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ought to be set aside the existence of this order would be no bar to such a course, for this order of the Settlement Officer would fall with the order of the High Court on which it was based.

We therefore allow the appeal and set aside the order of the learned Judges as also the order of the Settlement Officer dated August 31, 1962 which was dependent on it, and direct the Settlement Officer to take the applications of the respondents for permission to effect the exchange to his file and dispose of them in accordance with law and in the light of the observations contained in this judgment. We consider it necessary to add, to avoid any misconception, that the Act has (in 1958 and 1963) undergone radical alterations, and the Settlement Officer in dealing with the applications according to law would have regard to these later enactments only in so far as they apply to the case on hand.

In the circumstances of the case we make no order as to costs in this Court.

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v.

C. D. GOVINDA RAO AND ANR.

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR, JJ.)

Writs—Quo Warranto, *Scope of—Appointment of Reader by Board of Appointments of Mysore University—Constitution, Art. 226—Jurisdiction of High Court to interfere.*

The University of Mysore, Appellant no. 1, advertised inviting applications for 6 posts of Professors and 6 posts of Readers. Among them were included the post of a Professor of English and of a Reader in English. Candidates for the post of Reader were required to possess (a) a first or high second class Master's Degree of an Indian University in the subject; (b) a Research Degree of Doctorate standard or published work of a high standard and (c) experience of teaching post-graduate classes for 10 years in case of Professors and 5 years in case of Readers. Anniah Gowda, appellant no. 2, was selected by a Board of Appointment which was constituted to examine the fitness of the several applicants and he was appointed a Reader in English in the Central College, Bangalore.

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C. D. Govinda Rao, respondent, filed an application in the Mysore High Court under Art. 226 of the Constitution in which he prayed that a writ of *quo warranto* be issued calling upon appellant no. 2 to show cause under what authority he was holding the post of a Reader in English. He also prayed for a writ of *mandamus* or other appropriate writ or direction calling upon appellant no. 1 to appoint him Reader. His contention was that the appointment of Anniah Gowda was illegal in the face of the prescribed qualifications.

The High Court set aside the appointment of Anniah Gowda on the ground that he did not satisfy the first qualification which required "that he must possess either a first or a high second class Master's degree of an Indian University" as he had secured just 50.2 per cent marks while the minimum required for a second class was 50 per cent. As regards the second and third qualifications, the High Court did not make a finding against Anniah Gowda. The appellants came to this Court by special leave.

Held: (i) The decision of the High Court was incorrect in as much as the High Court did not take into consideration the Degree of Master of Arts of the Durham University obtained by Anniah Gowda. It is true that Anniah Gowda did not possess a high second class degree of an Indian University but he did possess the alternative qualification of Master of Arts of a foreign University. The High Court was in error in issuing a writ of *quo warranto* quashing the appointment of appellant no. 2.

(ii) Boards of appointments are nominated by the Universities and when recommendations made by them and the appointments following on them are challenged before the courts, normally, the courts should be slow to interfere with the opinions expressed by the experts unless there are allegations of *mala-fides* against them. Normally, it is wise and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally can be. What the High Court should have considered in this case was whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance and while doing so, the High Court should have shown due regard to the opinion expressed by the Board of experts and its recommendations on which the Chancellor had acted. The High Court should not have thought that the Board was acting like a quasi judicial tribunal, deciding disputes referred to it for decision. It should not have applied tests which are applicable in the case of writ of *certiorari*.

The writ of *quo warranto* gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be

allowed to continue either with the connivance of the executive or by the reason of its apathy. Before a person can effectively claim a writ of *quo warranto*, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority.

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 417 and 418 of 1963.

Appeal by special leave from the judgment and order dated March 7, 1962, of the Mysore High Court in Writ Petition No. 1197 of 1960.

C. K. Daphtary, Attorney-General for India, B. R. *Ethirajulu Naidu, S. N. Andley, Rameshwar Nath* and *P. L. Vohra,* for the appellant (in C.A. No. 417/63).

V. K. Govindarajulu and R. Gopalakrishnan for the appellant in C.A.No. 418/63.

S. K. Venkataranga Iyengar, J. B. Dadachanji O.C. *Mathur, Ravinder Narain,* for respondents.

August 26, 1963. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—The petition from which these appeals by special leave arise was filed by the respondent, C.D. Govinda Rao, in the Mysore High Court under art. 226 of the Constitution. By that petition, he prayed that a writ of *quo warranto* be issued, calling upon Anniah Gowda to show cause as to under what authority he was holding the post of a Research Reader in English in the Central College, Bangalore. He also prayed for a writ of *mandamus* or other appropriate writ or direction calling upon the University of Mysore to appoint him Research Reader in the scale of Rs. 500-25-800. His case was that the appointment of Anniah Gowda to the post of Research Reader was illegal in the face of the prescribed qualifications and that he was qualified to be appointed to that post. That is why he wanted the appointment of Anniah Gowda to be quashed, and he asked for a writ, directing the University to appoint him in that post. To his petition, he impleaded the University of Mysore by its Registrar, and Anniah Gowda as the opposite party.

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The University of Mysore and Anniah Gowda disputed the validity of the claim made by the respondent. They urged that Anniah Gowda was properly appointed Research Reader and that the contention made by the respondent that the said appointment was invalid was not justified.

On these pleadings, evidence was led by both the parties in respect of their respective contentions in the form of affidavits. The High Court has held that the appointment of Anniah Gowda was invalid and so it has quashed the Resolution of the Board of Appointments of the University of Mysore recommending his appointment and has directed that his appointment subsequently made by the Chancellor of the University should be set aside. The High Court, however, refrained from granting the respondent a writ of *mandamus,* directing his appointment to the said post, because it took the view that even if the appointment of Anniah Gowda was set aside, it did not follow that the respondent would necessarily be entitled to that post. That question, according to the High Court, may have to be considered by the University and the Board afresh. The University and Anniah Gowda, then, moved the High Court for a certificate to appeal to this Court against its judgement, but the application was rejected. Thereupon the University and Anniah Gowda by separate applications moved this Court for special leave, and on special leave being granted to them, they have brought the two present appeals before us (Civil Appeals 417 & 418 of 63). In this judgment, we will describe the University and Anniah Gowda as Appellants 1 and 2 respectively.

It appears that on 31st July 1959, appellant No. 1 published an advertisement calling for applications for six posts of Professors and six posts of Readers. Amongst them were included the post of Professor of English and the Reader in English. The qualifications prescribed for these posts are material and it is convenient to set them out at this stage :

"Qualifications :

(a) A First or High Second Class Master's Degree of an Indian University or an equivalent qualification of a Foreign University in the subject concerned;

(b) A Research Degree of a Doctorate Standard or published work of a high Standard;

(c) Ordinarily, ten years (not less than five years in any case) experience of teaching post-graduate classes and guiding research in the case of Professors and at least five years experience of teaching degree classes and independent research in the case of Readers ;

(d) The knowledge of regional language Kannada is considered as a desirable qualification. Preference will be given to candidates who have had experience in teaching and organisation of research and have also done advanced research work."

In accordance with s. 26(2) of the Mysore University Act, 1956 (No. 23 of 1956), as it then stood, a Board of Appointments was nominated, consisting of the Vice-Chancellor and two Specialists in English. These Specialists were Professor P. E. Dastoor of the Delhi University and Professor L. D. Murphy of Madras. The posts of Professor and Reader had been advertised in pursuance of a grant made to appellant No. 1 by the University Grants Commission. Four applications were received for the posts of Professors and Reader in English and these applicants were interviewed by the Board on June 8, 1960. The Board had the advantage of consulting Professor C.D. Narasimhiah, Principal, Maharaja's College, Mysore. After taking into account the opinion expressed by Prof. Narasimhiah, the Board considered the academic qualifications of the four applicants and their performance at the interview and came to the conclusion that none of them was fit enough to be appointed a Professor under the U.G.C. Scheme in grade 800-1,250. Accordingly, the Board resolved that the said posts be kept vacant for the present and be re-advertised. In regard to the filling of the post of Reader under the U.G.C. Scheme in the grade of 500-25-800, the Board, after considering all aspects of the case, came to the conclusion that appellant No. 2 was the most suitably qualified person and unanimously resolved that he be appointed Reader in the said grade under the U.G.C. Scheme. This report was in due course approved by the Chancellor on October 3, 1960, and after he was appointed to the post of Reader, appellant No. 2 assumed charge on October 31, 1960. Meanwhile, even before he assumed charge of his office, the

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respondent had filed his present petition on October 15, 1960, and he had claimed an injunction against appellant No. 1 from proceeding to fill the post, but since the post had already been filled up, he modified his claim and asked for a writ of *quo warranto* against appellant No. 2. That is how the main dispute which arose between the two appellants and the respondent was in regard to the validity of the appointment of appellant No. 2 to the post of Reader in English, and as we have already pointed out, the High Court upheld the contentions of the respondent and quashed the appointment of appellant No. 2.

The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of *quo warranto* which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

As Halsbury has observed :*

> "An information in the nature of a *quo warranto* took the place of the obsolete writ of *quo warranto* which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined."

Broadly stated, the *quo warranto* proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of *quo warranto* gives the Judiciary a weapon to control the Executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of *quo*

*Halsbury's Laws of England, 3rd ed., vol. 11, p. 145.

warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.

In the present case, it does not appear that the attention of the Court was drawn to this aspect of the matter. The judgment does not show that any statutory provisions for rules were placed before the Court and that in making the appointment of appellant No. 2 these statutory provisions had been contravened. The matter appears to have been argued before the High Court on the assumption that if the appointment of appellant No. 2 was shown to be inconsistent with the qualification as they were advertised by appellant No. 1, that itself would justify the issue of a writ of *quo warranto.* In the present proceedings, we do not propose to consider whether this assumption was well-founded or not. We propose to deal with the appeals on the basis that it may have been open to the High Court to quash the appointment of appellant No. 2 even if it was shown that one or the other of the qualifications prescribed by the advertisement published by appellant No. 1 was not satisfied by him.

Realising the difficulty which he may have to face, Mr. S. K. Venkataranga Iyengar for the respondent wanted to raise the contention that the appointment of appellant No. 2 was made in contravention of the statutory rules and ordinances framed by appellant No. 1. He attempted to argue that he had referred to the statutory rules and ordinances in the High Court, but, unfortunately, the same had not been mentioned or discussed in the judgment. We have carefully considered the affidavits filed by both the parties in the present proceedings and we have no hesitation in holding that at no stage it appears to have been urged by the respondent before the High Court that the infirmity in the appointment of appellant No. 2 proceeded from the fact that the statutory rules and ordinances made by appellant No. 1 had been contravened. The affidavit filed by the respondent in support of his petition merely described the appointment of appellant No. 2 as being illegal, and significantly added that the said appointment of appellant No. 2 and the failure of the University to appoint the respondent,

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were illegal in the face of the prescribed qualifications, and these qualifications in the context undoubtedly referred to the qualifications published in the notification by which the relevent post had been advertised.

It appears that in one of the affidavits filed on behalf of appellant No. 1 reference was made to the rules framed under the Mysore University Act (No. 23 of 1956), and it was added that the appointment to the post of Reader in question had to be made in accordance with the regulations framed by the University Grants Commission under s. 26 (1)(e) of the University Grants Commission Act, 1956. This was disputed by the respondent, and in that connection, he alleged in a vague manner that all the appointments made by appellant No. 1 were regulated by the ordinances and rules framed under the Mysore University Act. Then, he alleged that the ordinances made in this regard by the Senate in their meeting held on August 19, 1959, were approved by the Chancellor in his letter dated January 22, 1960. Having made these allegations, no attempt was made in the High Court to produce these ordinances and to show when they came into force. It appears that the statutory rules framed by appellant No. 1 under s. 26 (1) received the approval of the Chancellor on January 22, 1960, but we do not know even today when they were published in the Gazette. Similarly, the ordinances framed were approved by the Chancellor on the same day, but we do not know when they came into force. The statutory rules, thus, framed and approved, come into force on the date of the publication of the Mysore Gazette, and the ordinances come into force from such date as the Chancellor may direct (vide s. 42(5) of the Mysore University Act No. 23 of 1956). Therefore, though some reference was made to the ordinances, no attempt was made to show when the ordinances came into force and no arguments appear to have been urged on that account. The judgment delivered by the High Court in the present proceedings is an elaborate judgment and we think it would be legitimate to assume that it does not refer to the statutory rules and ordinances for the simple reason that neither party relied on them and the High Court had, therefore no occasion to examine them. In any case, we do not think it would be open to the respondent to take a ground about the effect of the statutory rules and ordi-

nances for the first time in appeal. The petition, which he originally filed, when read with the affidavit made by him, does support this view and unambiguously shows that he confined his attack against the validity of the appointment of appellant No. 2 solely to the ground that appellant No. 2 did not satisfy the qualification prescribed by the notifications by which applications had been called for by appellant No. 1. That is the basis on which the High Court has dealt with this matter and that is the basis on which we propose to deal with it.

Let us briefly indicate the findings recorded by the High Court before examining the merits of the contentions raised by the appellants in these appeals. In this connection, it is necessary to recall the four qualifications prescribed by the notification. The last one which relates to the knowledge of the Kannada language is not in dispute and may be left out of consideration. The first qualification is that the applicant must have a First or a high Second Class Master's Degree of an Indian University or an equivalent qualification of a foreign University in the subject concerned. It appears that appellant No. 2 secured 50.2 per cent marks in his Master's Degree examination. It was urged by the respondent before the High Court that when 50 per cent is the minimum required for securing a second class, it would be idle to suggest that a candidate, who obtains 50.2 per cent, has secured a high Second Class Master's Degree, and so the respondent pleaded that the first condition had not been satisfied by the appellant No. 2. The High Court has upheld this plea. In regard to the second qualification, it appears that appellant No. 2 has obtained a Degree of Master of Arts of the University of Durham. The High Court has held that in regard to this qualification, if the Board took the view that the appellant No. 2 statisfied that qualification, it would not be just for the Court to differ from that opinion. In other words, the High Court did not make a finding in favour of the respondent in regard to qualification No. 2. In regard to the third qualification, the matter appears to have been debated at length before the High Court. Evidence was led by both the parties and the respondent seriously disputed the claim made by both the appellants that appellant No. 2 satisfied the test of five years experience of teaching

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Degree classes. The High Court examined this evidence and ultimately came to the conclusion that though the material adduced by the appellants on this point was unsatisfactory, it could not make a finding in favour of the respondent. In this connection, the High Court has severely criticised the conduct of appellant No. 1 to which we will refer later. Thus, it is clear that substantially the High Court decided to quash the appointment of appellant No. 2 on the ground that it was plain that he did not satisfy the first qualification. In this connection, the High Court has also criticised the report made by the Board and has observed that the Members of the Board did not appear to have applied their minds to the question which they were called upon to consider.

In our opinion, in coming to the conclusion that appellant No. 2 did not satisfy the first qualification, the High Court is plainly in error. The judgment shows that the learned Judges concentrated on the question as to whether a candidate obtaining 50 per cent marks could be said to have secured a high Second Class Degree, and if the relevant question had to be determined solely by reference to this aspect of the matter, the conclusion of the High Court would have been beyond reproach. But what the High Court has failed to notice is the fact that the first qualification consists of two parts—the first part is: a high Second Class Master's Degree of an Indian University, and the second part is: its equivalent which is an equivalent qualification of a foreign University. The High Court does not appear to have considered the question as to whether it would be appropriate for the High Court to differ from the opinion of the Board when it was quite likely that the Board may have taken the view that the Degree of Master of Arts of the Durham University, which appellant No. 2 had obtained, was equivalent to a high Second Class Master's Degree of an Indian University. This aspect of the question pertains purely to an academic matter and Courts would naturally hesitate to express a definite opinion, particularly, when it appears that the Board of experts was satisfied that appellant No. 2 fulfilled the first qualification. If only the attention of the High court had been drawn to the equivalent furnished in the first qualification, we have no doubt that it would not have held that the Board had acted capriciously in expressing the

opinion that appellant No. 2 satisfied all the qualifications including the first qualification. As we have already observed though the High Court felt some difficulty about the two remaining qualifications, the High Court has not rested its decision on any definite finding that these qualifications also had not been satisfied. On reading the first qualification, the position appears to be very simple; but unfortunately, since the equivalent qualification specified by cl. (a) was apparently not brought to the notice of the High Court, it has failed to take that aspect of the matter into account. On that aspect of the matter, it may follow that the Master's Degree of the Durham University secured by appellant No. 2, would satisfy the first qualification and even the second. Besides, it appears that appellant No. 2 has to his credit published works which by themselves would satisfy the second qualification. Therefore, there is no doubt that the High Court was in error in coming to the conclusion that since appellant No. 2 could not be said to have secured a high Second Class Master's Degree of an Indian University, he did not satisfy the first qualification. It is plain that Master's Degree of the Durham University which appellant No. 2 has obtained, can be and must have been taken by the Board to be equivalent to a high Second Class Master's Degree of an Indian University, and that means the first qualification is satisfied by appellant No. 2. That being so, we must hold that the High Court was in error in issuing a writ of *quo warranto,* quashing the appointment of appellant No. 2.

Before we part with these appeals, however, reference must be made to two other matters. In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the experts with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about *mala fides* against

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the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a *quasi*-judicial tribunal, deciding disputes referred to it for its decisions. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writ of *certiorari*. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of *certiorari*. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinions expressed by the Board & its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.

It appears that the High Court was also dissatisfied with the conduct of appellant No. 1 and its officers, and in fact, while dealing with the question about the length of the teaching experience of appellant No. 2, the High Court has observed that "the material placed on record is of a doubtful nature characterised by a clear tendency

to mislead the Court, if not an actual attempt to do so". The learned Attorney-General has complained that this criticism is not justified. In fact, after the judgment was pronounced, an application was made to the same learned Judges to expunge the criticism made against appellant No. 1, and in support of this application, Mr. Ethirajulu Naidu, who was then the Advocate-General and who had argued the matter before the High Court, made an affidavit, showing that appellant No. 1 could not be charged with having attempted to mislead the High Court. Even then, the High Court was not fully satisfied, and so in a judgment delivered by it on the application subsequently made to quash the said observations, the learned Judges observed that they were willing to accept and did accept the assurance given by the learned Advocate-General that there was no actual attempt made to mislead the Court. Even so, they held that the material placed before the Court could or did have a tendency to mislead, and that is the opinion which they thought even after hearing the learned Advocate-General, was well founded, at any rate, not unwarranted

This criticism has beeen made by the High Court because when an affidavit was filed before it by Mr. Thimmaraju, the Gazatted Assistant of appellant No. 1, he produced on June 1, 1961, a statement from the Service Register of appellant No. 2. This extract purported to show that appellant No. 2 had more than five years' teaching experience prescribed by the third qualification. The Register was then sent for by the High Court and examined, and it became clear that whereas the first four entries in the statement filed by the deponent were borne out by the said Register, the subsequent eight entries did not appear in that Register. Later when the High Court was moved, after the judgment was pronounced, for expunging the remarks, another document was produced. This purported to be the gazetted Officers' Register, and the statements contained in the extract filed by Thimmaraju appeared in that Register. The explanation given by Appellant No. 1 and the learned Advocate-General was that when appellant No. 2 was a non-gazetted servant, his service register was seperately kept; but in regard to Government gazetted servants, a general service Register was kept, and all the statements

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filed by Mr. Thimmaraju really contained facts taken from the separate service Register of appellant No. 2 when he was a non-gazetted servant, and facts taken from the Government gazetted servants' Register, after he became a gazetted servant. It is undoubtedly true that the statement filed by Thimmaraju seems to suggest that all the facts stated in the statement were gathered from service Register of appellant No. 2, and that, strictly, was not accurate at all. Therefore, on the inaccuracy of the statement made by Mr. Thimmaraju, the High Court would have been justified in making an adverse comment; but in considering the question as to whether Thimmaraju or appellant No. 1 on whose behalf he made the affidavit, attempted or intended to mislead the Court, it is necessary to bear in mind other relevant facts. On the question about the length of the teaching career of appellant No. 2, appellant No. 2 had made a detailed affidavit on July 22, 1961. In this affidavit, he had set out the several teaching assignments he had held and the periods during which he held them, and these clearly show that his teaching experience of the prescribed character is much more than five years which is the minimum prescribed. It is remarkable that though the respondent purported to make a rejoinder to the affidavit filed by appellant No. 2, the details given by appellant No. 2 in regard to his teaching experience have not been specifically or categorically traversed by the respondent. Besides, it is significant that the Government gazetted officers' Register, which was produced before the High Court later, amply bears out the facts in the statement filed by Thimmaraju. Therefore, one thing is clear that the material fact about the length of the teaching experience of appellant No. 2 is fully established by the affidavit of appellant No. 2 and even by the gazetted officers' Register which was later produced, and so, it seems to us that the High Court need not have been so severe on appellant No. 1 when it observed that the material produced by appellant No. 1 had a tendency to mislead the Court, if not an actual attempt to do so. It is undoubtedly true that Thimmaraju should have looked into the record more carefully and should have stated clearly that the facts stated in the statement filed by him were taken partly from the individual service register of appellant No. 2 and partly from the Register

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which is kept as a general Register for gazetted servants in the State. Therefore, we think there is some substance in the contention made by the learned Attorney-General that the harsh criticism made by the High Court against appellant No. 1 is not fully justified.

In the result, the appeals are allowed, the order passed by the High Court is set aside and the writ petition filed by the respondent is dismissed with costs throughout, There will be one set of hearing fees in both the appeals filed by the two appellants.

Appeals allowed.

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August 27

SHRANAPPA MUTYAPPA HALKE
v.
STATE OF MAHARASHTRA
(and connected appeals)

(S. K. DAS, ACTING C.J., M. HIDAYATULLAH AND K. C. DAS GUPTA, JJ.)

Criminal Trial—Evidence of witness before committing court—Resiled in Sessions Court—Whether corroboration required —Code of Criminal Procedure, 1898 (*Act* 5 *of* 1898), *s.* 288.

The appellants were convicted by the High Court for committing three murders. In this case the High Court considered the testimony of one "Parwati", given by her in the committing court. She was an eye witness of the occurrence according to her testimony in the committing court. In the sessions court she resiled from her previous statement before the committing Magistrate and made a definite statement that she had not seen the occurrence. Her evidence before the committing court was tendered as evidence under s. 288 Criminal Procedure Code in the court of sessions. Her evidence before the committing court was not corroborated in respect of participation in the occurrence by four appellants. The High Court convicted the appellants on the basis of the statement made by Parwati before the committing Magistrate on the ground that it was substantive evidence which did not require any corroboration.

Held, that the evidence of a witness tendered under s. 288 of the Code of Criminal Procedure before the Sessions Court is substantive evidence. In law such evidence is not required to be corroborated. But where a person has made two contradictory statements on oath it is ordinarily unsafe to rely implicitly on her