REVIEWS

SERVICES UNDER THE STATE. By M. Rama Jois. Indian LawInstitute, Karnataka Unit, Bangalore. 1974. Pp. xxviii+464. Rs. 35.

THE BOOK under review deals in detail with relations between the state and persons employed by it in its various services. Recruitment and conditions of service including tenure of office, public service commissions, disciplinary action, integration of services, constitutional remedies available to a public servant when aggrieved by the state action, litigation between the state and its servants—all these receive detailed treatment in the book. Rama Jois who wrote the book for the Karnataka Unit of the Indian Law Institute has taken pains to paraphrase or summarise constitutional and statutory provisions relating to the services and to present judicial decisions on various matters concerning them. As pointed out by Chief Justice Govinda Bhat of the High Court of Karnataka who has contributed a foreword, the book is not a mere digest of cases; it has the merit of stating the principles and illustrating them with judicial decisions. There are nearly eleven hundred judicial decisions cited in support of the legal principles stated in the book. All these may provide grist for the lawyer and the judge, but may not make for easy reading to "all those who have anything to do with services under the State."[1] It will be, however, found that, on the whole, the book is more readable than many other law books which are published and occasionally read.

In part I of the book which deals with certain general matters relating to the services, the author tries to indicate the connotation of the term 'state' used in article 12 of the Indian Constitution. After having quoted the definition given in the article and having paraphrased it, he appeass to rest content by stating that :

> [T]he fundamental right conferred by Part III (of the Constitution) is an injunction both to the legislative as well as executive organs of the State and to other subordinate authorities.[1a]

In support of this statement he makes a footnote reference to *Basheshar Nath* v. *Commissioner of Income-tax*.[2] One wonders why there has been no reference to the judiciary. Where there is such a comprehensive study of case law as in this book, the omission of any reference, in a chapter entitled "State for Purposes of Fundamental Rights", to *Naresh Shridhar Mirajkar's*

1. M. Rama Jois, *Services Under the State* (hereinafter referred to as Jois).
1a. *Id.* at 3.
2. A.I.R. 1959 S C. 149.

case[3] appears, to say the least, surprising. It may be that the decision has no special relevance to employment under the state; but the author appears to be discussing, in general, the connotation of 'state' in relation to the fundamental rights. If that case decided that the judiciary did not form part of the state in article 12, this may not be a reason for not mentioning it, especially in view of the statement made in regard to the position of a company. If it could be specifically pointed out that a company is not state. the same thing could have been said about the judiciary, if one subscribed to the majority view in the *Mirajkar* case. This appears to be specially pertinent as there are whole chapters in the book devoted to judicial service and to officers and servants of the Supreme Court and the High Courts. One may quote Seervai who has said with reference to the opinion expressed by the majority of judges in the *Mirajkar* decision that "the judiciary falls within the definition of the State in Art. 12 and is subject to the limitation imposed by fundamental rights."[4] In *Shelley* v. *Kraemer*,[5] the U.S. Supreme Court has observed :

> That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court [6]

A provision in the Basic Law of the Federal Republic of Germany may throw some light on how the fundamental rights are generally conceived as binding the state. Article 1(3) of the Basic Law lays down that : "The following basic rights shall bind the legislatures, the executive and the judiciary as directly enforceable law."

It would seem that there was no good reason for our founding fathers to depart from this generally accepted concept. It may also be mentioned in passing that in *Premchand Garg* v. *Excise Commissioner, U.P.*,[7] the Supreme Court struck down a rule made by itself as violative of the fundamental rights.

After having thoroughly dealt with legal principles and judicial pronouncements relative to employment under the state, Jois devotes a chapter, by way of conclusion, to the causes of the grievances of the civil servants and the remedies which, in his opinion, will substantially reduce, if not totally eliminate, the grievances. One of the causes he mentions may be of

3. *Naresh Shridhar Mirajkar* v. *State of Maharashtra*, A.I.R. 1967 S C. 1.
4. H.M. Seervai, 1 *Constitutional Law of India* (second ed, 1975).
5. 334 U.S. 1; 92 L. Ed. 1161 (1947).
6. *Id.* at 14.
7. (1963) Supp. 1 S.C.R. 885.

special interest, as indicative of the attitude taken by the government departments. He gives a long excerpt from a judgment of the High Court of Mysore to show the inconsistent stands, built upon shifting sands of short-lived expediency, adopted by public authorities. In *Suryanarayana Rao* v. *State of Mysore*[8] the High Court considered the applicability of the Departmental Examination Rules, 1962 to different cadres of public service in the state and observed :

> We cannot but observe that the State Government has not taken a consistent stand in the several cases pertaining to the said rules. As pointed out in the order of reference to the Full Bench in *Krishna Gowda* v. *State of Mysore*, the learned Government Pleader appears to have conceded before the Bench that decided *Syed Hussain Syed Sah* v. *Superintendent of Police, Belgaum*, that the Departmental Examination Rules 1962 were applicable to the officials of the Police Department though separate Recruitment Rules have been framed for that Department. But before the Full Bench in *Krishna Gowda's* case, the stand taken on behalf of the State appears to be that the Departmental Examination Rules 1962, have no application for a Department for which separate Recruitment Rules have been made under the proviso to Article 309 of the Constitution. Though the opinion of the Full Bench was pronounced earlier to the Supreme Court hearing C.A. Nos. 1462 to 1550 of 1966, curiously enough the State Government does not appear to have brought to the notice of the Supreme Court the opinion of the Full Bench in *Krishna Gowda's* case. As pointed out (by Mr. Rama Jois), the contention advanced on behalf of the State in those appeals were on the footing that the Departmental Examination Rules 1962 were applicable to the Secretariat Service (for which separate Recruitment Rules had been made under the proviso to Article 309). Similar was the stand taken by the State Government before this Court in *T.Ś. Gurusiddaiah* v. *The Chief Secretary, Government of Mysore*.[9]

It is unfortunate that one is not impressed by the sense of justice which impelled the government to adopt inconsistent stands on different occasions. If, according to the scriptures, all authority emanates from God, public authorities are perhaps justified in assuming to themselves one of God's attributes, that of inscrutability in His ways.

Jois suggests a number of ways to reduce the bulk of legislation between the state and its employees and to improve generally the present condition of

8. 1967 (2) My.L.J. 544.

9. *Id.* at 553-554, quoted in Jois at 449-50, with a very modest omission of the author's name from the excerpt.

public service which has at least a veneer of discontent about it. One of the more striking of the remedies he suggests is the formation of administrative tribunals with "the object of redressing the grievances of Government servants and also with the object of having speedy settlement of disputes involving large number of Government servants".[10] At the time of writing this review, proposals for setting up administrative tribunals are very much in the air The Swaran Singh Committee. appointed by the ruling Congress party, has recommended such tribunals. The author visualises details of the tribunals he would like to have set up He says the tribunals should consist of at least two members selected from persons qualified to be judges of a High Court. To ensure the independence of the tribunals, the members should, according to him, be appointed on the recommendation of the High Court and should be subject to the disciplinary control of the High Court only.

The present reviewer may express his view that any tribunal should be a collegiate body,[11] consisting of no less than three members, that is, at least three members should be present when hearing and adjudicating a dispute. If only two members are present, they may happen to entertain to divergent opinions about a particular dispute and the matter may be too important to be left to the whimsical behaviour of a fateful coin or some such unpredictable 'chance' machinery. If the matter has to be referred to a third person, is it not advisable, from the point of view of fairness, that that person is enabled to take part in the proceedings from the beginning ? It would be desirable to provide for four members for every tribunal, of which at least three should be required to hear and deliberate on any important issue brought before it. It is worth considering whether it is not advisable to have on the tribunal at least one person who is or has been a senior civil servant. The members should have the same status and salary as the judges of a High Court and appeals from their decisions should lie only to the Supreme Court or preferably to an appellate administrative tribunal where at least five members of the tribunal will finally hear and dispose of the appeal. It is an extremely extravagant luxury to provide for more than one appeal in any case; this especially so, if the dispute has been adjudicated at the first instance by a collegiate bench.

In spite of the odium attached to the expression in common law jurisdictions, one need not hesitate to suggest that the procedure before the adminis-

10. Jois at 452.

11. It may be recalled that in ancient India adjudicatory organs were invariably collegiate bodies. According to Manu (VIII, 10) the *Adhyaksha* should decide cases with the assistance of three members (of the judicial council). Brihaspati says : "The Chief Justice decides causes, the King inflicts punishments; the judges investigate the merits of the case", (1.6) Chanakya was of the view that the judicial council should consist of six persons, three officers of state along with three other learned persons (*Arthasastra,* Book III, ch I). *Sukranitisara* insisted that the number of judges should be uneven, three, five or seven.

trative tribunals should be more inquisitorial than adversary in character.[12] Before these tribunals, a poor civil servant who will be almost always the plaintiff is pitted against the almighty state. It is, therefore, necessary that the tribunal itself conducts investigations to see whether the allegations made against the state are justified. This can be done, as done by the administrative tribunals in France, by appointing one of the members of the tribunal as *rapporteur* who will thoroughly investigate the case, may discover facts that the plaintiff could not discover for himself, and may even produce arguments which the plaintiff has overlooked. He may look at the files of the public authority concerned and see that no information relevant to the dispute is concealed from the tribunal.[13] There will generally be no need for the plaintiff to employ a lawyer to present his case before the tribunal as the *rapporteur* is expected to do all that is necessary to safeguard his interests as well as those of the state. It is perhaps advisable to restrict the employment of counsel for the conduct of the case at the appellate stage. All that the plaintiff is expected to do is to present a petition against the public authority concerned before the administrative tribunal and pay a small fee. As adjudication of disputes is one of the sovereign functions of a state, it is inequitable to demand from the poor plaintiff a heavy fee, as though adjudication is a commercial service rendered by the state. The levying of a small fee may be justified, as it might tend to discourage frivolous complaints from public servants. Even if these tribunals are not given jurisdiction to decide disputes between the private citizen and the state, it may not be out of place to consider in this context whether private bodies, like government contractors,[14] running a public service for the state should not be brought under the jurisdiction of these tribunals when their employees have grievances against them which they wish to be redressed.

The Indian Law Institute, Karnataka Unit, deserves congratulations for bringing out a research study of this kind. One may reasonably hope that this good example will be followed by other state units of the Institute.

Joseph Minattur*

12. Brihaspati's statement (1.6) that "the judges investigate the merits of the case" may point to the inquisitorial procedure prevalent in ancient India. Manu's insistence that "Either the court must not be entered, or the truth must be spoken; *a man who either says nothing or speaks falsely, becomes sinful*" (VIII, 13), (emphasis added) appears to underline the existence of the same procedure Narada speaks of a chief judge who puts questions to the parties. He says the chief judge "investigates the law relative to the case in hand by putting questions and passing a decision according to what was heard or understood by him". This, while characterising the procedure followed, also indicates that there was a collegiate body of judges hearing the case. While setting up administrative tribunals, we could, with undoubted benefit, resuscitate this indigenous procedure as well as the collegiality of the judicial bodies in ancient India.

13. See Ridley and Blondel, *Public Administration in France* 153. See also for a general discussion, J. Minattur, French Administrative Law, 16 *J.I.L.J.* 364 (1974).

14. See J. Minattur, Private Discrimination : Is it Unconstitutional ?, VII *Journal of Constitutional and Parliamentary Studies* 77 (1973).

*Ph.D., LL.D., D.C.L., Barrister, Director (Projects), Centre for Advanced Legal Studies, Professor of Law, Kerala Law Academy, Trivandrum.