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Venkataramia Aiyar J.

(supra), there was a decree, and the requirements of s. 205 were satisfied. Here, there is only a finding on a preliminary issue, and there is no decree or final order. The Explanation to Art. 132 provides that :

"For the purposes of this Article, the expression 'final order' includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case."

Applying this test, even if we accept the contention of the appellant that the impugned Act is bad, that would not finally dispose of the suit, as there are other issues, which have to be tried. We are clearly of opinion that the appeal is not competent under Art. 132, and the fact that a certificate has been given does not alter the position. It is said that the certificate is also under Art. 133, but under that article also, an appeal lies only against judgments, decrees or final orders, and no certificate could be granted in respect of an interlocutory finding.

The result is that this appeal must be dismissed, as not maintainable. We should add by way of abundant caution that as we express no opinion on the correctness of the decision under appeal, this order will not preclude the appellant from claiming such rights as he may have, in appropriate proceedings which he may take. In the circumstances, there will be no order as to costs.

Appeal dismissed.

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November, 28.

RAJVI AMAR SINGH

v.

THE STATE OF RAJASTHAN

(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS, A. K. SARKAR and VIVIAN BOSE JJ.)

State Service—Formation of new State by intergration of States—Effect—Employee under intergrating State continuing in service of new State—Status—If can be inferred

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from description in orders of transfer and increment of pay —Substantive appointment to a lower grade on guaranteed emoluments—If amounts to reduction in rank—Constitution of India, Art. 311.

The appellant was a District and Session Judge in the State of Bikaner and after its merger in the new State of Rajasthan, on August 7, 1949, continued to serve in the new State. The covenant of integration provided, *inter alia*, that the conditions of such service were to be no less advantageous than those under which he was working on November 1, 1948. By a Gazette Notification the appellant was appointed as an *ad hoc* Civil and Additional Sessions Judge. After the reorganisation of the Services he was substantively appointed as a Civil Judge and placed in grade C (Civil Judges and Munsiffs) and placed at No. 18 in the list of Juniors, but his old pay and emoluments remained as guaranteed. Before such appointment he was, however, described in certain orders of transfer and increments of pay as District and Sessions Judge. The appellant moved the High Court under Art. 226 of the Constitution and contended that he had been reduced in rank without being afforded an opportunity to show cause under Art. 311 of the Constitution. The High Court held that the appointment must be treated as an *ad hoc* appointment till it was regularised under the Constitution. This was done by the Government after the decision of the High Court and the appellant was again appointed as a Civil Judge:

Held, that it is well settled that when a State is by merger integrated to form a new State, all contracts of service between the prior Government and its servants automatically came to an end and those who elect to serve in the new State, or are taken in by it, serve on such terms and conditions as the new State may choose to impose.

The State of Madras v. *K. M. Rajagopalan*, [1955] 2 S.C.R. 541, relied on.

Virendra Singh & Others v. *The State of Uttar Pradesh*, [1955] 1 S.C.R. 415, referred to.

As the appellant's postings in the new State previous to his substantive appointment were all transitional and temporary in character and the guarantee given by the convenant was fulfilled, no question of reduction in rank arose so as to attract Art. 311 of the Constitution.

No inference of any determination by the new Government to appoint the appellant in his old post could follow from the descriptions made in the orders of transfer and increments of pay as appointments are not made in that casual way.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 330 of 1956.

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The State of Rajasthan

Appeal by special leave from the Judgment and decree dated September 5, 1955, of the Rajasthan High Court in Writ Petition No. 76 of 1954.

A. V. Viswanatha Sastri and *Ratnaparkhi A. G.* for the appellant.

R. Ganapathy Iyer, Ram Avtar Gupta and *T. M. Sen,* for the respondent.

1957. November 28. The following Judgment of the Court was delivered by

Bose J.

Bose J.—This appeal arises out of a writ petition for *mandamus* under Art. 226 of the Constitution.

The appellant was a District and Sessions Judge in the former Bikaner State. He was appointed on January 29, 1948, in the grade of Rs. 500-40-700 and worked as such till April 7, 1949.

On that date a new State of Rajasthan was formed by the integration of a number of States (including the former State of Bikaner) by means of a Covenant signed by the High Contracting Parties.

Article XVI (1) of the Covenant ran thus :

"The United State hereby guarantees either the continuance in service of the permanent members of the public services of the former Rajasthan State and of each of the new Covenanting States on conditions which will not be less advantageous than those on which they were serving on the 1st November 1948 or the payment of reasonable compensation or retirement on proportionate pension."

The integration necessarily involved a reorganisation of the various services in the several integrating States. On the judicial side it was found that there were as many as twenty-eight Courts of District and Sessions Judges in the aggregate. In the integrated State it was proposed to have only fifteen. The reorganisation took time and in the interval certain interim arrangements had to be made. These arrangements are set out in a Rajasthan Gazette Notification dated May 25, 1950. We append the relevant extracts:

"4. In Appendix F.....have been indicated

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the *provisional* postings *on an ad hoc basis* of the posts specified in Appendices A to E.

. . . . . .

6. All the appointments mentioned in the different Appendices, attached to this Order, are *provisional*. The emoluments of none of these officers appointed are being affected and they will continue to draw their existing salaries until further orders. All the appointments are without prejudice to the creation of a Judicial Service in Rajasthan to be formed in accordance with the rules which may be made therefor."

Appendix F is headed—

"*Ad hoc* postings of Judicial Officers to Civil and Sessions Courts."

The appellant was appointed under this heading in Part II as a Civil and Additional Sessions Judge in the Jaipur Division.

But before this Notification was made, namely, on December 9, 1949, the appellant received the following order from the new Rajasthan Government:

"Shri Amar Singh, District and Sessions Judge, Churu, is transferred to Ganganagar as District and Sessions Judge, Ganganagar."

Among other contentions, the appellant relies on this as an election by the new Government to continue him in his original post and contends that it could not later change its mind and make his service provisional as it purported to do in the notification just cited.

Two months after the notification, namely on July 31, 1950, the appellant's increment became due and Government sanctioned it in the following terms:

"Sanction is accorded to the grant of a stipulated increment of Rs. 40 p.m. in the scale of Rs. 500-40-700 to Shri Rajvi Amarsingh, District and Sessions Judge in Bikaner Division, with effect from the 23rd March, 1950, thereby raising his salary from Rs. 540 to Rs. 580 p.m."

When the final re-organisation was brought into force and the twenty-eight Courts of District and Sessions Judges reduced to fifteen, the appellant was

posted as Civil and Additional Sessions Judge on an *ad hoc* basis on May 25, 1950.

On September 11, 1950, the appellant made a representation to the Government of Rajasthan against his posting of May 25, 1950, as an *ad hoc* Civil and Additional Sessions Judge. He says in his writ petition to the High Court that

"he was given to understand that these *ad hoc* postings were without prejudice to the claims of the Government servants for a suitable position in the integrated set up on permanent basis."

This allegation was admitted by the opposite party.

Later, he was appointed substantively as Civil Judge on April 23, 1951. He was placed in Group C (Civil Judges and Munsiffs) and placed at No. 18 in the list of junior posts. His pay and emoluments were as before and he retained the same grading, namely Rs. 500-40-700. His earned increments were not affected and, except for the change in name, his conditions of service were not worse than when he was in the service of the Bikaner State. We were given the last two facts by his counsel. They do not appear in the paper book. All that is to be found there are references to these orders but the orders themselves have not been included.

Being aggrieved by this, the appellant filed the writ petition out of which this appeal arises on April 3, 1954. His contention was that under the guarantee given by the United State of Rajasthan, and also otherwise, he was entitled to be posted as a District and Sessions Judge in the new set up and that the posting of April 23, 1951, reduced him in rank. As that was done without affording him an opportunity to show cause, Art. 311 of the Constitution was violated.

The High Court held that the posting of April 23, 1951, which purports to appoint the appellant substantively as a Civil Judge, is wrong and that it must be treated as an *ad hoc* appointment till proper appointments are made to the Judicial Service of Rajasthan according to the Constitution of India.

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The learned Judges held that as there had been a clear declaration that a new Judicial Service was to be created in Rajasthan and that the existing officers from the various covenanting States were not to be taken into it as a matter of course, it followed that all appointments to it would be by way of fresh recruitment, and, as the Constitution of India was in force at that date, these recruitments must conform to its provisions. It was admitted before the learned Judges that after the Constitution only the Rajpramukh had power to make rules regulating the recruitment and conditions of service of those appointed to public services and posts in connection with the affairs of the State until provision in that behalf is made by an Act of the Legislature, and it was also admitted that the State Public Service Commission must be consulted. As this was not done, the learned Judges directed as follows :

"The petition is allowed, the postings made by notification dated the 23rd April, 1951, including that of the petitioner as Civil Judge, are declared to be on an *ad hoc* basis, and a direction is made to the Government to provide a machinery according to the provisions of the Constitution for the first recruitment to the Rajasthan Judicial Service."

The judgment was delivered on September 5, 1955, and the appellant thereupon came here and was granted special leave to appeal on April 16, 1956.

In the meanwhile, according to the facts set out in the respondent's statement of the case, the Rajasthan Government complied with the orders of the High Court, reframed their rules and made fresh appointments in accordance with them. These were duly published in the Rajasthan Gazette and the appellant was finally selected to the Rajasthan Judicial Service. He was appointed a Civil Judge.

The Appellant's contention is that the order of April 23, 1951, reduced him in rank and as he was not afforded an opportunity of showing cause, Art. 311 of the Constitution was violated. If this contention is sound, it will follow that the fresh appointment as

Civil Judge after the High Court's order will also be bad for the same reasons.

Now it is well established that when one State is absorbed in another, whether by accession, conquest, merger or integration, all contracts of service between the prior Government and its servants automatically terminate and thereafter those who elect to serve in the new State, and are taken on by it, serve on such terms and conditions as the new State may choose to impose. This is nothing more, (though on a more exalted scale), than an application of the principle that underlies the law of Master and Servant when there is a change of masters. So far as this Court is concerned, the law is settled by the decision in *The State of Madras* v. *K. M. Rajagopalan* (1), which follows the decision of the Privy Council and the House of Lords in *Reilly* v. *The King* (2), and *Nokes* v. *Doncaster Amalgamated Collieries Ltd.* (3). The distinction between rights to property and contractual rights when there is a change of sovereignty was pointed out in *Virendra Singh & others* v. *The State of Uttar Pradesh* (4).

The appellant founds on Art. XVI(1) of the Covenant. It was contended that he cannot rely on this because he was not a party to it but we need not decide this because, even if this be assumed to be the law of the new State settling the conditions of service of those who continue in service, all that it says is that the conditions of their service will not be less advantageous than those on which they were serving on November 1, 1948. We have shown above that this condition is fulfilled.

But that apart, Article XVI(1) indicates that the old contracts terminate just as they did in *The State of Madras* v. *K. M. Rajagopalan* (5). In the first place, there were three options :

(1) continuance in service,

(1) [1955] 2 S.C.R. 541, 562. (2) (1934) A.C. 176.

(3) (1940) A.C. 1014. (4) [1955] 1 S.C.R. 415, 427.

(5) [1955] 2 S.C.R. 541, 562.

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(2) payment of reasonable compensation, and
(3) retirement on proportionate pension.

That shows that the old contracts terminated and that those who continued in service did so on the basis of fresh contracts, the conditions of which had yet to be determined. The only guarantee (assuming that the appellant can avail himself of it) was that the new conditions were not to be less advantageous than those on which the appellant was serving on November 1, 1948. There was no guarantee that they would be the same or better.

This was emphasised in the Rajasthan Gazette Extraordinary dated June 4, 1949. It first referred to the broad outlines of the programme of integration that had already been published and then outlined the procedure and principles to be observed in carrying it out. Paragraph 6 is as follows:

"After final orders have been passed by the Government on the Departmental re-organisation schemes and *cadres and strength* for different kinds of establishments in each department are fixed, the heads of departments will prepare gradation lists according to prescribed rules and put up proposals for fixation *of each individual Government servant* in the posts on permanent, officiating or deputation basis.

They will also determine the revised rates of pay admissible to each Gazetted and non-Gazetted officer under the new scales etc."

and then paragraph 15—

"It is not the intention of Government to throw any Government servant out of employ as far as practicable. If necessary, services of efficient and deserving staff will be retained *temporarily* on supernumerary basis in the prospect of finding work for them in connection with new development schemes."

The order of December 9, 1949, on which the appellant relies, transferring him as District and Sessions Judge to the District Court at Ganganagar, must be read subject to the above and, if Article XVI(1) of

the Covenant applies, then subject to that as well. An order of transfer cannot be equated to an order of appointment; and in any case, the new *cadres* had not been established and the new Courts under the proposed scheme of re-organisation had not been constituted, so, anything done at that stage could only have been part and parcel of the temporary transitional arrangements pending the final settlement by the new State of the schemes and conditions of service.

The next set of orders published in the Gazette of May 25, 1950, brings this out clearly. We have already set out its terms.

The orders of March 25, 1950, and July 31, 1950, sanctioning the increment do not help the appellant. He is described there as

"Shri Rajvi Amarsingh, District and Sessions Judge in *Bikaner Division.*"

This is merely descriptive as the endorsement on the letter indicates. It runs—

"Copy forwarded to—

(1) Shri Amarsingh, *Civil and Addl. Sessions Judge,* Jhunjhunu."

No determination to post the appellant permanently in a particular cadre and post can be spelled out of these accidental descriptions in orders dealing with a different matter. Postings to a cadre and engagements of service are not made in this incidental way.

The substantive appointment gazetted on April 23, 1951, after the new cadres and Courts had been fixed, was struck down by the High Court, and the Government of Rajasthan was directed to treat that as an *ad hoc* appointment. According to the respondent in its statement of the case, the matter was regularised after the High Court's decision and the appellant was again appointed a Civil Judge. If that is so, then this must be regarded as his first substantive appointment in the new State. But whether this is his first substantive

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appointment after the integration, or the one of April 23, 1951, no question of reduction in rank can arise and so Art. 311 is not attracted. All his previous postings in the new State were purely transitional and temporary; and so far as Art. XVI(1) of the Covenant is concerned, its guarantee has been fulfilled.

The appeal is dismissed with costs.

Appeal dismissed.

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November, 28.

S. RM. AR. S. SP. SATHAPPA CHETTIAR

v.

S. RM. AR. RM. RAMANATHAN CHETTIAR

(BHAGWATI, B. P. SINHA, JAFER IMAM, J. L. KAPUR and GAJENDRAGADKAR JJ.)

Court fee, Computation of—Suit for enforcement of share in joint family property—Plaintiff's valuation of the claim—Value for purposes of jurisdiction, if must be the same—Court-Fees Act, 1870 *(VII of* 1870), *s.* 7*(IV)* (b)—*Suits Valuation Act,* 1887 *(VII of* 1887), *s.* 8.

The computation of Court fees in suits falling under s. 7(IV) of the Court-Fees Act depends upon the valuation which the plaintiff in his option puts on his claim and once he exercises his option and values his claim, such value must also be the value for purposes of jurisdiction under s. 8 of the Suits Valuation Act. The value for purposes of Court fee, therefore, determines the value for purposes of jurisdiction in such a suit and not *vice versa.*

Where, therefore, the Court finds that the case falls under s. 7(IV) (b) of the Court-Fees Act, and the plaintiff has omitted to specifically value his claim, liberty should ordinarily be given to him to amend his plaint and set out the amount at which he wants to value his claim. The value put for purposes of jurisdiction which cannot be binding for purposes of Court fee, and must be altered accordingly.

Karam Ilahi v. *Muhammad Bashir,* A.I.R. (1949) Lah. 116, referred to.

Consequently, in the present case where the Division Bench of the Madras High Court was of the opinion that s. 7(IV) (b) of the Court-Fees Act applied but nevertheless