A

MYSORE STATE ROAD TRANSPORT CORPORATION

V.

MIRJA KHASIM ALI BEG & ANR.

B

December 1, 1976

[A. N. RAY, C. J., M. H. BEG AND JASWANT SINGH, JJ.]

Service matter—Person employed in one State transferred to another on States' Reorganisation—No post in the new State equivalent to that of appointing authority in the old State—If Government servant could be dismissed by an officer lower in rank than the appointing authority.

C

Under s. 115(7) of the States Reorganisation Act, 1956, nothing contained in that section could, after the appointed day, *i.e.* November 1, 1956, affect the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of conditions of service of persons serving in connection with the affairs of the Union or any State. The proviso provides that the condition of service applicable immediately before the appointed day to any person who is allotted to another State could not be varied to his disadvantage except with the previous approval of the Central Government.

D

The respondents, who were bus conductors in the State Road Transport Department of the former State of Hyderabad, were allotted to the State of Mysore consequent upon the reorganisation of the States in 1956 and they continued to hold the same posts under the Mysore Government Road Transport Department. They were dismissed from service by the Divisional Controller of Mysore Government Road Transport Department and the order of dismissal was affirmed by the General Manager of the Department. The orders of dismissal were challenged on the ground that since they were appointed by the Superintendent of the Traffic Department of the former State of Hyderabad, who was the Head of that Department they could be dismissed only by the General Manager of the Mysore State Road Transport Department and that their dismissal by the Divisional Controller, who was not the Head of the Department, was in violation of the right guaranteed under Art. 311 of the Constitution. The High Court struck down the order of dismissal.

E

F

On appeal by the State it was contended that (1) since the post of Superintendent of Traffic Department did not exist in the State of Mysore and the Divisional Controller was the competent authority to appoint and dismiss servants of the category to which the respondents belonged, their dismissal was not incompetent in view of s. 116(2) of the States Reorganisation Act, 1956; (2) There was substantial compliance with Art. 311 because the order of dismissal was confirmed by the General Manager; (3) Since the posts were not civil posts under the State, there was no violation of Art. 311; (4) The discretionary relief of declaration of continuance in service could not have been granted in this case; and (5) the respondents were dismissed before the establishment of the Corporation and since they did not exercise their option to join the Corporation, no decree could be passed against the Corporation.

G

Dismissing the appeals,

H

HELD: The respondents could not have been dismissed from service by an authority lower or subordinate in rank to the General Manager of the Transport Department as it would tantamount to deprivation of the guarantee in Art. 311 of the Constitution read with s 115(7) of the State Reorganisation Act. That there was no post of Superintendent of Traffic under the Mysore Government Road Transport Department is of no consequence. [291 F]

A

1 (a) The protection enjoyed by persons holding civil posts under the State like the respondents prior to the coming into force of the Act could not after the appointed day, be taken away, whittled down or impaired by any legislative enactment or rule. The broad purpose underlying the section was to ensure that the conditions of service of persons mentioned therein shall not be changed except with the prior approval of the Central Govt. [288 E; B]

B

(b) The expression 'condition of service' is an expression of wide import and the dismissal from service is a matter which falls within the conditions of service of public servants. It is not possible by means of any legislative provision or rule to take away the guarantee provided by Art. 311(1) and if any legislative provision or rule lays down otherwise, it will be *ultra vires.* [288 D]

M. D. Shukla & Ors. v. *State of Gujarat & Ors.* [1970] 3 SCR 515; *N. Raghavendra Rao* v. *Deputy Commissioner, South Kanara, Mangalore* [1964] 7 SCR 549; *North West Frontier Province* v. *Suraj Narain Anand* 75 I.A. 343; AIR 1949 P.C. 112; *Pradyat Kumar Bose* v. *The Hon'ble the Chief Justice of Calcutta High Court* [1955] 2 SCR 1331; *State of Madhya Pradesh & Ors.* v. *Shardul Singh* [1970] 3 SCR 302; and *Rangachari* v. *Secretary of State* 64 I.A. 40 : AIR 1937 P.C. 27, followed.

C

(c) The expression 'competent authority' in s. 116(2) of the Act must be read in conjunction with, construed and understood as having the same meaning as the expression 'appropriate authority' contemplated by s. 116(1) and Art. 311(1) which means the appointing authority or an authority equivalent to or co-ordinate in rank with the appointing authority. [289 B]

D

(d) The power to dismiss a Government servant from service can be conferred on an officer other than the appointing authority provided he is not subordinate in rank to the appointing officer or authority. [291 B]

The State of U.P. & Ors. v. *Ram Naresh Lal* [1970] 3 S.C.R. 173, applied.

E

N. Somasundaram v. *State of Madras* A.I.R. 1956 Mad. 419; *Sobhagmal* v. *State* A.I.R 1954 Raj 207, *Gurmukh Singh* v. *Union of India* A.I.R. 1963 Punjab 370; *Mahadeo Prasad Rao* v. *S. N. Chatterjee & Ors.* A.I.R. 1954 Patna 285 and *State of Jammu & Kashmir and Anr.* v. *Raj Mohammad & Ors.* 1971 J & K L.R. 558, approved.

In the instant case by virtue of s. 116(1) the respondents were deemed to have been appointed from November 1, 1956 in the State of Mysore by the appropriate authority which could not be the authority other than the one equivalent to or coordinate in rank with the authority which appointed them in the erstwhile State of Hyderabad. The General Manager of the Mysore Department could alone be considered to be the competent authority in terms of s. 116(2). [291 D]

F

(2) The original order of dismissal being without jurisdiction and as such void and inoperative, the order passed on appeal by the General Manager could not cure the initial defect [292 A]

G

(3) Both at the time of coming into force of the States Reorganisation Act, 1956 and at the time of the passing of the impugned orders, the respondents were holding civil posts in connection with the affairs of the State and they could not but be treated as holding civil posts under the State. [292 D]

4 (a) The declaration to enforce a contract of personal service can be granted (i) where a government servant is dismissed from service in contravention of the Art. 311; (ii) to dismissed workers under the industrial and labour law, and (iii) where a statutory body has acted in breach of a mandatory obligation imposed by a statute. [292 G]

H

Executive Committee of U.P. State Warehousing Corporation Limited v. *Chandra Kiran Tyagi* [1970] 2 S.C.R. 250 and *Executive Committee of Vaish Degree College, Shamli & Ors.* v. *Lakshmi Narain & Ors.* [1976] 2 S.C.R. 1006, followed.

A (b) It is only where the discretion is not exercised by the lower court in the spirit of the statute or fairly or honestly or according to the rules of reason and justice that the order passed by the lower court can be reversed by the superior court. [293 A]

Charles Osenton & Company v. *Johnston* [1942] A C. 130, referred to.

In the instant case, it cannot be said that the discretion has been wrongly B exercised in favour of the respondents. [294 C]

(5) In view of the appellants' application before the High Court, which was duly endorsed by the Government, that since the State had constituted the Road Transport Corporation and transferred the rights and liabilities to it, the decree, if any, could be passed exclusively against it, the Corporation cannot contend that no decree should have been passed against it. [294 D]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1601—1609 C of 1968.

Appeals by Special Leave from the Judgments and Orders dated the 7th February, 1968 and 26th March, 1968 of the Mysore High Court at Bangalore in Regular Second Appeal No. 627 of 1964 and Regular Second Appeals Nos. 117 to 120 and 881 to 884 of 1967 respectively.

D *Civil Appeals Nos.* 2402—2405/68

Appeals by Special Leave from the Judgment and Decree dated the 26th March, 1968 of the Mysore High Court in R.S.A. Nos. 881-884/67.

(*Mrs.*) *Shyamla Pappu* and *Vineet Kumar* for the Appellant in C. As. 1601—1609/68.

E *Narayan Nettar* for the Appellant in CAs. 2402—2405/68.

A. H. Rizvi, B. B. Jawakley and *K. P. Gupta* for Respondent No. 1 in C.A. 1601/68.

A. H. Rizvi, A. M. Mathur, B. B. Jawakley, K. P. Gupta and *S. S. Hussain* for Respondent No. 1 in C.As. 1602—1607/68.

F (*Mrs.*) *Shyamla Pappu* and *J. Ramamurthi* for Respondents in C.As. 2402—2405/68.

The Judgment of the Court was delivered by

JASWANT SINGH, J. This batch of appeals by special leave, the first one out of which is directed against the judgment and decree dated February 7, 1968, of Somnath Iyer, J. of the Mysore High G Court in R.S.A. No. 627 of 1964, and the rest whereof are directed against the common judgment and decree dated March 26, 1968 of M. Santhosh, another learned Judge of that Court in R.S.A. Nos. 120, 881, 117 to 119 and 882 to 884 of 1967 shall be disposed of by this judgment as they raised a common question as to the validity of orders of dismissal from service of persons who are arrayed as first respondents in all these appeals.

H The facts leading to the appeals are : The first respondent in each of these appeals was working as a conductor in the Road Transport Department of the erstwhile State of Hyderabad prior to the

A

coming into force of the States Reorganisation Act, 1956. On the reorganisation of the States with effect from November 1, 1956, consequent upon the coming into force of the said Act, the said respondents were allotted to the new State of Mysore but their employment as conductors was continued in the Depots which became parts of the Mysore Government Road Transport Department. As a result of the disciplinary proceedings taken against them for certain cash and ticket irregularities alleged to have been committed by them, they were dismissed from service by the Divisional Controller of the Mysore Government Road Transport Department in December, 1960. The orders of their dismissal from service were affirmed by the General Manager of the Mysore Government Road Transport Department. Thereupon they filed separate suits for declaration that the aforesaid orders of their dismissal from service passed by the Divisional Controller were illegal, void and inoperative and they continued to be in service and were entitled to full pay. The challenge by the said respondents against their orders of dismissal from service was based on the ground that their appointments having been made by the Superintendent, Road Transport Department of the erstwhile State of Hyderabad, who was the head of that Department, their dismissal from service could only be by the head of the Mysore Government Road Transport Department i.e. by the General Manager of that Department and consequently their dismissal by the Divisional Controller who was not the head of that Department but a subordinate of his was in violation of the right guaranteed to them under Article 311(1) of the Constitution. The contentions of the first respondents regarding the invalidity of their dismissal due to the contravention of Article 311(1) of the Constitution having ultimately prevailed and all the suits filed by them having been decreed in their favour, the State of Mysore and the Mysore Government Road Transport Corporation (hereinafter referred to as 'the Corporation) have come up in appeal to this Court.

B

C

D

E

Appearing in support of the appeals, Mrs. Shayamla Pappu, counsel for the appellants, has raised the following contentions :—

F

1. That as the post of the Superintendent of the Traffic Department did not exist in the new State of Mysore and the Divisional Controller of the Mysore Government Road Transport Department was competent to appoint and dismiss servants of the category to which the first respondents (plaintiffs) belonged, the orders of their dismissal from service could not be held to have been passed in violation of Article 311(1) of the Constitution in view of section 116(2) of the States Reorganisation Act, 1956.

G

2. That in any event, as the General Manager of the Mysore Government Road Transport Department confirmed on appeal the order of dismissal from service of the first respondents, there was substantial compliance with the provisions of Article 311 of the Constitution.

H

A

3. That the posts held by the first respondents not being civil posts under the State, there could be no question of violation of Article 311(1) of the Constitution.

4. That the discretionary relief of declaration of continuance in service could not and should not have been granted on the facts of the present suits.

B

5. That in view of the fact that the first respondents were dismissed from service before the establishment of the Corporation and they did not choose to become its employees by exercising the option given to them to serve under it, no decree could be passed against the Corporation.

C

The principal and pivotal question that arises for our consideration in those appeals is whether the impugned orders of dismissal from service were passed by the competent authority ? The answer to this question depends on the answer to the questions as to who could be considered to be the appointing authority in case of the first respondents and whether they were dismissed from service by that authority or by an authority subordinate to it.

D

For a proper decision of this question, it is necessary to advert to sections 115(7) and 116 of the States Reorganisation Act, 1956, Article 311(1) of the Constitution as also to contention No. 4 raised by the Corporation in the Statement of Case filed by it before this Court and the admission made by the appellants in answer to the interrogatories served on them by the first respondent under Order 11 Rule 2 of the Code of Civil Procedure which are in these terms :—

E

"Section 115(7).—"Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

F

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

G

Section 116.—Provision as to continuance of officers in the same posts. (i) Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the Union or of an existing State in any area which on that day falls within another existing State or a new State or a Union territory shall, except where by virtue or a consequence of the provisions of this Act such post or office ceases to exist on that day continue to hold the same post or office in the other existing State or new State or

H

Union territory in which such area is included on that day, and shall be deemed as from that day to have been duly appointed to such post or office by the Government of, or other appropriate authority in such State, or by the Central Government or other appropriate authority in such Union territory as the case may be.

(2) Nothing in this section shall be deemed to prevent a competent authority after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office."

Article 311, "(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

Contention No. 4.—"The High Court failed to see that the post of Superintendent was abolished and was not in existence and that, therefore, an authority of equal rank would be an authority competent to appoint and dismiss the employees."

Admission.—"On 1-11-1956, the General Manager of the Mysore Government Road Transport Department was the head of the Mysore Government Road Transport Department and he was subordinate to none except the Government of Mysore.

The post of Divisional Controller is subordinate in rank to that of the General Manager."

A bare perusal of sub-section (7) of section 115 of the States Reorganisation Act, 1956, reproduced above, makes it clear that nothing contained in that section could, after the appointed day, i.e., November 1, 1956, affect the operation of the provisions of Chapter I of Part XIV of the Constitution which includes Article 311 thereof in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State and the conditions of service applicable immediately before the appointed day to any person who is allotted to another State could not be varied to his prejudice except with the previous approval of the Central Government. Reference in this connection may be made to two decisions of this Court in *M. B. Shukla & Ors.* v. *State of Gujarat & Ors.*(1) and *N. Raghavendra Rao* v. *Deputy Commissioner, South Kanara, Mangalore.*(2) In the latter case, it was held by this Court that the effect of sub-section (7) of section 115 of the States Reorganisation Act is to preserve the power of the State to make rules under Article 309 of the Constitution but the proviso

(1) [1970] 3 S.C.R. 515. (2) [1964] 7 S.C.R. 549.

A imposes a limitation on the exercise of that power, the limitation being that the State cannot vary the conditions of service applicable immediately before November 1, 1956, to the disadvantage of persons mentioned in sub-sections (1) and (2) of section 115 of the Act. In the view of the Court, the broad purpose underlying the proviso to section 115(7) of the Act was to ensure that the conditions of service of the aforesaid persons shall not be changed B except with the prior approval of the Central Government i.e. before embarking on varying the conditions of service, the State Governments should obtain the concurrence of the Central Government. Now as pointed out by the Judicial Committee of the Privy Council in *North West Frontier Province* v. *Suraj Narain Anand*(1) and by this Court in *Pradyat Kumar Bose* v. *The Hon'ble the Chief Justice of* C *Calcutta High Court*(2) and *State of Madhya Pradesh & Ors.* v. *Shardul Singh*(3), the expression 'conditions of service' is an expression of wide import and the dismissal from service is a matter which falls within the conditions of service of public servants. It is also well settled that it is not possible by means of any legislative provision or rule to take away the guarantee provided by Article 311(1) of the Constitution which lays down that no public servant D shall be dismissed by an authority subordinate to that by which he was appointed and if any such legislative provision or rule lays down otherwise, it will clearly be ultra vires. (See *Rangachari* v. *Secretary of State*(4)], *North West Frontier Province* v. *Suraj Narain Anand* (supra) and *The State of Uttar Pradesh & Ors.* v. *Babu Ram Upadhya*(5). It follows, therefore, that the protections including the constitutional protection enshrined in Article 311(1) of the Consti- E tution enjoyed by persons holding civil posts under the State like the first respondents prior to the coming into force of the States Reorganisation Act, 1956 could not, after the appointed day i.e. November 1, 1956, be taken away, whittled down or impaired by any legislative enactment or rule.

Sub-section (2) of section 116 of the States Reorganisation Act, F 1956 which is the sheet anchor of the first contention raised on behalf of the appellants but on which no reliance was rightly placed on their behalf either in the court of the first instance or in the trial court is of no assistance to the appellants. As observed by the learned Chief Justice while speaking for the Constitution Bench of this Court in *M/s. Gammon India Ltd. & Ors.* v. *Union of* G *India & Ors.*(6), every clause of a statute is to be construed with reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject matter. The interpretation of the words has to be by looking at the context, the collocation of the words and the object of the words relating to the matters. The words are not to be viewed

H

(1) 75 I.A. 343=A.I.R. 1949 P.C. 112.
(2) [1955] 2 S.C.R. 1331.
(3) [1970] 3 S.C.R. 302.
(4) 64 I.A. 40=A.I.R. 1937 P.C. 27.
(5) [1961] 2 S.C.R. 679.
(6) [1974] 1 S.C.C. 596.

detached from the context of the statute. The words are to be viewed in relation to the whole context. The expression 'competent authority' occurring in sub-section (2) of section 116 of the Act cannot, therefore, be considered in isolation apart from the rest of the provisions of the Act. It has to be read in conjunction with, construed and understood as having the same meaning as the expression 'appropriate authority' contemplated by sub-section (1) of that section which in turn according to Article 311(1) of the Constitution means the appointing authority or an authority equivalent to or co-ordinate in rank with the appointing authority. The Constitution being the transcendental law, the legislature by enacting section 115(7) of the States Reorganisation Act, 1956 took care to see that the constitutional guarantee enshrined in Article 311(1) of the Constitution which was available to the civil servants before the States Reorganisation Act, 1956 was not destroyed or wiped away on their allotment to a new State. That the construction placed by us on the expression 'competent authority' is in consonance with the meaning and import of the word 'subordinate' occurring in Article 311(1) of the Constitution is apparent from a catena of decisions.

In *N. Somasundaram* v. *State of Madras*[1] where the petitioner was appointed as Deputy Jailor by the Inspector General of Prisons but the order of his dismissal from service was made by the Superintendent of the Jail, it was observed :

> "The competence of the authority to order removal or dismissal will have to be determined with reference to the requirements of Article 311(1) of the Constitution; and one of the requirements is that the authority that orders the dismissal or removal should not be one subordinate in rank to that by which the civil servant in question was appointed. The principle would appear to be that it is the factum of the appointment of the civil servant who claims the guarantee, that determines the scope of the guarantee conferred by Article 311(1)."

In *Sobhagmal* v. *State*[2] where the applicant was informed in March, 1948 by the Revenue Secretary of the former State of Jaipur that he had been appointed as Inspector in the Customs and Excise Department and he was removed from service after departmental enquiry by the Commissioner, Customs and Excise, of the State of Rajasthan in July, 1952 and the order of his removal was confirmed on appeal by the Government of Rajasthan, Wanchoo, C.J. while holding that the order of removal could not be sustained said :—

> "What Article 311(1) provides is that the authority dismissing should not be subordinate in rank to that by

(1) A.I.R. 1956 Mad. 419.

(2) A.I.R. 1954 Raj. 207.

A which the appointment was made. The intention seems to be that the authority dismissing should be co-ordinate in rank to the authority appointing, and not that in the absence of direct subordination any authority could dismiss even though the authority appointing might be a higher authority in rank. The dismissing authority should be at least co-ordinate in rank with the appointing authority and should

B not be subordinate in rank. Thus if a person is appointed by a Head of one department, and he is transferred to another department, he can only be dismissed or removed by the Head of the other department."

In *Gurmukh Singh* v. *Union of India*(1) where the petitioner was

C appointed as an Assistant Sub-Inspector of Police in the Delhi State Police Force by the Deputy Inspector General of Police who was at the relevant time, the head of the Delhi Police and the post of Deputy Inspector General afterwards ceased to exist and the two senior-most officers in the Police Force at the relevant period were the Inspector General and the Senior Superintendent of Police and the petitioner was dismissed by the order of

D the Senior Superintendent of Police who had been invested with the powers of Deputy Inspector General, Falshaw, C.J. accepting the contention of the petitioner that his dismissal contravened Article 311 since the Superintendent of Police even where he is designated as Senior Superintendent is subordinate to the Inspector General of Police observed :

E "The word 'subordinate' in Art. 311(1) of the Constitution means subordinate in rank and not with reference to the functions exercised. Consequently, when no officer of equal rank to the appointing officer is available then the order of dismissal or removal will have to be passed by an officer of superior rank. In no circumstances can such an order be passed by an officer of lesser rank. Any rule

F of statute which permits such an action, must be held to be ultra vires as infringing the provisions of Article 311(1) of the Constitution."

In *Mahadev Prasad Roy* v. *S. N. Chatterjee & Ors.*(2) where the petitioner was appointed in 1928 as lino operator in the Government

G Press by the Superintendent of the Press and the Government order was passed on June 20, 1952 delegating the power of appointment and dismissal to the Deputy Superintendent who initiated proceedings against the petitioner on a charge of theft and passed an order dismissing the petitioner from service on September 16, 1953, Ramaswami, J. (as he then was) accepting the contention of the petitioner that he could be dismissed only by the Superintendent of the Govern-

H ment Press or by any higher authority and the order passed by the Deputy Superintendent was invalid and inoperative observed :

(1) Aau.I.R. 1963 Punjab 370. (2) A.I.R, 1954 Patna 285,

A

"The word 'subordinate' in Art. 311(1) must be properly construed to mean subordination in rank and not subordination of function; otherwise, the protection referred to in Art. 311 would be illusory."

Similar view was expressed by a Full Bench of the High Court of Jammu & Kashmir in *State of J & K and Anr.* v. *Raj Mohammad & Ors.*(1). In *The State of U.P. & Ors.* v. *Ram Naresh Lal*(2), this Court held that the power can be conferred on an officer other than the appointing authority to dismiss a Government servant provided he is not subordinate in rank to the appointing officer or authority.

B

In the instant cases, the first respondents were undeniably appointed by the Superintendent of the Traffic Department of the erstwhile State of Hyderabad who was the head of the Road Transport Department of that State. On the coming into force of the States Reorganisation Act, 1956 on November 1, 1956, they were to be deemed by virtue of sub-section (1) of section 116 of the States Reorganisation Act to have been appointed with effect from that date to the posts held by them on that date by the appropriate authority in the new State of Mysore which could not in the context mean an authority other than the one equivalent to or coordinate in rank with the aforesaid authority in the erstwhile State of Hyderabad. The authority equivalent to or coordinate in rank with the aforesaid authority on the relevant date being the General Manager of the Mysore Government Road Transport Department according to the appellant's own admission as contained in answer to the aforesaid interrogatories served on them by the first respondents, he alone could be considered to be the 'competent authority' in terms of sub-section (2) of section 116 of the States Reorganisation Act, 1956. The fact that there was no post of Superintendent of the Traffic in the Mysore Government Road Transport Department in the State of Mysore is of no consequence. Such being the position, the first respondents could not have been dismissed from service by an authority lower or subordinate in rank to the General Manager of the Transport Department as it would tantamount to deprivation of the guarantee enshrined in Article 311 of the Constitution read with section 115(7) of the States Reorganisation Act, 1956. The first contention urged on behalf of the appellants which runs counter not only to contention No. 4 raised by the Corporation in its Statement of Case before this Court and the admission made by it in answer to the aforesaid interrogatories but also to section 115(7) and section 116 of the States Reorganisation Act, 1956 is, therefore, rejected.

C

D

E

F

G

The second contention urged on behalf of the appellants that as the General Manager of the Mysore Government Road Transport Department confirmed on appeal the orders of dismissal of the first respondents that should be considered as substantial compliance with the provisions of Article 311(1) of the Constitution is, in our judg-

H

(1) (1971) J & K. L.R. 558. (2) [1970] 3 S.C.C. 173.

A ment, devoid of substance. The original order of dismissal of the first respondents being without jurisdiction and as such void and inoperative having been passed in contravention of the provisions of Article 311(1) of the Constitution, the order passed on appeal by the General Manager could not cure the initial defect. In similar circumstances, the appellate order passed by the Director General of B Prisons was not considered by the Madras High Court in *N. Somasundaram's* case (supra) to remedy the invalidity of the original order passed by the Superintendent of Jails. To the same effect is the decision of the Nagpur High Court in *Provincial Government, Central Provinces and Berar* v. *Shamshul Hussain Siraj Hussain.*(1)

Again in *Suraj Narain Anand* v. *The North-West Frontier Province*(2), it was held by the Federal Court that the rejection of appeal C by a higher authority against dismissal is not equivalent to a dismissal by that authority itself, so as to satisfy the provisions of subsection (2) of section 240 of the Government India Act, 1935.

There is also no force in the third contention of counsel for the appellants that the posts held by the first respondents not being civil D posts under the State, there could be no question of violation of Article 311(1) of the Constitution. The argument seems to overlook that both at the time of coming into force of the States Reorganisation Act, 1956 and at the time of the passing of the impugned orders, the first respondents were holding civil posts in connection with the affairs of the State and they could not but be treated as holding civil posts under the State.

E The fourth contention raised by counsel for the appellant that the discretionary relief of declaration could not and should not have been granted by the lower courts on the facts of the present suits is also devoid of merit. In *Executive Committee of U.P. State Warehousing Corporation Limited* v. *Chandra Kiran Tyagi*(3) and *Executive Committee of Vaish Degree College, Shamli & Ors.* v. *Lakshmi Narain* F *& Ors.*(4) it was clearly held by this Court that declaration to enforce a contract of personal service can be granted in the following three cases :—

(i) appropriate cases of public servants who have been dismissed from service in contravention of Art. 311;

G (ii) dismissed workers under industrial and labour law; and

(iii) when a statutory body has acted in breach of a mandatory obligation imposed by a statute

This takes us to second limb of the fourth contention raised on behalf of the appellants. While it is true that the relief of declara-H ration is discretionary, it is well settled that it is only if the dis-

(1) A.I.R. 1949 Nagpur 118.
(2) [1941] F.C.R. 37.
(3) [1970] 2 S.C.R. 250.
(4) [1976] 2 S.C.R. 1006.

cretion is not exercised by the lower court in the spirit of the statute or fairly or honestly or according to the rules of reason and justice, that the order passed by the lower court can be reversed by the superior court. Reference in this connection may usefully be made to a decision of the Privy Council in *Charles Osenton & Company* v. *Johnston*(1) where the legal position was succinctly stated as follows :—

> "There remains the question whether, assuming that in the circumstance of this case Tucker J. had jurisdiction to make the order of reference his conclusion must stand on the ground that it was reached in the exercise of his discretion and that the exercise of such discretion should not be interfered with on appeal. So the respondent contends, while the appellants urge that, even if the discretion to make the order existed, it was wrongly exercised in view of the gravity of the charges made against them, of the impossibility of appeal from an official referee's finding of fact, and in view of the practicability of the case being tried before a Judge without a jury. The law as to the reversal by a court of appeal of an order made by the judge below in the exercise of this discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case. The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. But if the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant. then the reversal of the order on appeal may be justified. This matter was elaborately discussed in the decision of this House in *Evans* v. *Bartlam* (1937) A.C. 473, where the proposition was stated by my noble and learned friend, Lord Wright, as follows : "It is clear that the Court of Appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the Court of Appeal cannot review his order unless he is shown to have applied a wrong principle. The Court must if necessary examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order. Otherwise in interlocutory matters, the judge might be regarded as independent of supervision. Yet an interlocutory order of the judge may

(1) [1942] A.C. 130.

A

> often be of decisive importance on the final issue of the case, and one which requires a careful examination by the Court of Appeal. Thus in *Gardner* v. *Jay* (1885) 29 Ch. D. 50, Bowen L.J. in discussing the discretion of the judge as regards mode of trial says : "That discretion, like other judicial discretions must be exercised according to common sense and according to justice, and if there is a miscarriage in the exercise of it, it will be reviewed."

B

Bearing in mind the well settled principles regarding interference with the discretion and taking into consideration all the facts and circumstances of the present cases, we are unable to see how the discretion has been wrongly exercised in favour of the first respondents. The fourth contention urged on behalf of the appellants is, therefore, overruled.

C

We are also not impressed with the last submission made on behalf of the appellants that in view of the fact that the impugned orders of dismissal from service were passed before the establishment of the Corporation, no decree could be passed against it. The Corporation having itself made an application on September 7, 1964 before the trial Court endorsed by the Government Pleader requesting therein that since the State of Mysore had constituted a Road Transport Corporation and had transferred its rights and liabilities to the Corporation, the decree, if any, be passed exclusively against it, it cannot now turn round and say that no decree should have been passed against it.

D

E

All the contentions raised on behalf of the appellants having failed, the appeals cannot succeed. They are accordingly dismissed but in the circumstances of the case without any order as to costs.

P.B.R. *Appeal dismissed.*