May 26, 1951. That being the position, the conclusion is irresistible in view of the Government's decision (vide Ext. P-33) that the appellant was entitled to the assignment of May 26, 1951 for the purpose of his seniority.

Dr. Syed Mohamad, on behalf of the 1st respondent, submits that the question has to be decided with reference to rule 11(2) of the C Madras Rules. The same may be set out :

> 11(2) : "Where the appointment of a person as District Munsiff in accordance with these rules would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the Governor may appoint any other person in the list of approved candidates. A person appointed under this rule shall not be regarded as a probationer in the service or be entitled by reason only of such D appointment to any preferential claim to future appointment to the service".

The High Court accepted this submission when it observed as follows :—

> "The appointment under rule 11(2) is a temporary E appointment and it is so stated in the rule itself. Appointment under rule 11(3) also is a temporary appointment though this can be even of persons who do not figure at all in any select list prepared after the selection by the Public Service Commission. A reading of the rule—rule 11(3) of the Madras State Judicial Service Rules—shows that this rule will be resorted to in cases of emergency. F Suffice to say at this stage that service rendered in a temporary capacity by virtue of appointments under rules 11(2) or 11(3), at any rate the whole of it, did not necessarily count for the purpose of inter se seniority among the persons who belonged to the particular service in the State of Madras. The Government of India decided that this service which G did not count for inter se seniority among the Madras personnel in the State of Madras and did not count for inter-State seniority in the matter of integration of the personnel that remained in the State of Madras with those that have been allotted to the State of Madras, will not count for inter-State seniority of personnel allotted from the State of Madras to the State of Kerala, for the purpose of integration with H the Travancore-Cochin personnel".

It is true that rule 11 deals with temporary appointments. Rule 11(3), however, is not at all relevant for the purpose of the present case.

The question that arises for consideration is that whether after final allotment of the appellant under the Act to the State of Kerala, the application of the Madras Rules would be at all relevant in face of a clear decision of the Government of India made under the Act. We have to hold in the negative. Apart from that, the Government of India took a decision which also the Kerala Government had accepted (vide Ext. R-2) as already set out. In this view of the matter we are unable to agree with the High Court that the appellant had been correctly assigned his date October 6, 1951 instead of May 26, 1951.

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It is next submitted by the learned counsel for the 1st respondent that the appointment of the appellant was "purely stop-gap or fortuitous arrangement" as mentioned in the principles agreed at the meeting of the Chief Secretaries. He also tries to reinforce his argument by referring to rule 11(3) which provides that "where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in the category of District Munsifs ....." Assuming that rule 11(3) may be invoked and the earlier decision of the Government of India in conformity with the agreement of the Chief Secretaries referring to "purely stop-gap or fortuitous arrangement" are applicable, we are unable to agree that the appellant's service is either filled "owing to an emergency" or that the same is held in a "purely stop-gap or fortuitous arrangement". The learned counsel for the 1st respondent followed by the counsel for the Union of India has submitted that on account of the writ application by Venkataramana in the High Court the appointment of the appellant had to be made as a temporary measure as has been mentioned in the letter of appointment itself. We are, however, unable to accept this submission as correct. It is common ground that the appellant has been appointed in a regular manner through the Public Service Commission and his appointment cannot by any stretch of imagination be made to fill a "purely stop-gap or fortuitous" vacuum. As noticed earlier, the Government of India has accepted the position that an allotted employee should not suffer any disadvantage if he would not have been subjected to a like handicap in his parent State. It is clear from the position taken by the Madras Government that the appellant would have got the benefit of his continuous appointment in Madras w.e.f. May 26, 1951 (vide Ext. P-34). That being the position the submissions of the learned counsel for the respondents are of no avail. We hold that the appellant should be given the benefit of his seniority reckoning his continuous appointment and assigning the date 26th May, 1951 and substituting the same in the final list for 6th October, 1951.

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With regard to the second submission of the appellant regarding the reservation of a separate cadre for the District Magistrates and Sub-Divisional Magistrates of executive origin, we do not see any force in his contention. It is open to the State Government to constitute as many cadres as they choose according to administrative convenience and expediency. There is, therefore, no merit in the objection to the creation of a separate cadre of District Magistrates and Sub-Divisional Magistrates of executive origin. The submission of the appellant is without any force.

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A With regard to Civil Appeal No. 2630 of 1969 of P. S. Menon, Sub-Judge, Quilon, the above submissions, which we have dealt with, were also advanced in his case. For the same reasons, the appellant in this appeal will be entitled to assignment of 12th February, 1955, as the date of continuous employment of his service after allotment to the Kerala State for the purpose of his seniority. The learned counsel, however, additionally contends that he should have the benefit B of what is described as the K.L.M. Principle in the following circumstances :

One Sethu Madhavan, who is admittedly junior to the appellant, was provisionally allotted to the State of Kerala along with the appellant at the initial stage when the new State was constituted. Later on, however, Sethu Madhavan arranged a mutual transfer with a Judicial Officer from Madras who desired to take transfer to Kerala and C for that reason his provisional allotment was cancelled and he was not finally allotted to Kerala. In the final integration list Sethu Madhavan's name, therefore, does not appear.

If Sethu Madhavan had remained in Kerala, the position of the appellant in the list sight have been different, since Sethu Madhavan's D date of continuous service is 1-7-1954. But the final list will now have to be judged without taking note of Sethu Madhavan who had already left the State. It is submitted that since the final list has been prepared as on 1-11-1956, the appellant should get the benefit of his date. Since, however, Sethu Madhavan cannot be held to be in service in Kerala for the purpose of the final integrated list, the appellant is not entitled to assignment of his date.

E We may now describe what the K.L.M. Principle is. The expression 'K.L.M. Principle' which came into existence in the Travancore-Cochin State by an order dated 27th September, 1950, has been described in the following words by the High Court in the judgment :

> "The relative seniority of the Travancore and Cochin personnel in any class or grade in the common seniority list F will be determined with reference to the date of commencement of continuous service in the same or similar class or grade of posts subject, however, to the condition that the seniority of the Travancore personnel as between themselves or of the Cochin personnel as between themselves should not thereby be disturbed".

G Dealing with the point the High Court observed as follows :

> "Though the said Sethu Madhavan commenced service earlier in the State of Madras he was admittedly junior to the petitioner and therefore it will become necessary for settling the inter se seniority of the petitioner vis-a-vis Sethu Madhavan to assign to the petitioner in integrated gradation list a place above the said Sethu Madhavan. This is so H because the principle settled as early as 29th December 1956 by G.O. of that date clearly provided that in effecting integration the inter se seniority of persons in either branch that

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are integrated should not be affected. The question however cannot arise when there is no need to fix the inter se seniority of the petitioner vis-a-vis the said Sethu Madhavan"

We agree with the above observations of the High Court and reject the submission of the appellant that he is entitled to the benefit of the K.L.M. Principle on the basis of the provisional allotment of Sethu Madhavan. B

It may be mentioned that we had allowed without objection from the respondent CMP No. 9761 of 1973 and admitted the documents mentioned therein.

In the result the appeals are partly allowed. The 1st and 2nd respondents are directed to assign to the appellant, C.P Damodaran Nayar, the date May 26, 1951, by substituting the same for October 6, 1951, in the final integration list and to give him the consequential benefits to which he may be entitled by virtue of this assignment. The aforesaid respondents are also directed to assign to ;the appellant, P. S. Menon, the date February 12, 1956, in the final integration list and to give him such consequential relief as he may be entitled to in pursuance of the new assigned date. The judgment of the High Court is set aside only to the extent indicated above. The appellants are entitled to costs in this Court. Two sets only. C D

Civil Appeals Nos. 304 and 305 of 1972 are identical by the same two appellants and they stand disposed of accordingly by this judgment.

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V.P.S. *Appeals partly allowed.*