

CHAPTER II

Creation of Administrative Machinery

1. Allotment of Civil Servants

In order to provide the necessary administrative machinery for the new States, the following provisions have been made in the States Re-organisation Act:—

(i) Constitution of 'State cadres' of existing All-India Services and the determination of cadre strength for each State and the allocation of members of All-India Services of pre-existing States to the new States by the Central Government (*vide* Section 114).

(ii) A provision for deemed allotment of all civil servants of erstwhile States whose territories in its entirety became part of a newly formed State to that successor State [*vide* Section 115(1)].

(iii) A provision for continuance of civil servants of a pre-existing States part of whose territories is transferred to another State, provisionally as civil servants of principal successor State [*vide* Section 115(2)].

(iv) A provision for general or special orders of allotment of civil servants of pre-existing States parts of whose territories became part of more than one successor State to any specified new State by the Central Government [*vide* Section 115-3 and 4].

(v) A provision for deemed appointment of civil servants serving in any area which is included in a new State as civil servants of that State [*vide* Article 116].

The above provisions were designed to bring into existence a new administrative set up for the new States and appointment of civil servants of erstwhile States as civil servants of the concerned new State by a legal fiction so that there may be no necessity for the Government of new State or its authorities to issue orders of appointment in order to bring into existence the relationship of master and servant between the new States and the civil servants allotted and to confer lawful authority on the civil servants concerned to discharge the powers and functions of the post in which they were continued.

2. Effect of Sections 115 and 116 on the Rights of Allottees

(1) *Allotment cannot be made in derogation of the right to hold higher post* : Allotment of civil servants to the new State under Section 115 of the States Re-organisation Act is not possible in derogation of the right of a civil servant to hold, in the State to which he is allotted post corresponding to that which he held in the parent State. If a civil servant is entitled to continue in the higher post in the parent State, he should be retained there or he should be allotted in the same post to a new State. It would be plain misuse of power to demote him and send him to the new State and then to contend that there are no higher posts in the new State for his continuance.⁹

(2) *Allotment takes effect from 1-11-1956* : When a Government servant of a particular State is serving in an area which becomes part of a new State by transfer of that area as a consequence of re-organisation of States, he will be deemed to be a servant of the new State with effect from 1-11-1956 which is the appointed day under the States Re-organisation Act notwithstanding the delay of an allotment order required to be made by the Central Government under Sub-section (3) of Section 115 of the Act.¹⁰

(3) *Promotions made by the erstwhile State before 1-11-1956 valid* : Section 116 of the States Re-organisation Act provides that every person who was holding or discharging the duties of any post in any area which becomes part of the new State shall be deemed to have been appointed by the corresponding authority in the new State with effect from the appointed date. In view of the said section, persons promoted to particular posts by the erstwhile State Governments before the date of integration can claim to be treated as having been duly appointed to such posts by the corresponding successor Governments.¹¹

(4) *Section 116 does not confer any higher rights* : The fact that under Sub-section (1) of Section 116, every person who has holding or discharging the duties of any post or office in connection with the affairs of an existing State in any area which on that day falls within another existing State or new State shall be deemed to have been duly appointed from that day by the Government or other appropriate authority in such State cannot be read as conferring upon the Government servant the status or any right or rights superior to what they possessed before integration of States. What the section does is merely to substitute the successor Government or other appropriate authority in the place of appointing authority. In other words, the effect of the section is that the said person for all purposes should be regarded

9 R. R. Kulkarni *V.* State of Mysore—AIR 1967 Mys. 225—Confirmed in State of Mysore *V.* R. R. Kulkarni —AIR 1972 SC 2170.

10 Balakrishnan *V.* Chief Secretary—AIR 1963 M.P. 216.

11 M. A. Moqueem *V.* State of Mysore—AIR 1963 Mys. 219.

as a person appointed by the Government or other appropriate authority of the new State in the same way as he had been appointed by the Government or the corresponding authority of his parent State. A person becomes a Government servant only by virtue of an order of appointment issued by the Government or the appropriate authority. Section 116(1) of the States Re-organisation Act only dispenses with the requirement of the issue of such an appointment order by the new Government or the competent authority in the new State by creating a legal fiction to the effect that they must be deemed to have been duly appointed in the respective posts by the Government or the corresponding authority of the new State.¹²

(5) *New State has the power to pass orders effecting continuance or status :*

(a) A civil servant who had been promoted on officiating basis in the parent State has no legal right to continue in that post. Sub-section (2) of Section 116 of the States Re-organisation Act specifically provides that though under Sub-section (1) a person is deemed to have been duly appointed by the Government or the corresponding authority in the new State it is open to the competent authority to pass in relation to such persons any order effecting their continuance in such post or office. It is not possible to read Section 115 and Sub-section (1) of Section 116 of the States Re-organisation Act as conferring any right to continue in the same post and that no reversion could be ordered without the sanction of the Central Government.¹³

(b) It is also competent for the Government of the new State to cancel or ignore the orders of the confirmation made by the parent State which were illegal and invalid. Where confirmation of persons were made as against posts which were not in existence, the orders of confirmations so made do not confer any right on the civil servant concerned. Confirmations made in the absence of posts was impermissible and therefore, invalid. Sub-section (2) of Section 116 of the States Re-organisation Act is wide enough to empower the successor Government to cancel the orders of confirmation made in contravention of the rules by the parent State.¹⁴

(6) *Effect of pending disciplinary proceedings :* It is competent for the new State to continue disciplinary proceedings which were pending against a civil servant in the erstwhile State on the date of re-organisation of States after his allotment to the new State in respect of acts of commission and omission in an area which did not become part of the new State to which he was allotted. Whether the disciplinary proceedings falls within the meaning of the word 'proceedings' in Section 125 of the States Re-organisation Act or not, when the Central Government has issued directions under Section 117 of the S.R. Act and stated that the authority to continue disciplinary proceed-

12 N. Chandra Mouli *V.* Union of India—1970(2) *Mys. L. J.* 187.

13 State of Rajasthan *V.* Ramsaran—AIR 1964 SC 1361—(1964) 2 SCR 982.

14 State of Punjab *V.* Jagdip Singh—AIR 1964 SC 521.

ings against Government servants would vest in the Government of the State to which the civil servant has been allotted, the jurisdiction of the new State to hold disciplinary proceedings cannot be questioned.¹⁵

15 *Mathada Neelakanta Sastry V. State of Mysore*—1965(2) *Mys. L. J.* 257.