CASE NO.:
Appeal (civil) 513-514 of 1998

PETITIONER:
KERALA MAGISTRATES (JUDICIAL) ASSOCIATION AND ORS.

RESPONDENT:
STATE OF KERALA AND ORS.

DATE OF JUDGMENT: 01/03/2001

BENCH:
G.B. PATTANAIK & B.N. AGRAWAL

JUDGMENT:
JUDGMENT

2001 (2) SCR 222

The Judgment of the Court was delivered by

PATTANAIK, J. The appellants were the Members of the Criminal Judicial Service before its integration and formation of the Kerala Judicial Service. Prior to 1991, in the State of Kerala, the lower judiciary consisted of Civil Judicial Service and Criminal Judicial Service. The service condi-tions of the Subordinate Magisterial Service was being governed by a set of Rules called Kerala Subordinate Magisterial Service Rules, 1964. Similarly the service conditions of Civil Judicial Service was being governed by the State Judicial Service Rules, 1966. In the year 1973, on the basis of the order issued by the Government, two separate wings, one on the civil side and the other on the criminal side had been formed. The aforesaid bifurcation under the order of the Executive Government was challenged before the Kerala High Court in the case of M.K. KrisimanNair v. State of Kerala and Ors., and the Kerala High Court was of the conclusion that such bifurcation is invalid and discriminatory. The decision of the Kerala High Court was assailed before this Court and in the case of State of Kerala v. M.K. Krislman Nair and Ors., AIR (1978) SC 747, this Court upheld the validity of the bifurcation and the decision of Kerala High Court on that point was reversed. On a construction of Articles 309 and 234 of the Constitution, this Court held that it is open to the State Government to constitute as many cadres in any particular service, as it may choose, according to the administrative convenience and expediency. Subsequent to the aforesaid judgment, the High Court considered the question of integrating the two wings of the Subordinate Judiciary and finally, a set of special rules for Kerala Judicial Service under Articles 234 and 235 of the Constitution of India was made, which provided for a common service called the Kerala Judicial Service. The service was formed by integrating the Members of the Civil Judicial Service as well as the Criminal Judicial Service and under the Rules for drawing up of the gradation list for the integrated cadre as between the Subordinate Judges belonging to the civil side and Chief Judicial Magistrates belonging to the criminal side, it was indicated that a ratio of 3:1 should be maintained. Similarly, for drawing up of a combined gradation list as between the Munsiff Magistrates and senior Grade Judicial Magistrate, was to be main-tained in the ratio as 5:2. The Rules further provided that in working of the ratio of 3:1, the first three places would be given to the Subordinate Judges and the 4th place would be given to the Chief Judicial Magistrate and in working of the ratio 5:2, it was stipulated that the first three places will be given to the Munsiffs and 4th place to be given to the Magistrate (criminal), 5th and 6th place to the Munsiffs and 7th place to the Magistrate (criminal) and so on. The Association of the Magistrates belong to the criminal side and two other individual Magistrates, assailed the validity of the aforesaid integration, more particularly, the validity of Sub-rule (4) of Rule 3 of the Kerala Judicial Service Rules, 1991. A Full Bench of Kerala High Court however, by the impugned Judgment came to

the conclusion that there cannot be any inherent infirmity in prescribing a quota for appointment of persons drawn from two sources and in working out the rale of quota by rotating the vacancies between them in a proportion. It further held that a ratio can be fixed not in the abstract, but with reference to the total number of persons in service in the two groups, who are to be integrated and the strength of each service is a reasonable basis for formulating the ratio. The High Court held that in working out the aforesaid principle to the case in band in prescribing the ratio of 3:1 and 5:2, no arbitrariness is discernible and, therefore, it would not be open for the Court to strike down the same. The High Court also came to the conclusion that since a Magistrate who would have earlier reached the post of Chief Judicial Mag-istrate in the hierarchy of post, would now be entitled to reach the top position in the judiciary, the grievance of such Magistrates is not real and, therefore, the Rule in question must be held to be valid.

Mr. P.P. Rao, the learned senior counsel, appearing for the appellants contended that the prescription of the ratio of 3:1 and 5:2 as well the manner in which the said ratio would be worked out, is on the face of it unreasonable and unjust, so far as the Magistrates belonging to the criminal Judiciary are concerned and the High Court committed error in not interfering with the aforesaid unreasonable and discriminatory provisions of the Rules. According to Mr. Rao, there was absolutely no justification for not considering the seniority in the integrated cadre on the basis of their regular length of service, which usually forms the basis when an integration takes place and in the absence of any special reasons indicated by the Rule Making Authority, the basis has to be held to be arbitrary and irrational and must be struck down. Mr. Rao further contended that when the Rule Making Authority decided to have an integration of the two wings, it was expected of them to take into account the total number of ports in the entry grade of both the wings, the promotional avenues, available to the incumbents of each wing and the promotional avenue which would be open in the integrated cadre and all other relevant facts and that not having been done, the fixation of quota under the Rules cannot, but be held to be invalid, Mr, Rao lastly contended that a provision for promotion in a cadre increases the efficiency of the public service while stagnation reduces the efficiency and makes the service inef-fective and, therefore, promotion is considered to be a normal incidence of service and, if this test is applied to the integrated cadre constituted under the Rules of 1991, it would appear that the incumbents engrafted from the criminal side have practically no prospect of promotion, as compared to their counter-parts on the civil side and this makes the rules discriminatory and consequently, must be struck down.

Mr, T.L.V. Iyer, the learned senior counsel, appearing for the High Court of Kerala, on the other hand contended that the matter has been thoroughly discussed in several meetings of the Full Court of Kerala High Court and ultimately, the Court found the ratio provided under the Rules to be most reasonable. In this view of the matter, the High Court was justified in dismissing the writ petition. Mr. Iyer also contended that the entry point for the two wings was different, the requirement of experience for the entry was different; the opening up of avenue for promotion to the higher cadre was different; period taken for promotion was also different and the High Court considered all these aspects and only after a detailed consideration, the final view was taken and the same cannot, therefore be held to be arbitrary or irrational. Mr. Iyer submitted that when an integration of two wings takes place, the principle evolved for determination of inter se seniority in the integrated cadre may work out some injustice to some of the Members of the service but that by itself neither can be held to be arbitrary or irrational and a party who alleges discrimination, has to positively establish the same and the Court will not interfere with the Rules unless it conies to the conclusion that the Rules really act with hostile discrimination. According to Mr. Iyer, in forming an integrated cadre and in evolving a principle of seniority of incumbents in the integrated cadre, efficiency of the service was of paramount

consideration before the High Court and with that end in view, the principles having teen evolved, after a detailed consideration by the Full Court of the High Court, the same need not be interfered with by the Court.

The rival contentions require careful consideration. The Kerala Judicial Service Rules, 1991 (hereinafter referred to as "the Rules") have been framed by the Governor of Kerala in exercise of powers conferred under Articles 234 and 235 of the Constitution of India read with Section 2(1) of the Kerala Public Services Act, 1968. Thus before enactment of the Rules, the Governor had full consultations with the kerala Public Service Commission as well as the High Court of Kerala, In fact it is the High Court which deliberated on the question of providing a ratio in the integrated cadre, which was ultimately accepted by the State Government. For a proper appreciation of the point in issue, Rule 3 of the Rules is quoted herein below in extenso :

"3. Constitution : (1) There shall be a common service called 'The Kerala Judicial Service' in the place of existing Kerala Civil Judicial Service and Kerala Criminal Judicial Service.

(2) The service shall consist of the following categories of officers, namely :

Category 1 : Subordinate Judges/Chief Judicial Magistrates, Category 2: Munsiff-Magistrates.

(3) The service shall first be formed by integrating the members of the Kerala Civil Judicial Service consisting of Subordinate Judges and Munsiffs and the Members of Kerala Criminal Judicial Service consisting of Selection Grade Chief Judicial Magistrates, Chief Judicial Magistrates, Senior Grade Judicial Magistrates of the first class, Judicial Magistrates of the fust class and Judicial Magistrates of the second class. Criminal Judicial Service consisting of selection Grade Chief Judicial Magistrates, Chief Judicial Magistrates, Senior Grade Judicial Magistrates of the first class, Judicial Magistrates of the first class and Judicial Magistrates of the second class."

(4) On the date of the coming into force of these Rules, category I, Subordinate Judges/Chief Judicial Magistrates, shall be formed by integrating those in the category of Subordinate Judges and those in the category of Selection Grade Chief Judicial Magistrates and Chief Judicial Magistrates in the ratio of 3:1, that is, the first three places shall be given to the Subordinate Judges and the fourth place to the Chief Judicial Magistrates and so on and category 2, Munsiff-Magis-trates, by integrating those in the category of Munsiffs and those in the category of Senior Grade Judicial Magistrates of the first class and Judicial Magistrates of the first class, on the basis of the ratio of 5:2, that is the first three places shall be given to the Munsiffs, the fourth place to the Magistrates, fifth and sixth to the Munsiffs, seventh place to the Magistrates and so on.

(5) All the existing Judicial Magistrates of the second class at the commencement of these rules shall be absorbed in the category of Munsiff-Magistrates and shall be ranked below all the then existing Munsiff-Magistrates."

In the case of Mervyn Coutindo & Ors. v. Collector of Customs, Bombay & Ors., [1966] 3 SCR 600, where 50 per cent to the cadre of appraisers in the customs department was being filled up by the direct recruits and 50 per cent by the promotees, the seniority in the cadre of appraisers was required to be fixed by rotational system, alternatively fixing promotee and direct recruits. This had been assailed but the Supreme Court upheld the principle on a finding that there does not appear to be any violation of the principle of equality of opportunity enshrined in Article 16(1) by following the rotational system of fixing seniority in a cadre half of

which consists of direct recruits and the other half of promotees, and the rotational system by itself working in this way cannot be said to deny equality of opportunity in Government service. In Joginder Nath v. Union of India, [1975] 3 SCC 459, the Supreme Court had observed that it would not be possible or practical to measure the respective merits for the purpose of seniority with mathematical precision by a barometer and some formula doing largest good to the largest number had to be evolved. The aforesaid observations had been made in the context of the Rules of seniority engrafted in Delhi Judicial Service Rules. In one of the earliest case relating to education department of Tamil Nadu, where a ratio had been fixed for promotion and principle of computation of service had been indicated for determining the common seniority, this Court had observed that in Service Jurivsprudence, integration is a complicated administrative problem, where in doing broad justice to many, some bruise to a few cannot be ruled out. In this particular case, the ratio of 5:2 and 3:2 had been prescribed for the ministerial staff and teaching staff, taking a realistic note of the total numbers of the two equivalent groups. The Supreme Court considered the strength of the District Board Staff to be inducted and held the ratio to be rational. The Court also observed that a better formula could be evolved, but the Court cannot substitute its wisdom for Government's save to see that unreasonable perversity, mala fide manipulation, indefensible arbitrariness and infirmities do not defile the equation for integration. In the impugned Judgment, the Pull Bench of Kerala High Court has taken note of the aforesaid decisions while approving the ratio provided for in the recruit-meat rules of 1991 in the integrated cadre. In New bank of India Employees' Union and Anr v. Union of India and Ors., [1996] 8 SCC 407, Where the New Bank of India had been amalgamated with Punjab National Bank under a scheme and the amalgamation scheme provided for treatment of two years' service in the transferor bank as equivalent to one year service in the transferee bank for computing the length of service for the purpose of determination of eligibility for promotion and where the ratio of 2:1 had been fixed in Clause 4(a)(iii) of the Amalgamation Scheme for the purpose of inter se seniority, the same on being challenged, this Court had held that no scheme of amalgamation can be foolproof and a Court would be entitled to interfere only when it comes to the conclusion that either the scheme is arbitrary or irrational or has been framed on some extraneous considerations. In coming to the aforesaid conclusion the Court had relied upon the observations made in the earlier decision in the case of" V.T. Khanzode v. Reserve Bank of India, [1982] 2 SCC 7, where the Court had observed that no scheme governing service matters can be foolproof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectations of every employee is not evidence of these. It would, therefore, be necessary for us to examine whether the provisions of ratio of 3:1 and 5:2 in the integrated cadre, as provided in Sub-rule (4) of Rule 3 of the Kerala Judicial Service Rules, can be held to be arbitrary, irrational or perverse, Mr. Rao, however, relied upon the decision of this Court in the All India Federation of Central Excise v. Union of India and Ore., [1997] 1 SCC 520, where-under the proposal of the Government for promotion quota from Group "B" feeder cadre comprising of Central Excise Superintendents, Customs Superintendents and Customs Appraisers in the ratio of 6:1:2 was held just fair and equitable. The Court in that case found the reasons given for the ultimate solution to be well founded and the ratio suggested on examining the panoramic view looking at the chart indicating the promotional potentiality in both the streams was held to be quite satisfactory. Mr. Rao also had relied upon the decision of this Court in the case of Sub-Inspector Roop

Lal and Anr. v, Lt. Governor Delhi and Ors., [2000] 1 SCC 644, where-imder when depulationists were absorbed .permanently in the deputation department and their seniority was being determined after absorption, their previous services rendered had not been taken into account under the office memoran-dum. The Court held the said principle to be violalive of Articles 14 and

16 on the ground that when a deputationist is absorbed in the equivalent cadre in the transferred post, then there is no reason why his past services will not be permitted to be counted for the purpose of his seniority. This case will be of no assistance to the case in hand where the integration of the two wings of the Judicial Service has been made under a set of Rules framed by the Governor in exercise of powers conferred under Articles 234 and 235 of the Constitution, after due consultations with the State Public Service Commis-sion and the High Court and the High Court itself has elaborately discussed this question before taking a final decision. The only question therefore, remains to be considered by us is whether the Rules in question, providing a ratio in the integrated cadre for determination of inter se seniority between the incumbents of the criminal wing and incumbents of the civil wing have been arbitrarily fixed or the same have been arrived at after due deliberation and on examining relevant and germane factors.

We have examined the relevant records containing the deliberations made in the Full Court Meetings of the High Court on the topic of integration of the two wings. It appears that on the criminal side the entry post was Magistrate Second Class and the highest post, a Magistrate Second Class could reach was Chief Judicial Magistrate. On the Civil side the entry post was Munsiff and the highest post was the District Judge. The Association of the criminal Magistrates had all along been clamoring that the post of District and Sessions Judge should also be separated and the Chief Judicial Magistrates on the criminal side should also be promoted to the post of District and Sessions Judge. Such grievance had been considered by a Committee of three Judges headed by Dr. Justice Kochu Thommen and the said Committee submitted a report to integrate the two wings of the judicial services, way back in the year 1985, Different Associations of Judicial Officers, both on the civil side as well as on the criminal side discussed the question of integration with the Hon'ble Chief Justice Shri E. Balakrishna Pillai in January, 1986. The representatives of the Kerala Magistrates' Association when met the Chief Justice, expressed their views that a quota should be fixed for promotion on rotational basis and in fact it was their suggession that the cadre of sub judges and Chief Judicial Magistrates should be a combined cadre and for .the purpose of promotion to the post of District Judge from the combined cadre, promotion should be given on a proportion of 3:1 and so far as the integration of Munsiffs and Magistrates First Class are concerned, their demand was that on integration, they should be promoted to the promotional cadre of Sub-Judges and Chief Judicial Mag-istrates on a rotational basis at a proportion of 3:2. This demand had been made on the assumption that there exist 85 posts of Munsiffs and 63 posts of Magistrates Fkst Class. All these suggestions were placed before the Full Court of Kerala High Court for consideration. Before such consideration, information had been gathered from the Registrars of the Karnataka High Court and the Andhra Pradesh High Court to find out as to principle that was adopted for determining the inter se seniority when there was an integration in those two States. The Full Court of Kerala High Court took, all the relevant factors into consideration, including the information received from the Registrars of Karnataka and Aadhra Pradesh High Courts. The Full Court, took into consid-eration the fact that the number of posts of District Judges, number of posts of Subordinate Judges, the aumber of posts of Chief Judicial Magistrates, the number of posts of Munsiff Magistrates, the number of posts of Judicial Magistrates First Class and the number of posts of Judicial Magistrates Second Class, which existed on the date of the Full Court Meeting, The Court took notice of the fact that on the date of integration, 42 Magistrates Second Class will be absorbed in the category of Munsiff Magistrates and all of them will be duly benefited in their scale of pay. The Court also considered that in view of the number of posts available, while Munsiffs, could expect promotion to 49 posts of Subordinate Judge but the Judicial Magistrates could expect pro-motion only to 18 posts of Chief Judicial Magistrates, as it existed. But by reason of integration, the chances of promotion of the Magistrates will be much more enhanced, compared to the chances of promotion to the Munsiffs. The Court also

considered the normal rate of promotion and found that for Munsiffs, the rate being 1.25, for a Magistrate rate was only 0.30 and on account of integration, the ratio would come to 0.84, which indicates that over-all chances of promotion to the Munsiffs would get reduced from 1.25 to 0.84, whereas the chances of promotion of the Magistrates get increased from 0.30 to 0.84. The High Court, therefore, suggested that the ratio of 3:1 should be fixed both in the integrated cadre of the Subordinate Judges and Chief Judicial Magis-trates for promotion to the post of District Judge as well as in the cadre of Munsiffs and Magistrates First Class for the promotion to the post of Subor dinate Judges. The High Court also was of the opinion that the effect of integration will be that while Mnnsiffs would lose chances of promotion but the Magistrates will improve their chances of promation,although some senior Magistrates, individually, will sustain some loss. But such loss is the usual consequence of any integration process. Notwithstanding the aforesaid recom-mendations of the High Court, the State Government on receipt of represen-tation from the Magistrates' Association, made further correspondence with the High Court and suggested that the ratio for promotion from the Munsiffs and Magistrates to the Subordinate Judges should be Fixed at 5:2, The High Court initially had some reservations, but ultimately accepted the same and commu-nicated its acceptance to the Government, whereafter the rules were promul-gated and Rule 3(4) of the Rules embodies the aforesaid principle. Having examined the considerations made by the High Court and the Government in fixing the ratio in the integrated cadre, embodied in Sub-rule (4) of Rule 3 bearing in mind the parameters and the power of a Court for interference with such decisions, it is difficult for us to hold that the aforesaid Sub-rule (4) of" Rule 3 can be termed to be arbitrary or irrational or that the decision has been taken without taking into considiration the germane materials. On the other hand, the final decision has been taken after elaborate discussions, taking into account all the relevant factors and consequently, the Full Court of the High Court was fully justified in Coming to the conclusion that the Rule cannot be struck down as being discriminatroy or being violative of Article 14. We see no legal infirmity with the conclusion arrived at by the High Court, requiring interference by this Court, even through, we agree thate some individual Mag-istrates might have suffered some loss. In the aforesaid premises, we do not find any merit in these appeals, which acceodingly stand dismissed,