

STATE OF MAHARASHTRA & J. ANR.

v.

CHANDRAKANT ANANT KULKARNI & ORS.

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September 8, 1981[O. CHINNAPPA REDDY, A.P. SEN AND
BAHARUL ISLAM, JJ.]*State Reorganisation Act 1956, S. 115(5) and (7).*

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*Reorganisation of State of Bombay—Assistant Sales Tax Officers of Madhya Pradesh and Hyderabad and Sales Tax Inspectors of Bombay allocated to new State—Integration of service.**State Government executive order altering departmental promotion rule—ASTOs of M.P. Hyderabad required to pass departmental examination for promotion—Whether alteration of condition of service, permissible, valid.*

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*Seniority list of allocated ASTOS and STIs—State Government unilaterally altering the list—ASTOS of M.P., Hyderabad placed in isolated category above STIs for Bombay—Validity of.**Integration of services—Equation of posts purely administrative function—Chances of promotion—Not condition of service—Fair and equitable treatment—What is.*

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Assistant Sales Tax Officers serving in connection with the affairs of the former States of Madhya Pradesh and Hyderabad, on the appointed date, were allocated to the new State of Bombay under s. 115 of the States Reorganisation Act, 1956 (Act No. XXXVII) with effect from November 1, 1956. The Assistant Sales Tax Officers from the former States of Madhya Pradesh and Hyderabad were superior to the Sales Tax Inspectors in their respective States and the posts of Assistant Sales Tax Officer in those States was a promotion post. In the former State of Bombay, there was no similarly constituted cadre of Assistant Sales Tax Officers, but there were posts of Sales Tax Inspectors.

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On November 16, 1957, the State Government by its resolution directed that the ASTOs from Madhya Pradesh and Hyderabad should continue in their respective pay-scales until such of them were not appointed as STOs Grade III, and Notes 3 and 6 appended to the Resolution provided that for purposes of promotion their *inter se* seniority be fixed on the basis of their service as STOs and ASTOs. On February 3, 1960, the State Government substantially modified rule 7 of the Allocated Government Servants (Absorption, Seniority, Pay and Allowances) Rules, 1957 and a new rule 7 was substituted which provided that the seniority of an allocated Government servant in the post or cadre of absorption shall, as on November 1, 1956 be determined by the length of continuous service etc. Since

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A there were no comparable posts of ASTOs in the former State of Bombay, the Central Government directed that the ASTOs from Madhya Pradesh and Hyderabad should not be equated with the post of STIs but should be continued in an isolated category and their seniority should be fixed above the persons in the next lower grade. The State Government by its resolution dated September 10, 1960 modified Notes 3 and 6 and directed that the seniority as on November 1, 1956 of ASTOs from Madhya Pradesh and Hyderabad be fixed above all persons absorbed as STIs and that the *inter se* seniority of STOs from Madhya Pradesh and Hyderabad be fixed on the basis of their continuous service as ASTOs, and that the service rendered by the ASTOs from Madhya Pradesh as Excise Inspectors or Assistant District Excise Officers in the Excise Department be counted as equivalent service. On August 17, 1962, the State Government prepared a fresh provisional gradation list of ASTOs and STIs and invited objections. None of the respondents raised any objection.

C Upto and until August 8, 1960, departmental examinations for promotion to the post of STOs were conducted under the three different sets of rules applicable to the former States of Bombay, Madhya Pradesh and Hyderabad. The Departmental Examination Rules for Sales Tax Officers 1954 framed by the former State Government of Bombay were made applicable to the Assistant Sales Tax Officers allocated from Madhya Pradesh and Hyderabad from August 8, 1960, as the provisions of the Bombay Sales Tax Act, 1959 were extended to the whole of the State, the CP and Berar Sales Tax Act 1947 and the Hyderabad General Sales Tax 1950 having been repealed. The ASTOs from Vidarbha and Marathwada regions of Madhya Pradesh and Hyderabad were called upon to appear at the examinations prescribed from the STOs of the old Bombay region, and some of the ASTOs from Madhya Pradesh and Hyderabad who had been promoted as STOs Grade III were reverted to the post of ASTOs due to their failure to pass the said examination.

E The Government by its Resolution dated June 13, 1964 directed that the ex Hyderabad ASTOs even though they had not passed the prescribed departmental examination should be confirmed on the basis of confidential records, efficiency and seniority; and by its Memorandum dated November 21, 1964 ordered that all the ASTOs and STIs who had been allocated from the old M.P. and Hyderabad States should be considered eligible for promotion without passing the STOs examination if they are otherwise fit for promotion.

F On representation made by the ASTOs from Madhya Pradesh and Hyderabad, the Government of India, by its letter dated March 9, 1965 to the State Government directed that the Bombay Departmental Examination Rules, 1954, could not be made applicable to the allocated ASTOs from Madhya Pradesh and Hyderabad as it would amount to changing their conditions of service to their disadvantage. It accordingly directed that all the ASTOs from Madhya Pradesh and Hyderabad who were compelled to appear for the said examination and who had failed to pass the same be reinstated as STOs. This directive resulted in Respondents 1 and 2 who had been promoted to officiate as STO, Grade III being reverted as STIs.

G The State Government in view of this change reviewed the cases of all the ASTOs, and STIs from the three regions and those who were otherwise found

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suitable were according to their seniority promoted to the post of STO, Gr. III even though they had not passed the STO's examination. On January 6, 1966 the State Government published a revised gradation list of ASTOs and STIs and invited objections. Only Respondent 4 filed objections which was considered by the Government and rejected.

The writ petition filed by Respondents 1 to 5 who were STIs in the State of Bombay and had passed the prescribed departmental examination for promotion as STOs Gr. III was allowed by the High Court which struck down the various resolutions and orders passed by the State Government from time to time relating to integration of service under sub-section (7) of S. 115 of the Act.

In the appeals by the State to this Court on the questions whether (1) the State Government could by an executive order without framing a rule under the Proviso to Art. 309 of the Constitution alter the rules relating to departmental promotion of ASTOs from Madhya Pradesh and Hyderabad which constituted their conditions of service to the prejudice of the STIs of Bombay without the prior approval of the Central Government under the proviso to sub-section (7) of section 115 of the Act, and (2) the State Government while integrating the services could unilaterally alter the seniority list of the allocated ASTOs and place the ASTOs from Madhya Pradesh and Hyderabad in an isolated category over the STIs from Bombay while determining their *inter se* seniority.

Allowing the appeal,

HELD : 1 (i). The matter of equation of posts is purely an administrative function under s. 115 of the States Re-organisation Act, 1956. Under sub-s. (5) of s. 115 the Central Government is the sole repository of the power to effectuate the integration of services in the new States. It has been left entirely to the Central Government as to how it has to deal with these questions. The Central Government established an Advisory Committee for purposes of assisting in proper consideration of the representations made to it for the work of integration of services, the Central Government could take all manner of assistance from the State Government including the preparation of provisional gradation lists, The Central Government exercises general control in regard to the integration of services, and the ultimate integration was done with the sanction and approval of the Central Government. The provisional gradation lists prepared by the State Government were not, therefore, open to challenge. [679 A-E]

Union of India and Anr. v. P.K. Roy and Ors. [1968] 2 SCR 186 referred to.

In the instant case, not only had the Central Government laid down the principles for integration but also considered the representation made and passed the final orders thereon. The provisional gradation lists were prepared by the State Government under the direction and with the sanction of the Central Government. The Assistant Sales Tax Officers from the former States of Madhya Pradesh and Hyderabad allocated to the new State of Bombay, could not be equated with the Sales Tax Inspectors. In the former State of Bombay, there was no similarly constituted cadre of Assistant Sales Tax Officers, but there were

A posts of Sales Tax Inspectors. The Assistant Sales Tax Officers from Madhya Pradesh and Hyderabad were superior to Sales Tax Inspectors in their respective States and the post of Assistant Sales Tax Officer in these States was a promotion post. It would have been inequitable and unfair to equate Assistant Sales Tax Officers from Madhya Pradesh and Hyderabad with Sales Tax Inspectors from Bombay having regard to the nature of their posts, the powers and responsibilities, and the pay-scales drawn by them. In addition, Assistant Sales Tax Officers in these States were assessing authorities and they enjoyed statutory powers of their own to assess tax and levy penalties, whereas the Sales Tax Inspectors in Bombay had no such powers to assess tax or levy penalty but had merely to scrutinise returns and generally act in a subordinate capacity to Sales Tax Officers. [679 F—680 C]

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C (ii) The principle adopted by the State Government for determining the relative *inter se* seniority was obviously wrong, being contrary to the principles settled at the Chief Secretaries Conference. The Government of India, on representation by the affected Assistant Sales Tax Officers from Madhya Pradesh and Hyderabad in consultation with the Central Advisory Committee, directed that the *inter se* seniority should be fixed taking into account continuous service in the equated grade only subject to the *inter se* seniority of the officers, coming from the several integrating regions. Upon that basis, the State Government by its Resolution dated September 10, 1960 rightly modified Notes 3 and 6 of its 1957 Resolution and directed that the seniority as on November 1, 1956 of ASTOs from Madhya Pradesh and Hyderabad be fixed above the persons in the cadre of STIs and that the *inter se* seniority of ASTOs from Madhya Pradesh and Hyderabad be fixed on the basis of their continuous service as ASTOS in their respective States. [680 E-G]

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E 2. There was a difference between the Departmental Examination Rules framed by the former State Governments of Bombay, Madhya Pradesh and Hyderabad regulating the appointment of STOs. In the former State of Bombay, eligibility for the promotion of STIs to the post of STO Gr. III depended upon their passing the departmental examination for the non-gazetted staff of the Sales Tax Department under rule 1 (b) (ii) of the Recruitment Rules for the STOs Gr. III, i. e. it was condition precedent. In the former States of Madhya Pradesh and Hyderabad there was no such condition attached. Under the Rules for Departmental examination, the ASTOs who were promoted as STOs were required to pass the departmental examination within two or three years from the date of their promotion i. e. it was a condition subsequent. The Departmental Examination Rules framed by the former State Governments of Madhya Pradesh and Hyderabad for promotion to the post of STOs formed part of the conditions of service of ASTOs from Madhya Pradesh and Hyderabad and they could not be altered to their disadvantage without the prior approval of the Central Government under s. 115 (7) of the Act. Since no examination admittedly had been held there was no question of their reversion as ASTOs.

[685 B-C; E-G; 683 B-F; 685F]

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H 3 (i) The Resolution dated June 13, 1964 and the Memorandum dated November 24, 1964 do not have the status of a rule framed under the Proviso to Article 309 of the Constitution. They merely conveyed the decision of the State Government that the allocated ASTOs from Madhya Pradesh and Hyderabad

should be considered eligible for promotion to the post of STO, Gr. III without passing the departmental examination for STOs Gr. III. The State Government had not by its Resolution or Memorandum brought about a change in the conditions of service by an executive order. All that was done was to rectify a mistake that had been committed in the past in subjecting the ASTOs from Madhya Pradesh and Hyderabad to the Departmental Examination Rules framed by the former State Government of Bombay i. e. to a rule which did not form part of conditions of their service and, therefore, was not applicable to them. There is, therefore, no infirmity in these two documents. [681 F-H]

(ii) Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotions are not. [683 C]

(iii) The State Government's Resolution dated June 13, 1964 and its Memorandum of November 21, 1964 clarifying that the ASTOs from Madhya Pradesh and Hyderabad were entitled for promotion to the post of STO Gr. III without passing the departmental examination, placed STI from Bombay at a disadvantage. To ensure 'fair and equitable treatment' the State Government rightly dispensed with the requirement of passing the departmental examination in the case of STIs from the former State of Bombay. The State Government acted with the best of intentions. It endeavoured to strike a balance between the competing claims to relative seniority. When sub-section (5) of section 115 of the Act speaks of 'fair and equitable treatment', it envisages a decision which is fair and equitable to *all*. [686 A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 420(N) of 1971

From the Judgment and Order dated 23rd October 1969 of the Bombay High Court in Special Civil Application No. 1721 of 1966.

R.N. Sachthey and Mr. R.N. Poddar for the Appellant

U. R. Lalit, V. N. Ganpule and Mrs. Veena Devi Khanna for Respondents Nos. 1 to 5

S.V. Tambewaker for Respondent No. 7

A.K. Sanghi for the intervener

M. L. Heble, V. N. Ganpule and Mrs. Veena Devi Khanna for the intervener.

A The Judgment of the Court was delivered by

B SEN, J. In this appeal, by special leave, the question for consideration is whether there was denial of "fair and equitable treatment" within the meaning of sub-s. (5) of s. 115 of the States Reorganisation Act, 1956 (hereinafter called 'the Act') in the matter of determination of relative seniority and equation of posts as between the Assistant Sales Tax Officers (abbreviated as ASTOs) from the former States of Madhya Pradesh and Hyderabad and Sales Tax Inspectors (abbreviated as STIs) from the former State of Bombay, who were allocated to the new State of Bombay, and their right to promotion to the posts of Sales Tax Officers (abbreviated as STOs) Grade III.

C The High Court by its judgment, on a writ petition filed by Respondents 1 to 5, who were STIs of the State of Bombay and passed the prescribed departmental examination for promotion as STOs Gr. III, has struck down the various resolutions and orders passed by the State Government from time to time relating to integration of services of these officers under sub-s. (7) of s. 115 of the Act, in compliance with the directives of the Central Government issued under sub-s. (5) of s. 115 of the Act. The main question in the appeal is whether the High Court was right in doing so.

D To appreciate the points involved, it is necessary to set out a few facts. On November 16, 1957, the State Government by its Resolution purported to direct that the ASTOs from Madhya Pradesh and Hyderabad should continue in their respective pay-scales until such of them were not appointed as STOs Gr. III under r. 7 of the Allocated Government Servants (Absorption, Seniority, Pay and Allowances) Rules, 1957. Notes 3 and 6 appended to the said Resolution provided that for purposes of promotion, their *inter se* seniority shall be fixed on the basis of their service as STIs being counted together with their service as ASTOs in Madhya Pradesh and service as Accountants, if any, together with their service as ASTOs in Hyderabad. In accordance therewith, a provisional gradation list of those who were absorbed as STIs as on November 1, 1956 as also of those who continued as ASTOs in their respective posts with effect from that date was prepared and published by the State Government under r. 2 of the said Rules, on January 21, 1960 and objections thereto were invited within two months from the date of its publication. On February 3, 1960, the State Government substantially modified r. 7 and a new r. 7 was substituted which provided that generally the seniority of an allocated Government servant in the post or cadre of absorption shall, as

on November 1, 1956, be determined by the length of continuous service etc. On instructions from the Central Government and in further consultation with it, the State Government clarified that the provisional gradation list as published would not be finalised until representations, if any, of the Government servants were decided by the Government of India in consultation with the Advisory Committee. Since there were no comparable posts of ASTOs in the former State of Bombay, the Central Government directed that the ASTOs from Madhya Pradesh and Hyderabad should not be equated with the post of STIs, but should be continued in an isolated category and their seniority should be fixed above the persons in the next lower grade.

In accordance with the directive of the Central Government under sub-s. (5) of s. 115 of the Act, the State Government by its Resolution dated September 10, 1960, modified Notes 3 and 6 referred to above and directed that the seniority as on November 1, 1956 of ASTOs from Madhya Pradesh and Hyderabad be fixed above all persons absorbed as STIs and that the *inter se* seniority of STOs from Madhya Pradesh and Hyderabad be fixed on the basis of their continuous service as ASTOs. It was further directed that the service rendered by the ASTOs from Madhya Pradesh as Excise Inspectors or Assistant District Excise Officers in the Excise Department of that State be counted as equivalent to service as STOs. On August 17, 1962, the State Government accordingly prepared a fresh provisional gradation list of ASTOs and STIs and invited objections thereto afresh. It appears that none of the respondents raised any objection.

To resume the narration. Between November 1, 1956 and August 8, 1960, promotions to the post of STO, Gr. III were made on the basis of separate departmental examinations held in accordance with the rules framed by the former State Governments concerned. Upto and until August 8, 1960, departmental examinations for promotion to the post of STOs were conducted under the three different sets of rules applicable to the former States of Bombay, Madhya Pradesh and Hyderabad. From August 8, 1960, the Bombay Departmental Examination Rules for STOs were made applicable to the ASTOs allocated from Madhya Pradesh and Hyderabad as well in as much as the Bombay Sales Tax Act, 1959 was made applicable to the whole of the State and the C.P., and Berar Sales Tax Act, 1947 and the Hyderabad General Sales Tax

A Act, 1950, were repealed. The ASTOs from Vidarbha and Marathwada regions of Madhya Pradesh and Hyderabad were called upon to appear at the examination prescribed for the STOs of the old Bombay region. Accordingly, promotions to the post of STO Gr. III were regulated under the Bombay Departmental Examination Rules and in consequence some of the ASTOs from Madhya Pradesh and Hyderabad who had been promoted as STOs Gr. III were reverted to the post of ASTO due to their failure to pass the said examination. In the meanwhile, the State Government, on January 20, 1961, amended r. 1(b) (ii) of the Recruitment Rules for the Sales Tax Officers Grade III by the addition of the words "and also the Departmental Examination for Sales Tax Officers" after the words "time for promotion" which had the effect of making the passing of such an examination a condition precedent to promotion as STOs Gr. III.

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D On representations made by the ex-Hyderabad ASTOs, the Government by its Resolution dated June 13, 1964, directed :

E Rules 2(d) of the Departmental Examination Rules of Sales Tax Officers and Assistant Sales Tax Officers issued by the Finance Department of the former Hyderabad Govt. under their Notification number 1118/3 S. T. dated the 24th January, 1956 lays down that Inspecting Officers, Sales Tax Officers (Class I and II) and Assistant Sales Tax Officers who are not confirmed in their respective posts, should pass the examination within the period specified in clause (c) of Rule 2 of the said Rules failing which they would be reverted to their substantive post. In accordance with this Rule Government have reverted some Sales Tax Officers from the former Hyderabad State for not having passed the Departmental Examination within the prescribed time. The Government of Andhra Pradesh has brought to the notice of this Government the instructions contained in Ex-Hyderabad, Finance Department, Letter No. 7851/Admn. dated the 31st October 1956 according to which officers and the staff of the Sales Tax Department of the former Hyderabad State, even though they have not passed the prescribed Departmental Examination *are to be confirmed, if they are otherwise found deserving of confirmation on the basis of their confidential records, efficiency and seniority.* The said letter dated 31st October 1955 of the Hyderabad Finance Department, also laid down that such

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confirmed personnel should not be promoted to higher posts until such times as they complete the prescribed Departmental Examination. A

2. *The validity of the instructions issued in Ex-Hyderabad Finance Department letter No. 7851/Admn. dated the 31st October, 1956 was under the consideration of Government for some time and it has now been decided to observe the instructions contained in the Finance Department letter of the Ex-Hyderabad State, and is, therefore, pleased to order that the officers and staff of the Sales Tax Department of the former Hyderabad State, who were otherwise found deserving of confirmation on the basis of their confidential records, efficiency and seniority may be confirmed in their respective posts held prior to 1st November 1956 against clear vacancies in terms of General Administration Department Circular No. 97 G.A.D. 12-SR-55 dated 10th September 1956 issued by the Ex-Hyderabad Government. Such confirmed personnel should, however, not be promoted to higher posts until such times as they complete the prescribed Departmental Examination.* B
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(emphasis supplied)

Similarly, on representations made by the ex-Madhya Pradesh ASTOs, the State Government by its Memorandum dated November 21, 1964, ordered : E

Recruitment Rules for the Sales Tax Officers prescribed for the Old Bombay State appearing in Government Resolution Finance Department No. STO-1654 dated 28th July 1954 as amended by the Government Resolution, Finance Department No. STE-1159/0181/61-XIII dated the 29th January 1961 lays down that a Sales Tax Inspector is not eligible for promotion of Sales Tax Officers without passing the examination prescribed for the Sales Tax Officers. According to Govt. Circular, Political and Services Department No. STI-1080-D dated the 29th April 1960 pending unification of the Recruitment Rules sanctioned by the Government of the former State of Bombay, M.P. and Hyderabad Recruitment to the post and services in the various component parts of the State is to be regulated according to the rules framed by the former Govern- F
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A ments concerned and not according to the Bombay Civil Service Rules. In view of this, the recruitment rules of old M.P. and the Ex. Hyderabad State will be applicable to the allocated Government servants coming from those areas until such time as a unified set of recruitment rules is prescribed by Government. *As there is no condition in the recruitment rules of the M.P. State or the Ex. Hyderabad State to the effect that persons should pass the Sales Tax Officers Examination before he is promoted as a Sales Tax Officer, it would not be correct to ask the Assistant Sales Tax Officers and Sales Tax Inspectors allocated from the old M.P. State and Hyderabad State to pass the Sales Tax Officers examination before being considered for promotion. Government has, therefore, decided that all Assistant S.T.Os and S.T.Is who have been allocated from the old M.P. and Hyderabad States should be considered eligible for promotion without passing the STOs examination if they are otherwise fit for the promotion. Such persons will have to pass STO's examination within such period as laid down in their respective departmental examination rules or recruitment rules as the case may be.*

(emphasis added)

E On the representations made by the ASTOs from Madhya Pradesh and Hyderabad, the Government of India, on March 9, 1965, addressed a letter to the State Government to the effect :

The specific approval of the Government of India under the proviso to section 115(7) of the S.R. Act is necessary not only for applying the amended rules to the erstwhile employees of Vidarbha and Marathwada but also for amending the rules to the disadvantage of the erstwhile Bombay employees. The 1954 rules of Bombay only provided that preference should be given to an Inspector who had passed the Departmental Examination of Sales Tax Officers before he could be considered for promotion to the post of Sales Tax Officer. But the amended rules now provide that passing this examination is a prerequisite for consideration for promotion to the post of Sales Tax Officer.

H The Government of India have normally been accord- ing approval under the S. R. Act for prescribing such departmental tests subject to the following conditions :-

1. *Additional time*, which may be *double* that of the time that is *ordinarily permissible* for passing such tests be *allowed to the employees from the integrating units* in cases where tests of higher standard are prescribed, or where tests were not prescribed under the parent State Governments. A
2. *Employees of the integrating unit should be promoted subject to their passing the test within the additional time referred to at item (i) above in other words, promotions should not be withheld merely because the employees have not passed a Departmental test, and* B
3. *Government Servants of the age of 45 years or more should be exempted from passing departmental test and when exempted, they should be eligible for promotion equally with one who has passed the tests.* C

I am to request that the *State Government may examine the matter on the above lines and forward to the Government of India for approval their reconsidered proposals together with a draft of the amendment to the rules which the State Government may desire to make.* I am also to request that relevant extract of the rules of the erstwhile Government of Hyderabad, Madhya Pradesh and Bombay which are to be affected by the proposed amendment may also be forwarded to this Ministry. D

(emphasis added) E

As the Central Government was of the opinion that the Bombay Departmental Examination Rules should not be made applicable to the allocated ASTOs from Madhya Pradesh and Hyderabad to their disadvantage, all the ASTOs from Madhya Pradesh and Hyderabad who were compelled earlier to appear for the said examination and who had failed to pass it were reinstated as STOs. As a direct consequence of this, the Respondents 1 and 2 who had been promoted to officiate as STO, Gr. III were reverted as STIs by orders dated April 28, 1965 and June 30, 1965. Since the amendment made to rule 1 (b) (ii) on January 20, 1961 operated to the disadvantage of STIs from Bombay, the State Government by its orders dated October 1, 1965, suspended the said amendment to the Recruitment F

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A Rules until further orders. In view of these changes, the State Government reviewed the cases of all the ASTOs and STIs from the three regions, and those who were otherwise found suitable were according to their seniority promoted to the post of STO Gr. III even though they had not passed the STO examination. On January 6, 1966, the State Government published a revised gradation list of ASTOs and STIs and invited objections thereto. None of the respondents except Respondent 4 filed any objection. That representation, on being forwarded by the State Government, was duly considered by the Government of India, who rejected the same.

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C The decision of the Government of India is contained in the counter-affidavit of Shri Shukla, Deputy Secretary, Ministry of Home Affairs, which reads :

D I say that the Government of India carefully considered the representation made inter alia by the 4th petitioner and the recommendations of the State Advisory Committee and rejected the said representations and upheld the said gradation list dated the 6th Jan. 1966 as there was no reason to alter the principles on which the same had been prepared. As stated hereinabove the *Government of India was of the opinion that the decision of the State Government to treat Assistant Sales Tax Officers as an isolated category and to place the same above Sales Tax Inspectors was just and fair.* The Government of India also considered the alterations made by the State Government in the rules relating to the passing of a Departmental Examination before a Sales Tax Inspector could be promoted to the post of a Sales Tax Officer Grade III. I say that different rules were prevalent in the different integrating areas regulating departmental promotions. The State Govt. decided that until unified recruitment rules were framed promotions might be given to all without their having to pass an examination i.e. without any discrimination. *The Government of India, who have examined the matter in consultation with the State Advisory Committee was of the view that the deletion of departmental examination altogether was fair and just because by doing so all discrimination between employees coming from different integrating areas was removed.*

H (emphasis added)

It would appear that till 1973 there were no unified rules by which ASTOs from Madhya Pradesh and Hyderabad and STIs from Bombay were governed. The Maharashtra Sales Tax Officers' Rules, 1973, framed by the State Government in exercise of the powers under the Proviso to Art. 309 of the Constitution came into force on August 4, 1973. Rule 2 provides that the rules shall apply to Government servants serving in the Sales Tax Department including those of the former States of Bombay, Madhya Pradesh and Hyderabad who were allocated for service to the State of Bombay and subsequently to the State of Maharashtra. Rule 4 deals with direct recruits as well as promotees and makes the condition for passing of the departmental examination within two years from the date of promotion or two years from the date of promulgation of the Rules and by r. 4 (c) it is provided that in the event of failure to pass the examination in the prescribed time, they shall be liable to reversion to the posts held by them prior to their promotion. Looking to the lapse of time in framing the Rules, r. 8 provides that STOs who have already attained the age of 48 years on the date of promulgation of these rules shall be exempted from passing the Departmental Examination under the rules. It is necessary here to mention that the Maharashtra (Bombay Area) Sales Tax Officers (Grade II and Grade III) Recruitment Rules, 1969 framed by the State Government under the Proviso to Art. 309 of the Constitution were struck down by the High Court as *ultra vires* being *per se* discriminatory and thus violative of Art. 14 of the Constitution. That was because r. 2 provided that nothing therein shall govern the ASTOs from Madhya Pradesh and Hyderabad. There is no need for us to enter into the question as to the validity or otherwise of the said Rules. since the Maharashtra Sales Tax Officers' Rules, 1973 now hold the field.

The two questions canvassed in this appeal are : (1) whether the State Government could by an executive order without framing a rule under the Proviso to Art. 309 of the Constitution, alter the rules relating to departmental promotion of ASTOs from Madhya Pradesh and Hyderabad which constituted their conditions of service to the prejudice of the STIs of Bombay without the prior approval of the Central Government under the Proviso to sub-s. (7) of s. 115 of the Act, and (2) Whether the State Government while integrating the services could unilaterally alter the seniority list of the allocated ASTOs and STIs and place the ASTOs from Madhya Pradesh and Hyderabad in an isolated category over the STIs from Bombay while determining their *inter se* seniority.

A Prior to the reorganisation of the States, a Conference of the Chief Secretaries of the States that were to be affected by the reorganisation was held at Delhi on May 18 and 19, 1956 for the purpose of the formulation of the principles upon which integration of services was to be effected. The Government of India by their letter dated April 3, 1957 informed the State Government that the work of integration of services should be dealt with by them in the light of the general principles already settled at the Chief Secretaries Conference. This has been construed to be a valid delegation of powers to prepare the preliminary and final gradation lists under the direction and with the sanction of the Central Government. The Government of India by its Circular dated May 11, 1957 to all the State Governments stated *inter alia* that it agreed with the views expressed on behalf of the States' representatives that it would not be appropriate to provide any protection in the matter of departmental promotion. This Circular has been interpreted as a prior approval of the Central Government in terms of the proviso to sub-s. (7) of s. 115 of the Act in the matter of change in the conditions of service relating to departmental promotions.

The following principles had been formulated for being observed as far as may be, in the integration of Government servants allotted to the services of the new States :

- E** "In the matter of equation of posts :
- (i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but
- F** (ii) Where, however, there were no such similar cadres the following factors will be taken into consideration in determining the equation of posts :—
- (a) nature and duties of a post ;
- G** (b) powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged ;
- H** (c) the minimum qualifications, if any, prescribed for recruitment to the post.
- (d) the salary of the post.

It is well-settled that these principles have a statutory force. A

There is a long line of decisions of this Court starting from the *Union of India and Anr. v. P.K. Roy and Ors*⁽¹⁾ laying down that the Central Government has been constituted to be the final authority in the matter of integration of services under sub-s, (5) of s. 115 of the Act. The matter of equation of posts is purely an administrative function. It has been left entirely to the Central Government as to how it has to deal with these questions. The Central Government had established an Advisory Committee for the purpose of assisting in the proper consideration of the representations made to it. There is nothing in ss. 115 to 117 of the Act prohibiting the Central Government in any way from taking the aid and assistance of the State Govt, in the matter of effecting the integration of services. As observed by this Court in *Roy's* case the usual procedure followed by the Central Government in the matter of integration of services generally, is in order. It is not open to the Court to consider whether the equation of posts made by the Central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps, the only question the Court can enquire into is whether the four principles agreed upon at the Chief Secretaries Conference had been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the Court can operate. But where, as here, in the matter of equation of posts, the Central Government had properly taken into account all the four principles decided upon at the Chief Secretaries Conference, the decision cannot be assailed at all. In the present case, not only the Central Government had laid down the principles for integration, but also considered the representations and passed the final orders and the provisional gradation lists were prepared and published by the State Government under the direction and with the sanction of the Central Government. B
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In accordance with the principles settled at the Chief Secretaries Conference, the Government of India, in consultation with the Central Advisory Committee, directed that the posts of ASTOs in the former States of Madhya Pradesh and Hyderabad should be continued in an isolated category, there being no corresponding post in the successor State of Bombay with which they could be equated. There were 19 ASTOs in the pay-scale of Rs. 150-10-200. F
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(1) [1968] 2 SCR 186.

A EB-15-250 from Madhya Pradesh and 23 ASTOs in the pay-scale of Rs. 170-8½-225-EB-13-320 from Hyderabad allocated to the new State of Bombay. In the former State of Bombay there was no similarly constituted cadre of ASTOs, but there were posts of STIs in the pay-scale of Rs. 120-8-144-EB-8-200-10/2-250. It would have been inequitable and unfair to equate ASTOs from Madhya Pradesh and Hyderabad with STIs from Bombay, looking to the nature of their posts, the powers and responsibilities and the pay-scales attached to the same. The ASTOs from Madhya Pradesh and Hyderabad were, in the first instance, superior to STIs in their respective States and the post of ASTO in those States was a promotion post. In addition, ASTOs in those States were assessing authorities and they enjoyed statutory powers of their own to assess tax and levy penalties, whereas the STIs in Bombay had no such powers to assess tax or levy penalty but had merely to scrutinise returns and generally act in a subordinate capacity to STOs. Evidently, the State Government was wrong in directing by its Resolution dated November 16, 1957 that the seniority of ASTOs from Madhya Pradesh and Hyderabad and STIs from Bombay be fixed in the cadre of STIs in the reorganised State of Bombay on the basis of continuous service including that in the lower grade. The principle adopted by the State Government for determining their relative *inter se* seniority was obviously wrong, being contrary to the principles settled at the Chief Secretaries Conference. As already stated, the Government of India, on representation by the affected ASTOs from Madhya Pradesh and Hyderabad, in consultation with the Central Advisory Committee, directed that the *inter se* seniority should be fixed taking into account continuous service in the equated grade only subject to the *inter se* seniority of the officers coming from the several integrating regions. Upon that basis, the State Government by its Resolution dated September 10, 1960, rightly modified Notes 3 and 6 of its 1957 Resolution and directed that the seniority as on November 1, 1966 of ASTOs from Madhya Pradesh and Hyderabad be fixed above the persons in the cadre of STIs and that the *inter se* seniority of ASTOs from Madhya Pradesh and Hyderabad be fixed on the basis of their continuous service as ASTOs in their respective States.

The High Court, in dealing with the question of equation of posts observed :

H On merits, if the duties of Assistant Sales Tax Officers of those two States and those of Inspectors are compared

in the light of the minutes contained in Ex.2 (Memorandum of the Government of Maharashtra, Finance Department, dated November 21, 1964) the *difference is not much. We enquired about the nature of work they are doing today and we are told on instructions by the State's counsel that they are doing the work that the Sa'es Tax Inspectors are doing.*

(emphasis added)

All that we need say is that the High Court, if we may say so, without meaning any disrespect, has viewed the question from a wrong perspective.

The remaining question whether the State Government by its Resolution dated June 13, 1964 and Memorandum dated November 21, 1964, effected a change of recruitment rules by an executive order, in the conditions of service of the ASTOs from Madhya Pradesh and Hyderabad, contrary to the Proviso to sub-s. (5) of s. 115 of the Act; and if so, whether such a change in the conditions of service could be brought about without framing a rule under the Proviso to Art. 309 of the Constitution. In our opinion, the question does not really arise. There can be no dispute with the proposition that a rule framed under the Proviso to Art. 309 of the Constitution cannot be modified by an executive order. But the question is whether that principle is attracted to the facts and circumstances of the present case. The Resolution and the Memorandum referred to above, undoubtedly do not have the status of a rule framed under the Proviso to Art. 309 of the Constitution. They merely conveyed the decision of the State Government that the allocated ASTOs from Madhya Pradesh and Hyderabad should be considered eligible for promotion to the post of STO, Gr. III without passing the departmental examination for STO, Gr. III. The State Government had not by its Resolution dated June 13, 1964, or by its Memorandum dated Nov. 21, 1964, brought about a change in the conditions of service by an executive order. All that was done was to rectify a mistake that had been committed in the past in subjecting the ASTOs from Madhya Pradesh and Hyderabad to the Departmental Examination Rules framed by the former State Government of Bombay i.e. to a rule which did not form part of conditions of their service and, therefore, was not applicable to them. We find no infirmity in these two documents. The decisions reached by the Government on the representations made by ASTOs from Madhya Pradesh and

A Hyderabad were strictly in conformity with the recruitment rules framed by the former State of Madhya Pradesh and Hyderabad under the Proviso to Art. 309 of the Constitution. It is quite obvious that STIs from Bombay were not entitled to the above concession, as the passing of the STOs examination had been made a condition precedent for their promotion as STO Gr. III.

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C There was a marked distinction between the recruitment rules framed by the former State Governments of Bombay and Madhya Pradesh and Hyderabad for appointment as STOs. In the former State of Bombay, eligibility for the promotion of STIs to the post of STO Gr. III depended upon their passing the departmental examination for the non-gazetted staff of the Sales Tax Department under r. 1(b) (ii) of the Recruitment Rules for the S.T.Os. Gr. III. Under r. 3, preference was to be given to an Inspector who had passed the departmental examination prescribed for STOs over those who had not. By the amendment of January 20, 1961 made by

D the State Government, the words "and also the departmental examination for STOs" were added after the words "time for promotion". The effect of this amendment was to make the passing of the STO examination a condition precedent for promotion of STIs as STO Gr. III. Further, the amendment deleted r. 3 which laid down a rule of preference. In the former States of Madhya Pradesh and Hyderabad, neither such condition nor any rule of preference was there. Under r. 1 of the Rules for Departmental Examination framed by the former State Government of Madhya Pradesh, ASTOs who were promoted as STOs were required to pass the departmental examination within two years from the date of such promotion. Rule 4 provided that they would not be confirmed till they pass the said examination and on their failure to do so, they would be reverted to the substantive post of ASTOs. Similarly,

E under r. 2(c) of the Rules framed by the former Hyderabad State, ASTOs who were promoted as STOs were required to pass the departmental examination within three years from the date of commencement of the rules failing which their grade increment was to be withheld till they pass such examination. Rule 2 (d) provided that STOs Cl. I and II who had not been confirmed in their respective posts, were required to pass the said examination within the said period failing which they were to be reverted to their substantive posts. According to the general Circular issued by the State Government of the reorganised State of Bombay dated April 29, 1960, pending unification of the recruitment rules framed by the

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H State Government of Bombay, Madhya Pradesh and Hyderabad, the

recruitment to the various posts and services was to be regulated according to the rules framed by the State Governments and not according to the Bombay Civil Service (Classification and Recruitment) Rules. It is not disputed that the Departmental Examination Rules framed by the former State Governments of Madhya Pradesh and Hyderabad for promotion to the post of STOs formed part of the conditions of service of ASTOs from Madhya Pradesh and Hyderabad.

Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not. Under the Departmental Examination Rules for STOs, 1954, framed by the former State Government of Madhya Pradesh, as amended on January 20, 1960, mere passing of the departmental examination conferred no right on the STIs of Bombay, to promotion. By passing the examination, they merely became *eligible* for promotion. They had to be brought on to a select list not merely on the length of service, but on the basis of merit-cum-seniority principle. It was, therefore, nothing but a mere chance of promotion. In consequence of the impugned orders of reversion, all that happened is that some of the STIs who had wrongly been promoted as STOs Gr. III had to be reverted and thereby lost a few places. In contrast, the conditions of service of ASTOs from Madhya Pradesh and Hyderabad, at least so far as one stage of promotion above the one held by them before the reorganisation of States, could not be altered without the previous sanction of the Central Government as laid down in the Proviso to sub-s. (7) of s. 115 of the Act.

We are unable to agree with the High Court in its opinion that ASTOs from Madhya Pradesh and Hyderabad on their allocation to the new State of Bombay, who had wrongly been put at par with STIs from Bombay, had to pass the departmental examination prescribed by the former State Government of Bombay, for promotion to the post of STO Gr. III before they could be actually so promoted.

It is an incontrovertible fact that the departmental examination prescribed by the former State Governments of Madhya Pradesh and Hyderabad had not been held after August 8, 1960 i.e. for the last 20 years. Merely because the C.P. and Berar Sales Tax Act, 1947

A and the Hyderabad General Sales Tax Act, 1950 stood repealed with effect from January 1, 1960, that hardly furnished a ground for not holding the examination. The State Government, in their affidavit before the High Court, tried to justify their action that the subjects under the ex-Madhya Pradesh and Hyderabad Rules had become obsolete and, therefore, it was felt that no useful purpose would be served in holding these examinations. This was no justification at all, for even after the Bombay Sales Tax Act, 1959 had been extended throughout the State with effect from January 1, 1960, all pending assessments pertaining to the Vidarbha and Marathwada regions of the former States of Madhya Pradesh and Hyderabad had to be completed in accordance with the repealed Acts. In this context, the High Court observed that it examined the subjects prescribed for the three departmental examinations of Bombay, Madhya Pradesh and Hyderabad and found that "there was not much difference". It went on to say that "it could hardly be suggested by any one that prescribing a subject more or less for an examination would adversely affect conditions of service. The purpose of examination is to prepare the officer to be able to cope up with different kinds of problems that would confront him with reasonable efficiency." To say the least, the observations made by the High Court are unwarranted.

E Be that as it may, the fact remains that the condition regarding the passing of the departmental examination became incapable of compliance in the case of ASTOs from Madhya Pradesh and Hyderabad who had been promoted as STOs Gr. III. They were entitled to such promotion without passing such examination. Under the relevant rules which regulated their conditions of service, there was only a possibility of reversion in the eventuality of their not passing the examination within the stipulated time. Since no examinations admittedly have been held, there is no question of their reversion as ASTOs. If the decision of the High Court were to be upheld, it would imply that many of the ASTO from Madhya Pradesh and Hyderabad who had been promoted as STOs Gr III and during the past 20 years have reached the higher echelons of service, would now have to be put back as ASTOs, for no fault of their own. Many of them either have retired or are on the verge of retirement.

H There was thus no alternative for the State Government but to suspend the operation of the amendment made on January 20, 1961 to r. 1(b) (ii) of the recruitment rules, by its order dated October 1,

1965, which made the passing of the STO examination a condition precedent for promotion of STIs to STO Gr. III. There can be no doubt that the State Government's Resolution dated June 13, 1964 and its Memorandum of November 21, 1964, clarifying that the ASTOs from Madhya Pradesh and Hyderabad were entitled for promotion to the post of STO Gr. III without passing the departmental examination, placed STIs from Bombay at a disadvantage. To ensure 'fair and equitable treatment', the State Government rightly dispensed with the requirement of passing the departmental examination in the case of STIs from the former State of Bombay.

In the end, reverting back to the main question. On an overall view of things, we are satisfied that the State Government acted with the best of intentions. It endeavoured to strike a balance between the competing claims to relative seniority. When sub-s. (5) of s. 115 of the Act speaks of "fair and equitable treatment", obviously it envisages a decision which is fair and equitable to *all*.

The result, therefore, is that the appeal succeeds. The judgment of the High Court of Bombay is set aside and the writ petition filed by Respondents 1 to 5 is dismissed. There shall be no order as to costs in the facts and circumstances of the case.

N.V.K.

Appeal allowed.