

(1980) 03 DEL CK 0059

In the Delhi High Court

Case No : Civil Writ Appeal No. 608 of 1978

Brat Pal Mandal and Others

APPELLANT

Vs

Lt. Governor, Delhi and Others

RESPONDENT

Date of Decision : 14-03-1980

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1980) ILR Delhi 394

Hon'ble Judges : V.S. Deshpande, J; Harish Chandra, J

Bench : Division Bench

Advocate : S.C. Gupta, M. Ahmed and G.D. Gupta, for the Appellant;

Judgement

Harish Chandra, J.

(1) The petitioners are 40 language teachers in Schools in Delhi and joined service in the various High Schools of Delhi between 1st September, 1959 and 21st August, 1964. Respondents 3 to 71 are also language teachers who joined service much earlier than the petitioners.

(2) The petitioners claim that they were recruited to posts created for teaching language in higher classes in High Schools, i.e., classes IX and X. Graduation was an essential qualification for being recruited to these posts and all of them being graduates were fitted in these posts. They contend that respondents 3 to 71 were recruited to posts created for teaching language mainly in Middle Schools (i.e. Schools going up to Class VIII) and some possibly in the Middle Department of High Schools. They contend that the work of teaching language to Higher Classes is different and superior to the work of teaching language to Middle Classes and that is why graduation was an essential qualification for the former and not for the latter and the pay scale for the former was higher than for the latter. On this premise, they say that the petitioners were in a higher grade i.e. Grade II whereas the respondents 3 to 71, none of whom was graduate, were recruited to posts in Grade III. They, Therefore, claim that their seniority has to

be reckoned Grade-wise and for the purposes of calculating seniority on the basis of length of service the incumbents of these two grades cannot be mixed together.

(3) As against this, respondents contend that the nature of work of teaching language is common and, Therefore, posts held by them and pots held by the petitioners were created for work of the same nature and were posts in one Grade and that this grade had two scales. the higher being available to graduates like the petitioners and lower being available to them. They further claim that at any rate on the unification of the two prevailing pay-scales in 1970, all language teachers came into one Grade and then their inter-se seniority has to be calculated on the basis of the length of service as language teachers. If this is done, respondents having joined service earlier would be senior to the petitioners.

(4) There are numerous documents pertaining to a history of nearly 30 years which the parties have placed on record which throw some light on the point in controversy and which we propose to refer to but before doing that it is necessary to refer to the definition of "Grade" in the relevant Seniority Rules in terms of which the controversy has to be resolved.

(5) By notification dated 30th December, 1954, the Chief Commissioner of Delhi notified the Delhi State Service (Seniority) Rules, 1954. In these Rules, "Grade" is defined as follows:

""Grade" means a post or a group of posts created for work of the same nature in a department or office. Provided that where posts have been created for work of the same nature in different departments or offices, a competent authority may, by order, declare any or all such posts to be in a single grade for the purposes of these rules."

(6) The Rules provide that inter-se seniority among members of a Grade shall be fixed in accordance with the continuous length of their service in that Grade. These Rules were followed by 1965 Rules but no change was made in the above relevant provisions.

(7) We are, Therefore, called upon to decide whether the two sets of language teachers were holding posts in one grade or in two grades and whether, Therefore, their seniority is to be reckoned on the basis of the length of service by pooling them all together or by taking them grade wise .

(8) One of the earliest documents brought on record is a letter dated 17th January, 1950, issued by the Ministry of Education, Government of India, conveying a decision of the Governor-General on the subject of scale of pay of teachers in Govt. Schools in Delhi and Ajmer-Merwara. Superseding all previous instructions, the Govt. of India had by this letter fixed the pay-scales w.e.f. 1st April, 1950 and requisite educational qualifications of various teachers. The items relating to language teachers show that in the High Schools a scale of pay 120-8-200-EB-10-300 was prescribed with "a degree with either Shastri or its

equivalent....." as the minimum qualification with effect from 1st April, 1950. From this date, no language teacher in a High School could be given this scale if he did not have the aforesaid minimum qualification. Three other pay-scales were prescribed with correspondence educational qualifications. Those pay scales were 100-250, 80-220 and 68-170. For the Middle Schools, this order prescribed the latter three scales of the High Schools and corresponding educational qualifications similar to the qualifications for the latter three scales in the High Schools and not including the qualification of graduation prescribed for the first indication of a similarity between teachers teaching language in Middle Schools and non-graduate teachers teaching language in the High Schools. By this letter the Govt. of India asked for the following action :

"I am to request that the Local Admn. should now fix in respect of each school the number of posts under each category. The intention behind these revised scales is that a teacher will be promoted to a higher grade only when there is a vacancy in the higher grade."

This then as far as back as 1950, is the first pointer on record to show that the posts of language teachers were treated as in two grades, that teachers in the lower grade were promotable to the higher grade and that. the word "Category" was used as a synonym of grade and the posts were to be fixed/created category-wise.

(9) The next document is the letter No. F. 9-10/49-D-4 dated 22nd September. 1950. The relevant portion of this letter is set out below :

"The question has been raised as to how teachers salaries should be fixed in respect of those teachers who happen to work in High or Hr. Section Schools which also have the Middle and the Pry. Deptt. As was intimated in this Ministry's letter dated 17-1-50 the number of posts in each department of the school is to be fixed by the State Govt. qualified candidates appointed against post in the High Deptt. of High School should be encouraged to go and teach in the Middle Deptt. of High Schools if the full time of teachers is not taken up by their work in the High Deptt. Such teachers will be treated as teachers in High Schools for the purposes of pay. The posts in the Middle Deptt. of Schools should be fixed after taking into account the number of teachers who would be available for teaching work from the teachers shown against the ".....High Deptt. of the schools. Such teachers should be asked to teach in the Primary Deptt. of the Schools if they are not fully engaged in the Middle Deptt. alone. These teachers should be treated as Teachers in the Middle Schools."

(10) This document shows rather clearly that the division, or grouping or categorisation for the purposes of deciding who was in which grade was not always on the basis of working in the High School versus working in the Middle School but on the basis of a language teacher recruited to teach the High Department of a High School, i.e. Classes IX and X versus a language teacher recruited to teach the Middle Department of a High School or the Middle School,

i.e.. Classes up to VIII. The members of the first group were required to be graduates, were given a higher pay-scale and put in a Higher grade, latter described as Grade Ii whereas the members of the second group were not graduates, were given a lower pay-scale and put in a lower grade, later described as Grade III.

(11) Next, we may refer to an Officer Order No. DR.1(16)/Estt.55-Lang. dated 20th June, 1955 whereby 23 language teachers were transferred from one Govt. School to another, including transfers from Middle School to High School but the transfers from Middle School to High School were expressly "on their own pay and grade". Thus when a language teacher was transferred from a Middle School to a High School, he continued to remain in his own grade, i.e. Grade Iii, indicated by a lower pay-scale even though after the transfer, this teacher became a language teacher in a High School.

(12) By Office Order No. 40 dated 10th February, 1958, the Director of Education, Delhi, issued orders of confirmation of 212 teachers ""against the posts and grade shown against each." In the list, under the head, "Post" Language Teachers are shown as Junior Language Teachers (Rs. 80-220) and Senior Language Teachers (Rs. 120-300) separately. By an endorsement at the end of the letter, heads of institutions have been requested to make necessary entries in the service books.

(13) By Office Order No. 80 dated 1st February, 1960, language teachers were "allowed the grade of Rs. 100-250.....".

(14) We may now consider an important document relating to drawing up of seniority lists in the past. Memorandum dated 10th February, 1956, notified, "tentative inter-se seniority lists of the marginally noted grades of teachers employed in Government Schools... prepared on the basis of the Delhi State Service (Seniority) Rules, 1954....". In the margin "Senior Language Teachers in Rs. 120-300" and "Junior Language Teachers in Rs. 80-220" were separately shown and separate tentative seniority list of each of these two was prepared and circulated. In this memo. it was stated, ".....the seniority of all such officials has been provisionally determined on the basis of the length of service rendered by them in the grade in which their seniority is being determined.". In the list "Tentative Inter-se Seniority list of Junior Male Language Teachers working in the Grade of Rs. 80-220, under this Directorate" the names of more than a dozen respondents appear. The list was presumably finalised after 31st March, 1956, the last date for objections.

(15) Letter No. 6-272/58-SE-2(AO) dated 17th September, 1960 from the Govt. of India to the Director of Education, Delhi, referred to the previous letter dated 22nd September. 1950 on the subject of revision of scales of pay and stated that the clarification issued herein may be amended to read as under :

"(I)..... The posts of teachers in these four categories required to teach classes Vi to Vii in the Middle Departments of High and Higher Secondary Schools

should be created in the scales of pay prescribed for teachers of these categories in the Middle Schools."

This amended clarification confirmed, as late as 17th September, 1960, the concept of the two groups, i.e. those recruited to teach the High Department of High Schools and these required "to teach Classes Vi to Viii in the Middle Departments of High and Higher Secondary Schools....." and further confirms that posts of teachers were created accordingly.

(16) We may now turn to the Recruitment Rules which were made in exercise of the powers under Article 309 of the Constitution of India and were notified on 28th June, 1960. These Rules provide for the recruitment of a language teacher in the Scale of Rs. 120-300 by selection. These teachers are described as Assistant Language Teachers and 50 per cent of them are required to be appointed by promotion from amongst "Assistant Language Teachers in the Scale of Rs. 100-250". The minimum educational qualification required is a degree with Shastri or its equivalent.

(17) Office Order No. 505 dated 21st July, 1960, is an order by which seven "Junior Language Teachers (Rs. 100-250) in the Directorate of Education, Delhi Administration, are appointed as Senior Language Teachers in an officiating capacity, in the Scale of Rs. 120-300.".

(18) This then is the background of nearly 10 years when the respondents were in service and at the end of which, i.e. from 1st September, 1959, the petitioners started joining service as language teachers. From this background there is unmistakable evidence that the work of teaching classes up to Viii whether in Middle Schools or in High Schools was not treated as the same as the work of teaching classes IX and X in the High Schools, that posts were created separately for the two types of work. The minimum educational qualifications required for the two types of posts were different and so also the scale of pay admissible to them. These posts, Therefore, belonged to two different grades and not to one grade and incumbents of the lower of the two grades were promotable to the higher of the two categories and other times, posts with a pay-scale of Rs. 100-250 and posts with a pay-scale of Rs. 120-300. The incumbents of the two grades were described sometimes as Senior Language Teachers and Junior Language Teachers and at other times as Assistant Language Teachers but notwithstanding such variations in expressions and descriptions, language teachers held two sets of posts created for different type of work and these posts, Therefore, constituted two grades and could not be said to be two posts of one grade.

(19) The next phase we propose to cover and note important dates and documents form a period of 15 years from the time the petitioners joined as language teachers in High Schools.

(20) We recall, as noted above, that in 1959-60, there were two scales of pay for language teachers 100-250 and 120-300. These scales of pay, among others,

were considered by the Second Pay Commission and following the acceptance of its recommendations, the Govt. of India vide its letter No. F-3/3/60-Delhi dated 25th November, 1960. notified the revised scales of pay. By this letter, the Govt. of India announced that it had been decided to bring all language teachers, who had the qualifications "a degree (or postgraduate degree) with degree or diploma in teaching or equivalent qualifications prescribed from time to time" and who were in High Schools, whether being paid in the scale of 120-300 or in the scale of 100-250, into one Grade for the work of teaching Vi to X Classes and all such teachers would be fixed in the new, revised and uniform scale of 170-380. This revision of pay scale was made effective from 1st July, 1959.

(21) The decision to revise the then existing two pay-scales of 100-250 and 120-300 to 170-380 and to make the revised scale available both to those who were holding posts created for teaching higher classes in High Schools as well as those who were holding posts created for teaching Classes Vi to Viii, provided they had the minimum prescribed qualification, was in keeping with the erstwhile position of giving to language teachers in High Schools the higher scale if they were graduates even if they were teaching the lower classes. Respondents 3 to 71 were, however, teachers who had hitherto been holding posts created for teaching lower classes and who had, Therefore, been fitted in the lower pay-scale available to language teachers in Middle Schools. None of them was a graduate at this time and, Therefore, none of them was entitled to the revised scale.

(22) The respondents constituted a lot who could normally not be retained as language teachers in High Schools as the minimum qualification of being a graduate was not possessed by them but being already in service, they were accommodated by being given a scale of pay personal to teachers who were in service on 1st April, 1950 and who did not possess the prescribed qualifications. They were thus a group by themselves, members from which were to be elevated to the Grade of language teachers in High Schools identifiable by their pay scale of 170-380 on their achieving the prescribed qualifications The special scale given to the respondents was 160-300. It is significant here to recall that the scale of Grade Iii teachers i.e. teachers recruited to each language in Middle Schools was revised from 100-250 to 160-300 and note the similarity between the two.

(23) This position is made amply clear by the observations of the Pay Commission in respect of the group constituted by the respondents and similarly placed teachers, quoted below :

"We expect, however, that training facilities will be provided in future for those with a "Shastri" or equivalent qualification so that they may be on the same footing as other trained Graduates."

(24) The next development was occasioned on 19th May, 1961, when a degree of "Shastri" from Kashi Vidyapeeth was recognised as equivalent to B.A. degree in Government employment. Thereafter, by a letter of 6th September, 1962, the

educational qualifications prescribed for Sanskrit teachers in Delhi for "Teachers-Grade Ii Scale of Pay Rs. 170-380 for teaching Classes Vi to X or composite Higher Secondary Schools was set out as : B.A. (with Sanskrit as subject) or its equivalent oriental degree in Sanskrit plus degree or diploma in Education or five years experience or teaching Sanskrit to secondary or college classes.

In terms of the above, (1) Shastri or its equivalent oriental degree of any Indian University or of an institution authorised by Parliament or a State Legislature to award degree, and (2) Alankar of Gurukul Vishwa Vidyalaya, Kangri. were declared equivalent to an oriental degree in Sanskrit equivalent to.

(25) Finally on 12th April, 1966, the Govt. of India announced its decision to set down below noted qualifications for the post of Language Teachers Grade Ii in Government Higher Schools.

"(I)B.A. (with Hindi or the Modern Indian Language concerned as a subject) or its equivalent Oriental Degree in the Modern Indian Language concerned ; Or "Sahitya Ratna" of the Hindi Sahitya Sammelan Prayag with matriculation in English only. (ii) A degree or diploma in teaching Or Five years teaching experience in a recognised school."

2.The following Oriental Degrees only have been recognised for the time being as equivalent to B.A. (with Hindi or the Modern Indian Language concerned: (i) "Alankar" or Gurukul Vishwa Vidyalaya, Kangri. (ii) "Jamia Sanadi" of the Jamia Millia Islamia, Delhi. (iii) "Shastri" of the Kashi Vidyapeeth, Banaras."

(26) With these relaxations and recognitions, first the respondents who were Shastris and then the respondents who were Sahitya Ratnas have been included in Grade Ii Language Teachers and have been fitted in the pay-scale of 170-380 with its subsequent revisions. It may here be called that the scale of 170-380 was revised to 190-425 and the scale of 160-300 to 175-350 with effect from 21st December. 1967 and eventually with effect from 27th May, 1970, the two scales were merged into one 220-500. By the time of the merger of the two pay-scales, the respondents were already in "Language Teachers Grade II". Should this not be so in case of any respondent he must have been upgrade now. A consistent policy was, however, followed to implement this upgradation only with effect from the date it was made.

(27) We may now examine how the seniority of the petitioners and the respondents being fixed each of these stages.

(28) On 11th April, 1961, the Directorate of Education issued a Seniority List of Language Teachers "consequent upon (i) the implementation of revision of scales of pay with retrospective effect and (ii)....."

(29) A separate Seniority List of "Language Teachers (Male) in the Grade of Rs. 100-250" has been produced on record. It does not include any of the petitioners and a number of respondents are identifiable in the list. Objections were invited by a prescribed date and the list must have been finalised in due course.

(30) On 13th April, 1964, the Directorate of Education issued yet another tentative seniority list of "Language Teachers Grade Ii and Grade Iii (Male) working in the scale of Rs. 170-380 and 160-380 respectively....."

(31) It was stated at the Bar that even after merger of the two scales of pay with effect from 27th May, 1970, a Common Seniority List was issued in which all those who were hitherto getting pay in the scale of 160-300 were grouped en-bloc lower than those getting pay in the scale of 170-380.

(32) The contention on behalf of the respondents is that even if they were not treated as senior to the petitioners up to 27th May, 1970 they should be treated as senior to the petitioners on the unifications of the two pay-scales on the principle of seniority in accordance with length of service.

(33) In our opinion this claim is based on an unacceptable oversimplification of the principle of seniority being co-terminus with length of service because this principle set out in the Seniority Rules, 1954 cannot be interpreted to mean that whenever an outsider is brought in a "Grade" to which he did not belong, he is able to claim seniority on the basis of his service when not in that Grade. It is not as if the posts held by the petitioners and the posts held by the respondents "have been created for work of the same nature in different departments or offices" and a Competent Authority has by an order declared such posts to be in a single Grade, within the meaning of the proviso to the definition of "Grade" in the Seniority Rules, 1954. On the other hand, the respondents have in course of time brought up or elevated to Grade Ii of Language Teachers and their seniority must be reckoned from the date they were so brought up or elevated and they cannot with any justification, supersede and set at naught the existing vested right of the petitioners to seniority in this Grade.

(34) There is ample evidence on record that the grant of the higher pay-scale to a language teachers upon his achieving prescribed educational qualifications was considered upgradation and made effective from the date of such gradation.

(35) Firstly, in the letter of the Govt. of India dated 25th November, 1960, following the recommendations of the Pay Commission, language teachers who were then in the pay-scale of Rs. 100-250 like the respondents were described as in Grade Ii and like the petitioners who were in the pay-scale of Rs. 120-300 were described as in Grade II. Again in August, 1974, by letter dated 30th August, 1974, written by the Directorate of Education to the Secretary, Ministry of Education, dealing with the case of four Sanskrit teachers, it was stated as follows :

"The point that the 4 Sanskrit teachers in question were Grade Iii Language teachers prior to 1-7-59 was checked with the office record. Although complete records could not be made readily available yet 2 of the cases were examined with reference to the relevant records and it was found that the teachers concerned possessed qualification prescribed for teaching only the middle classes of High/Higher Secondary Schools and Middle Schools. Such teachers were

classified as Grade 11.1 Language teachers in the terms of Letter No. F. 6-8/59-SE.II dated 16-6-59 from the Ministry of Education, Govt. of India read with letter No. F. 3/3/60 dated 25-11-60 from the Ministry of Home Affairs, Govt. of India."

(36) Thereafter, reference may be made to a letter issued regarding the case of trained graduate teachers which serves as an example by analogy. This letter is dated 11th January, 1961 and has been addressed by the Govt. of India to the Directorate of Education and states :

".....The matter has been carefully examined in consultation with the Ministry of Home Affairs and it has been decided that trained graduate teachers who are originally recruited in the scale of Rs. 100-250 should on their being granted the scale of Rs. 120-300 under the order contained in this Ministry file No. F. 6-32/54 H-3 of 8th January, 1955, be given seniority in the scale of Rs. 120-300 w.e.f. the date they were appointed to the latter scale on a regular basis, i.e., the date from which they have been continuously holding the post in the scale of Rs. 120-300."

Similar instructions about inter-se seniority were issued on 10th May, 1972. by letter No. A. 11016/19/71-UT. 1 by which it was made clear that the inter-se seniority of those who had been given a higher pay-scale under order dated 18-17/62-S.B. 2 dated 6th September, 1962, is to be fixed qua the other language teachers in the same scale with effect from 6th September, 1962.

(37) In a letter of 30th August, 1974, sent by the Directorate of Education to the Ministry of Education, Govt. of India, reference was made to the aforesaid communication of 10th May, 1972 and it was stated that

".....Shri R. N. Goswami has submitted before me that the case of the 4 Sanskrit teachers for whom Ministry of Education declined to allow the revised scale of pay of Rs. 170-380 w.e.f. 1-7-59 and instead issued instructions for the fixation of their pay and seniority in the revised scale w.e.f. 6-9-62 from the date from which their qualification was recognised vide their letter No. 11016/19/72-UT-I dated 10-5-1972 have no bearing in his case. His argument is that these Sanskrit teachers were working in the scale of Rs. 100-250 as Grade Iii Language teachers meant for middle Deptt. of the High/Higher Secondary Schools and for the Middle Schools before their scale of pay was revised to Rs. 160-300 w.e.f. 1-7-59 in pursuance of the recommendations of the Second Pay Commission....."

(38) Finally, in this series is the letter dated 23rd April, 1977, which had become necessary in view of an earlier letter dated 17th April, 1976 containing contrary instructions. This letter is reproduced herein below :

"I am directed to refer this Ministry's letter No. A-11014/3/75 U.T.I., dated 17-4-76 and No. F-48-68/75-V.T.I. dated 28-1-77, on the subject mentioned above and to state that the matter was carefully considered in consultation with

the Department of Personnel and Administrative Reforms. On the basis of the information furnished by the Delhi Administration that Department was informed by this Ministry that the Merger of Scales of Pay has taken place on 21-12-67 and 27-5-1970. It was also pointed out to that Department the followings : (1) For qualified teachers, there is higher scale of pay and for unqualified teachers there is a lower scale of pay. (2) There are different sets of qualifications, different sets of recruitment rules and separate seniority lists of the two scales of pay of a particular grade. The Department of Personnel and Administrative Reforms having examining the matter have now given the following ruling :

"In order to determine inter-se seniority on the merger of two scales of pay in such a situation the teacher belonging to the Higher scale of pay or particular grade should be placed en bloc senior to the teachers belonging to the lower scale of pay of that grade and amongst the teachers of a particular scale of pay, seniority should be determined on the basis of length of service. There appears to be no need to issue any such orders and what ever principle for granting selection grade is being followed prior to 17-4-1976 by the Delhi Administration may be allowed status quo."

In deciding the seniority cases of teachers employed under the Delhi Administration, the decision given by the Department of Personnel and Administrative Reforms may be followed :

This was followed by yet another letter dated 28th April, 1977, dealing with the case of the seniority of Mrs. Lata Jain and Shrimati Satya Gulati. The relevant portion is quoted below :

"In the present case of inter-se seniority between Mrs. Lata Jain, and Mrs. Satya Gulati Mrs. Lata Jain, being qualified teacher was appointed to the higher scale of pay of Rs. 190-425, w.e.f. 1-8-1968, whereas Smt. Satya Gulati being non-qualified teacher was appointed to a different scale of pay of Rs. 160-300 prior to 1-7-59. Since there are separate seniority list for two scales of pay prior to 27-5-70 (i.e., the date on which the merger of the scales of pay took place) the question of inter-se seniority prior to this date does not arise on merger w.e.f. 27-5-1970. Smt. Lata Jain be placed above Smt. Satya Gulati on the principle indicated."

(39) We may now refer to the last stage of the developments around this vexed question of inter-se seniority of language teachers.

(40) In 1975 Shri R. C. Sharma and 31 others filed in our court Writ Petition No. 629 of 1975 against the Union of India, the Directorate of Education, the Delhi Administration and imp leaded Shri B. D. Sharma, Trained Graduate Teacher, Shri Dori Lal Sharma, Post Graduate Teacher (Hindi) and Shri R. N. Goswamy, Language Teacher. The petitioners claimed seniority from the date of their joining service irrespective of the pay-scales in which their pay was fixed and on the basis of such claim to seniority, set up a claim to being granted the Selection Grade.

(41) The petitioners did not include any of the respondents herein (i.e. 3 to 71) nor did they implead any of the petitioners who were vitally interested and directly affected by the claim and prayer in the writ petition. A learned Single Judge of this Court who heard the writ petition took the view that impleading of the directly affected language teachers like the petitioners in the writ petition before us was not necessary as the challenge in the writ petition was to the very principle underlying the assignment of seniority and if some language teachers are adversely affected by following the principles of seniority which he was invited to lay down, that would be a consequence not necessitating the impleading of the affected teachers as parties.

(42) In his judgment dated 18th April, 1977, the learned Single Judge posed the question, "The question to be found out is whether they entered the grade on the date on which the scale was raised or whether they were in the grade already but enjoying a lower scale of pay" and held that the work of language teaching which the two sets of language teachers performed being the same, i.e., teaching of language, the two always belonged to one Grade within the meaning given to "Grade" in the Seniority Rules, 1954.

(43) The Union of India and the Delhi Administration preferred an appeal against this judgment but the appeal having been filed late was dismissed as time-barred and in these circumstances the afore said judgment became final. It cannot, however, be emphasised enough that the judgment is final only in so far as the cases of the teacher respondents imp leded therein are concerned and cannot preclude the petitioners from having their inter-se seniority with the respondents 3 to 71 decided.

(44) Following the aforesaid judgment of 18th April, 1977, the Government of India informed the Director of Education vide its letter of 26th May, 1977 that its earlier letters, referred to above, dated 23rd April, 1977 and 28th April, 1977 may be treated as cancelled.

(45) In course of time, in pursuance of this judgment, the Directorate of Education prepared a revised tentative seniority list of language teachers and circulated the same by an order dated 10th April, 1978, seriously adversely affecting the petitioners and giving pari passu advantage to the respondents 3 to 71. It is against this proposed revision of their seniority after 19 years that this petition has been filed.

(46) Before proceeding further we may recall that the Directorate of Education has taken a varying stand not only on propositions of law but indeed also on narration of facts from time to time. It opposed tooth and nail the petition 629 of 1975 decided on 18th April, 1977 and contended in no uncertain terms that language teachers in the scale of 120-370 were in a different and distinct grade, being Grade.II and language teachers in the scale of 100-250 were in Grade Iii and their seniority had to be reckoned separately and not inter-se from the date of joining service. It appealed against the judgment of 18th April. 1977 by

reiterating the self-same averments but after the said judgment, in an affidavit in opposition to the present writ petition, the Directorate has, as if, made a volte face and deposed that the seniority of the petitioners and respondents 3 to 71 was liable to be fixed inter-se on the basis of the length of service as language teachers irrespective of their being in two grades and entitled to two different scales of pay. Presumably taking cue from the aforesaid judgment, it was deposed that the nature of work of the two was the same.

(47) Like the Directorate of Education, the respondents 3 to 71 have based their case entirely on the reasoning in the aforesaid judgment and have contended that the respondents had also been teaching language to Classes Vi to X like the petitioners and, Therefore, the work performed by them was the same as that of the petitioners and, Therefore, they and the petitioners must be deemed to be in one grade within the meaning assigned to "Grade" in the Seniority Rules, 1954. Instance's of their being put in different grades in the last nearly 30 years are dismissed by them as mistake on the part of the Govt. of India and the Directorate of Education.

(48) During the arguments, both sides had claimed that they were in possession of documents which could prove their respective cases and asked for an opportunity to place these documents as well as their submissions before the Director of Education.

(49) We, Therefore, directed that both sides may appear before the Director of Education and place before him such documents as they may have and make their submissions and that thereafter the Director of Education may file an affidavit. This was done and Shri P. N. Gupta, Joint Director of Education, has filed an affidavit dated 2nd August, 1979. The depositions in this affidavit conform to our findings from the close study and scrutiny of voluminous documents and it may be useful to quote from it extensively.

"I, P. N. Gupta, Joint Director of Education (Administration) do hereby take oath and solemnly affirm as under : 1. That as directed by the Hon"ble High Court, I heard the representatives of the petitioners as well as of the respondents No. 3 to 71 at length in the above matter. I have also gone through the documents filed by both the parties. I find as under : (A) That prior to 1st July, 1959, there was two separate groups of Language Teachers. One was of petitioners enjoying pay-scale of Rs. 120-300 and the other one was of the respondents No. 3 to 71 whose pay-scale was Rs. 100-250. The posts of the Language Teachers, in the Higher pay-scale were created for the purpose of teaching classes IX and X in the High Schools and the Higher Secondary Schools while the posts of teachers carrying pay-scale of Rs. 100-250 were created for teaching classes Vi to VIII in the Middle Schools and Middle Departments of High and Higher Secondary Schools. (ii) That the Language Teachers enjoying lower pay-scale of Rs. 100-250 used to be promoted to the posts carrying higher pay-scale i.e. Rs. 120-300. (iii) The minimum qualifications of the Language Teachers enjoying the two pay-scales were also different. (iv) The seniority lists of the two groups of

teachers were used to be prepared separately. (B) That after 1st July, 1959, when the Recommendations of Second Pay Commission were implemented, the situation underwent drastic change. All the Language Teachers of the Group of the petitioners and of the respondents Nos. 3 to 71 were integrated in a single grade described as Grade II. The Higher pay-scale of Rs. 120-300 was revised to Rs. 170-380. The other pay-scale of Rs. 100-250 was given two fold revision. Those who possessed requisite qualification prescribed for the pay-scale of Rs. 120-300, their pay-scale was revised to Rs. 170-380. Those who did not possess these qualifications, pay-scale of Rs. 100-250 in their case was revised to Rs. 160-300. The minimum qualifications prescribed for the scales of Rs. 170-380 were Degree or Post-Graduate Degree with Degree or Diploma in teaching or equivalent qualifications prescribed from time to time. The Government of India, recognised Shastri Qualifications equivalent to Graduation for allowing the scale of Rs. 170-380 with effect from 6-9-1962. Similarly, Sahitya Ratna of Hindi Sahitya Sammelan, Prayag was recognised to be equivalent to Degree with effect from 12-4-66. As a result of recognition of these qualifications all the respondents No. 3 to 71 fulfilled the conditions for the scale of Rs. 170-380 and became entitled to it. 2. That after 1-7-1959 a single seniority list was formulated which covered both the petitioners as well as respondents No. 3 to 71. In the said single seniority list, seniority of the Respondents No. 3 to 71 was reckoned from the date from which they became entitled to the Higher pay-scale. This seniority list was, however, challenged by the respondents in Civil Writ Petition No. 629/1975. The writ petition was accepted by the Hon'ble Mr. Justice D. K. Kapoor, Judge of Delhi High Court by his judgment dated 18th April, 1977. The Directorate of Education then formulated a new seniority list dated 10-4-1978 in accordance with the said decision of the High Court. 3. That I have come to aforesaid conclusions after hearing the parties at length and after carefully examining the documents filed by them and also the documents available in the Directorate of Education."

(50) In our view, a correct answer to the question posed at the outset, namely, whether the posts held by the petitioners and respondents were in one grade with a higher and a lower pay-scale for each set of posts or whether the posts held by them having different pay-scales were in two different grades cannot be given if all the elements of the meaning assigned to "Grade" in the Seniority Rules, 1954 are not kept in view. Rule 2(ii) says "Grade" means a post or a group of posts created for work of the same nature in a department or office " for posts to be in one grade, it is not relevant and certainly not sufficient that its incumbents, all or any, at any point of time be carrying on the work of the same nature. It is necessary that the posts must have been created for work of the same nature. We have referred to various documents above to show that posts held by the petitioners and the posts held by the respondents were not created for work of the same nature and that work of teaching classes Ix and X by graduate teachers was not considered of the same nature as the work of teaching classes Vi to Viii by non graduates This we consider is the key

to the problem if not to the puzzle and we find that in the judgment of the learned Single Judge this aspect of the matter has not been taken into consideration at all. This again is the reason why the learned counsel for the respondents, in spite of strenuous efforts, has not been able to persuade us to hold that these posts are in one grade because all he insisted upon is to stress that the respondents were doing work of the same nature and their being grouped in two different grades all these years is a stupendous mistake of the authorities, i.e. Govt. of India and the Directorate of Education. He, however, could not show at all that these posts were created for work of the same nature. Thus in scores of schools and in hundreds of language teachers, examples could be cited and shown of language teachers holding posts for teaching classes Vi to Viii but actually teaching for a short or a long while classes up to X, but such showing cannot convert their posts into posts created for teaching IX and X classes.

(51) It is in this context that the above quoted paragraph 1(A)(i) of the affidavit of Shri P. N. Gupta is relevant, indeed, decisive for it adverts to the creation of posts for work of different nature.

(52) It is for the aforesaid reasons that we came to the conclusion, set out above and which we reiterate here that the posts held by the petitioners were in a different and a higher grade than the posts held by the respondents 3 to 71 which were in a lower grade and, Therefore, the seniority of the members of these two grades has to be drawn and assigned, on the basis of the length of service in each grade separately. On the merger of the two grades, the incumbents of the higher grade, i.e., the petitioners would be en-bloc senior to the respondents.

(53) The petitioners have been considered holders of posts in Language Teachers Grade Ii ever since they joined service in High Schools in 1959 or soon thereafter and the respondents have first been considered not in this Grade but in Grade Iii ever since they joined service in 1950 or thereabouts. Even after the revision of the two pay-scales of 100-250 and 120-300 to the one scale of 170-380 with effect from 1st July, 1959. even after the merger of pay-scales of the petitioners and the respondents into the common scale of 220-550 with effect from 27th May, 1970, the petitioners have been considered and treated as senior to the respondents. This seniority has been conferred on and allowed to be enjoyed by the petitioners for nearly 20 years. On the basis of such seniority many petitioners have been given the selection grade and many others are expecting it to be given to them. On the other hand the respondents have for nearly 25 years till 1975 never objected to their being placed in Grade Iii Language Teachers and never objected for nearly 15 years since the petitioners joined service to have been treated either in a lower grade than the petitioners or junior to them.

(54) In the circumstances, even though we are satisfied that the respondents have not succeeded in setting up a case of being assigned seniority over the petitioners yet we have no hesitation in saying that even if some circumstance or

description or document or executive interpretation could be utilised by them to contend that they should now in 1980, be treated as senior to the petitioners, we would be loathe to do so and upset a state of things which has come to stay over a long period of time giving rise to rights and equities in favor of continuing that status. The overall damage that is bound to ensue in such upsetting would be far more than the benefit belatedly brought to the respondents.

(55) In support of this view, it is enough to recall the observations of S. M. Sikri J., speaking for the Supreme Court in *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, .

"IT would be unjust to deprive the respondents to the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion affected a long time would not be set aside after a lapse of number of years."

(56) Before parting with the case, we recall having been told that in. the circumstances in which the petitioners and respondents are placed today the question of inter-se seniority is the question of getting the "Selection-Grade" and as the grant of the same is based on seniority-cum-fitness, seniority is virtually decisive. We were further told that the number of "Selection-Grade" is rather small and in the few years of service left before retirement respondents have little chance to it. This is indeed very unfortunate and we hope that the appropriate authorities will devise ways and means to maximise the opportunity of the grant of selection-grade to the respondents.

(57) The petition is allowed in the aforesaid terms with no order as to costs.