

PETITIONER:
STATE OF GUJARAT & ORS ETC.

Vs.

RESPONDENT:
RAMAN LAL KESHAV LAL & ORS. ETC.

DATE OF JUDGMENT 27/01/1983

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
VARADARAJAN, A. (J)
CHANDRACHUD, Y.V. ((CJ)
FAZALALI, SYED MURTAZA
TULZAPURKAR, V.D.

CITATION:
1984 AIR 161 1983 SCR (2) 287
1983 SCC (2) 33 1983 SCALE (1)66
CITATOR INFO :
F 1984 SC 385 (11,20)
MR 1985 SC 421 (79)
E&R 1987 SC 415 (16,17)
R 1987 SC 1858 (22)
RF 1991 SC 1047 (8)

ACT:
Gujarat Panchayats Act, 1961 (VI of 1962), Ss. 102, 122, 142, 143, 157, 158, 203, 206 and 325 & Constitution of India, 1950. Arts. 12, 309, 310; Schedule VII, List I Entry 70 and List II Entries S. 41-Panchayat Service Constituted under S. 203 whether 'civil service of the State'-A person holding a 'civil post' or a member of a 'Civil Service'-Tests for determination-Administration of a service under a State-What are functions of.

Words & Phrases-'Civil Services'-'Civil Post'-Meaning of.

HEADNOTE:

The Gujarat Panchayat Act, 1961 (Gujarat Act No. VI of 1962) came into force on June 15, 1962 in the State of Gujarat except in Kutch area and the district of Dangs. By an order made by the State Government on March 4, 1963, the areas which were within the jurisdiction of the several municipalities constituted under the Bombay Municipal Act, 1901 were declared to be gram or nagar, as the case may be. On April 1, 1963, sections 203 to 205 of the Panchayats Act were brought into operation. On March 26, 1963, the State Government entrusted some of its functions relating to recovery of land revenue etc. to the nagar and gram panchayats with effect from April 15, 1963. On August 1, 1963 by a notification issued under section 149 of the Panchayats Act, the State Government delegated some of its powers under the Land Revenue Code and rules made thereunder to the gram and nagar panchayats. Service rules like the Gujarat Panchayat Service (Conduct) Rules, 1964, the Gujarat Service (Discipline & Appeal) Rules, 1964, Gujarat Panchayat Service (Absorption Seniority, Pay & Allowances) Rules, the Gujarat Panchayat Service (Transfer of Servants) Rules,

1968, Gujarat Panchayat Service (Promotion to Cadres in State Service) Rules, 1974, Gujarat Panchayat Service (Pension) Rules, 1976 were promulgated and issued by the State Government. On January 2, 1967, the State Government passed an order under sub-section (2) of section 203 of the Panchayats Act directing that the Panchayat Service shall consist of district cadre, taluka cadre and local cadre and specified the posts which were to belong to each of such cadres in the Schedule appended to the said order. In Part III of the Schedule to that Order, the posts belonging to the local cadre were specified.

Although the above steps were taken by the State for the constitution of the Panchayat Service, the State Government did not make any order regarding the equation of posts of the staff in the local cadre and fixation of their pay scale till 1975 notwithstanding repeated representations made by the ex-municipal employees and others who were included in the local cadre. The State Government also did not make any rules prescribing the promotional

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avenues for the staff borne on the local cadre of the Panchayat Service, nor extended the benefit of revisions of pay scales and other allowances which were made on the basis of the recommendations of the First Pay Commission (Sarela Commission) and of the Second Pay Commission (Desai Commission).

The Respondent Nos. 1 to 5 in the appeal filed a writ application in a representative capacity for and on behalf of themselves and other officers and servants who were originally in the employment of several municipalities which had been constituted under the Bombay District Municipal Act, 1901 and who were working as employees under gram panchayats or nagar panchayats which were established in the place of municipalities under the provisions of the Gujarat Panchayats Act, 1961 for a Writ, order or direction to the Appellant (State of Gujarat) and others who had been impleaded as respondents directing them: (i) to pass orders regarding appointment in equivalent posts in the Panchayat Service of the State Government, fixation of seniority, pay scales and allowances in the equivalent posts with retrospective effect and payment of the difference in salary and allowances, (ii) to frame rules providing for promotional avenues in the Panchayat Service as also in the State Service, and (iii) to extend the benefits flowing from pay revisions ordered by the State Government on the basis of the recommendations of the First Pay Commission (Sarela Commission) and the Second Pay Commission (Desai Commission) retrospectively. It was contended that the Panchayat Service was as much a service under the State as any other Civil Service, that the State Government had failed to discharge its statutory duties in relation to the members of the staff included in the local cadre of the Panchayat Service and that the denial of benefits similar to those extended to other members of the State Civil Service on the basis of the reports of the two Pay Commissions amounted to hostile discrimination. The State Government contested the application alleging that the members of the Panchayat Service were not government servants.

Following its earlier decision in *G. L. Shukla & another v. The State of Gujarat* & Ors. 8 GLR 833 the High Court held that the respondents who belonged to the local cadre were government servants and allowed the application.

During the pendency of the appeal to this Court, the Gujarat Panchayats (Amendment) Ordinance 1978 was promulgated by the Governor amending some of the provisions

of the Panchayats Act and the said Ordinance was repealed and replaced by the Gujarat Panchayats (Third Amendment) Act, 1978. As the Ordinance and the Amending Act adversely affected the interests of the employees, writ petitions were filed questioning the validity of the Amending Act.

In the appeal and writ petitions to this Court on the questions:

- (1) Whether the Panchayat Service was a Civil Service of the State, and
- (2) Whether under the unamended Act, there was a common Centralized Panchayat Service.

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HELD: 1. (i) The Panchayat Service constituted under section 203 of the Panchayats Act has all the characteristics of a Civil Service of the State. This also appears to have been the view of the State Government when it constituted the Second Pay Commission (Desai Commission) to examine the

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general conditions of service applicable to Government employees other than officers of the all-India services but including employees in the Panchayat Service. [165H-166B]

(ii) It is a question of fact to be decided in the circumstances of each case whether every employee of a Panchayat should be treated as a member of the State Civil Service. [166H-167A]

2. The provisions contained in section 206 of the Panchayats Act and the provisions in sub-sections (2), (2A), (3) and (4) of section 203 clearly establish that the Panchayat service constituted under section 203 can only be a centralized service and recruitment of candidates to be made under section 210 of the Panchayats Act by the Gujarat Panchayat Service Selection Board can only be to that centralised service. The division of the Panchayat Service into district cadre, taluka cadre and local cadre does not affect the integrity of the Panchayat Service. It continues to be a single service notwithstanding such division. When the Panchayat Service is a Statewise service, it has necessarily to be a common centralised service. [167B-C]

3. Municipal Corporations, city municipalities, town municipalities, municipal boroughs, district boards, zilla parishads, taluka development boards, town panchayats, village panchayats, sanitary boards and town area committees were some of the different kinds of local bodies which were constituted under the local laws and the management of their affairs were entrusted subject to the control of the State Government to elected bodies. Each one of them was treated as a body corporate. In the staffing pattern of these bodies there were at least three classes of persons. Officers holding high administrative posts such as commissioners of corporations, deputy commissioners of corporations, municipal health officers, municipal educational officers, district development officers and chief executive officers of district boards were usually drawn from the ranks of the provincial or the State Services and they were deputed to the various bodies to discharge functions which were either statutory or non-statutory. Even though they drew their salary and allowances from the local bodies to which they were deputed, they still retained their identity as officers of the State Civil Service and their services were liable to be withdrawn by the State Government at any time it pleased. [159D-E]

4. The expressions 'civil service' or 'civil post' are not formally defined. Entry 70 of List I of the Seventh Schedule to the Constitution refers to Union Public Services

and All-India Services, and Entry 41 of List II of that Schedule refers to State Public Services. Part XIV of the Constitution deals with services under the Union and the States. In Article 309 of the Constitution, there is reference to persons appointed to public services and posts in connection with the affairs of the Union or of any State. Article 310 of the Constitution distinguishes the defence service from the civil service when it refers to members of a 'defence service or of a civil service'. But all persons who are members of a defence service or of a civil service of the Union or of an all-India service or persons who hold any post connected with defence or any civil post under the Union are treated as persons serving the Union and every person who is a member of the civil service of a State or holds any civil post under a State is treated as a person serving a State. [160D-F]

5. The true test for determination of the question whether a person is holding a civil post or is a member of a civil service is the existence of a relationship of master and servant between the State and the person holding
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a post under it and that the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages and remuneration. The relationship of master and servant may be established by the presence of all or some of the above factors in conjunction with other circumstances. [161E-F]

State of Assam & Ors. v. Shri Nanak Chandra Dutta, [1967] 1 S.C.R. 679; Superintendent of Post Offices etc. v. P. K. Rajamma etc. [1977] 3 S.C.R. 678, referred to.

6. Entry 5 of List II of the Seventh Schedule to the Constitution specifically refers to local authorities established for the purpose of local self-Government or village administration as part of local government. The local authorities are included in the definition of the expression 'State' in Article 12 of the Constitution. [165D]

7. The Panchayats exercise many governmental functions which the State Government can perform. They are entrusted with the power to levy taxes and to exercise large number of powers which are loosely called as "police powers" regulating several aspects of human life. Articles 276 and 277 of the Constitution also take note of the powers of local authorities to levy certain taxes. [165E]

8. The Panchayats Act was enacted for the purpose of consolidating and amending the law relating to village Panchayats and district local boards in the State of Gujarat with a view to reorganising the administration pertaining to the local Government in furtherance of the object of democratic decentralisation of powers in favour of different classes of panchayats. It provided for the establishment of Panchayats of different tiers viz. a gram panchayat for each gram, a nagar panchayat for each nagar, a taluka panchayat for each taluka and a district panchayat for a district. [151C-D]

9. Section 203 of the Panchayats Act provided for the constitution of a Panchayat Service which shall be distinct from the State Service. The State Government was authorised to determine by orders issued from time to time the several classes, cadres and posts in the Panchayat Service and the initial strength of the officers and servants in each such class and cadres. The Panchayat Service consisted of district cadres, taluka cadres and local cadres. A servant belonging to a district cadre was liable to be posted either

by promotion or transfer to any post in any taluka in the district, a servant belonging to a taluka cadre was liable to be posted similarly to any post in any gram or nagar in the same taluka, and a servant belonging to a local cadre similarly to be posted in the same gram or, as the case may be, nagar. The Panchayat Service was also to consist of certain posts designed as deputation posts, which may be filled in accordance with section 207. The State Government was empowered to make rules regulating the mode of recruitment and conditions of service of persons appointed to the Panchayat Service and the powers in respect of appointments, transfers and promotions of officers and servants in the panchayat Service and disciplinary action against any such officers or servants. [154B-E]

10. Under section 206 of the Panchayats Act, it is open to the State Government to allocate to the Panchayat Service such number of officers and servants out of the staff allotted or transferred to a panchayat under sections 157, 158 and 325 as it may deem fit. [154G]
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11. Sections 102, 122 and 142 of the Panchayats Act provide that the gram panchayat or the nagar panchayat or the taluka panchayat or the district panchayat as the case may be, shall have such other officers and servants as may be determined under section 203 of the Panchayats Act and such officers and servants shall be appointed by such authority and their conditions of service shall be such as may be prescribed. Clause (c) of sub-section (2) of section 143 of the Panchayats Act empowers the District Development Officer to appoint such class of officers and servants as may be prescribed. [163C, B]

12. The Panchayat Service contemplated under section 203 is a single service for the whole State and it is not a collection of distinct and separate services of each individual panchayat. That Panchayat Service is a service under the State is again emphasized by section 206 which authorises the State Government to pool together the four classes of persons mentioned therein who originally belonged to four different sources and to allocate them to the Panchayat Service and one class of such persons are those who belong to the State Service. Unless the Panchayat Service is held to be a State Service, inclusion of officers and servants in the State Service will be unconstitutional. [163E-F]

State of Mysore v. H. Papanna Gowda & Anr. etc., [1971] 2 S.C.R. 831, referred to.

In the instant case there is no compelling reason to hold that the Panchayat Service is not a civil service under the State. Further recruitment of candidates to the Panchayat Service had to be made by the Gujarat Panchayat Service Selection Board constituted by the State Government. [163H]

Jalgaon Zilla Parishad v. Duman Govind & Ors. Civil Appeals Nos. 24 and 25 of 1968 decided on December 20, 1968 distinguished.

13. Entry 41 of List II of the Seventh Schedule to the Constitution, refers to State Public Services suggesting that there can be more than one State Public Service under the State. A number of such services under a State e.g. Police Service, educational service, revenue service etc. State Public Services may be constituted or established either by a law made by the State Legislature or by rules made under the proviso to Article 309 of the Constitution or even by an executive order made by the State Government in exercise of its powers under Article 162 of the

Constitution. The recruitment and conditions of service of the officers and servants of the State Government may also be regulated by statute, rules or executive orders. [164A-B]

14. The administration of a service under a State involves broadly the following functions: (1) the organisation of the Civil Service and the determination of the remuneration, conditions of service, expenses and allowances of persons serving in it; (ii) the manner of admitting persons to civil service; (iii) exercise of disciplinary control over members of the service and power to transfer, suspend, remove or dismiss them in the public interest as and when occasion to do so arises. [164C-D]

In the instant case, the Panchayat Service is constituted by the Panchayats Act and the State Government is empowered to make orders and rules regarding its organisation and management. Having regard to the broad features of the Panchayat Service, the declaration in Section 203 that the Panchayat Service, shall be distinct from the State Service, appears to have been made only to distinguish the Panchayat Service from other services of the State attached to the several departments which are under the direct control of the State Government. [164E]

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15. If the members of the Panchayat Service are not to be members of a Service under the State Government but are to be the officers and servants of the panchayat unit to which they are allotted then sub-sections (2), (2A) and 4(a) of section 203 of the Panchayats Act would to some extent become unworkable, as every time there is a transfer of an officer borne on the Panchayat Service there would be a change of master. The Legislature could not have contended such a bizarre result. [164F]

16. The reason for treating Panchayat Service as a service distinct from State Service appears to be that the law intended that persons belonging to the Panchayat Service should be transferable from one post in a panchayat to another post in a panchayat and unless there was an order of promotion, such persons could not be transferred to posts outside the Panchayats. [165B]

17. Merely because the Panchayats are declared to be body corporates, it cannot be said that any of the persons working under them cannot be considered as members of a civil service under a State. The panchayats constituted under the Panchayats Act derive their authority from the statute and are under the control of the State Government. They form part of the local self-Government organisation which the State Government is under an obligation to foster under Article 40 of the Constitution. [165C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 359 of 1978.

Appeal by special leave from the Judgment and Order dated 28-1-1977 of the Gujarat High Court in Special Civil Application No. 309/1975.

WITH

WRIT PETITION NOS. 4266-4270 of 1978
(Under Article 32 of the Constitution)

V. M. Tarkunde, Niranjana Mehta, P. H. Parekh, C. B. Singh and M. Mudgal for the Petitioners in Writ Petitions and Respondents 1-3 and 5 in CA 359/78.

D. V. Patel, R. H. Dhebar, M. N. Shroff and G. A. Shah for the Appellants in CA 359/78 and Respondents 1-2 in Writ

Petitions.

Nirajan Mehta, Vimal Dave and Miss Kailash Mehta for the Applicant intervenor in Writ Petition.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The State of Gujarat and the Development Commissioner of the State of Gujarat have filed Civil Appeal No. 359 of 1978 under Article 136 of the Constitution against the judgment, dated January 28th, 1977 passed in Special Civil Application No. 309 of 1975 on the file of the High Court of Gujarat. Respondents Nos. 1 to 5 in the above appeal were the petitioners in the aforesaid Special Civil Application. They had filed the

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said application with the leave of the High Court in a representative capacity for and on behalf of themselves and other officers and servants who were originally in the employment of several municipalities which had been constituted under the Bombay District Municipal Act, 1901 (hereinafter referred to as 'the Municipal Act') and who were working as the employees under gram panchayats or nagar panchayats which were established in the place of the municipalities referred to above under the provisions of the Gujarat Panchayats Act, 1961 (Gujarat Act No. VI of 1962) (hereinafter referred to as 'the Panchayats Act') under Article 226 of the Constitution requesting the High Court to issue an appropriate writ, order or direction to the State of Gujarat and others who had been impleaded as respondents therein directing them (i) to pass orders regarding the appointment of the persons for and on whose behalf the said application had been filed in equivalent posts in the Panchayat Service of the State Government, fixation of their seniority and pay scales and allowances in the equivalent posts with retrospective effect and payment to them of the difference in salary and allowances to which they would become entitled on such fixation of salary and allowances payable to them, (ii) to frame rules providing for promotional avenues to them in the Panchayat Service as also in the State Service and (iii) to extend to them the benefits flowing from the pay revisions ordered by the State Government on the basis of the recommendations of the first Pay Commission (Sarela Commission) and the second Pay Commission (Desai Commission) retrospectively. They also prayed for certain incidental reliefs.

Writ Petitions Nos. 4266 to 4270 of 1978 were filed by them before this Court under Article 32 of Constitution in a representative capacity with the leave of this Court requesting the Court to declare the Gujarat Panchayats (Amendment) Ordinance, 1978 (hereinafter referred to as 'the Ordinance') as unconstitutional, void and of no effect and to grant them such reliefs as may be permissible consequent upon such declaration. After the above writ petitions were filed, the Ordinance was repealed and replaced by the Gujarat Panchayats (Third Amendment) Act, 1978 (Gujarat Act No. 28 of 1978) (hereinafter referred to as 'the Amending Act'). Thereafter the petitioners prayed for an amendment of the writ petitions requesting the Court to permit them to question the validity of the Amending Act in so far as it adversely affected them. Their prayer was accordingly granted. The writ petitions are contested by the State Government.

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For purposes of convenience, respondents Nos. 1 to 5 in Civil Appeal No. 359 of 1978 who are also petitioners in the writ petitions Nos. 4266 to 4270 of 1978 are hereafter referred to as the petitioners.

Before the Panchayats Act was enacted there existed in the State of Gujarat a number of municipalities constituted under the Municipal Act and the petitioners and those whom they represent in these proceedings by virtue of the leave granted to them to prosecute these proceedings in a representative capacity were employees of such municipalities.

The Panchayats Act was enacted for the purpose of consolidating and amending the law relating to village panchayats and district local boards in the State of Gujarat with a view to reorganise the administration pertaining to the local Government in furtherance of the object of democratic decentralisation of powers in favour of different classes of panchayats. It provided for the establishment of panchayats of different tiers viz. a gram panchayat for each gram, a nagar panchayat for each nagar, a taluka panchayat for each taluka and a district panchayat for a district. Section 9 of the Panchayats Act empowered the State Government to declare any local area comprising a revenue village or a group of revenue villages or hamlets forming part of a revenue village or such other administrative unit or part thereof to be a nagar, if the population of such local area exceeded 10,000 but did not exceed 20,000 and to be a gram, if the population of such local area did not exceed 10,000 by issuing a notification in the Official Gazette to that effect. Section 307 of the Panchayats Act provided that where any local area was declared to be a gram or nagar under section 9 and, immediately before such declaration, the local area was co-extensive with the limits of a municipal district or a municipal borough or included an area comprising a municipal district or municipal borough as well as any other area, then with effect from the date on which such local area was so declared to be a gram or nagar, the consequences mentioned therein would ensue notwithstanding anything in the relevant municipal law. Two of the consequences which flowed from such a declaration were that the municipality functioning in such a local area or part thereof would cease to exist and all officers and servants in the employ of the municipality immediately before the said date would become officers and servants of the interim panchayat under the Panchayats Act and shall until other provision was made in accordance with the provisions thereof would receive salaries and allowances and be subject to the conditions of service to which they were entitled or subject on such date. Section 308 of the Panchayats Act required the

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District Development Officer to take steps to hold election for a new gram panchayat or nagar panchayat, as the case may be, within a period not exceeding one year from the date on which the interim panchayat came into existence. Chapter XI in which sections 203 to 211 of the Panchayats Act are included sets out provisions relating to services. Section 203 of the Panchayats Act prior to the promulgation of the Ordinance read as follows:-

"203. (1) For the purpose of bringing about uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions and duties of panchayats, there shall be constituted a Panchayat Service in connection with the affairs of panchayats. Such service shall be distinct from the State Service.

(2) The Panchayat Service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre

shall be such, as the State Government may by order from time to time determine:

Provided that nothing in this sub-section shall prevent a district panchayat from altering, with the previous approval of the State Government, any class, cadre or number of posts so determined by the State Government.

(2A) (a) The cadres referred to in sub-section (2) may consist of district cadres, taluka cadres and local cadres.

(b) A servant belonging to a district cadre shall be liable to be posted whether by promotion or transfer to any post in any taluka in the district.

(c) A servant belonging to a taluka cadre shall be liable to be posted, whether by promotion or transfer to any post in any gram or nagar in the same taluka.

(d) A servant belonging to a local cadre shall be liable to be posted whether by promotion or transfer to any post in the same gram or, as the case may be, nagar.

(2B) In addition to the posts in the cadre referred to in sub-section (2A), a panchayat may have such other posts of such classes as the State Government may by general or special order determine. Such posts shall be called "deputation posts" and shall be filled in accordance with the provisions of section 207.

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(3) Subject to the provisions of this Act, the State Government may make rules regulating the mode of recruitment either by holding examinations or otherwise and conditions of service of persons appointed to the panchayat service and the powers in respect of appointments, transfers and promotions of officers and servants in the Panchayat Service and disciplinary action against any such officers or servants.

(4) Rules made under sub-section (3) shall in particular contain-

(a) a provision entitling servants of such cadres in the Panchayat Service to promotion to such cadres in the State Service as may be prescribed.

(b) a provision specifying the classes of posts recruitment to which shall be made through the District Panchayat Service Selection Committee and the classes of posts, recruitment to which shall be made by the Gujarat Panchayat Service Selection Board, and

(c) a provision regarding the percentage of vacancies to be reserved for the members of Scheduled Castes, Scheduled Tribes and other backward classes in the Panchayat Service.

(5) Such rules may provide for inter-district transfer of servants belonging to the panchayat service and the circumstances in which and the conditions subject to which such transfers may be made.

Section 205 of the Panchayats Act states that subject to any rules made under section 203, appointments to the Panchayat Service shall be made (i) by direct recruitment, (ii) by promotion and (iii) by transfer of members of the State Service to the Panchayat Service. Section 206 of the Panchayats Act before the Amending Act was passed empowered the State Government by a general or special order to

allocate to the Panchayat Service (i) such number of officers and servants out of the staff allotted or transferred to a panchayat under sections 157, 158 and 325 as it may deem fit, (ii) all officers and servants of the municipalities dissolved under section 307, (iii) all officers and servants in the service of district local boards and district school boards immediately before their dissolution under the Panchayats Act and transferred to the panchayats under sections 155 and 326 and (iv) and other officers and servants employed in the State service as may be necessary to enable the panchayats to discharge efficiently their functions and duties

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under the Panchayats Act. Section 210 of the Panchayats Act provides for the establishment of a Gujarat Panchayat Service Selection Board for the purpose of recruitment of candidates to the several posts in the Panchayat Service.

The provisions contained in Chapter XI of the Panchayats Act may be summarised thus: Section 203 of the Panchayats Act provides for the constitution of a Panchayat Service which shall be distinct from the State Service. The State Government is authorised to determine by orders issued from time to time several classes, cadres and posts in the Panchayat Service and the initial strength of the officers and servants in each such class and cadre. The Panchayat Service may consist of district cadres, taluka cadres and local cadres. A servant belonging to a district cadre is liable to be posted either by promotion or transfer to any post in any taluka in the district, a servant belonging to a taluka cadre is liable to be posted similarly to any post in any gram or nagar in the same taluka and a servant belonging to a local cadre may similarly be posted in the same gram or, as the case may be, nagar. The Panchayat Service may also consist of certain posts designated as deputation posts, which may be filled in accordance with the provisions of section 207. The State Government is empowered to make rules regulating the mode of recruitment and conditions of service of appointments, transfers and promotions of officers and servants of appointments, transfers and promotions of officers and servants in the Panchayat Service and disciplinary action against any such officers or servants. Sub-section (4) of section 203 of the Panchayats Act provides that rules may be made under sub-section (3) thereof containing provisions entitling servants of such cadres in the Panchayats Service to promotion to such cadres in the State Service as may be prescribed. We have noticed earlier that under section 206 of the Panchayats Act, it is open to the State Government to allocate to the Panchayat Service such number of officers and servants out of the staff allotted or transferred to a panchayat under sections 157, 158 and 325 as it may deem fit. Section 157 of the Panchayats Act provides that notwithstanding anything contained in any law for the time being in force, the State Government may subject to such conditions as it may think fit to impose, transfer by an order published in the Official Gazette to a district panchayat any such powers, functions and duties relating to any matter as are exercised or performed by the State Government or any officer of Government under any enactment which the State Legislature is competent to enact, or otherwise in the executive power of the State, and appear

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to relate to matters arising within a district and to be of an administrative character and shall on such transfer, allot to the district panchayat such fund and personnel as

may be necessary to enable the district panchayat to exercise the power and discharge the functions and duties so transferred. Sub-section (2) of section 157 sets out some of the departments whose powers, functions and duties that may be transferred under section 157 (1). Section 158 of the Panchayats Act provides that any functions and duties relating to any of the matters specified in the Panchayat Functions List performed before the commencement of that section by the State Government through its officers within a gram, nagar, taluka or district shall, subject to such exceptions as the State Government may by order in writing specify, be transferred to the district panchayat together with the funds provided, and the staff employed therefor. By section 325 of the Panchayats Act, the Bombay Village Panchayats Act, 1958 was repealed and all officers and servants in the employ of the old village panchayats immediately before the said date became the officers and servants of the new gram panchayats established under the Panchayats Act.

We shall now briefly refer to some of the steps taken under the Panchayats Act after it came into force on June 15, 1962 in the State of Gujarat except in Kutch area and the district of Dangs. On March 4, 1963 by an order made by the State Government, the areas which were within the jurisdiction of the several municipalities constituted under the Municipal Act were declared to be gram or nagar, as the case may be. On April 1, 1963, sections 203 to 205 of the Panchayats Act were brought into operation. On March 26, 1963, the State Government entrusted some of its functions relating to recovery of land revenue etc. to the nagar and gram panchayats with effect from April 15, 1963. On August 1, 1963 by a notification issued under section 149 of the Panchayats Act, the State Government delegated some of its powers under the Land Revenue Code and rules made thereunder to the gram and nagar panchayats. On July 13, 1964, the Gujarat Panchayat Service (Conduct) Rules, 1964 promulgated under section 203 of the Panchayats Act came into force. On July 16, 1964, the Gujarat Service (Discipline & Appeal) Rules, 1964 came into force. On November 11, 1965, the Gujarat Panchayat Service (Absorption, Seniority, Pay & Allowances) Rules were promulgated. On October 16, 1968, the Gujarat Panchayat Service (Transfer of Servants) Rules, 1968 were promulgated. The Gujarat Panchayat Service (Promotion to cadres in State Service) Rules, 1974 were issued on September 16, 1974.

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The Gujarat Panchayat Service (Pension) Rules, 1976 were issued on January 9, 1976. The State Government passed an order under sub-section (2) of section 203 of the Panchayats Act of January 2, 1967 directing that the Panchayat Service shall consist of district cadre, taluka cadre and local cadre and specified the posts which were to belong to each of such cadres in the Schedule appended to the said order. In Part III of the Schedule to that Order, the posts belonging to the local cadre with which we are concerned in these cases were specified. It is stated that by certain administrative orders the State Government had also undertaken the liability of reimbursing the panchayats, either wholly or in part in respect of the remuneration paid by them to the specified staff even though under section 204 of the Panchayats Act, the expenditure towards pay, allowances etc. of officers and servants in Panchayat Service should be met out of panchayat funds.

Although the above mentioned and some other steps were taken by the State Government under the Panchayats Act

providing for the constitution of the Panchayat Service, the State Government did not make any order regarding the equating of posts of the staff in the local cadre and fixation of their pay scale till 1975 notwithstanding the fact that repeated representations were made by the ex-municipal employees and others who were included in the local cadre. The State Government also failed to extend to the staff borne on the local cadre of the Panchayat Service the benefit of revisions of pay scales and other allowances which were made on the basis of the recommendations of the first Pay Commission (Sarela Commission) and of the second Pay Commission (Desai Commission). The State Government also did not make any rules prescribing the promotional avenues for the staff borne on the local cadre of the Panchayat Service. The petitioners, therefore, filed the Special Civil Application No. 309 of 1975 on the file of the High Court of Gujarat out of which the above appeal arises under Article 226 of the Constitution for several reliefs, referred to above. The said application was resisted by the State of Gujarat and the Development Commissioner who had been impleaded as the respondents. The contentions urged by the petitioners before the High Court among others were that the Panchayat Service was as much a service under the State as any other State Civil Service; that the State Government had failed to discharge its statutory duties in relation to the members of the staff included in the local cadre of the Panchayat Service and that the denial of benefits similar to those extended to other members of the State Civil Service on the basis

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of the reports of the two Pay Commissions to them amounted to hostile discrimination. The principal contention urged on behalf of the State Government was that the members of the Panchayat Service were not Government servants and, therefore, could not claim the reliefs prayed for by them. In support of the above contention, reliance was placed by the State Government on section 203 (1) of the Panchayats Act which stated that the Panchayat Service was distinct from the State Service. It should be mentioned here that the question whether the Panchayat Service constituted under the Panchayats Act was a Civil Service under the State Government or not arose for consideration before the High Court of Gujarat in *G. L. Shukla & Anr. v. The State of Gujarat & Ors.*(1). That was a case in which some of the employees of the State Government working in the Public Works Department questioned the constitutional validity of a notification issued by the State Government transferring certain functions of the Public Works Department to the panchayats and transferring some of the officers and servants working in that department to the Panchayat Service. The petitioners therein who had been allotted to the Panchayat Service under that order contended that the notification was violative of Articles 14, 310 and 311 of the Constitution on the ground that by virtue of the impugned notification, they had been removed from the service of the State Government against their will and in violation of their rights under the Constitution. The High Court dismissed the petition holding that they had not ceased to be Government servants by reason of the allocation of their services to the Panchayat Service. Bhagwati, J. (as he then was) observed in the course of the said decision at page 845 thus:

"When an order of allocation is made under sec. 206, the Government servant who is allocated does not cease to be a State servant and become a servant of the

panchayat. There is no termination of his service as a State servant and the only effect of the order of allocation is that whereas, prior to the order of allocation, he was a member of one civil service of the State, namely, the State Service, he is now, after the order of allocation, a member of another civil service of the State, namely, the panchayat service. He is merely transferred from one civil service of the State to another. The Panchayat Service contemplated under the Act is as much a civil service of the State as the State service. The Legislature by enacting

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the Act provided for the establishment of the Panchayat Organization of the State and for the efficient administration of the Panchayat Organization, particularly in view of the fact that a large part of the service personnel would be drawn from different sources and would, therefore, be heterogeneous in composition with widely differing scales of pay and conditions of service, the Legislature felt that it would be desirable to have a separate civil service of persons employed in the discharge of functions and duties of panchayats with uniform scales of pay and uniform conditions of service and, therefore with that end in view the Legislature provided for constitution of the panchayat service. All the provisions of the Act relating to the panchayat service point unmistakably and inevitably to one and only one conclusion, namely, that the panchayat service is one single service with the State as the master."

Following the decision in Shukla's case (supra) the High Court held in the case out of which this appeal arises that the petitioners herein who belonged to the local cadre were Government servants and directed the State Government (i) to issue suitable orders, in so far as the members included in the local cadre were concerned regarding the equivalence of posts, fixation of pay scales for such posts, fixation of the petitioners and the persons whom they represent at an appropriate stage in such pay scales and other incidental matters and to give effect to such orders from the date of allocation of the petitioners and others whom they represent to the Panchayat Service, that is to say, from February 11, 1969, (ii) to fix their initial pay scales and allowances and to revise them in accordance with the orders passed by the State Government in the case of other Government employees on the basis of the first Pay Commission (Sarela Commission) and of the second Pay Commission (Desai Commission) with effect from the dates on which similar benefits were extended to other State Civil Services, and (iii) to consider the question of making suitable provisions in the appropriate rules providing for promotion of members of the local cadre who were formerly the employees of the municipalities. Aggrieved by the directions issued by the High Court, the State Government and the Development Commissioner have filed this appeal.

During the pendency of the above appeal, as stated above, the Ordinance was issued by the Governor of Gujarat amending some of the provisions of the Panchayats Act and the said Ordinance was replaced by the Amending Act. As the petitioners felt that their interests were adversely affected by the Ordinance and the Amending Act, they filed the writ petitions referred to above.

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Although several questions arise for consideration in the above appeal, at this stage we propose to deal with

only the following two contentions as per orders passed by the Court on July 24, 1980:-

"(1) Whether the Panchayat Service was a Civil Service of the State and

(2) whether under the unamended Act, there was a common centralized Panchayat Service?"

It is well-known that in India experiment in administration of local self Government had been going on for well over a century in almost all British Indian provinces and many princely States that were in existence before the commencement of the Constitution. There were laws having local operation under which different kinds of local self-Government bodies were constituted to enable persons living in different local areas to participate in the administration of such local areas in so far as functions that were delegated to them by law. All those laws continued to be in force even after the commencement of the Constitution. Some of them have since been repealed and replaced by new laws. Municipal corporations, city municipalities, town municipalities, municipal boroughs, district boards, zilla parishads, taluka development boards, town panchayats, village panchayats, sanitary boards and town area committees were some of the different kinds of local bodies which were constituted under the said laws and the management of their affairs were entrusted subject to the control of the State Government to elected bodies. Each one of them was treated as a body corporate. In so far as the staffing pattern of these bodies was concerned, there were at least three classes of persons working under them. Officers holding high administrative posts such as commissioners of corporations, deputy commissioners of corporations, municipal health officers, municipal educational officers, district development officers and chief executive officers of district boards were usually drawn from the ranks of the provincial or the State Services and they were deputed to the various bodies to discharge functions which were either statutory or non-statutory. Even though they drew their salary and allowances from the local bodies to which they were deputed, they still retained their identity as officers of the State Civil Service and their services were liable to be withdrawn by the State Government at any time it pleased. There was a second class of officers like chief executive officers of town municipalities who were officers belonging to the provincial or State local self-Government Service and who were liable to be transferred from one local body to another. There was a third class of officers and servants of the local bodies who were appointed by them and who were for all intents and purposes

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the employees of the local bodies by which they were appointed. They could not be transferred from one local body to another. The foregoing shows that in the case of persons borne on the State Civil Service or the Provincial local self-Government Service, the fact that they were for the time being working under a local body and were in receipt of salary and allowances from them did not militate against their status as members of the Service from which they were drawn. That was so because even when they were functioning under local bodies, they were engaged in discharging duties and functions which legitimately belonged to the State Government but which had been transferred to the local bodies with the intention of the decentralizing administrative functions and of fostering democratic ideals amongst the people.

The first question is whether the Panchayat Service constituted under the Panchayats Act is a civil service of the State. The expressions 'civil service' or 'civil post' are not formally defined. Entry 70 of List I of the Seventh Schedule to the Constitution refers to Union Public Services and All-India Services, and Entry 41 of List II of that Schedule refers to State public services. Part XIV of the Constitution deals with services under the Union and the States. In Article 309 of the Constitution, we find reference to persons appointed to public services and posts in connection with the affairs of the Union or of any State. Article 310 of the Constitution distinguishes the defence service from the civil service when it refers to members of a 'defence service or of a civil service'. But all persons who are members of a defence service or of a civil service of the Union or of an all-India service or persons who hold any post connected with defence or any civil post under the Union are treated as persons serving the Union and every person who is a member of the civil service of a State or holds any civil post under a State is treated as a person serving a State. The factors which govern the determination of the question whether a person holds a civil post or is a member of civil service were considered by a Constitution Bench of this Court in *State of Assam & Ors. v. Shri Nanak Chandra Dutta(1)* and Bachawat, J. speaking for the Bench observed thus:

"There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Article 311

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In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control and manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post."

According to the above decision, the true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship is dependent upon the right of the State to select and appoint the holder of the

post. its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages and remuneration. It is further held that the relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances. Applying these tests, this Court held that a Mauzadar in the Assam Valley who was engaged in the work of collection of land revenue and other Government dues and in the performance or certain other special duties was a person holding a civil post under the State. Following the above decision in Superintendent of Post Offices etc. etc. v. P. K. Rajamma etc. etc. this Court held that persons who were working as extra departmental agents of the Posts and Telegraphs Department were persons holding civil posts.

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Section 102 of the Panchayats Act before it was amended by the Amending Act read as follows:-

"102. (1) Subject to the provisions of this Act and the rules made thereunder-

(a) there shall be a Secretary for every gram panchayat and nagar panchayat who shall be appointed in accordance with the rules;

(b) a gram panchayat or as the case may be, nagar panchayat shall have such other servants as may be determined under section 203. Such servants shall be appointed by such Authority and their conditions of service shall be such as may be prescribed :... "

Section 122 of the Panchayats Act reads:

"122. Subject to the provisions of this Act and the rules made thereunder-

(1) there shall be a Secretary for every taluka panchayat,

(2) the Taluka Development officer who shall be an officer belonging to the State Service and posted under the panchayat, shall be the ex-officio Secretary of the panchayat.

(3) a taluka panchayat shall have such other officers and servants as may be determined under section 203. Such officers and servants shall be appointed by such authority and their conditions of service shall be such as may be prescribed. The officers and servants so appointed shall in the discharge of their functions and duties exercise such powers as may be conferred on them by the panchayat, subject to rules, if any, Made in this behalf."

Clause (c) of sub-section (2) of section 123 of the Panchayats Act authorises the Taluka Development officer to appoint such class of officers and servants as may be prescribed.

Section 142 of the Panchayats Act reads:

"142. Subject to the provisions of this Act and the rules made thereunder-

(1) there shall be a secretary for every district panchayat;

(2) (a) a District Development officer posted under the panchayat, shall be ex-officio secretary of the panchayat;

(3) a district panchayat shall have such other officers and servants as may be determined under section 203. Such officers and servants shall be appointed by such authority and

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their conditions of service shall be such as may be prescribed. The officers and servants so appointed shall in the discharge of their functions and duties exercise such powers as may be conferred on them by the panchayat, subject to rules, if any, made in this behalf."

Clause (c) of sub-section (2) of section 143 of the Panchayats Act empowers the District Development officer to appoint such class of officers and servants as may be prescribed.

It is significant that sections 102, 122 and 142 of the Panchayats Act provide that the gram panchayat or the nagar panchayat or the taluka panchayat or the district panchayat, as the case may be, shall have such other officers and servants as may be determined under section 203 of the Panchayats Act and such officers and servants shall be appointed by such authority and their conditions of service shall be such as may be prescribed. As mentioned earlier, Section 203 (1) of the Panchayats Act provides that there shall be constituted a Panchayat Service in connection with the affairs of panchayats i.e. gram and nagar panchayat, taluka panchayat and district panchayat for the purpose of bringing about uniform scales of pay and uniform conditions of service of the person employed in the discharge of functions and duties of panchayats. It may be noted that the Panchayat Service contemplated under section 203 of the Panchayats Act is a single service for the whole State and it is not a collection of distinct and separate services of each individual panchayat. That Panchayat Service is a service under the State is again emphasized by section 206 which authorises the State Government to pool together four classes of persons mentioned therein who originally belonged to four different sources and to allocate them to the Panchayat Service and one class of such persons are those who belong to the State Service. Unless the Panchayat Service is held to be a State service, inclusion of officers and servants in the State service will be unconstitutional. Sections 157 and 158 would also be exposed to a similar attack. (Vide State of Mysore v. H. Pappana Gowda & Anr. etc.) It is a well-settled rule of construction that a court ought not to interpret statutory provisions unless compelled by their language in such a manner as would involve their unconstitutionality because the legislature is presumed to enact a law which does not contravene the Constitution. In the instant case, we feel that there is no compelling reason to hold that the Panchayat Service is not a civil service under the State. It is seen that further recruitment of candidates to the Panchayat Service has to be made by the Gujarat Panchayat Service Selection Board constituted by the State Government. Entry 41 of List II of the Seventh Schedule to the Constitution,

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as mentioned earlier, also refers to State Public Services suggesting that there can be more than one State Public Service under the State. We have indeed a number of such services under a State e.g. Police Service, educational service, revenue service etc. State Public Services may be constituted or established either by a law made by the State Legislature or by rules made under the provision to Article 309 of the Constitution or even by an executive order made by the State Government in exercise of its powers under Article 162 of the Constitution. The recruitment and conditions of service of the officers and servants of the State Government may also be regulated by statute, rules or executive orders. The administration of a service under a

State involves broadly the following functions: (i) the organisation of the Civil Service and the determination of the remuneration, conditions of service, expenses and allowances of persons serving in it; (ii) the manner of admitting persons to civil service; (iii) exercise of disciplinary control over members of the service and power to transfer, suspend, remove or dismiss them in the public interest as and when occasion to do so arises. In the instant case, the Panchayat Service is constituted by the Panchayats Act and the State Government is empowered to make orders and rules regarding its organisation and management. It is true that section 203 of the Panchayats Act, it is stated that the Panchayat Service shall be distinct from the State Service. Having regard to the broad features of the Panchayat Service, we are of the view that the said declaration appears to have been made only to distinguish the Panchayat Service from other services of the State attached to the several departments which are under the direct control of the State Government. If the members of the Panchayat Service are not to be the members of a Service under the State Government but are to be the officers and servants of the panchayat unit to which they are allotted then sub-sections (2), (2A) and 4(a) of section 203 of the Panchayats Act would to some extent become unworkable as every time there is a transfer of an officer borne on the Panchayat Service there would be a change of master. We do not think that the Legislature intended such a bizarre result. Sub-section (2) of section 203 authorises the division of the Panchayat Service into different classes, cadres and posts. Sub-section (2A) of section 203 provides that the Panchayat Service may consist of district cadres, taluka cadres and local cadres and that a servant belonging to a district cadre may be transferred from a post in any one taluka to a post in another taluka in the district, a servant belonging to a taluka cadre may be transferred from a post in any gram or nagar to a post in any other gram or nagar in the same taluka. Sub-section (4) of section 203 authorises promulgation of rules providing for promotion of servants in the Pan-

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chayat Service to cadres in the State Service. Such promotion is possible only because the State Government is the master of the Panchayat Service. The reason for treating Panchayat Service as a service distinct from State Service appears to be that the law intended that person belonging to the Panchayat Service should be transferable from one post in a panchayat to another post in a panchayat and unless there was an order of promotion, such persons could not be transferred to posts outside the panchayats.

Merely because the panchayats are declared to be body corporates, it cannot be said that any of the persons working under them cannot be considered as members of a civil service under a State. The panchayats constituted under the Panchayats Act derive their authority from the statute and are under the control of the State Government. They form part of the local self-Government organisation which the State Government is under an obligation to foster under Article 40 of the Constitution. Entry 5 of List II of the Seventh Schedule to the Constitution specifically refers to local authorities established for the purpose of local self-Government or village administration as part of local Government. The local authorities are included in the definition of the expression 'State' in Article 12 of the Constitution. The panchayats exercise many governmental functions which the State Government can perform. They are

entrusted with the power to levy taxes and to exercise large number of powers which are loosely called as "police powers" regulating several aspects of human life. Articles 276 and 277 of the Constitution also take note of the powers of local authorities to levy certain taxes. In addition to the express powers granted to the panchayats, the State Government is also authorised under the Panchayats Act to delegate many of its functions to them and to transfer many of its officers and servants to function under their supervision and control as members of the Panchayat Service. It is manifest from the foregoing that it cannot be said that person working as members of the Panchayat Service are not persons engaged in governmental functions and, therefore, it is not possible to treat them as members of the State Civil Service. We, however, make it clear that it is quite possible that under the statute it may be open to the panchayats to employ servants for the purpose of, administration of the panchayats who may not be members of the Panchayat Service. We are concerned in these cases only with the members of the Panchayat Service constituted under section 203(1) with regard to whose appointment and conditions of service the Government alone has been entrusted with the power to make rules under section 203(3). We are of the view H. that the Panchayat Service constituted under section 203 of the Panchayats Act has all the characteristics of a Civil Service of the State. This

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also appears to have been the view of the State Government when it constituted the second Pay Commission (Desai Commission) as can be seen from the Government Resolution constituting the said Commission requiring it to examine the general conditions of service applicable to Government employees other than officers of the all India services but including employees in the Panchayat Service (Vide Resolution No. PDS 1672/1526/P dated November 20, 1972 passed by the Government of Gujarat) and there is no justification for taking a view different from the one taken by the High Court of Gujarat in Shukla's case (supra) as early as 1967. Several orders and rules issued by the Government of Gujarat under the Panchayats Act since its commencement also support the aforesaid view.

At this stage, it is necessary to refer to a decision of this Court in Jalgaon Zilla Parishad v. Duman Govind & Ors on which reliance was placed by the learned counsel for the State Government in support of the contention that the Panchayat Service cannot be considered as a State Civil Service. In that case, the question which arose for consideration was whether kotwals who were holding posts under the State Government ceased to be the employees of the Government on the transfer of their services to Zilla Parishads. This Court held that they ceased to be the Government servants as they had been transferred to the services of the Zilla Parishads. That decision turned on the true construction of section 239 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 which provided for the constitution by the State Government as from the appointed day a District Technical Service (Class III), a District Service (Class III) and a District Service (Class IV) for each Zilla Parishad. We do not have a corresponding provision in the Panchayats Act providing for the constitution of a service for each panchayat but on the other hand, the statutory requirement is that a Panchayat Service should be constituted in respect of all the panchayats i.e. district panchayats, taluka panchayats and gram and nagar panchayats. Such a common service constituted

for the benefit of all panchayats leads to the inevitable conclusion that the State alone can be the master of the members of that Service and not the individual Panchayats. The decision relied on has, therefore, no bearing on the question before us. We, therefore, reject the contention of the State Government that the Panchayat Service is not a civil service under the State. We, however, make it clear that the view taken by us in the present case does not necessarily lead to the conclusion that every employee of a local body who is not a member of the Panchayat Service should be treated as a member of the State

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Civil Service. It is a question of fact to be decided in each case depending on the circumstances of that case.

The second question is a simple one and does not require much elaboration. The provisions contained in section 206 of the Panchayats Act and the provisions in sub-sections (2), (2A), (3) and (4) of section 203 clearly establish that the Panchayat Service constituted under section 203 can only be a centralized service and recruitment of candidates to be made under section 210 of the Panchayats Act by the Gujarat Panchayat Service Selection Board can only be to that centralized service. The division of the Panchayat Service into district cadre, taluka cadre and local cadre does not affect the integrity of the Panchayat Service. It continues to be a single service notwithstanding such division. When the Panchayat Service is a State-wide service, it has necessarily to be held that it is a common centralised service

In the result, we answer the two points which are set down for decision at this stage as follows:-

"1. The Panchayat Service constituted under the Panchayats Act is a civil service of the State of Gujarat; and

2. that under the unamended Act, there was a common centralized Panchayat Service."

The cases shall now be posted before a Bench of three Hon'ble Judges for further hearing on other points as directed by the Court on July 24. 1980.

N.V.K.

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