E. P. ROYAPPA

v.

STATE OF TAMIL NADU & ANR.

November 23, 1973

[A. N. RAY, C.J., D. G. PALEKAR, Y. V. CHANDRACHUD, P. N. BHAGWATI AND V. R. KRISHNA IYER, JJ.]

Constitution of India, Art. 32—*Fundamental Right—Indian Administrative Service (Pay) Rules* 1954 *r.* 9 *sub-r.* (1)—*Declaration of equivalence—Mere violation of rule does not involve infringement of fundamental right.*

Constitution of India, Arts. 14, 16—*Transfer of acting Chief Secretary to non-cadre posts in the same grade as that of Chief Secretary—Appointment and confirmation of junior in the post of Chief Secretary—Material on record must show that non cadre posts are inferior in status and responsibility.*

Indian Administrative Service (Pay) Rules, 1954—*Rule* 9 *sub-rule* (1)—*Making of declaration* sine qua non *of exercise of power under sub-rule.*

Indian Administrative Service (Cadre) Rules 1954—*Rule* 4(2)—*Scope of second proviso.*

Mala fides—*Onus—Grave imputations against holder of office with high responsibility—Court would be slow to draw inferences from incomplete facts.*

The petitioner was a member of the Indian Administrative Service in the cadre of the State of Tamil Nadu. In November, 1969, when the post of Chief Secretary to the State fell vacant the petitioner, as the best suited, was selected for the post. The draft order in regard to the appointment approved by the Chief Minister, the second respondent, stated that the petitioner "is promoted and posted as Chief Secretary *vice* [R] retiring from service with effect from the afternoon of November 13, 1969". The final order in the name of the Governor, duly authenticated, issued on the same day, stated that the petitioner "is promoted and posted to act as Chief Secretary to Government *vice* [R] who has been granted refused leave....." The petitioner was accordingly promoted as Chief Secretary. On the recommendation of the State Government that the posts of Chief Secretary and First Member of the Board of Revenue should be deemed to be in the same category and should be inter-changeable selection posts the Central Government by notification dated January 14, 1970 provided that the pay of First Member, Board of Revenue was to be the same as that of the Chief Secretary. The post of First Member Board of Revenue was thus equated to that of the Chief Secretary in rank and status. By notification dated August 31, 1970 the Government of India enhanced the pay, rank and status of the post of Chief Secretary to that of the Secretary to the Government of India and that post was raised above every other cadre post in the State including the post of First Member, Board of Revenue.

On April 17, 1971 the State Government accorded sanction to the creation of a temporary post of Deputy Chairman in the State Planning Commission in the grade of Chief Secretary for a period of one year and appointed the petitioner to that post providing that he shall be entitled to the same rank and emoluments as admissible to the post of Chief Secretary. The petitioner did not join this post and went on leave. On the petitioner's return from leave the post of Deputy Chairman was again created for a period of one year in the grade of the Chief Secretary and the petitioner was appointed to that post. Against this the petitioner made a representation that the continuance of the post of Deputy Chairman in the rank of Chief Secretary for a period of more than one year would be invalid under r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954. Next the State Government created a temporary post of officer on Special Duty for streamlining and rationalising the Sales Tax Act, "in the grade of Chief Secretary to the Government and appointed the petitioner to that post". He did not join this post too and proceeded on leave. After the petitioner was transferred from the post of Deputy Chairman Planning Commission and appointed Officer on Special Duty for revision of Sales Tax laws the State Government abolished the

A post of Deputy Chairman sanctioned under the earlier order and sanctioned the creation of a new post of Deputy Chairman "in the Grade of First Member, Board of Revenue" on a pay of Rs. 3000/- per month and appointed a First Member of the Board of Revenue to that post. Besides, on the transfer of the petitioner from the post of Chief Secretary a person who was admittedly junior to the petitioner was promoted as Chief Secretary and was confirmed in that post.

The petitioner filed a petition under Art. 32 of the Constitution challenging the validity of his transfer from the post of Chief Secretary, first to the post of B Deputy Chairman State Planning Commission and then to the post of officer on Special Duty, on the following grounds : *viz.* (i) it was contrary to the proviso to r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 and r. 9[sub-r.(1)] of the Indian Administrative Service (Pay) Rules 1954; (ii) it was violative of Arts. 14 and 16 of the Constitution as the posts of Deputy Chairman, State Planning Commission and Officer on Special Duty were inferior in rank and status to that of Chief Secretary; and (iii) that it was made in *malafide* exercise of power, not on account of exigencies of administration or public service, but be- C cause the second respondent was annoyed with the petitioner on account of various incidents referred to in the petition and wanted him out of the way.

Dismissing the petition,

HELD : *Per* Chandrachud, Bhagwati and Krishna Iyer, JJ : (i) The promotion of the petitioner as Chief Secretary was only in an acting or officiating capacity and not in a substantive capacity. The draft order does not say whether the promotion is in a substantive capacity or in an officiating capacity. It is the D authenticated order which says for the first time clearly and definitely by using the words "to act" that the promotion is in an officiating capacity. The authenticated order, in so far as it uses the words "to act" does no more than speak on a matter on which the draft order was silent. The authenticated order correctly reflects the final decision of the State Government. There is, thus, no inconsistency between the draft order and authenticated order from which any error can be spelt out in the authenticated order. [378H-379E]

The respondents are not correct in contending that the authenticated order was the final order and it was not open to the petitioner to say that it did not E correctly reflect the order as made by the State Government. It is now well settled law that when an order is authenticated the only challenge that is excluded by the authentication is that it is not an order made by the Governor. The validity of such an order can be questioned on other grounds. [378A-C]

King Emperor v. *Shivnath Banerjee*, 72 I.A. 241 and *State of Bihar* v. *Sonabati*, [1961] 1 S.C.R. 746, referred to.

(ii) The second proviso to r. 4(2) of the Indian Administrative Service F (Cadre) Rules has no application. The proviso merely confers limited authority on the State Government to make temporary addition to the cadre for a period not exceeding the limit therein specified. The State of Tamil Nadu could not add the posts of Deputy Chairman, State Planning Commission and Officer on Special Duty under the second proviso, as these posts did not exist in the Cadre as constituted by the Central Government. They were new categories of posts created by the State Government. [380A-E]

(iii) The making of a declaration setting out which is the cadre post to which G a non-cadre post is equivalent is *sine qua non* of the exercise of the power under sub-r. (1) of r. 9 of the Indian Administrative Service (Pay) Rules, 1954. [381C-D]

The determination of equivalence is therefore a condition precedent before a member of the Indian Administrative Service can be appointed to a non-cadre post under sub-rule (1). The government must apply its mind to the nature and responsibilities of the functions and duties attached to the non-cadre post and determine the equivalence. Where it appears to the Court that the declaration H of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or that extraneous or irrelevant factors are taken into account in determining the equivalence or that the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent

in status and responsibility, or that the decision of equivalence is *mala fide* or in colourable exercise of power or it is a mere cloak for displacing a member of the Indian Administrative Service from a cadre post which he is occupying, the court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. [382A-F] A

The order dated April 7, 1971 sanctioning the creation of temporary post of Deputy Chairman and appointing the petitioner to the post has not in it any trace of a declaration that the State Government found, on an objective assessment of the nature and responsibilities of the functions and duties attached to the post of Deputy Chairman, that it is equivalent in status and responsibility to that of Chief Secretary. Further, the post of Deputy Chairman cannot be declared equivalent in status and responsibility to the post of Chief Secretary at one time and to the post of First Member Board of Revenue at another. The nature and responsibilities of the functions and duties remaining the same the equivalence which is a matter of objective assessment, could not vary from time to time. This clearly shows that the Government did not apply its mind and objectively determine the equivalence of the post of Deputy Chairman, but, gave it a rank or grade according as who was going to be appointed to it. But the petitioner cannot now be permitted to challenge the validity of the appointment since in the letter dated June 7, 1972 addressed to the second respondent—he accepted the appointment without demur as he thought that the post of Deputy Chairman "was of the same rank and carried the same emoluments as the post of Chief Secretary". [384A-G] B C

Similarly in making the orders dated June 26, 1972 and June 27, 1972 the State Government did not apply its mind and objectively determine the equivalence of the post of Officer on Special Duty, but gave it a rank or grade according as who was the officer going to be appointed to it. There was thus no compliance with the requirement of r. 9 sub r.(1). But the petitioner cannot get relief in a petition under Art. 32 since mere violation of r. 9 sub. r. (1) does not involve infringement of any fundamental right. [385F-386B] D

(iii) The contention that the transfer of the petitioner from the post of Chief Secretary first to the post of Deputy Chairman and then to the post of Officer on Special Duty coupled with the promotion and confirmation of a person junior to the petitioner in the post of Chief Secretary was arbitrary and violative of Arts. 14 and 16, though it may seem plausible, cannot be accepted, because, there is no adequate material to sustain it. The premise on which this contention is founded is that the posts of Deputy Chairman and officer on special duty were not of the same status and responsibility as the post of Chief Secretary. It cannot be said on the material on record that the validity of this premise has been established by the petitioner. So far as the post of Deputy Chairman is concerned the petitioner himself accepted that post as being of the same status and responsibility as the post of Chief Secretary. Even though it is not possible to accept the thesis that the post of officer on special duty was equal in status and responsibility to that of the Chief Secretary, equally, it is not possible to hold it established on the material on record that this post was inferior in status and responsibility to the post of Chief Secretary, though *prima facie* it does appear to be so. The challenge based on Arts. 14 and 16 must, therefore, fail. [388C-389E] E F

(iv) (Concurring with Ray, C.J.): The burden of establishing *mala fides* is very heavy on the person who alleges it. The onus of establishing *mala fides* against the second respondent has not been discharged by the petitioner. The Court would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. [390D-F] G

Per Ray C.J. and Palekar, J:

(i) The petitioner was not appointed substantively to the post of Chief Secretary. The gazette notification prevails over the draft order. The previous incumbent in the post of Chief Secretary held his lien on the post until the date of his actual retirement. The effect of fundamental rules 86 and 13(d) as they stood prior to the commencement of the Constitution, is that an officer does not continue on duty but draws leave salary by virtue of a privilege granted to him. There is no formal extension of service. He retains lien on his post. The post H

A cannot be substantively filled till he actually retires from service. Therefore, the petitioner did not have any right to hold the post of Chief Secretary. [355A-C, G]

(ii) It is not the case of the State that the post of Deputy Chairman Planning Commission and Officer on Special Duty are cadre posts within the meaning of r. 4 of the Indian Administrative Service (Cadre) Rules 1954. The second proviso to r. 4(2) of the Cadre Rules does not confer any power on the State Government to alter the strength and composition of the Cadre. The meaning of
B the second proviso to r. 4(2) is that the State Government may add to the cadre for the period mentioned there one or more posts carrying duties and responsibilities of the like nature of a cadre post. The posts so added do not become cadre posts. [356C-G]

(iii) The real significance of Rule 9 of the Indian Administrative Service (Pay) Rules is that members of Cadre posts cannot be deployed to non-cadre posts unless posts are of a calibre which can be filled up by cadre men. The purpose of the declaration that the post is equivalent in status and responsibility
C to cadre post specified in the schedule to the Indian Administrative Service (Pay) Rules is to ensure that members of the cadre are not taken to posts beneath their status and responsibility. The declaration is not one of mere form. It is of substance. A declaration in writing is desirable. The absence of a declaration will not be an impediment in ascertaining the equivalent status and responsibility. Similarly, the presence of a declaration may not be conclusive if the declaration is a mere cloak. The facts and circumstances has to be looked into in order to find out whether there is in real substance equality in status and responsibility. [358B-F; 360H; 361C]

D The posts of Deputy Chairman Planning Commission and the Officer on Special Duty were created for cadre officers to discharge duties and responsibilities of a high order and must be counted as no less responsible than the top most cadre posts. These posts were not created all of a sudden with any oblique purpose. When the petitioner was posted to the new posts he was permitted to draw his salary as Chief Secretary and when a First Member Board of Revenue was appointed he took with him his salary as First Member. When the petitioner was to occupy the post of Deputy Chairman or Special Officer the post was
E graded to give him his old scale of pay and when the First Member was appointed to these posts he was given his old scale as First Member. That the posts of Chief Secretary and First Member were interchangeable, though the former got a higher salary, was recognised by the State Government and also endorsed by the Central Government in 1970. There was therefore no upgrading or downgrading of the posts. [361G-362-G]

The petitioner who was in the selection grade could thus be transferred to any of these two posts of Deputy Chairman Planning Commission or Officer on Special Duty which were posts not lower in status and responsibility to the cadre
F posts in Schedule III of the Indian Administrative Service (Pay) Rules 1954, and which carried the same salary as that of the Chief Secretary. The services of cadre officers are utilised in different posts of equal status and responsibility because of exigencies of administration and for employing the best available talent on the suitable post. There is no hostile discrimination in transfers from one post to another when the posts are of equal status and responsibility. [362G-363D]

(iv) (Chandrachud, Bhagwati and Krishna Iyer, JJ concurring) :

G The entire affidavit evidence establishes beyond any measure of doubt that the petitioner's allegations imputing *mala fides* against the Chief Minister are baseless. The allegations of *mala fides* are not contemporaneous but after thoughts at a distance of one year. The petitioner's allegations are in aid of suggesting vindictiveness and vengeance on the part of the Chief Minister. Facts and circumstances repel any such insinuation and innuendo. [371H-372F]

ORIGINAL JURISDICTION : Writ Petition No. 284 of 1972.

H Under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

A. K. Sen, S. J. Rana, U. N. R. Rao, V. Selvaraj and *R. R. Agarwala* for the petitioner.

S. Govind Swaminadhan, M. C. Setalvad, Ratnavel Pandian, S. Mohan, A. V. Rangam, Habibullah Basha, N. S. Sivam, D. Raju and *A. Subashini*, for respondent no. 1. A

S. V. Gupte, S. Ratnavel Pandian, S. Mohan, A. V. Rangam, D. Raju and *A. Subhashini*, for respondent no. 2.

F. S. Nariman and *M. N. Shroff*, for intervener.

The Judgment of A. N. RAY, C.J. and D. G. PALEKAR J. was delivered by RAY, C.J. A separate opinion of Y. V. CHANDRACHUD, P. N. BHAGWATI and V. R. KRISHNA IYER, JJ. was given by BHAGWATI, J. B.

RAY, C.J. The petitioner in this writ petition under Article 32 of the Constitution asks for a mandamus or any other appropriate writ, direction or order directing the respondents to withdraw and cancel the order dated 27 June, 1972. The petitioner further asks for direction to re-post the petitioner to the post of Chief Secretary in the State of Tamil Nadu. The respondents are the State of Tamil Nadu and the Chief Minister of Tamil Nadu. C.

The petitioner is a member of the Indian Administrative Service in the cadre of the State of Tamil Nadu. On 2 August, 1968 the petitioner was confirmed in the Selection Grade of the Indian Administrative Service with effect from 22 May, 1961. There were 8 Selection Grade posts in the State of Tamil Nadu. The petitioner was No. 4 in that list. The petitioner in the years 1964, 1965, 1966, 1968 and 1969 was posted to act as Fifth Member, Board of Revenue; Fourth Member, Board of Revenue; Third Member, Board of Revenue; Second Member, Board of Revenue. On 5 April, 1969 the petitioner was posted to act as Second Member, Board of Revenue. On 11 July, 1969 the petitioner was posted to act as Additional Chief Secretary. D E

On 11 July, 1969 the post of Additional Chief Secretary was temproraily created in the grade of Chief Secreatry for one year. The State Government further directed that the post of Chief Secretary to Government, Additional Chief Secretary to Government and the First Member, Board of Revenue were deemed to be in the same category and they were inter-changeable selection posts. F

On 7 August, 1969 the State of Tamil Nadu wrote to the Central Government to amend Schedule III-A of the Indian Administrative Service (Pay) Rules, 1954, so that the posts of Chief Secretary to Government, Additional Chief Secretary to Government and First Member, Board of Revenue could be of the same cadre carrying the same pay. The Government of India by a letter dated 26 September, 1969 stated that the status of Chief Secretary as the head of the Secretariat organisation in the State should remain unquestioned. The view of the Central Government was that the status of Chief Secretary should not be allowed to be diluted by the creation of the post of Additional Chief Secretary carrying the same status and emoluments as the Chief Secretary. The Central Govt. also stated that the post of Additional Chief Secretary was not a cadre post. The Central Government, however, expressed the view that the post of First Member, Board of Revenue in the State should carry pay as admissible to the Chief Secretary. G H

A On 13 November, 1969 the petitioner was posted to act as Chief Secretary to Government with effect from the afternoon of 13 November, 1969 vice C.A. Ramakrishnan whose date of superannuation was 14 November, 1969 who has been granted refused level with effect from 14 November, 1969.

B On 7 April, 1971 the petitioner was appointed Deputy Chairman of the State Planning Commission. That post was created temporarily for a period of one year in the grade of Chief Secretary to Government. The petitioner did not join the post. The petitioner went on leave from 13 April, 1971 to 5 June, 1972. When the petitioner was on leave Raja Ram, the First Member, Board of Revenue was by an order dated 18 August, 1971 asked to hold the additional charge of the post of Deputy Chairman for one year with effect from 13 August, 1971. C On 6 June, 1972 the petitioner returned from leave. He was again posted as Deputy Chairman, State Planning Commission on a salary of Rs. 3500/- per month. The petitioner did not join that post. The petitioner pointed out that the post of Deputy Chairman which was created for one year did not exist after 13 April, 1972.

D By an order dated 27 June, 1972 the Government of Tamil Nadu accorded sanction to the creation of a temporary post of Officer on Special Duty in the grade of Chief Secretary to Government for a period of one year from the date of appointment or till the need for it ceased whichever was earlier. By the same order the petitioner was transferred and appointed as Officer on Special Duty in the post sanctioned aforesaid. The petitioner did not join that post. The petitioner in E the month of July, 1972 filed this petition.

The petitioners contentions were these. First, the petitioner is appointed to a post or transferred to a post which is not validly created. The post of Officer on Special Duty is said to be not a post carrying duties and responsibilities of a like nature to cadre posts within the meaning of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954. Second, under rule 9 of the Indian Administrative Service F (Pay) Rules, 1954 no member of the Service shall be appointed to a post other than a post specified in Schedule III unless the State Government concerned in respect of posts under its control or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule. It is, therefore, said that the petitioner who is a cadre post holder, *viz.*, holding G the post of Chief Secretary cannot be posted to a non-scheduled post without a declaration that the non-scheduled post is equal in status and responsibilities to a scheduled post. Third, the petitioner is posted to an office which is inferior in status and office to that of the Chief Secretary. Therefore, the order is a hostile discrimination offending Articles 14 and 16. Fourth, the creation of the post as well as the H appointment and transfer of the petitioner to the post is malafide.

In this context it is to be ascertained as to whether the petitioner was appointed to the substantive post of Chief Secretary to the State of Tamil Nadu. The petitioner relied on draft order of the Chief

Minister dated 13 November, 1969 which stated that the petitioner "is promoted and posted as Chief Secretary". The petitioner also relied on the following note of the Chief Minister at the time of the passing of the order. There were 11 senior I.C.S./I.A.S. Officers borne on the Tamil Nadu State Cadre. The petitioner's position was No. 10 in the list of Senior I.C.S./I.A.S. Officers borne on the Tamil Nadu State Cadre. Ramakrishnan, the then Chief Secretary was No. 1 in the list. Kaiwar, Subramanyam, Mani, Govindan Nair, Vaidyanathan, Ramachandran, Raman, Raja Ram were above the petitioner in the list. Ramakrishnan and Kaiwar were retiring from service in the month of November, 1969. Subramanyam and Govindan Nair were acting as Secretaries to the Government of India. Vaidyanathan was away from the State for over 8 years and was working under the Central Government. Ramchandran and Raman also working under the Government of India since 1955 and 1959 respectively. Rajaram had left the State Cadre in 1960. In 1969 Rajaram was the Special Representative to the Government of Tamil Nadu. The choice was between Mani whose position was No. 4 and the petitioner. Mani's work was not satisfactory during the flood relief operations in 1967. There was adverse criticism on his work from the public and the press. The petitioner was commended by his superiors to be dynamic, efficient, vigorous. The petitioner was, therefore, described by the Chief Minister to be best suited for the post.

A B C D

It thus appears that the Chief Minister's note as well as the draft order stated that the petitioner was promoted and posted as Chief Secretary. But the Gazette Notification dated 13 November, 1969 was that the petitioner was "promoted and posted to act as Chief Secretary to the Government vice C. A. Ramakrishnan, who has been granted refused leave with effect from 14 November, 1969". The Gazette notification prevails over the draft order.

E

The substantive appointment of the petitioner was in the selection grade of Rs. 1800-2000. The petitioner was appointed on 13 November, 1969 to act as Chief Secretary. It was a temporary appointment. He was not appointed substantively to the post of Chief Secretary. The fact that the petitioner was not appointed substantively to the post of Chief Secretary will appear from the note signed by the petitioner himself on 16 November, 1970. When Ramakrishnan went on refused leave for four months from 14 November, 1969 there was no substantive vacancy in the post of Chief Secretary. The petitioner in his note dated 16 November, 1970 stated that the post of Chief Secretary fell vacant substantively from 14 March, 1970 and was available for confirmation of an officer. The petitioner signed the note as acting Chief Secretary. The note was put up as to whether there was any objection in confirming the petitioner as Chief Secretary. No order was passed on that note.

F G

Under Fundamental Rule 56(f) a member of the Indian Civil Service shall retire after 35 years' service counted from the date of his arrival in India. Ramakrishnan completed 35 years' service on 14

H

A November, 1969. When the petitioner was posted on 14 November, 1969 to act as Chief Secretary, Ramakrishnan went on what is described as refused leave for four months. Under Fundamental Rule 86 clause (c) the grant of refused leave extending beyond the date on which a Government servant must compulsorily retire or beyond the date upto which a Government servant has been permitted to remain in service, shall not be construed as an extension of service. B Fundamental Rule 13(d) provides that a Government servant ceases to retain lien on a permanent post while he is on refused leave granted after the date of compulsory retirement under Fundamental Rule 56 or corresponding other Rules. The effect of refused leave under the Fundamental Rules is that there is no extension of service by the period of that leave. Again, during the period of refused leave there is no earning of pension. C Counsel for the petitioner relied on Fundamental Rules 56(f) and 86(c) and contended that the post of Chief Secretary fell vacant as Ramakrishnan did not hold a lien on his post.

It was contended that the petitioner was appointed in an officiating capacity to the post of Chief Secretary and reliance was placed on Fundamental Rule 9(19). Under that Rule a Government servant officiates in a post when he perform the duties of a post on which D another person holds a lien or the Government may, if it thinks fit, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien.

Ramakrishnan, who was on refused leave being a member of the Indian Civil Service, was entitled under Article 314 of the Constitution to conditions of service as respects remuneration, leave and E pension to which members of the Civil Service were entitled immediately before the commencement of the Constitution. Fundamental Rule 13(d) as it stood prior to the commencement of the Constitution provided for the retention of lien on a permanent post while on leave without making any exception with regard to refused leave. Fundamental Rule 86 as it stood prior to the commencement of the Constitution did not contain any provision to the effect that the grant of refused F leave would not amount to extension of service. The Government of India, Finance Department Notification No. 520-CSR dated 31 May, 1922 contained the Government decision that the grant of leave under Fundamental Rule 86 automatically carried with it the extension required and no formal sanction to the extension was necessary. The effect of Fundamental Rules 86 and 13(d) as they stood prior to the commencement of the Constitution is that an Officer does not continue G on duty but draws leave salary by virtue of a privilege granted to him. There is no formal extension of service. He retains lien on his post. The post cannot be substantively filled till he actually retires from service.

The Fundamental Rules of the Madras Government corrected upto 30 June, 1966 issued by the Finance Department, 2nd Ed. 1966 H at pages 133-134 contain a note appended to Fundamental Rule 56 of Tamil Nadu State Government. In that note an exception in respect of Indian Civil Service Officers is created by providing that in the case of an Officer of the former Secretary of State Service the grant

of such leave shall be treated as sanctioning an extension of service upto the date on which the leave expires. Therefore, Ramakrishnan held lien on his post until 14 March, 1970. A

The petitioner in the note for circulation dated 14/16 November, 1970 prepared by the Joint Secretary, Public Department, noted that the date of retirement of Ramakrishnan would take effect from the date of expiry of the refused leave, namely, 14 March, 1970. That is why the petitioner asked to be confirmed as Chief Secretary with effect from 14 March, 1970. The petitioner was, however, not confirmed in the post. Therefore, the petitioner was not substantively appointed to the post of Chief Secretary. The petitioner's substantive appointment was in the selection grade of Rs. 1800-2000. The petitioner during the period of refused leave of Ramakrishnan acted as Chief Secretary by way of a temporary arrangement. The petitioner did not have any right to hold the post of Chief Secretary. B C

It was contended that neither the post of Deputy Chairman, Planning Commission nor the post of Officer on Special Duty was a cadre post within the meaning of Rule 4 of the Indian Administrative Service (Cadre) Rules, 1954. The Additional Solicitor General as well as the Advocate General of the State did not contend that either of the posts was a cadre post within the meaning of the Indian Administrative Service (Cadre) Rules. The strength and composition of the cadre as contemplated by Rule 4 of the Indian Administrative Service (Cadre) Rules is to be determined by the Central Government in consultation with the State Government. The relevant provision is sub-rule (2) of Rule 4. It states that the Central Government shall at the interval of every three years re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations as it deems fit. There are two provisos in the sub-rule. The first proviso states that nothing shall be deemed to affect the power of the Central Government to alter the strength and composition of the cadre at any other time. The second proviso states that the State Government may add for a period not exceeding one year and with the approval of Central Government for a further period not exceeding two years, to a State or joint cadre one or more posts carrying duties and responsibilities of a like nature of cadre posts. It, therefore, follows that the strength and composition of the cadre shall be determined by regulations made by the Central Government in consultation with the State Government. The State Government alone cannot alter the strength and composition of the cadre. D E F G

The aforementioned second proviso to Rule 4(2) of the Cadre Rules does not confer any power on the State Government to alter the strength and composition of the cadre. If such power were conferred on the State examination of the strength and composition at the interval of every three years by the Central Government in consultation with the State Government would be nullified. The meaning of the second proviso to rule 4(2) is that the State Government may add for a period mentioned there to the cadre one or more posts H

A carrying duties and responsibilities of the like nature of a cadre post. The posts so added do not become cadre posts. These temporary posts do not increase the strength of the Cadre. The addition of the post of Deputy Chairman, Planning Commission or Officer on Special Duty to the Indian Administrative Service Cadre of Tamil Nadu State is not permissible because that would result in altering the strength B and composition of the Cadre. The State has no such power within the second proviso to rule 4(2) of the Cadre Rules.

Counsel for the petitioner contended that the post of Deputy Chairman, Planning Commission as well as the post of Officer on Special Duty was not equivalent in status and responsibility to the post of Chief Secretary to Government within the meaning of Rule 9(1) C of the Indian Administrative Service (Pay) Rules, 1954. The petitioner alleged that both the posts were upgraded or downgraded depending upon the persons to occupy them and therefore the posts were not equivalent in status and responsibility to the post of the Chief Secretary. When the petitioner was appointed to the post of Deputy Chairman, Planning Commission it was upgraded. When Rajaram was appointed to hold an additional charge of Deputy D Chairman in addition to the post of First Member, Board of Revenue it was downgraded. When the petitioner was appointed to occupy the post the post was said to be equivalent to that of Chief Secretary. When Rajaram was appointed it was downgraded to the level of the First Member, Board of Revenue. The post of Deputy Chairman, Planning Commission was created for one year in the month of April, 1971. On 26 June, 1972 the State created a new post of Special E Officer for Commercial Taxes which was stated to be of the rank of Member, Board of Revenue. On 27 June, 1972 the petitioner was appointed to that post in the grade of Chief Secretary for a period of one year or till the need of the post ceased whichever was earlier. The petitioner alleged that on 26 June, 1972 when the post of Special Officer for Commercial Taxes was created it was supposed to be of the rank of a Member, Board of Revenue but on 27 June, 1972 the F post was upgraded and regarded as of the grade of Chief Secretary.

When the petitioner did not take charge as Deputy Chairman of the Planning Commission on 7 April, 1971, the Government directed Rajaram, the senior most officer in the State who was the First, Member, Board of Revenue to hold additional charge. Again when the petitioner did not join on 6 June, 1972 as Deputy Chairman of the Plan- G ning Commission, it was decided to post Rajaram in his place. Rajaram was drawing only a salary of Rs. 3000/- per month. The post of Deputy Chairman was to be filled either by the petitioner or by Rajaram. The post was not inferior. The Planning Commission is an advisory body to the Government like the Planning Commission at the Centre. The Chief Minister is the Chairman of the Planning Commission. The petitioner was drawing a salary of Rs. 3500/- H per month when he acted as Chief Secretary. Therefore, the post of Deputy Chairman, Planning Commission carried a pay of Rs. 3500/- per month when the petitioner was appointed as Deputy Chairman of the Planning Commission. The upgrading and the downgrading of the

post of Deputy Chairman, Planning Commission alleged by the petitioner is not correct. The post was not upgraded or downgraded. The incumbent of the post carried a higher or a lower salary according to the salary enjoyed by the incumbent at the time of the appointment.

Broadly stated, the petitioner's contentions about the two posts of Deputy Chairman, Planning Commission and the Officer on Special Duty were first that there was no declaration in accordance with Rule 9 of the Indian Administrative Service (Pay) Rules that the posts were equivalent in status and responsibility to a post specified in the Schedule to the aforesaid Rules; and, secondly, that the functions and responsibilities of the two posts were such that no comparison could be made between those posts and the posts in the Schedule.

Rule 9 speaks of a declaration that the post is equivalent in status and responsibility to a post specified in Schedule III to those Rules. Sub-rule (4) of rule 9 states that where equation of posts is not possible the State Government or the Central Government may, for sufficient reasons to be recorded in writing appoint a member of a service to such a post without making a declaration. It is, therefore, said on behalf of the petitioner that a declaration in writing is necessary where a post is declared to be equivalent in status and responsibility just as reasons are to be recorded in writing where it is not possible to have a post equivalent in status and responsibility. In other words it is said that in one case it is a declaration in positive terms that the post is equivalent in status and responsibility and in the other case the declaration is negative in content that though the post is not equivalent in status and responsibility yet a cadre officer of the Service is appointed to such a post. It is not in dispute that the posts of Deputy Chairman, Planning Commission and the Officer on Special Duty carried the same pay as that of the Chief Secretary. It cannot be said that equal pay will by itself alone be decisive of the equation of status and responsibility of the post. But pay scale will primarily show status and responsibilities of equal nature.

The Chairman of the Planning Commission is the Chief Minister. The Planning Commission is a high powered Commission. The position of the Deputy Chairman is equal in status and responsibility to the duties of the Chief Secretary. The real significance of aforementioned Rule 9 is that Members of Cadre posts cannot be deployed to non-cadre posts unless posts are of a calibre which can be filled up by Cadre men.

It also appears that the State since the year 1970 had been contemplating the setting up of a Planning Commission. In the month of March, 1970 the Finance Department prepared a note that a Planning Commission was necessary in industrial project, power project and irrigation. A properly organised plan for a region is to be an adjustment of the continuing rate of growth of economic product and a plan of continuing investments. A plan of long term development is necessary. Such a plan would spell out the various resources which can be utilised and the manner in which the fuller life can be attained by the people. The Finance Department of the State in 1970 advocated en-

A gagement of a group of qualified economists to work in collaboration with the Institute of Economic Growth, New Delhi. The State wanted to set up an Institute of Economic Planning, to work with the advice of the National Council of Applied Economic Research. A separate department of planning was suggested by the State. The reason was to have the advice of experts with knowledge in the specialised field.

B The petitioner as the Chief Secretary on 23 March, 1970 did not accept the advice of the Finance Secretary of the State. He was against the proposal to entrust formulation of plan to a body of experts. The petitioner advised utilising the services of senior officers of Government department and enlisting the services of experts in any particular sphere of activity or project, if found necessary. The Chief Minister C on 25 December, 1970 recorded a note that a 10-year plan was necessary. The State Planning Commission was set up in the month of April, 1971. The Planning Commission was to consist of Chairman, Deputy Chairman, Members, Secretary and Deputy Secretary. The Chief Minister was to be the Chairman. A full time officer in the grade of Chief Secretary was to be the Deputy Chairman. The Planning Commission was to achieve the declared objectives of the Govern- D ment to promote a rapid rise in the standard of living of the people. The other objects were to see that the ownership and control of the material resources of the community are so distributed as to sub-serve the common good. The character and content of the Planning Commission shows that the Chairman being the Chief Minister the Deputy Chairman was equal in status and responsibility to the post of the Chief Secretary.

E The State Government in the year 1969 sanctioned the constitution of a statistical cell for preparing scientifically processed data of production and the source of production of various commodities liable to sales tax. A scientific analysis was also made of the pattern of trade and revenue accruing from different sections of the trade. In the month of August, 1970 the Government examined the suggestion F of the Commissioner, Commercial Taxes to constitute an expert committee to look into the various aspects of sales tax. In the month of October, 1970 the Chief Minister indicated that a committee might be constituted for going into the working of the sales tax law and to suggest methods for simplification of the legislative measures. In the month of April, 1971 the Chief Minister reviewed the important aspects of administration of Commercial Taxes Department. There were per- G sistent demands from one section of the trade for single point levy. There were also demands from the other section for changing the existing single point items to multi point levy of sales tax. The idea of appointing a committee was still engaging the attention of the Government. A note was prepared by the Revenue Department with regard to constitution of a committee to undertake a comprehensive study of the sales tax structure in the State. Eventually the Government in the H month of June, 1972 decided to appoint a senior Indian Administrative Service officer for "Streamlining and relationalising" the structure of Tamil Nadu General Sales Tax Act and similar enactments relating to Commercial Taxes and Rules made thereunder.

The State General Sales Tax and other Commercial Taxes for long contributed the preponderant share towards the revenue receipts of the State. Sales Tax played a significant role in the context of development programme of the State. These taxes fetched Rs. 112 crores in 1971-72. The General Sales Tax Act was enacted in 1959. In order to meet the situations arising from changing patterns of trade and commerce, the interpretations of the Act by courts of law, the discovery of loop-holes in the statutory frame-work, the Sales Tax Act has been amended from time to time. The Chambers of Commerce represented to the Government for simplification and rationalisation of the tax structure and statutory procedures and practices. It is in this context that the State Government created the post of Officer on Special Duty.

The Officer on Special Duty was entrusted to deal with these matters. First, there is to be general review of the commercial Taxes Acts from the point of view of the rate of growth of revenue in relation to the rate of growth of income and the rate of growth of commerce and industry. Second, the Sales Tax Act, the Entertainment Tax Act, the Local Authorities Finance Act, the Motor Spirit Taxation Act, the Betting Tax Act being all State Acts and the Central Sales Act could be rationalised and simplified so as to facilitate easy administration and also to reduce hardship to the trading community. Third, the present classification of commodities taxed at single point and multi point is to be studied in order to find out as to what extent there is a case for transfer of commodities from multi point to single point and *vice versa*. Fourth, it is to be found out whether there is any need and justification for the continuance of the concessional rate of taxation under the General Sales Tax Act on components coming under single point levy, and, if so, whether there is a case for extending the same concession to all raw materials. Fifth, measures are to be found to improve the procedure of inspection, search and seizure in order to make them more effective and at the same time to minimise the apprehension of harassment on the part of the trading community. Sixth, measures are to be taken to make the check post more effective and arrangements for the collation and interpretation of data collected at the check posts and the cross verification of such data with assessment records are also to be made. Seventh, measures to ensure regular and systematic flow of vital data such as tax yield from various commodities and changes in trade practices affecting tax yield to the Board of Revenue (Commercial Taxes) are to be devised and arrangements are to be made for their collation and interpretation to facilitate tax policy.

These are some of the principal duties and responsibilities of the Officer on Special Duty. These duties indicate in no uncertain terms that the post of Officer on Special Duty is of enormous magnitude and importance in formulation and shaping of the revenue structure of the State. The duties and responsibilities of the Officer on Special Duty are beyond any measure of doubt equal in status and responsibility to those of the Chief Secretary.

It was contended on behalf of the petitioner that there should be a declaration in writing. The purpose of the declaration that the post is

A equivalent in status and responsibility to Cadre post specified in the Schedule to the Indian Administrative Service (Pay) Rules is to ensure that members of the Cadre are not taken to posts beneath their status and responsibility. These measures are intended to preserve respectability and responsibility of the Cadre officers. The declaration is not one of mere form. It is of substance. A declaration in B writing is desirable. The absence of a declaration will not be an impediment in ascertaining the equivalent status and responsibility. Similarly the presence of a declaration may not be conclusive if the declaration is a mere cloak. The facts and circumstances will be looked into in order to find out whether there is in real substance equality in status and responsibility.

C Fundamental Rule 15 provides that no Government servant can be transferred substantively to or appointed to officiate in a post carrying less pay than the pay of the permanent post on which holds a lien or would hold a lien had his lien not been suspended under rule 14. The position of the petitioner was that he was holding a lien in the selection grade post. It was open to the Government to transfer him to a post or to appoint him to officiate in a post carrying pay not less than D what he was entitled to in the selection grade of Rs. 1800-2000. However, the petitioner was appointed to the post of Deputy Chairman, Planning Commission on 6 April, 1971 carrying a salary of Rs. 3,500 per month. The petitioner went on leave from 13 April, 1971 to 5 June 1972. On 6 June, 1972 when the petitioner returned from leave he was again posted as Deputy Chairman of the State Planning Commission. The post carried a salary of Rs. 3,500/- per month which is the same E as that of the Chief Secretary. The petitioner made a representation on 17 June 1972 that the post of Deputy Chairman in the rank of Chief Secretary could not continue for a period of more than one year since April, 1971. The Government on 26 June, 1972 sanctioned the creation of a temporary post of Officer on Special Duty. On 27 June, 1972 the petitioner was promoted to the post of Officer on Special Duty. The F post of Officer on Special Duty also carried the same salary as that of the Chief Secretary. Therefore, the petitioner who was in the selection grade could be transferred to any of these two posts of Deputy Chairman, Planning Commission or Officer on Special Duty which were posts not lower in status and responsibility to the Cadre posts in Schedule III of the Indian Administrative Service (Pay) Rules, 1954 and which carried the same salary as that of the Chief Secretary.

G

The posts of the Deputy Chairman, Planning Commission and the Officer on Special Duty were created for cadre officers to discharge duties and responsibilities of a high order. These posts were not created all of a sudden with any oblique purpose. The Planning Commission had been in contemplation for some time. Similarly, the post of Officer on Special Duty was created after consideration and H evaluation of serious problems of State Revenue. Each one of the posts carried specific functions and responsibilities. Comparisons between functions, duties and responsibilities of posts at the apex of different departments are not always possible. The status of the

post would also depend on the incumbent, because a brilliant officer can so augment the opportunities of public service in that post that others may covet it. The posts were created under the inherent executive powers of the State Government. These posts were not additions to posts specified in the Cadre Schedule of the Indian Atministrative Service (Cadre) Rules, 1954. These were posts outside the cadre. A

On an objective consideration we find that the two posts were created for discharging functions requiring very high calibre and specialized experience and must be counted as no less responsible than the topmost cadre posts. Finding suitable officers for such specialized jobs is always a difficult problem for the administration. The Cadres do not always overflow with superabundance of specialized experience. The choice, therefore, becomes limited. The Administration has also to take into account the willingness or otherwise of an officer to take up a new job which may not invest him with wide executive powers which he wields, while holding even less important posts. The choice in the present case fell on the petitioner when the post of the Deputy Chairman was created and then again when the post Special Officer was created. He was given the pay scale of the Chief Secretary, because that was the scale of pay he was drawing when he was appointed to these posts. The fact that on his refusal to join the posts, some body else was appointed on Rs. 3000/- does not devalue the job. The job remains the same. The question for the administration is to choose the man for the job, and it is only to be expected that whosoever is chosen will take with him his pay unless Government thinks of paying him more. When the petitioner was posted to the new posts he was permitted to draw his salary as the Chief Secretary and when Rajaram the First Member of the Board of Revenue was appointed, he took with him his salary as the First Member. When the petitioner was to occupy the post of Deputy Chairman or Special Officer the post was graded to give him his old scale of pay and when Rajaram was appointed to these posts, he was given his old scale as First Member. That the posts of Chief Secretary and First Member were interchangeable, though the former got a higher salary, was recognized by the State Government and also endorsed by the Central Government long back in January, 1970. There was, therefore no upgrading or downgrading of the post. B C D E F

The petitioner had worked as Deputy Commissioner of Commercial Taxes and subsequently as Secretary to Government, Revenue Department dealing with Commercial Taxes also. The petitioner was also Commissioner, Board of Revenue in charge of commercial taxes. In view of the wide experience of the petitioner in the field of commercial taxes the Government decided to post him as Officer on Special Duty. This was neither unjust nor unfair nor malafide. There was no reduction in rank. The petitioner's status as well as pay was in conformity with the Rules. G

The petitioner could not claim that till retirement he must continue to act in the post of the Chief Secretary. The orders of transfer were passed in the administrative exigencies. H

A The members of Indian Administrative Service and particularly those who are in the high posts are described as the steel framework of the Administration. The smooth and sound administration of the country depends in the sense of security and stabiilty of the officers. These officers should not be made to feel that their position or posts are precarious with the change of Government. Their service must be completely free from the fear or threat of arbitrary act of the author-
B ties. Similarly, the members of the Service should keep themselves isolated from turmoils of political parties. It is this sense of disinterestedness and detached devotion to duty which has to be recognised and rewarded.

The posts of Deputy Chairman, Planning Commission and Officer on Special Duty are equal in status and responsibility. The services
C of cadre officers are utilised in different posts of equal status and responsibility because of exigencies of administration and employing the best available talent in the suitable post. There is no hostile discrimination in transfer from one post to another when the posts are of equal status and responsibility.

The petitioner alleged that the creation of the posts of Deputy
D Chairman, Planning Commission and Officer on Special Duty as well as the appointment of the petitioner to the posts was malafide. Broadly stated, the petitioner's allegations were that the Chief Minister acted malafide in removing the petitioner from the post of Chief Secretary The petitioner alleged that in the discharge of his duty he was fearless and he suggested action against persons who were friendly to the Chief Minister. It is said that the Chief Minister therefore
E wreaked his vengeance on the petitioner.

One of the instances alleged by the petitioner which gave rise to the anger of the Chief Minister relates to irregularities in the accounts of Tanjavur Cooperative Marketing Federation. V. S. Thiagaraja Mudaliar was the head of the Federation. Mudaliar was a powerful and influential person. He was a close associate of the Chief Minis-
F ter. The petitioner put up a note to the Chief Minister that the case should be handed over to the police and the persons responsible should be hauled up. The petitioner alleged that the Minister for Co-operation called the petitioner and asked him to modify the note. The modification suggested was to leave out any reference to Mudaliar and to omit the suggestion for handing over the matter to the police.

Another allegation concerning Mudaliar is that he was flouting
G orders of the Government and health authorities and allowing effluents from the distillery at Tirucharapalli without proper treatment into the river and thereby causing hazards. The petitioner wrote a note asking for deterrent action and launching prosecution against Mudaliar. The petitioner alleged that the Chief Minister expressed his annoyance.

H The Minister for Co-operation denied that he asked the petitioner to modify any note. The Chief Minister denied that he ever asked for any modification in the note. The Chief Minister further alleges in the affidavit that there is no note written by the petitioner suggesting

the launching of prosecution against Mudaliar. Both the Chief Minister and the Minister for Co-operation state in their affidavits that action has been taken and is being pursued against all the persons concerned relating to the affairs of the Federation. The petitioners' suggestion was accepted. There is no occasion for vindictiveness. A

The petitioner's allegation that the Chief Minister expressed annoyance at the petitioner's note against Mudaliar for causing hazards by discharge of effluent from the distillery is belied by the action taken by the Government. The petitioner in his note suggested a joint inspection and satisfactory arrangement for treatment of the effluent in accordance with the recommendation of the Water and Sewage Advisory Committee. The petitioner's proposal was accepted. The petitioner also recommended implementation of a plant scheme on pain of cancellation of licence. Industrial alcohol is manufactured in the distillery. This product is required by the cordite factory of the Defence Department, and for pharmaceutical, medicinal and industrial products. The petitioner's recommendation to close the distillery would not only have created unemployment of a large section but also loss of important products. The way the affairs of the distillery were handled according to the suggestion and recommendation of the petitioner does not disclose any evidence of malafide on the part of the Government. B C D

The third instance of malafide alleged by the petitioner was that the Chief Minister did not like the suggestion of the petitioner that Vaithialingam, the Private Secretary to the Chief Minister should be transferred. The Chief Minister is also alleged to have said that the Chief Secretary should be transferred but not the Private Secretary. The Chief Minister denied that he ever made any statement that the Chief Secretary should be transferred. E

It is also alleged that the Chief Minister wanted to prefer Vaithialingam in the preparation of the seniority list of the Indian Administrative Service. The petitioner alleged that he declined to oblige. Therefore, it is said that the petitioner suffered by the malafides of the Chief Minister. There were disputes between direct recruits and promotees in regard to fixation of seniority. The Chief Minister on the advice of the petitioner passed an order on 22nd Dec., 1969 that the Government could finalise the seniority list after considering the representations of the members. The petitioner thereafter submitted a file to the Chief Minister that direct recruit Assistant Engineers of the Public Works Department also made requests for revision of seniority as between them and the promotee Engineers. The Chief Minister under these circumstances cancelled his order dated 22 December, 1969. Subsequent to the cancellation of the order direct recruit Deputy Collectors filed writ petitions in the High Court claiming revision of seniority on the basis of Government order dated 22nd December, 1969. Those petitions are pending disposal in the High Court of Madras. F G

The petitioner also alleges that the Chief Minister refused to allow Deputy Collectors in the select list to act in the Indian Administrative Service posts and many retired at the age of 55 without acting as I.A.S. H

A Officers. The petitioner alleges that the Chief Minister thought that Vaithialingam would thereby gain seniority in the inter se seniority list of Deputy Collectors because the age of superannuation of I.A.S. Officers is 58. The respondents in their affidavits stated that the I.A.S Selection Committee could not meet for the years 1968, 1969 and 1970 for various reasons. The petitioner in a note suggested that the inclusion of name in the Select List did not confer any right of B promotion. The Chief Minister agreed with the petitioner.

These facts in relation to Vaithialingam indicate that the petitioner was not only a party to all the decisions but also he was responsible for the decisions taken by the Government. There is no ground whatever for attributing bad faith or improper motive to the Government against the petitioner.

C

The petitioner alleged other instances which gave rise to the wrath of the Chief Minister against the petitioner. There was land acquisition at Manali for Madras Refineries. Large compensation was paid to the owner Ramkrishnan. The petitioner caused the suspension of the District Revenue Officer and other Officers for suppressing the note D that the Law Department had strongly opposed the proposal to award large compensation. The affidavit evidence of the respondents is that the awards were passed by the land acquisition authorities. The Law Department was of the view that land acquisition officers did not Department advised disciplinary action against the officers. The Law Department recommended that the awards should be set aside. The Chief Minister, the Minister of Law both directed that suitable action E should be taken. The file was sent to the petitioner for further action. The petitioner asked for suspension of the Officers. The Government approved the suspension because of the clear instructions of the Government. Disciplinary proceedings are pending against these officers. It is obvious that the petitioner's allegations of *malafide* against the Chief Minister are totally repelled by the correct facts.

F The petitioner alleged that the Chief Minister expressed the view that the Government could not tolerate the Chief Secretary who dared to oppose the proposal relating to Anna Samadhi. It is alleged as follows. The D.M.K. Party decided to erect a Samadhi called Anna Samadhi. The Chief Minister wanted to appoint a committee for management and maintenance of the Samadhi. The Chief Minister G wanted to issue an Ordinance in that behalf. The petitioner opposed the promulgation of the Ordinance. The idea of the Ordinance was dropped. It is said that thereafter a private trust was created for administering the Samadhi. The trustees requested the Government to hand over the Samadhi to the trust. The petitioner opposed the proposal on the ground that the portion of the land belonged to the Municipal Corporation and the land together with the Samadhi cost H the Government and the Corporation over Rs. 40 lakhs. The petitioner's allegations are all baseless. The Public Works Department examined the proposal to hand over the Samadhi to the private trust. The file was marked to the Chief Minister. The petitioner merely

noted "Chief Minister may decide". The petitioner did not oppose the proposal. This fact also indicates that the Chief Minister did not bear any grudge against the petitioner. A

The petitioner alleges that an extra-ordinary procedure was followed in connection with the tender for the Veeranam Water Supply Scheme to the city of Madras. One Satyanarayana submitted the tender. The amount involved was Rs. 20 crores. The Government agreed to pay an advance of Rs. 90 lakhs as loan to the contractor for buying machinery. The petitioner did not approve the proposal. The petitioner said that a considerable time would be required to scrutinise the tender for such a large amount. The petitioner returned the file without scrutiny because the Minister for Works wanted it. This annoyed the Chief Minister. On the other hand Government alleges that eight firms submitted tenders for the Veeranam project. The tender of Satyanarayana Brothers was the lowest. They were a local company with wide experience in civil works and defence works. The Chief Secretary received the file on 27 April 1970. Orders were to be issued urgently. The file was obtained by the Additional Chief Secretary from the Chief Secretary's office. It was then ordered by the Minister for Works after discussion with the Chief Minister that the lowest tender of Satyanarayana might be accepted. Orders were issued on 7 May 1970 accepting the tender of Satyanarayana Brothers. The petitioner's alleged note that he wanted time to scrutinise the file is not found in the file. An expert team recommended the acceptance of the tender of Satyanarayana Brothers. It thus appears that the petitioner saw the file on 11 May 1970 after the tender had been accepted on 7 May 1970. The petitioner did not raise any objection to the procedure which was adopted. When the matter came for final orders on 13 July 1970 the petitioner did not record any objection. This is yet another instance which establishes that the petitioner made reckless allegations imputing *mala fides* to the Chief Minister. B C D E

The other allegation of the petitioner concerns the Cooum River Project. The allegation is that the petitioner pressed for an investigation of the Cooum River Project. The Chief Minister issued orders for an enquiry. Later on the Chief Minister cancelled the order. The Chief Minister directed the Director of Vigilance to look into certain rumours about mal-practices in the execution of the Cooum Improvement Scheme. The Director of Vigilance informed the petitioner and requested him to accord sanction to enable the Director to embark upon such an enquiry. The relevant section put up before the petitioner a draft letter authorising the Director to embark on an enquiry. It is discovered that no action was taken by the petitioner. The letter of the Director dated 25 February 1970 addressed to the petitioner indicates that the Director asked for authorisation to make an enquiry. The file indicates that the petitioner on 26 February 1970 submitted a note for Public (Secret Confidential) Department for perusal. The Public (Secret Confidential) Department received the file on 20 September 1970. There are minutes of the Chief Minister ordering the enquiry. The file was put up before the petitioner on 21 September 1970. The file was not received back. On 31 July 1971 the Chief F G H

A Secretary asked the petitioner to send back the file. The petitioner on 8 August, 1971 said that the file was not with him These are indeed strange things. It is baseless to allege *mala fides* against the Chief Minister.

The brunt of the petitioner's allegations against the Chief Minister centres on the mid-term poll in the month of February, 1971. The B petitioner's allegations are these. In or about the end of January, 1971, the D.M.K. Party of which Ramaswami Naicker is the leader took out an anti-religious procession at Salem. It is alleged that the procession hurt the feelings of devout Hindus. One Ramaswami, popularly known as "Cho" who is the Editor of a magazine called "Tughlak" took photographs of the procession. The D.M.K. Party obtained information that Cho was likely to publish the photographs. The C D.M.K. Party thought that in view of the impending elections the publication of the photographs would affect their prospects at the election. The petitioner received a trunk call from the Law Minister who asked him to take action to prohibit publication of the photographs. The petitioner said that the Government had no power to prevent the publication.

D The Chief Minister shouted on the telephone that the Deputy Superintendent of Police should be suspended and action should be taken against the magazine. The petitioner discussed the matter with the Inspector General of Police who said that it would be most unfair to suspend the Deputy Superintendent of Police, Salem. The petitioner suggested that the matter might be dropped. The Chief Minister thereupon asked the Inspector General of Police to suspend the Circle E Inspector of Police at Salem. The Inspector General of Police suspended the Circle Inspector and registered a case against him. When the Chief Minister returned from his camp, he took the petitioner to task for registering a case against Naicker.

The Chief Minister in his affidavit states that he told the petitioner that action should be taken against the persons who had broken the F law. He denies that he took the petitioner to task for registering a case against Naicker. He denies that he shouted at the petitioner and ordered the Inspector General of Police to suspend any police officer.

The other allegations by the petitioner are these. On 28 February, 1971 the petitioner received a telephone message from the Deputy Inspector General of Police about various clashes involving looting, killing, burning of houses in the village in Tireunelveli District on the G previous night. The Inspector General of Police informed the petitioner that the Minister of Co-operation was at the back of the clashes. The District Collector was not helpful in taking action against the Minister. The petitioner told the Collector that it was a serious dereliction of duty. The petitioner asked the Collector to proceed immediately to the spot to take steps to maintain law and order. The peti- H tioner also asked for a full report.

At 4 p.m. on 28 February, 1971 the Governor summoned the petitioner and the Inspector General of Police. The Governor summoned them to discuss about the deteriorating law and order situation in the

city and the Districts. The Governor made special reference to the complaints received by him about violence and intimidation particularly from Tirupattur (Ramnad), Shivai Kundam, Udumalpet, Tiruvannamalai and Saidapet constituencies from where the Chief Minister and other Cabinet Ministers were contesting the elections. The Inspector General of Police told the Governor that lorry loads of goondas armed with deadly weapons had arrived in the city of Madras. The goondas numbered about 1500. They were brought at the instance of the Chief Minister. The Governor was annoyed and shouted "how was it possible to transport 1500 goondas from nearly 300 miles by lorries without the knowledge of the police. I expect the police to do their duty. The law and order situation has deteriorated considerably throughout the State. In the Tirupattur Constituency of Ramnad District there was no semblance of law and order. I had received telegrams and complaints. Unless the Collectors and the Superintendent of Police do their duty there would be no free and fair Elections". The Governor told the petitioner "Mr. Chief Secretary, throughout your career, you have the reputation of carrying out the duties without fear or favour and without bothering about the consequences. I am sure that I could rely upon you to take special steps to arrest the deteriorating law and order situation and ensure free and fair Elections". The petitioner assured the Governor that he would take strong action.

The petitioner then discussed with the Inspector General of Police about the special steps to be taken to maintain law and order. The petitioner gave orders to the Inspector General of Police that the goondas should be arrested. The Inspector General of Police agreed to carry out the orders. Raid was carried out in the night.

The Chief Minister sent for the petitioner and shouted at him. "I am the Chief Minister. I am in charge of the Police Portfolio. How dare you order the arrest of persons in my constituency without my prior permission?" The petitioner said that he carried out his duty without favour and fear. The Chief Minister flared up and said "You had deployed Central Police every two feet at Thiagarayanagar, Mylapore, Saidapet and other places. I order you to withdraw immediately the Central Reserve Police". The petitioner said that he had asked for five battalions of Central Reserve Police for maintaining law and order situation. It was not possible to withdraw the Central Reserve Police. The Chief Minister shouted at the petitioner.

After the polling was over the police force posted in the city was moved to other polling areas. Law and order situation deteriorated considerably in the city. A lady M.L.A. belonging to the Congress Party was dragged from her car and molested. Goondas armed with sticks and weapons were at large. The Inspector General of Police discussed the matter with the petitioner. The petitioner asked them to round up all bad elements. More than 2600 bad elements were rounded up. In the absence of the Chief Minister, two Ministers phoned the Commissioner of Police to release the D.M.K. ring leaders. The Commissioner of Police in accordance with the petitioner's instructions refused to release them unless proper bail was

A offered. The Commissioner of Police informed the petitioner that the Chief Minister himself had phoned him. The Inspector General of Police reported that the D.M.K. was pressing into service goondas. He apprehended trouble as some of the Ministers were indulging in dangerous activities. The petitioner ordered the Inspector General of Police to intercept lorry-loads of goondas. The Chief Minister and the Minister of Law, when they came to know about the instructions B issued by the petitioner to the Inspector General of Police asked the petitioner to withdraw the instructions. The petitioner refused to do so.

On 4 March, 1971 a Code message was received from the Home Ministry that the Ministry had received disturbing reports about clashes between various political groups in parts of the city. Officers C were asked to be fully vigilant and take preventive measures. The petitioner discussed the matter with the Home Secretary, Inspector General of Police, Commissioner of Police and other officers and issued instructions. The instructions were that the people should not be allowed to collect within three furlongs of the counting centres. Bad elements should be rounded up 24 hours before the counting began. The Collectors and the Commissioner of Police should form D Peace Committees and request the political parties not to take out victory processions or indulge in violence. Section 41 of the City Police Act and Section 30 of the District Police Act were to be promulgated to regulate crowds.

On 6 March, 1971 the Chief Minister rang up the petitioner and asked him to be present at the Cabinet meeting along with the Inspec- E tor General of Police, the Commissioner of Police and the Home Secretary. At the Cabinet meeting the petitioner was attacked and abused by the Law Minister. The petitioner, the Inspector General of Police and the Commissioner of Police were threatened with dire consequences. The results were declared on 11 March. The D.M.K. maintained its majority.

F After the elections a meeting of all the District Collectors was fixed for 6 April, 1971, at Madras. The Chief Secretary as the Service Chief was responsible for conducting the proceedings. The Chief Minister called a Press Conference around 12 mid night at which he announced that the petitioner was appointed as Deputy Chairman of the State Planning Commission and that he would be transferred forthwith.

G It is in this background of long narration of events at the time of Election that the petitioner alleges that the Government and the Chief Minister acted malafide against the petitioner because of the stern attitude of the petitioner against the D.M.K. Party.

The Chief Secretary of the State in his affidavit states that there is no record of any one of the matters alleged by the petitioner with H regard to law and order situation on the eve and at the time of the election save and except the instructions issued by the petitioner on 4 March, 1971 with regard to promulgation of section 41 of the City Police Act and section 30 of the District Police Act; rounding up of

bad elements and probation offenders and prohibition of processions. The order passed by the petitioner was reviewed at the State Cabinet Meeting on 6 March, 1971. There were two modifications. First, the prohibition against collection of people within three furlongs of the counting centre was changed into safe distance, in place of three furlongs. The rounding up of rowdies and bad elements and probation offenders was restricted only to "listed rowdies". The Home Ministry Code message dated 4 March, 1971 about clashes between political groups was received but the Government did not attach special or particular importance to the message. The Secretary Ministry of Home Affairs sent a message on 16 March, 1971 commending the excellent arrangements made for ensuring free and fair elections. The Government, therefore, states that law and order was well maintained. The letter dated 16 March, 1971 was a circular letter sent to all the Chief Secretaries and therefore the Government states that no special credit can be claimed by the petitioner or ascribed to the petitioner's alleged instructions.

There is an affidavit by the Chief Minister that no goondas were brought by him into the city and the allegation about raid on 1 March to round up the goondas is described by the Chief Minister to be false. The Chief Minister also denies that the petitioner at any time stated that the Inspector General of Police was expecting serious clashes in Saidapet, Mylapore and Thyagaroya Nagar. The Chief Minister denies that he asked the Commissioner of Police to release the D.M.K. leaders.

The Governor of Tamil Nadu in his affidavit states that the petitioner and the Inspector General of Police met him on 28 February, 1971 at 4 p.m. at his instance to discuss the arrangements made or being made for the effective maintenance of law and order. The Governor brought to the notice of the petitioner and the Inspector General of Police that certain allegations had been made in regard to incidents of violence and intimidation. The Inspector General of Police told the Governor that the reports would be investigated. The Governor denies that he made a reference to complaints of violence or intimidation from the constituencies of Chief Minister and Cabinet Ministers. The Governor also denies that the Inspector General of Police had informed him that 1500 goondas had been rounded up. The Governor denies that he ever paid compliments to the petitioner about his reputation or carrying out his duties without favour or fear.

The Minister of Labour in his affidavit denies that he phoned up the Commissioner of Police. The Minister for Harijan Welfare to the Government of Tamil Nadu denies having telephoned the Commissioner of Police to release the arrested leaders. The Minister for Food denies that the D.M.K. employed goondas and he with other Ministers indulged in violence. He also denies that the Minister started a tirade against the petitioner, the Inspector General of Police and the Commissioner of Police.

The Inspector General of Police states that there was no deterioration in the law and order situation. He states that out of 160 complaints received throughout the State 69 were against D.M.K. 46

A against the Congress (O) and 6 against the other parties and the remaining 39 are against the Police and other non-political bodies. The Inspector General of Police denies that there was any organised violence. Kuppuswamy, the Inspector General of Prisons who held the post of Commissioner of Police at the time of the election states that the allegations made by the petitioner about tirade against the petitioner and the Inspector General of Police and the Commissioner of Police B are baseless.

The petitioner made allegations of malafides to suggest that the petitioner was an honest officer and the Chief Minister and the other Ministers did not want such an honest officer and therefore they got rid of him. The most significant feature in the allegations of malafides is that when on 7 April, 1971 the petitioner was appointed to C act as Deputy Chairman, Planning and he went on leave he did not at any stage state anywhere that the order was made malafide. The first letter where the petitioner alleged malafides is dated 7 June, 1972. The allegations of malafides are not contemporaneous but after thoughts at a distance of one year. That was when the petitioner returned from leave after one year and he was appointed to the post of Deputy Chairman, Planning Commission. Even in that letter D the only allegation about malafide is that the petitioner took strong steps about maintenance of law and order at the time of the elections in 1971 against the views of the Chief Minister and the Ministers. It, therefore, follows that until the petition was filed in the month of July, 1972 the respondents were not aware of various allegations of malafide made in the petition. Therefore, when the impugned order was made E on 26/27 June, 1972 it is manifest that the Government did not make the order out of any improper motive or any indecent haste or out of any ingenious inspiration to get rid of the petitioner. Another noticeable feature in the allegations of malafides is that the petitioner all throughout describes himself as a person who acted without any fear or favour and enjoyed the reputation of being a strict and honest officer, and, therefore, the Government contrived to remove the petitioner F from the post of Chief Secretary. Honest and fearless cadre officers are not unknown and rare as the petitioner suggests. Nor are intrepid officers in cadre posts thrown out of office because of expression of views about law and order situation. In the petition the petitioner has ascribed to the Chief Minister, the Governor and a few other Ministers certain statements having been made by them. The statements are quoted to be words of mouth of the Chief Minister or the Gover- G nor or the Ministers. The petitioner has nowhere made contemporaneous entry or record of such utterances. It is difficult to believe that the petitioner would remember identical words in long sequence and set them out with exactitude in the petition. These allegations are made in the petition for the purpose of giving semblance of truth and lending colour to chronicle.

H The affidavit evidence indicates that the petitioner carried out normal duties and exercised care and caution at the time of the election. That is expected of all officers. It is also expected that officers will maintain a balanced and firm hand in regard to law and order situation as well as administration. Civil servants are expected to advise

Ministers in the context of files and rules. The Government and Ministers are also expected to maintain a balanced and impersonal attitude in regard to advice given by civil servants. In the present case, it appears that the petitioner gave advice in course of duty. The Government practically in all cases accepted the advice of the petitioner. There does not appear any instance of acrimony or disagreement between the Government and the petitioner. There are no records to suggest that the petitioner advised one way and the Government acted in an opposite manner.

The events alleged at the time of the elections are in aid of the petitioner's contention that his dealing of the law and order situation was so firm that the Chief Minister and other members of his party became alienated. The petitioner suggested that the Chief Minister and the members of his party were responsible for introducing violence and intimidation. The further suggestion of the petitioner is that the petitioner exposed the activities of the D.M.K. Party. Complaints against the D.M.K. Party were like complaints against other political parties. The affidavit evidence indicates that the law and order situation was kept under normal control. All the officers of the State including the police service discharged their duty in the best interest of administration as also in public interest. The petitioner did not achieve anything extraordinary. As the Chief Secretary it was the duty of the petitioner to see that situation nowhere went out of control. The Chief Minister and the members of his party cannot be said on the affidavit evidence to have committed acts of violence or intimidation. The entire affidavit evidence establishes beyond any measure of doubt that the petitioner's allegations imputing malafides against the Chief Minister are baseless. The petitioner's allegations were in aid of suggesting vindictiveness and vengeance on part of the Chief Minister Facts and circumstances repel any such insinuation and innuendo.

For these reasons the contentions of the petitioner fail. The petition is dismissed. Each party will pay and bear its own costs.

JUDGMENT

BHAGWATI, J. We are in agreement with the final conclusion reached in the judgment delivered by the learned Chief Justice, but our approach and reasoning are a little different and we are, therefore, delivering separate judgment expressing our views on the various questions arising in the petition.

The petitioner is a member of the Indian Administrative Service

A in the cadre of the State of Tamil Nadu. On 2nd August, 1968, the petitioner was confirmed in the selection grade of the Indian Administrative Service with effect from 22nd May, 1961. The petitioner was successively posted to act as Fifth Member, Board of Revenue, Fourth Member, Board of Revenue, Third Member, Board of Revenue, and Second Member, Board of Revenue on 25th February, 1964, 5th August, 1965, 30th March, 1966 and 5th April, 1969. On 11th July,
B 1969 the State of Tamil Nadu passed an order sanctioning the creation of a temporary post of Additional Chief Secretary to the Government for a period of one year and directed that the posts of Chief Secretary to Government, Additional Chief Secretary to Government and First Member of the Board of Revenue should be deemed to be in the same category and should be interchangeable selection posts, and by the same order promoted and posted the petitioner to act as Additional
C Chief Secretary to Government in the newly created post. Now, according to Sh. IIIA of the Indian Administrative Service (Pay) Rules, 1954 the posts of Chief Secretary to Government and First Member, Board of Revenue carried respectively pay of Rs. 3,000/- and Rs. 2,750/-. But since the State Government had by the order dated 11th July, 1969 directed that the posts of Chief Secretary to Govern-
D ment, Additional Chief Secretary to Government and First Member, Board of Revenue should be in the same category and interchangeable it was necessary that there should be same pay for all the three posts and the State Government, therefore, by a letter dated 7th August, 1969 requested the Central Government to amend Sch. IIIA of the Indian Administrative Service (Pay) Rules, 1954, so that all the three posts could be of the same rank carrying the same pay, namely,
E Rs. 3,000/-. The Central Government by its letter in reply dated 26th September, 1969 pointed out to the State Government that the status of Chief Secretary to Government as the head of the Secretariat organisation in the State should remain unquestioned and it should not be allowed to be diluted by the creation of the post of Additional Chief Secretary carrying the same status and emoluments as the Chief Secretary and suggested that the State Government may consider adding
F the post of Additional Secretary to the cadre temporarily for one year in the pay of Rs. 2,750/- or in smaller scale, but not in the scale of Rs. 3,000/- as desired by the State Government. So far as the request of the State Government in regard to the post of First Member of the Board of Revenue was concerned, the Central Government agreed that there should be one non-secretariat post in the State Cadre carrying the same salary as that of the Chief Secretary and stated that
G they were taking steps to provide that the First Member, Board of Revenue should carry the same pay as admissible to the Chief Secretary. The Central Government accordingly issued a notification dated 14th January, 1970 in pursuance of r. 11 of the Indian Administrative Service (Pay) Rules, 1954 amending Sch. III with effect from 17th December, 1969 so as to provide that the pay of First Member, Board
H of Revenue shall be Rs. 3,000, that is, the same as that of the Chief Secretary. The post of First Member, Board of Revenue was thus equated to that of the Chief Secretary in rank and status, though the post of Additional Chief Secretary was not.

In the meantime, on 13th November, 1969, the then Chief Secretary Ramakrishnan, who was a member of the Indian Civil Service, was retiring on completion of 35 years service, and the question, therefore, arose as to who should be appointed in his place. The file in this connection was placed before the Chief Minister, who is the second respondent before us, and a list of eleven senior-most members of the Indian Civil Service and the Indian Administrative Service was submitted to him for his consideration on 30th October, 1969. The second respondent made an elaborate note on the file on 12th November, 1969 pointing out that the post of Chief Secretary is a selection post and in making selection merit should be considered and not seniority alone and the person best fitted to discharge the onerous duties of the post should be selected. The second respondent then proceeded to consider the merits of the eleven officers whose names had been placed before him and selected the petitioner for the post stating that "among the present set of senior officers—E.P. Royappa is the best suited for the post" and "he may, therefore, be promoted as Chief Secretary". This note was approved by the Governor on the same day, namely, 12th November, 1969. On the next day, that is, 13th November, 1969 the draft order in regard to the appointment of the petitioner was prepared and it was approved by the second respondent. The draft order stated *inter alia* that the petitioner "is promoted and posted as Chief Secretary *vice* Thiru Ramakrishnan, I.C.S. retiring from service with effect from the afternoon of 13th November, 1969". The final order in the name of the Governor duly authenticated by the Chief Secretary was issued on the same day but it was differently worded in one material respect. Paragraph 5 of that order provided that the petitioner "is promoted and posted *to act* as Chief Secretary to Government *vice* Thiru Ramakrishnan, I.C.S. who has been granted refused leave with effect from 14th November 1969." The reference here was to the fact that Ramakrishnan has been granted refused leave for four months from 14th November, 1969 under Fundamental Rule 86, cl. (a). The petitioner was accordingly promoted as Chief Secretary. Whether such promotion was by way of substantive appointment or in an officiating capacity is a matter which we would have to decide when we deal with the arguments of the parties.

On 1st April, 1970, the Government of India proposed that in view of the fact that the responsibilities of Chief Secretary to State Government had multiplied and become complex to such an extent that they would no longer be regarded as less onerous than those of Secretary to the Government of India, the post of Chief Secretary to State Government should be equated to the post of Secretary to the Government of India in respect of pay and invited the comments of various State Governments on this proposal. The State of Tamil Nadu conveyed its assent to the proposal but suggested that since the posts of Chief Secretary and First Member, Board of Revenue in the State were equal in status and interchangeable, both these posts should be upgraded to that of Secretary to the Government of India. The Government of India did not accede to the request of the State of Tamil Nadu in so far as the post of First Member,

A Board of Revenue was concerned, but in regard to the post of Chief Secretary, amended Sch. III to the Indian Administrative Service (Pay) Rules, 1954 by a notification dated 31st August, 1970 raising the pay of Chief Secretary from Rs. 3,000/- to Rs. 3,500/- per month so as to bring him on par with Secretary to the Government of India. The rank and status of the post of Chief Secretary was thus enhanced and that post was raised above every other cadre post in the State B including the post of First Member, Board of Revenue.

The general elections to the Parliament and the State Legislature were held in Tamil Nadu in the first week of March 1971. The results of the poll were declared on 11th March, 1971 and the DMK party under the leadership of the second respondent retained its majority in the State Legislature and formed the new Government C with the second respondent as the Chief Minister. According to the petitioner, there were several matters in which he had the misfortune to incur the displeasure and wrath of the second respondent during the period prior to the elections as also at the time of the elections whilst acting in discharge of his duties as Chief Secretary, and the second respondent, therefore, on being returned to power, decided to remove him from the post of Chief Secretary. D With that end in view the second respondent announced at a Press Conference held by him at mid-night on 6th April, 1971 that the petitioner was transferred as Deputy Chairman of the State Planning Commission. There was no State Planning Commission in existence on that date though it appears that the proposal to set it up had been under consideration of the Government for some time. The petitioner was also not given any inkling of the proposed appointment E and he came to learn about it for the first time on reading the newspapers in the morning of 7th April, 1971. The formal order in this connection was issued by the State Government on 7th April, 1971 and by this order the State Government accorded sanction to the creation of a temporary post of Deputy Chairman in the State Planning Commission in the grade of Chief Secretary for a period of one year with effect from the date of appointment and appointed the peti- F tioner to that post providing that he shall be entitled to the same rank and emoluments as admissible to the post of Chief Secretary. The petitioner obviously felt that he was being denigrated and he, therefore, did not join this post and went on leave from 18th April, 1971 and the leave was renewed by him from time to time upto 5th June, 1972. The State Planning Commission was in the meantime con- G stituted on 25th May, 1971 and since the petitioner was on leave, an order dated 19th August, 1971 was issued by the State Government directing, in modification of the earlier order dated 7th April, 1971, that the post of Deputy Chairman should be deemed to have been sanctioned for a period of one year from 13th April, 1971 and that Raja Ram, who was First Member, Board of Revenue, should be placed in charge of that post until further orders. The post of Deputy H Chairman having been created for a period of one year only, came to an end on 13th April, 1972 and it was not thereafter continued until 6th June, 1972 when it was again revived on return of the petitioner from leave. The State Government passed an order dated 6th

June, 1972 sanctioning once again the creation of a temporary post of Deputy Chairman on a pay of Rs. 3,500/- per month for a period of one year and appointing the petitioner to that post on return from leave. Against this order the petitioner made a representation to the second respondent on 7th June, 1972 stating that, without the approval of the Central Government, the continuance of the post of Deputy Chairman in the rank of Chief Secretary for a period of more than one year would be invalid under r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954. How far this contention was valid is a matter we shall presently examine and it need not detain us. The next event that happened was—whether as a sequel to the representation of the petitioner or not, we do not know—that the State Government issued an order dated 26th June, 1972 sanctioning the creation of a temporary post of Officer on Special Duty "of the rank of Member, Board of Revenue" for a period of one year for streamlining and rationalising the structure of Tamil Nadu General Sales Tax Act and similar enactments relating to commercial taxes and rules. On the next day, i.e., 27th June, 1972 another order was issued by the State Government modifying the earlier order to the effect that the temporary post of Officer on Special Duty shall be "in the grade of Chief Secretary to Government" and appointing the petitioner to this post. The petitioner did not join this post too and proceeded on long leave which continues till to-day. We enquired of the learned Advocate General who appeared on behalf of the State of Tamil Nadu as to what arrangement had been made to fill the post of Officer on Special Duty in the absence of the petitioner who had gone on leave and in answer to our inquiry, we were informed by him that a Member of the Board of Revenue was discharging the functions of this post in addition to his normal functions. It may be pointed out here that after the petitioner was transferred from the post of Deputy Chairman and appointed Officer on Special Duty, an order dated 29th June, 1972 was passed by the State Government abolishing the post of Deputy Chairman sanctioned under the earlier order dated 6th June, 1972, sanctioning the creation of a new post of Deputy Chairman "in the grade of First Member, Board of Revenue" on a pay of Rs. 3,000/- per month and appointing Raja Ram, First Member, Board of Revenue to that post "in addition to his appointment as First Member, Board of Revenue". One other fact may also be noticed—and that is a little important—that on transfer of the petitioner from the post of Chief Secretary, one Sabanayagam, who was admittedly junior to the petitioner, was promoted as Chief Secretary and we are told that he has been confirmed in that post. The petitioner was obviously hurt by these rather disingenuous moves adopted by the State Government at the instance of the second respondent to remove him from the post of Chief Secretary and he, therefore, filed the present petition under Art. 32 of the Constitution challenging the validity of his transfer from the post of Chief Secretary, first to the post of Deputy Chairman, State Planning Commission and then to the post of Officer on Special Duty, on the following grounds, namely, (1) it was contrary to the proviso to r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 and r. 9, sub-r. (1) of the Indian Administrative Service (Pay) Rules, 1954; (2) it was violative of Arts. 14 and 16 of the Constitution as

A the posts of Deputy Chairman, State Planning Commission and Officer on Special Duty were inferior in rank and status to that of the Chief Secretary; and (3) it was made in *mala fide* exercise of power, not on account of exigencies of administration or public service, but because the second respondent was annoyed with the petitioner on account of various incidents referred to in the petition and wanted him out of the way. We shall elaborate these grounds as we proceed to B discuss them.

But before we examine these grounds we must first determine what was the nature of the appointment when the petitioner was promoted as Chief Secretary. Was he promoted in a substantive capacity or in an officiating capacity? The contention of the petitioner was that he was appointed substantively to the post of Chief Secretary and C for this purpose he relied on the draft order approved by the second respondent as well as the Governor which did not use any words suggesting that his promotion was in an acting capacity and promoted and posted him as Chief Secretary without any qualifying or limitative words. The petitioner of-course could not dispute that the words used in the authenticated order were "promoted and posted *to act* as Chief Secretary", but his argument was, firstly, that the words D "to act" qualified only "posted" and not "promoted" and in this context they meant nothing more than this, namely, that the petitioner was posted to function or work as Chief Secretary and not that he was promoted in an acting capacity, and secondly, that even if the words "to act" had the effect of making promotion an acting one, the authenticated order did not correctly embody the real decision of the State Government which was to be found in the draft order and E the draft order must, therefore, prevail over the authenticated order. The respondents sought to repel this contention by a two-fold argument. The first argument was based on the terms of the authenticated order and it was said that that was the final order duly authenticated by the then Chief Secretary and it was not open to the petitioner to go behind that order and refer to the draft order for purpose of varying its terms. The authenticated order, contended the respondents, clearly F showed that the promotion and posting of the petitioner as Chief Secretary was in an officiating capacity. The other argument urged in the alternative was that though Ramakrishnan retired on attaining the age of superannuation on the afternoon of 13th November, 1969, he was granted refused leave for a period of four months after the date of his retirement under Fundamental Rule 86, cl. (a) and his service was, therefore, extended and he continued to retain his lien G on the post of Chief Secretary until the expiration of such period of four months, *i.e.* up to 14th March, 1970 and the petitioner could not, therefore, possibly be appointed substantively to the post of Chief Secretary till that time. We think, on a consideration of these arguments, that the contention of the petitioner that he was promoted as Chief Secretary in a substantive capacity is not well founded.

H The authenticated order provided in terms clear and explicit that the petitioner was promoted and posted to act as Chief Secretary. The words "to act", according to plain grammar and language, governed not only "posted" but also "promted". The petitioner was both

"promoted and posted" as one single composite event, "to act" as Chief Secretary and that clearly meant that the promotion was in an acting capacity. But the argument of the petitioner was that the words "to act" were not to be found in the draft order which recorded the original decision of the State Government and they were introduced in the authenticated order by mistake and should therefore be ignored, or in other words, the authenticated order should be read without the words "to act" so as to be in conformity with the draft order. The respondents resisted this attempt to go behind the authenticated order and contended that the authenticated order was the final order and it was not open to the petitioner to say that it did not correctly reflect the order as made by the State Government. We do not think this contention of the respondents is sound. It is now well settled law that when an order is authenticated, the only challenge that is excluded by the authentication is that it is not an order made by the Governor. The validity of such an order can be questioned on other grounds. [Vide *King Emperor* v. *Shivnath Banerjee*(1) *and State of Bihar* v. *Sonabati*(2)]. The authentication does not, therefore, preclude the contention that the order though made by the Governor suffers from some other infirmity. The authenticated order is merely an expression of the actual order which precedes it and which is made by the appropriate authority entitled to act on behalf of the State Government. As pointed out by this Court in *State of Bihar* v. *Sonabati*(2- "the process of making an order precedes and is different from the expression of it". It should, therefore, be axiomatic that if the authenticated order does not correctly reflect the actual order made, or to put the same thing differently, the actual decision taken by the State Government, it must be open to correction. The formal expression of the order cannot be given such sanctity that even if found to be mistaken, it must prevail over the actual order made and override it. That would not be consonant with reason or principle. It would be an artificial rule calculated to obstruct the cause of truth and justice. Here in the present case it is the citizen who contends that the authenticated order does not correctly reproduce the actual order made by the State Government. But there may conceivably be cases where the Government may also find that there is a mistake in the authenticated order and it requires to be rectified. Take for example a case where the actual decision taken by the State Government is that a person should be appointed to a post in an officiating capacity but by mistake the appointment is described as substantive appointment in the authenticated order. Can it be suggested in such a case that the Government cannot rectify the mistake by amending the authenticated order so as to bring it in accord with the real decision ? We have, therefore, no doubt that it was competent to the petitioner to contend, by reference to the draft order which contained the original decision of the State Government, that the authenticated order did not correctly reflect such decision and suffered from an error. But the question is whether such contention can succeed.

Now, if we look at the draft order it is clear that it merely uses the words "promoted and posted as Chief Secretary". It is silent as to

(1) 72 I.A. 241. (2) [1961] 1 S.C.R. 746

A the nature of the promotion. It does not say whether the promotion is by way of substantive appointment or in an officiating capacity. It could be either, consistently with the words used. It is the authenticated order which says for the first time clearly and definitely by using the words "to act" that the promotion is in an officiating capacity. There is thus no inconsistency between the draft order and the authenticated order from which any eror can be spelt B out in the authenticated order. The authenticated order in so far as it uses the words "to act", does no more than speak on a matter on which the draft order was silent. It appears that before issuing the authenticated order the appropriate authority applied its mind to the question as to whether the promotion should be in a substantive capacity or in an officiating capacity and since Ramakrishnan was going on refused leave for four months from 14th November, 1969 and C was accordingly, as we shall presently point out, entitled to retain his lien on the post of Chief Secretary till that date, decided that the promotion should be an officiating one as indeed it could not be otherwise, and that is why the authenticated order was issued with the addition of the words "to act" after the expression "promoted and posted". There is of-course no positive evidence to this effect, but it would appear to be a reasonable inference to make in view of the D substitution of the words "retiring from service with effect from the afternoon of 13th November, 1969" in the authenticated order. It is, therefore, clear that the authenticated order correctly reflected the final decision of the State Government and under it the promotion of the petitioner was in an acting or officiating capacity.

The alternative argument of the respondents must also lead us to E the same conclusion. This argument has been dealt with in the judgment of the learned Chief Justice and we do not think we can usefully add anything to what has been stated there by the learned Chief Justice. We entirely agree with the reasoning and the conclusion of the learned Chief Justice on this point and hold that since Ramakrishnan proceeded on refused leave for a period of four months from the date of his superannuation he continued to retain F his lien on the post of Chief Secretary until 14th March, 1970 during the period of refused leave granted to him, and the promotion of the petitioner under the order dated 13th November, 1969 could not therefore be otherwise than in an officiating capacity. The post of Chief Secretary became vacant on 14th March, 1970 but at no time thereafter the petitioner was confirmed as Chief Secretary and he had, therefore, no right to hold the post of Chief Secretary at the date G when he was transferred as Deputy Chairman, State Planning Commission. But that does not mean that he was not entitled to be considered for confirmation, and since he was not confirmed, but Subanayagam, who was junior to him, was promoted and confirmed, the question must inevitably arise whether what was done was in *mala fide* exercise of power or in violation of Arts. 14 and 16 of the Constitution.

H

We now turn to the first ground of challenge which alleges contravention of the second proviso to r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 and r. 9, sub-s. (1) of the Indian Admi-

nistrative Service (Pay) Rules, 1954. So far as the second proviso to r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 is concerned, we do not think it has any application. That proviso merely confers limited authority on the State Government to make temporary addition to the cadre for a period not exceeding the limit therein specified. The strength and composition of the cadre can be determined only by the Central Government under r. 4(1) and the Central Government alone can review it trienially or at any other intermediate time under r. 4(2). The State Government cannot add to the cadre a different category of post than that already existing in the cadre, nor can it make any permanent addition to the number of posts of a particular category in the cadre, for to do so would mean, in the first case, alteration in the composition of the cadre, and in the second, alteration in the strength of the cadre, both of which would be impermissible to the State Government. But the State Government can, by virtue of the relaxation granted by the second proviso, make temporary addition to the cadre provided the post added carries duties or responsibilities of a like nature to a cadre post. This would mean, as pointed out by the Government of India in its decision recorded at 4.1 at page 741 of the All India Services Manual (Second Edition) : "The exercise of this power by the State Government with reference to a post involves an objective assessment of the nature of the duties and responsibilities attached to that post in comparison to those attached to a cadre post. *Thus posts cannot be added temporarily to the cadre unless such posts already exist in the cadre*". The State of Tamil Nadu could not, therefore, add the posts of Deputy Chairman, State Planning Commission and Officer on Special Duty under the second proviso, as these posts did not exist in the cadre as constituted by the Central Government. They were new categories of posts created by the State Government. The second proviso to r. 4(2) has, therefore, no application and the challenge based on it must fail.

The petitioner is, however, on firmer ground when he bases his challenge under r. 9, sub-r. (1) of the Indian Administrative Service (Pay) Rules, 1954. Rule 9, in so far as material, provides as follows :

> "(1) No Member of the Service shall be appointed to a post other than a post specified in Schedule III, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.
>
> (2) The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled to, had he been appointed in the post to which the said post is declared equivalent.
>
> (3) xxx xxx xxx
>
> (4) Notwithstanding anything contained in this rule, the State Government concerned in respect of any posts

A under its control, or the Central Government in respect of any posts under its control, may for sufficient reasons to be recorded in writing, where equation is not possible, appoint any member of the Service to any such post without making a declaration that the said post is equivalent in status and responsibility to a post specified in Schedule III."

B This rule is intended to provide a safeguard for the protection of a member of the Indian Administrative Service. Sub-r. (1) enacts that no member of the Indian Administrative Service shall be appointed to a post other than a post specified in Schedule III, or in other words, to a non-cadre post unless the Government makes a declaration that such non-cadre post is "equivalent in status and responsibility" to a post specified in the said Schedule, *i.e.*, to a cadre post. If the State C Government wants to appoint a member of the Indian Administrative Service to a non-cadre post created by it, it cannot do so *unless it* makes a declaration setting out which is the cadre post to which such non-cadre post is equivalent in status and responsibility. The making of such a declaration is a *sine qua non* of the exercise of power under sub-r. (1). It is not an idle formality which can be dispensed with at the sweet-will of the Government. It has a purpose behind it and D that is to ensure that a member of the Indian Administrative Service is not pushed off so a non-cadre post which is inferior in status and responsibility to that occupied by him. So far as cadre posts are concerned, their hierarchy would be known, but a non-cadre post created by the Government would be stranger in the hierarchy, and that is why sub-r. (1) requires that before appointing a member of the Indian Administrative Service to such non-cadre post, the Govern- E ment must declare which is the cadre post to which such non-cadre post is equivalent in status and responsibility, so that the member of the Indian Administrative Service who is appointed to such non-cadre post, would know what is the status and responsibility of his post in terms of cadre posts and whether he is placed in a superior or equal post or he is brought down to an inferior post. If it is the latter, he would be entitled to protect his rights by pleading violation of Art. F 311 or Arts. 14 and 16 of the Constitution, whichever may be applicable. That would provide him effective insulation against unjust or unequal or unlawful treatment at the hands of the Government. The object of this provision clearly is to ensure that the public services are, in the discharge of their duties, not exposed to the demoralising and depraving effects of personal or political nepotism or victimisation or the vagaries of the political machine. The determination of equi- G valence is, therefore, made a condition precedent before a member of the Indian Administrative Service can be appointed to a non-cadre post under sub-r. (1). It is a mandatory requirement which must be obeyed. The Government must apply its mind to the nature and responsibilities of the functions and duties attached to the non-cadre post and determine the equivalence. There the pay attached to the non-cadre post is not material. As pointed out by the Government H of India in a decision given by it in MHA letter No. 32/52/56-AIS(II) dated 10th July, 1956 the basic criterion for the determination of equivalence is "the nature and responsibilities of duties attached to the post *and not the pay attached to the post*". Once the declaration of

equivalence is made on a proper application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post, sub-r. (2) says that the pay of the member of the Indian Administrative Service appointed to such non-cadre post shall be the same as he would have been entitled to, had he been appointed in the cadre post to which such non-cadre post is declared equivalent. He is thus assured the pay of the equivalent cadre post and his pay is protected. Now this declaration of equivalence, though imperative, is not conclusive in the sense that it can never be questioned. It would be open to a member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence, that the non-cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-cadre post is in violation of Art. 311 or Arts. 14 and 16. The burden of establishing this would undoubtedly be heavy and the court would be slow to interfere with the declaration of equivalence made by the Government. The Government would ordinarily be the best judge to evaluate and compare the nature and responsibilities to the functions and duties attached to different posts with a view to determining whether or not they are equivalent in status and responsibility and when the Government has declared equivalence after proper application of mind to the relevant factors, the court would be most reluctant to venture into the uncharted and unfamiliar field of administration and examine the correctness of the declaration of equivalence made by the Government. But where it appears to the court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dis-similar that no reasonable man can possibly say that they are equivalent in status or responsibility or the declaration of equivalence is *mala fide* or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a cadre post which he is occupying, the court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant. The declaration of equivalence must, however, always be there if a member of the Indian Administrative Service is to be appointed to a non-cadre post. The only exception to this rule is to be found in sub-r. (4) and that applies where the non-cadre post is such that it is not possible to equate it with any cadre post. Where the Government finds that the *equation is not possible*, it can appoint a member of the Indian Administrative Service to a non-cadre post but only for sufficient reasons to be recorded in writing. This again shows that the Government is required to apply its mind and make an objective assessment on the basis of relevant factors for determining whether the non-cadre post to which a member of the Indian Administrative Service is sought to be appointed can be equated to a cadre post, and if so, to what cadre post it can be so equated. This is the plain requirement of r. 9, sub-r. (1) and the question is whether the appointment of the petitioner to the non-cadre posts of

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A Deputy Chairman, State Planning Commission and Officer on Special Duty was in compliance with this requirement.

Turning first to the appointment of the petitioner as Deputy Chairman, State Planning Commission, it was made by the order dated 7th April, 1971. The Government by this order sanctioned the creation of a temporary post of Deputy Chairman "in the grade of Chief Secretary" and appointed the petitioner to this post, stating that he B would be entitled to the same rank and emoluments as admissible to the Chief Secretary. Howsoever favourably to the State Government we may try to read this order, it is not possible to discern in it any trace of a declaration that the State Government found, on an objective assessment of the nature and responsibility of the functions and duties attached to the post of Deputy Chairman, that it was equivalent in status and responsibility to that of Chief Secretary. It is one C thing to create a post of Deputy Chairman in the grade of Chief Secretary and another to determine, on an objective assessment of the nature and responsibilities of the functions and duties, that the post of Deputy Chairman is equivalent in status and responsibility to that of Chief Secretary. Here the State Government seems to have proceeded on the hypothesis that it can create a non-cadre post in the rank or grade of any cadre post it likes, irrespective of the nature D and responsibilities of the functions and duties attached to such non-cadre post and that would be sufficient compliance with the requirement of r. 9, sub-r. (1). But that hypothesis is plainly incorrect. The State Government cannot artifically create equivalence by saying that a particular non-cadre post, whatever be the nature and responsibilities of the functions and duties attached to it, shall be in the E rank or grade of any cadre post it likes. The State Government has to apply its mind and make an objective assessment of the nature and responsibilities of the functions and duties and determine which is the cadre post to which such non-cadre post can be regarded as equivalent in status and responsibility and then only it can make a declaration of equivalence. This exercise does not seem to have been gone through by the State Government when it made the order dated 7th F April, 1971 sanctioning the creation of the post of Deputy Chairman and appointing the petitioner to that post. This becomes abundantly clear if we look at the subsequent orders. As we have already pointed out above, the post of Deputy Chairman first created came to an end on 13th April, 1972. Thereafter there was no post of Deputy Chairman till 6th June, 1972 when it was created once again by the order G dated 6th June, 1972. Strangely enough this order, unlike the earlier order dated 7th April, 1971, did not even mention that the post of Deputy Chairman was in the grade or rank of Chief Secretary. It merely prescribed the pay which shall attach to the post of Deputy Chairman. There was admittedly no declaration in it equating the post of Deputy Chairman to that of Chief Secretary. Then we come to the order dated 29th June, 1972. This order is most eloquent. H It abolished the post of Deputy Chairman created under the order dated 6th June, 1972 and sanctioned the creation of a fresh post of Deputy Chairman "in the grade of First Member, Board of Revenue" on a pay of Rs. 3,000/- per month and appointed Raja Ram, First

Member, Board of Revenue to that post. Now it was not the case of the respondents that when the post of Deputy Chairman was sanctioned again by this order, there was any change in the nature and responsibilities of the functions and duties attached to the post of Deputy Chairman. These remained the same, namely, what they were when the post of Deputy Chairman was first created under the order dated 7th April, 1971 and then again under the order dated 6th June, 1972. If that be so, how could the post of Deputy Chairman be declared to be equivalent in status and responsibility to the post of Chief Secretary at one time and to the post of First Member, Board of Revenue at another. The nature and responsibilities of the functions and duties remaining the same, the equivalence, which is a matter of objective assessment, could not vary from time to time. This clearly shows that the Government did not apply its mind and objectively determine the equivalence of the post of Deputy Chairman but gave it a rank or grade according as who was going to be appointed to it. That is in fact what the State Government has categorically and in so many terms admitted in paragraphs 25(b) and 28 of its affidavit in reply : "Since Thiru M. G. Raja Ram was drawing only a salary of Rs. 3,000/- per month there was no option but to down grade the post" :—"With the recent appointment of Thiru M. G. Raja Ram as Deputy Chairman of the Planning Commission the post has been equated to that of the First Member, Board of Revenue". But this is precisely what is impermissible. The status and responsibility of a non-cadre post for the purpose of determining equivalence cannot depend on who is going to occupy it. It is really the other way round. The equivalence in status and responsibility determined on an objective assessment of the nature and responsibilities of the functions and duties attached to the post should decide which officer should occupy it. It may be pointed out that, even if the order dated 7th April, 1971 be construed most liberally in favour of the State Government, which, in our opinion, should not be done when there is a contest between a public servant and the State Government it did not contain a declaration of equivalence in regard to "responsibility". There can, therefore, be no doubt that the appointment of the petitioner to the post of Deputy Chairman was in contravention of r. 9(1). But we cannot grant relief to the petitioner on this ground, because, as admitted by him in his letter dated 7th June, 1972 addressed to the second respondent, he accepted the appointment without demur as he though that the post of Deputy Chairman "was of the same rank and carried the same emoluments as the post of Chief Secretary" and actually stated in a chat with newsmen on 7th April, 1971 that "he was looking forward with confidence to discharge the duties of the Deputy Chiarman, Planning Commission, which is considered a challenging task", and he cannot now be permitted to challenge the validity of the appointment.

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So far as the question of validity of the appointment to the post of Officer on Special Duty is concerned, we think that this appointment also suffers from the same infirmity. The order dated 26th June, 1972 first created the post of Officer on Special Duty "of the rank of Member, Board of Revenue", but on the next day, when

A it was decided to appoint the petitioner to that post, the order dated 26th June, 1972 was modified by the order dated 27th June, 1972 and the post of Officer on Special Duty was created "in the grade of Chief Secretary". These two orders dated 26th June, 1972 and 27th June, 1972 being of the same nature and in almost identical words as the order dated 7th April, 1971, what we have said above B in regard to the order dated 7th April, 1971 must apply equally in relation to these two orders dated 26th June, 1972 and 27th June, 1972. It is clear, for reasons we have already discussed while dealing with the order dated 7th April, 1971, that in making these two orders dated 26th June, 1972 and 27th June 1972, the State Government proceeded on the wrong assumption that it can create a non-cadre post in the rank or grade of any cadre post it likes, regard- C less of the nature and responsibilities of the functions and duties attached to such non-cadre post. The State Government first created the post of Officer on Special Duty in the rank of Member, Board of Revenue and on the very next day, because it was decided that the petitioner should be appointed to that post, converted it into one in the grade of Chief Secretary. This shows clearly that the State Government did not apply its mind and determine on an objective D appraisal of the nature and responsibilities of the functions and duties attached to the post of Officer on Special Duty whether it was equivalent in status and responsibility to the post of Member, Board of Revenue or to the post of Chief Secretary. The nature and responsibilities of the functions and duties attached to the post of Officer on Special Duty could not change in a day and indeed it was not the case of the respondents that they changed at any time. E If that be so, how could the post of Officer on Special Duty be declared to be equivalent in status and responsibility to the post of Member, Board of Revenue on one day and to the post of Chief Secretary, on the very next day. Either it was equivalent to the post of Member, Board of Revenue or equivalent to the post of Chief Secretary. But it could not be equivalent to one post at one time and to another post at another time, when the nature and responsibilities of F the functions and duties attached to it remained the same. This establishes beyond doubt that, in making the orders dated 26th June, 1972 and 27th June, 1972, the State Government did not apply its mind and objectively determine the equivalence of the post of Officer on Special Duty, but gave it a rank or grade according as who was the officer going to be appointed to it. That is in fact what the State Government clearly and in so many words admitted in paragraph 28 G of its affidavit in reply : "—although the post of Officer on Special Duty was first created in the rank of Member, Board of Revenue, with the appointment of the petitioner to that post, the status of that post was equated to that of the Chief Secretary". This is also borne out by the fact that when the petitioner went on leave, a Member of the Board of Revenue was appointed to discharge the functions of the H post of Officer on Special Duty and that post was once again brought down to the rank of Member, Board of Revenue. The order dated 27th June, 1972 in any event did not contain any declaration as to equivalence in "responsibility". There was thus no compliance with the requirement of r. 9, sub-r. (1) and the appointment of the peti-

tioner to the post of Officer on Special Duty was accordingly be liable to be held invalid for contravention of that sub-rule. But we cannot in this petition under Art. 32 give relief to the petitioner by striking down his appointment to the post of Officer on Special Duty, as mere violation of r. 9, sub-r. (1) does not involve infringement of any fundamental right. We, however, hope that the State Government will not drive the petitioner to take appropriate proceedings for obtaining the necessary relief. A B

The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Arts. 14 and 16. Art. 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art. 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to *mala fide* exercise of power and that is hit by Arts. 14 and 16. *Mala fide* exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16. C D E F G H

A It is also necessary to point out that the ambit and reach of Arts. 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Arts. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to *mala fide* exercise of power by the State machine. It is, therefore, no answer to the charge of infringement of Arts. 14 and 16 to say that the petitioner had no B right to the post of Chief Secretary but was merely officiating in that post. That might have some relevance to Art. 311 but not to Arts. 14 and 16. We must, therefore, proceed to consider whether the transfer of the petitioner first to the post of Deputy Chairman and then to the post of Officer on Special Duty was arbitrary, hostile and is *mala fide* exercise of power. What was the operative reason for such transfer; C was it the exigencies of public administration or extra administrative considerations having no relevance to the question of transfer? Was the transfer to the post of Deputy Chairman or Officer on Special Duty so irrational or unjust that it could not have been made by any reasonable administration except for colateral reasons? These are the questions which call for our consideration.

D Now, two important considerations must weigh with us in determining our approach to these questions. First, the post of Chief Secretary is a highly sensitive post. It is a post of great confidence—a lynchpin in the administration and smooth functioning of the administration requires that there should be complete rapport and understanding between the Chief Secretary and the Chief Minister. The Chief Minister as the head of the Government is in ultimate charge of the administration and it is he who is politically answerable E to the people for the achievements and failures of the Government. If, therefore, *for any valid reason* the Chief Secretary forfeits the confidence of the Chief Minister, the Chief Minister may legitimately, in the larger interests of administration, shift the Chief Secretary to another post, *provided of-course that does not involve violation of any of his legal or constitutional rights*. There can be no question in such a case as to who is right and who is wrong. The displacement of F the Chief Secretary from his post in such a case would not be arbitrary and it would not attract the inhibition of Arts. 14 and 16. It may, however, be pointed out that such an action would not, we think, ordinarily be taken except for the most compelling reasons, because, if resorted to without proper justification, it would tend to affect the political neutrality of the public service and lead to demoralisation G and frustration amongst the public servants.

Secondly, with the vast multitudinous activities in which a modern State is engaged, there are bound to be some posts which require for adequate discharge of their functions, high degree of intellect and specialised experience. It is always a difficult problem for the Government to find suitable officers for such specialised posts. There are not ordinarily many officers who answer the requirements of such specia- H lised posts and the choice with the Government is very limited and this choice becomes all the more difficult, because some of these posts, though important and having onerous responsibilities, do not carry-

wide executive powers and officers may not, therefore, generally be willing to be transferred to those posts. The Government has in the circumstances to make the best possible choice it can, keeping in view the larger interests of the administration. When, in exercise of this choice, the Government transfers an officer from one post to another, the officer may feel unhappy because the new posts does not give him the same amplitude of powers which he had while holding the old post. But that does not make the transfer arbitrary. So long as the transfer is made on account of the exigencies of administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and not open to attack under Arts. 14 and 16.

Now, here the post of Chief Secretary was admittedly a selection post and after careful examination of the merits of the senior most eleven officers of the Tamil Nadu Cadre of the Indian Administrative Service, the second respondent selected the petitioner for the post of Chief Secretary. The petitioner worked as Chief Secretary from 14th November, 1969 up to 6th April, 1971 and evidently during this period he acquitted himself creditably. It was not the case of either of the respondents that the petitioner was not found equal to the task or that his work was not satisfactory. In fact the affidavit in reply filed on behalf of the first respondent clearly indicates that the petitioner discharged the duties of his office efficiently and to the satisfaction of every one concerned. Yet the petitioner was transferred first to the post of Deputy Chairman and then to the post of Officer on Special Duty and in his place Sabanayagam, who was admittedly junior to him, was not only promoted but also confirmed. The result of confirmation of Sabanayagam as Chief Secretary was that the petitioner, though senior and proved competent, was permanently excluded from the post of Chief Secretary. This clearly shows, contended the petitioner, that his transfer first to the post of Deputy Chairman and then to the post of Officer on Special Duty was not on account of administrative reasons but solely to displace him from the key post of Chief Secretary. That perhaps might have been legally and constitutionally unobjectionable, if the post of Deputy Chairman and Officer on Special Duty were of the same status and responsibility as the post of Chief Secretary, but the argument of the petitioner was that neither of these two posts could be regarded as of equal status and responsibility as the post of Chief Secretary because the post of Chief Secretary is always a unique and unrivalled post in the State administration. The transfer of the petitioner from the post of Chief Secretary first to the post of Deputy Chairman and then to the post of Officer on Special Duty coupled with the promotion and confirmation of Sabanayagam in the post of Chief Secretary was, therefore, clearly arbitrary and violative of Arts. 14 and 16. This contention, plausible though it may seem, cannot be accepted by us, because there is no adequate material placed before us to sustain it. The premise on which this contention is founded is that the posts of Deputy Chairman and Officer on Special Duty were not of the same status and responsibility as the post of Chief Secretary, but we cannot say on the material on record that the validity of the premise has been established by the petitioner. So far as the post of Deputy Chairman is concerned, the

A petitioner himself accepted that post as being of the same status and responsibility as the post of Chief Secretary and did not raise any objection against it and we need not, therefore, say anything more about it. The only question is as to the post of Officer on Special Duty. We think that this post has not been satisfactorily established by the petitioner to be inferior in status and responsibility to the post of Chief Secretary. This of-course does not mean, and we are not pre-
B pared to go as far as the learned Chief Justice in asserting positively that that post was equal in status and responsibility to the post of Chief Secretary. The fact that sales tax accounts for a very large segment of the revenues of the State and it runs into about 120 crores of rupees does not necessarily make the post of Officer on Special Duty equal in status and responsibility to that of the Chief Secretary. What has to be seen for equivalence is the status and the
C nature and responsibility of the duties attached to the two posts. Merely giving the salary of one post to the other does not make for equivalence. We are, therefore, not prepared to accept the thesis that the post of Officer on Special duty was equal in status and responsibility to the post of Chief Secretary as claimed by the respondents. We entertain serious doubts about it. But equally it is not possible for us to hold it established on the material on record that this post was
D inferior in status and responsibility to the post of Chief Secretary, though *prima facie* it does appear to be so. We cannot, therefore, say that the petitioner was arbitrarily or unfairly treated or that equality was denied to him when he was transferred from the post of Chief Secretary and in his place Sabanayagam, his junior, was promoted and confirmed. The challenge based on Arts. 14 and 16 must therefore fail.

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We may now turn to the ground of challenge based on *mala fide* exercise of power. The petitioner set out in the petition various incidents in the course of administration where he crossed the path of the second respondent and incurred his wrath by inconvenient and uncompromising acts and notings and contended that the second respondent, therefore, nursed hostility and *malus animus* against the
F petitioner and it was for this reason and not on account of exigencies of administration that the petitioner was transferred from the post of Chief Secretary. The incidents referred to by the petitioner, if true, constituted gross acts of mal-administration and the charge levelled against the second respondent was that because the petitioner in the course of his duties obstructed and thwarted the second respondent in these acts of mal-administration, that the second respondent was an-
G noyed with him and it was with a view to putting him out of the way and at the same time deflating him that the second respondent transferred him from the post of Chief Secretary. The transfer of the petitioner was, therefore, in *mala fide* exercise of power and accordingly invalid.

Now, when we examine this contention we must bear in mind two
H important considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second respondent. It is not within our

province to embark on a far flung inquiry into acts of commission and omission charged against the second respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry before us and we must decline to enter upon any such inquiry. It is one thing to say that the second respondent was guilty of misrule and another to say that he had *malus enimus* against the petitioner which was the operative cause of the displacement of the petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the petitioner to side track the issue and escape the burden of establishing hostility and *malus enimus* on the part of the second respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only question before us is whether the action taken by the respondents includes any component of *mala fides* whether hostility and *malus enimus* against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

Secondly, we must not also overlook that the burden of establishing *mala fides* in very heavy on the person who alleges it. The allegations of *mala fides* are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extra-ordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may land themselves to misconstruction and suspicion as to the *bona fide* of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferances from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up—these considerations are wholly irrelevant in judicial approach—but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand point that we must assess that merits of the allegations of *mala fides* made by the petitioner against the second respondent.

Now extensive arguments were addressed before us by counsel on both sides and we were taken through a mass of documents, papers and official notings on this part of the case but we are afraid it is not possible for us to say that the onus of establishing *mala fides* against the second respondent, heavy as it is, has been discharged by the petitioner. The allegations of *mala fides* have been dealt with fully in the

judgment of the learned Chief Justice and we do not think it will serve any useful purpose for us to discuss the merits of those allegations once again in this judgment, as we are substantially in agreement with what the learned Chief Justice has said. But we cannot help mentioning that there are certain disturbing features which cause us anxiety. We may take by way of example the imputation in regard to the Coom River Project. It seems that in or about the beginning of February 1970 the second respondent asked the Director of Vigilance to look into the affairs relating to Coom Improvement Project as he apprehended that there were certain mal-practices in the execution of that scheme. Whether this was done by the second respondent on his own initiative or at the instance of the petitioner is immaterial and we need not go into that controversy. The Director of Vigilance, as his subsequent letter dated 25th February, 1970 shows, informed the second respondent that without a discreet inquiry it would not be possible to allay or confirm the apprehensions with any degree of credibility since the head of the concerned engineering department was personally involved in the execution of the scheme and he accordingly by that letter pointed out to the petitioner that he needed authorisation to embark on the inquiry and Government order in that behalf should therefore be obtained and communicated to him. The petitioner made an endorsement on this letter on the very next day with a remark that the Public (Secret/Confidential) Department should deal with it immediately. The Public (Secret/Confidential) Department prepared a note at the foot of the letter and submitted it for circulation to the Minister for Works and the second respondent for orders whether the Director of Vigilance should be requested to make a discreet inquiry and send his report. The endorsement made below the note shows that it was submitted for circulation on 3rd March, 1970. It appears, however, that this note remained unattended until the middle of September 1970. On 12th September, 1970 the Minister for Works made an endorsement that the Director of Vigilance may make a discreet inquiry and this endorsement was approved by the second respondent on 20th September, 1970. The file containing the note together with the endorsements of the Minister for works and the second respondent was thereafter placed before the petitioner along with a draft of the memorandum to be addressed by the petitioner to the Director of Vigilance. It is common ground that no memorandum in terms of this draft was issued by the petitioner to the Director of Vigilance. The case of the petitioner was that he did not do so because the second respondent subsequently ordered that no inquiry need be made in this matter. This position was disputed by the second respondent who stated that to the best of his recollection he did not make any such order cancelling the inquiry. That is a matter of controversy between the parties and as pointed out above it does not fall within our province to investigate it. But the fact remains, and that cannot be disputed, that no inquiry thereafter took place in the affairs of the Coom Improvement Scheme. It is a little interesting to note that Sabanayagam addressed a letter dated 31st July, 1971 to the petitioner stating that though the Personal Assistant to the Chief Secretary had been reminded to send back the file relating to this matter, it had not been received and the petitioner should arrange to send it back,

if it was with him. The petitioner immediately replied to this letter on 8th August, 1971 pointing out that he distinctly remembered that the second respondent had subsequently ordered that no inquiry need be made in this matter and the file was not with him. It is significant that though the petitioner stated categorically that the second respondent had subsequently ordered that no inquiry need be made, Sabanayagam did not write back challenging the correctness of this statement. The file pertaining to this matter was all throughout in the possession of the Government and even after the petitioner pointed out that it was not with him, curiously enough, it could not be traced until the filing of the petition. In fact, the absence of the file could not have stood in the way of ordering an inquiry. These and a few other circumstances do create suspicion but suspicion cannot take the place of proof and, as pointed out above, proof needed here is high degree of proof. We cannot say that evidence generating judicial certitude in up-holding the plea of *mala fides* has been placed before us in the present case. We must, therefore, reject this contention of the petitioner as well.

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We accordingly dismiss the petition with no order as to costs.

K.B.N. *Petition dismissed.*