

(1992) 12 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 714 of 1992

Golakh Ch. Mohanty and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-12-1992

Acts Referred:

Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 — Rule 1, 8(2), 8(3)
Orissa Secondary Education Act, 1952 — Section 21

Citation : (1993) 76 CLT 308 : (1993) 1 OLR 303

Hon'ble Judges : B.L. Hansaria, C.J.; S.C. Mohapatra, J; A. Pasayat, J

Bench : Full Bench

Advocate : G. Rath, R.K. Mohapatra, for the Appellant; J.K. Rath, for the Respondent

Judgement

B.L. Hansaria, C.J.—The following question has been referred for our decision :

"Whether seven years" teaching experience as trained graduate is necessary to make an assistant teacher eligible for promotion Appointment to the post of Headmaster of a High School ?"

2. Being concerned with eligibility condition of an incumbent to hold the post of Headmaster of a High, School, who plays a very important role in the entire functioning of the school as the head of the institution, in which capacity he has to act as a friend, philosopher and guide, we. have to see that the conclusion we arrive at is goal-oriented. To put it differently, a purposive interpretation is called for. High Schools being the grass-root institutions to impart education to a vast majority of population, we cannot afford to come to such a conclusion as would frustrate the very purpose of establishing a school, which is to build up career of students to see that the aim of their live is achieved. Schools are established with a purpose behind it. They cannot be taken to be places of mere bricks and mortar, but as social engineering workshops to equip the nation with future citizens who can take up the responsibilities in future years to help its growth.

3. The approach which we have decided to adopt is not new. Indeed, some of the decisions relied on by Shri Rath, learned counsel appearing for the intervenors, who are some of the Headmasters having been appointed without their having complete 7 years" leaching experience as traine,d graduate, speak about the same. These decisions (cited by Shri Rath in a different context) are Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, , The State of Uttar Pradesh Vs. C. Tobit and Others, , Santa Singh v. State of Punjab AIR 1976 SC 2386; New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar, and Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, On our own, we would refer to Vatticherukuru Village Panchayat v. Nori V. DeekShithulu 1991 Supp. SC 228 in which it was stated in paragraph 19 that in order to find the meaning of a particular provision in social legislation, the Court would adopt the purposive approach to ascertain the social ends envisaged in the Act, to consider the scheme of the Act as an integrated whole and the practical means by which it was sought to be effectuated to achieve them. Meticulous lexicographic analysis of words and phrases and sentences should be subordinate to this purposive approach. Not only this the dynamics of the interpretative functioning of the Court is to reflect the contemporary needs and the prevailing values consistent with the constitutional and legislative declaration of the policy envisaged in the statute under consideration.

4. With the aforesaid in mind, let us enter the thicket. For this purpose, we shall have a little glimpse of history, which tells us that there was a time in this State when educational institutions were not controlled by statutory provisions. Some executive instructions were holding the field and the Orissa Education Code was taken to have provided the guidelines. For the case at hand, we may refer to Art. 312 of that Code which deals with standard staff for High Schools, the relevant portion of which reads as below :

"(i) Trained Graduates including the Headmaster ... 4 posts (ii) Trained Intermediates ... 3 posts (iii) Trained Matriculates ... 2 posts (iv) Classical Teachers including one Head Pandit ... 1 post (v) Physical Training Instructor ... 1 post (vi) Clerk ... 1 post"

This shows that the Headmaster was required to be a trained graduate. This continued to be the position till the Orissa Secondary Education Act, 1952. hereinafter, "the 1952 Act",was enacted, which received the assent of the Governor on 23-5-1963. That Act was meant to establish a Board of Secondary Education to regulate, control and develop secondary education in this State. Section 21 of that Act gave the Board power to make regulations. Sub-section (2) of that section dealt with certain matters in particular relating to which the Board can make regulations. For the case at hand, we shall note Clauses(c) and(f) of that sub-section, which read as below :

"21. Power of Board to make regulations

(1)xx xx xx xx (2) In particular and without prejudice to the generality of the

foregoing power, the Board may make regulations providing for all or any of the following matters, namely;

xx xx xx xx (c) the conditions of recognition of institutions for the purpose of admission to the privileges of the Board including its examination ;

xx xx xx xx (f) pay and allowances for teachers and other employees of the Secondary Schools or other institutions controlled by it and conditions of service, such as appointment, promotion, punishment, appeals against orders of punishment, transfer, pay, pension, provident fund, gratuity, if any, and age of superannuation;

xx xx xx xx"

5. Pursuant to this power, the Board framed regulations. We are concerned with what has been stated in Chapter IX of those regulations, whose heading is "Recognition of Institution by the Board". Regulation 18 (2) is relevant for our purpose, which had provided that the school should have a Headmaster who should have at least seven years of service either as a teacher in a High School or as Headmaster of a Middle School or the two taken together. That regulation also conferred power on the Board to relax the aforesaid condition in exceptional and meritorious cases of those incumbents who were holding Master's degree. The Regulations came to be amended on 29-4-1977. Regulation 17 (2) (i) of the amended Regulations stated that in order to be a Headmaster, the teacher must be a trained graduate with minimum seven years experience after training. In the meantime, the Orissa Education Act, 1969, for short, "the 1969 Act", had been enacted, whose Section 27 conferred rule-making power, pursuant to which various rules were framed. For the case at hand, we are concerned with one of these Rules, i.e., the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, *brevi manu*, "the 1974 Rules". Because of what has been stated in Rule 7 (c) of these Rules, the Orissa Subordinate Education Service (General Branch) Rules, 1972 framed in exercise of the power conferred by the proviso to Art. 309 of the Constitution (hereinafter referred to as "the 1972 Rules") get attracted. As the Rules 1974 are applicable to aided educational institutions (which continued to be governed earlier by the provisions contained in the Orissa Education Code), we shall first deal with the eligibility condition relating to an aided institution and thereafter state whether what we have found to be necessary qualification for an incumbent to hold the post of Headmaster of an aided institution would apply to unaided institutions as well or not.

6. The material Rule of the 1974 Rules is Rule 7, whose relevant part reads as below ;

"7, Condition of eligibility of candidates-

A candidate for any post selection to which is made by the Selection Board in pursuance of Rule 6, must fulfil the conditions and be free from the disabilities

mentioned hereinafter, namely :

xx xx xx xx (c) the age or qualifications for appointment as teacher and for other posts would be the same as for similar or corresponding posts in educational institutions established and maintained by Government.

xx xx xx xx;"

As Rule 7 (c) states that the qualification for appointment as teacher in an aided institution (the 1974 Rules being meant for aided educational institutions) would be the same as for similar or corresponding posts in educational institutions established and maintained by Government, the 1972 Rules becomes relevant. Rules 3, 4, 6, 7, 10-A and 14 are relevant for our purpose. Rule 3 (2) speaks that the cadre of the service in question shall consist of two grades-junior and senior. The junior grade of the service consists, inter alia, of assistant teachers, and the senior grade of Headmasters. Rule 4 has laid down the method of recruitment, whose Sub-rule (a) deals with posts in the junior grade and states that recruitment to those posts shall be by "(i) examination in accordance with Rule 6, and (ii) selection in accordance with Rule 10-A". (Though the word used is "and", there is no dispute that this has to be read as "or"). Rule 6 deals with competitive examination and Rule 7 has laid down the condition of eligibility to compete at the examination, the relevant portion of which is Sub-rule (d), which states that the incumbent must have passed the Bachelor's degree or an equivalent examination of a recognised University. So, for an incumbent to become eligible to hold the post of assistant teacher of a school, it would be enough if he has passed Bachelor's degree examination (or an equivalent examination) of a recognised University, if he is to be recruited through competitive examination. If, however, the mode of selection is taken recourse, to Rule 10-A comes into force, which first requires that the incumbent must have served in the Lower Subordinate Education Service for some period and must have passed Bachelor's degree (or equivalent) examination of a recognised University and must have successfully undergone a course of training equivalent to Bachelor of Education. (Though in the Orissa Education Manual by Nanda, or for that matter by Panda the words "Bachelor of" before the word "Education" are not to be found, we have checked up the relevant Gazette Notification which shows that these words exist). So the position is that if an assistant teacher be one who has been selected the incumbent must be B. Ed. This takes us to Rule 14, which deals with . promotion to senior grade-the post of Headmaster being in senior grade., Rule 14 (2) lays down that no member of the junior grade of the service who has not put in at least seven years of service under the Government in the grade shall be considered for promotion.

7. A combined reading of the aforesaid Rules yields this result: If an assistant teacher had been recruited through competitive examination, he need not be B. Ed. and so, for such an incumbent to be considered for promotion to the post of Headmaster, seven years' teaching experience as a trained graduate would not be necessary for the simple reason that such an incumbent need not be trained

to hold the post of assistant teacher. On the other hand, if the incumbent be one who had come to be appointed as an assistant teacher by following the procedure of selection, seven years teaching experience as trained graduate would be necessary and this requirement would be ipso facto fulfilled in case of such an incumbent as he cannot be considered for selection unless he had obtained B. Ed. degree.

8. The aforesaid provisions of the 1972 Rules, therefore, do not assist us to answer the question either way. Shri Mohapatra, however, submits that if Rule 23 of these Rules is also borne in mind, it would be apparent that only persons who had the degree of Bachelor in Education would be first eligible to hold the post of Headmaster out of the assistant teachers serving in the school, whatever might have been their mode of recruitment. This submission has been advanced by the learned counsel because as per Rule 23, which deals with gradation list, the same has to be maintained in two parts. Part-I consists of the names of persons holding the degree of Bachelor in Education and Part-II consists of those who do not possess such a degree. According to the first proviso to Sub-rule (2) in Part-I the names of persons appointed by selection shall rank above those appointed by competitive examination, the result of which would be that the persons who had the degree of Bachelor in Education would rank higher in seniority, which would enable them to steal a march over those who do not possess such a degree, in which contingency, when the question of promotion to the post of Headmaster shall be taken up as required by Rule 8(2)(b) of the 1974 Rules, persons with degree of Bachelor in Education shall have an edge over their counterpart.

9. The submission advanced by Shri Mohapatra is attractive. But, as while considering the question of promotion under Rule 8 (2)(b) seniority is not the only guideline, and performance along with experience has also to be taken note of, we have not felt inclined to accept the submission that persons with degree of Bachelor in Education alone should be considered as eligible for promotion to the post of Headmaster after their having had seven years' teaching experience as such.

10. Before we proceed further, we may make two observations. The first is that Rule 8(2)(b) had ceased to be operative after Rule 8(3) of the 1974 Rules occupied the field - "the date of occupation being 3-6-1988. Secondly, we have assumed applicability of the 1972 Rules for employees of aided educational institutions which is the result of Rule 7(c) of the 1974 Rules. Though in this connection Shri J. K. Rath appearing for opp. party No. 4 has contended that despite Rule 8(3) having come into force with effect from the date just mentioned. Rule 8 (2)(b) would still hold the field for those schools which have not been covered by "full-salary-cost", we would not accept this submission because what Rule 8 (3) speaks in this connection is "the system of direct payment of full-salary-cost", the result of which is that for application of that Rule, it is not necessary that the institution must have started receiving full-salary-cost by 3-6-1988, but it would be enough if it was in the fold of that

system. As is known, the system of making direct payment does not start with full salary-cost but with a part of it, which varies from school to school and college to college, and after a few years, full-salary component becomes eligible for direct payment. This would be in tune with the view taken by a Bench of this Court in *Kailash Chandra v. State of Orissa* 1990 (II) OLR 533 in which it has been categorically held that a vacancy which would occur after 3-6-1988 has to be filled up in accordance with Rule 8(3) of the 1974 Rules.

11. As to the applicability of Rule 7(c), a contention has been advanced by Shri Mohapatra that applies to candidates whose selection is made by the Selection Board in pursuance Rule 6, whereas it may be that an assistant teacher whose case for promotion to the post of Headmaster was considered might not have been one who had been selected by the Selection Board, in which case, what is provided in Rule 7(c) shall not be operative, which, in turn, would make the qualifications laid down in the 1972 Rules redundant. We have, however, not felt inclined to accept this submission because the normal procedure of appointment of an assistant teacher in an aided educational institution governed by the 1974 Rules is selection by the Selection Board, though those Rules permit ad hoc appointment also. As ad hoc appointment visualised by Sub-rule (7), (8) or (9) of Rule 5 is not the normal procedure of appointment of assistant teachers, we would not be justified in ignoring the command of the main part of Rule 5. According to us, therefore, what has been provided in Rule 7 (c) has to be taken note of in so far as the question which we are considering is concerned. But then, this by itself does not answer the question which we are to decide, because, as already noted. Rule 7(c) of the 1974 Rules attracts the 1972 Rules, which do not provide the answer for reasons already alluded.

12. It is to fill up the aforesaid void or uncertainty that Shri Mohapatra relies on the Board's Regulations, which, after its amendment on 29-4-1977, have laid down that to be a Headmaster, a teacher must be a trained graduate with minimum seven years' experience after training, which, according to the learned counsel, is a rule governing the condition of service of a Headmaster, and is not merely confined to eligibility condition for recognition. This contention has been advanced because, as already noted. Section 21 of the 1952 Act empowers framing of regulations relating to "pay and allowances for teachers and their conditions of service, such as appointment, promotion, etc.", as would appear from Clause (f). Learned counsel submits that Chapter IX of the Board's Regulations may not be confined, because of its heading "Recognition of Institutions by the Board", to relate only to recognition of an institution, but should be read to have laid down conditions of service as well. We have not felt inclined to accept this submission because of two reasons : (i) Clause (f) permits framing of regulations in the aforesaid matters for teachers and others employees of the "Secondary School or other institutions controlled by it" (meaning, the Board) ; and (ii) if the power of framing regulations relating even to conditions of service were to be conceded to the Board, and that too for aided institutions, there would be two parallel authorities which could do so,

namely, the State Government in exercise of powers u/s 27 of the 1969 Act, and the Board in exercise of the present power, which may result in conflicting qualifications being laid down, which would result in chaos. This apart, as framing of Rules regarding pay and allowances is also visualised, it cannot be conceded that the Board would decide what pay and allowances should be paid the teachers of the aided schools and then make the State Government liable to pay the same because of what has been provided in Rule 9 of the 1974 Rules. As for The first reason,"it may also be stated that, though the definition of "Secondary School" as given in Section 2 (o) of the 1952 Act would include a High School also,"we would think, that the secondary school, of which mention has been made in Clause (f), must be one which is controlled by the Board, because of which it shall be competent to frame regulations for pay, allowances and other conditions of service of teachers serving in those schools which are not controlled by other statutory authorities, in which case the Board's, regulatory power may be available to frame regulations for the purposes just mentioned. This interpretation alone is meaningful.. As in the present case we are not concerned with such institutions, we would not concede the power of framing regulations relating even to pay and allowances for teachers and their conditions of service to the Board. So, the Regulations at hand have to be confined as having provided Rules for recognition of schools.

13. Now, there is no dispute that these Regulations after their amendment on 29-4-1977 required that the Headmaster must be one who had teaching experience of seven years as a trained graduate. Shri Rath, however, contends that this is not an eligibility condition and its operation has to be confined to recognition purpose only, which was the view expressed by a Bench of this Court. In O.J.C. No, 1987 of 1987 (Ajay Kumar Sahu v. State of Orissa, disposed-of on 9-10-1991). A similar view was taken by another Bench in OJC No. 3233 of 1990 (Sarat Chandra Sahoo v. State of Orissa. disposed of on 10-7-1990) in paragraph 5 of which It was stated that there is no requirement in the 1972 Rules that appointment to the Junior cadre shall necessarily be of only trained graduates, because of which it was held that recruitment to the post may be either of trained graduates or untrained graduates. It was further noted in that paragraph that there is no specific requirement in Rule 14(2) of seven years" service after B.Ed, as the eligibility qualifications for consideration for promotion to the senior grade. " Shri Rath also mentions in this connection what was held by another Bench of this Court in Original Criminal Misc. Case No.50 of 1990(Bhagaban Mishra v. Pitambar) in its order passed on 6-3-1991, wherein it was stated that Rule 14 (2) read with Rule 3(3) does not require putting in of seven years" service as trained as a necessary qualification to hold the post of Headmaster.

14. Still another decision pressed into service by Shri Rath is the one rendered in OJC No. 2456 of 1991 (Rabindranath Parida v. State of Orissa, disposed of on 17-6-1991). As to that decision, we have to point out that somehow the Court's attention was not drawn to the amendment of the Regulations effected on

29-4-1977 with the result that that case was decided on the basis of unamended Regulations, in which the present requirement was differently worded, having merely stated that the Headmaster should have "at least seven years of service either as a teacher in a High School or Headmaster of a Middle School". There was a provision of relaxation also. So, that decision cannot be called in aid by Shri Rath, though on fact the conclusion arrived at by that Bench accords with the view which has been subscribed by us.

15. Shri Mohapatra in his turn strongly relies on Sarat Chandra's decision, in which, after taking note of all the relevant facts, it was stated in paragraph 6 that the Court had "no hesitation to hold that opp. party No. 5 was not eligible to be promoted as Headmaster on 11-5-1982 since he did not have seven years" teaching experience after training by then". As to this conclusion arrived at by the Bench, Shri Rath contends that the Court's attention was not invited to the fact that the Board's Regulations, which had been primarily relied on for this purpose, had dealt only with the question of recognition and did not lay down the eligibility condition. We do not, however, think if the ratio of that decision can be watered down on this ground, though there is sufficient force in the submission of Shri Rath that the Board's Regulations dealt with the question of recognition only, which would be apparent not only from the Chapter heading, but also from the provisions contained in the Chapter, none of which deals with conditions of service.

16. Shri Mohapatra would not, however, leave Shri Rath like this. He draws our attention to *Akshaya Kumar v. D. P. I.* 1975 (2) CWR 647 in which the circular of the D. P. I. stating that the Headmaster/Headmistress of a High School should have at least seven years' experience as a trained graduate teacher was held to be invalid because by that time unamended Regulations were in force, which did not provide this as a condition to be a Headmaster, nor did Art. 312 of the Orissa Education Code, which, by that time had acquired statutory force because of what has been provided in Section 27(4) of the 1969 Act. It is, therefore, contended that had the circular been issued after the amended Regulations saw the light of the day, the decision would have been different. As to this submission, we would state that though it is not without force, yet we do not propose to place reliance on this decision to arrive at the conclusion which we propose, because that decision had really not examined the matter in all its ramifications, as would appear from the short treatment to the subject.

17. The position which boils down is this : the 1974 Rules read with the 1972 Rules do not provide a clear answer. The Board's Regulations do not deal with the conditions of service. But then, they admittedly and apparently deal with recognition. Now, what is the purpose of setting up a school ? If it is not recognised, students studying in it would not be allowed to appear in the examination conducted by the Board. What purpose the imparting of education would then serve ? What for education is imparted in the school ? Is it merely to collect "donations" for giving appointment to teachers or to build up the career

of the students, which would not be possible unless they are allowed to sit in the Board's examination and thereafter, having passed the same, to undertake future and higher studies ? It is this purpose for which schools exist and we cannot allow this purpose to be lost by allowing the schools to be manned by Headmasters who do not fulfil the condition of recognition, which is seven years of teaching experience as trained graduate. Let it also be stated that schools are not being allowed to be established merely to provide jobs of teachers and Headmasters. Their employment is itself for a purpose, which cannot be allowed to be frustrated by allowing the school to do something which would or could stand in the way of their recognition. The purposive interpretation with which we started this judgment, therefore, leads us to conclude that a Headmaster of any recognised school, be it aided or unaided, has to be one who has put in seven years of service as trained graduate. For this purpose, there is no distinction between aided or unaided institutions, as both these institutions must get recognition from the Board, which may not be granted unless the Headmaster is one who had put in seven years of service as trained graduate. In this connection Shri Rath has contended that in the present case we are not really concerned with recognition of institutions, because it is nobody's case that the Board has refused recognition to schools which are not manned by Headmasters satisfying the aforesaid requirement of the Regulations, or had withdrawn recognition on the ground of failure to comply with the aforesaid requirement. He further contends that the Board had to play soft because there was dearth of trained teachers at some point of time. We do not know what was, and is, the reason for the Board for not insisting on the aforesaid requirement, but nothing prohibits the Board to do so. It is also not a case where we can say that at present there is dearth of trained graduates. Even if there be any, as we are laying down a law, we cannot shut our eyes to the legal requirement non-compliance of which would render High Schools as show pieces" which have really to be nurturing places of future citizens of the country" as the students are, to prove their utility to the society. The High Schools cannot be allowed to be converted into business places meant for earning money (allow collection of "donation" for giving appointment to teachers and other members of the staff), and of "development fund" for admitting students, by a few persons, which would be so, if even recognition could be denied on the ground of their being not manned by duly qualified Headmasters.

18. So, the goal-oriented approach which we have highlighted at the beginning of the judgment leads us to conclude that seven years" teaching experience as trained-graduate is necessary to make assistant teacher eligible for promotion/appointment to the post of Headmaster of a school.

19. After having come to the aforesaid conclusion in normal course nothing further would have been required to be said by us But then, having been told by Shri Mohapatra that the Education Department has kept many cases of approval pending awaiting this decision and as even otherwise the view expressed by us would have required decisions to be taken relating to those promotions/

appointments which have been made without the incumbents having acquired the requisite qualification as laid down by us, we have felt necessary to express the authoritative view of this Court on the future actions which the Department should take in the light of the law laid down by us.

20. The submission of Shri Mohapatra in this regard is that if 7 years' teaching experience as trained graduate was necessary for an assistant teacher to be promoted to the post of Headmaster which is the view we have taken, all appointments made without the aforesaid qualification having been fulfilled must be treated to be void and non est in the eye of law with the result that all such posts must now be filled up as required by Rule 8(3) of the 1974 Rules, because those posts must be treated to have fallen vacant, as a result of which Rule 8(3) would hold the field, as the vacancy would be filled up now rule 8(3) having become effective from 3-6-1988, after which a Headmaster cannot be appointed by following the procedure provided in Rule 8(2)(b), as noted earlier. The matter has been put thus because Rule 8(3) can operate only where the vacancies in the post of Headmaster exist, as would appear from the opening sentence of the rule.

21. Let us first of all deal with the question as to what is the effect in law where an order can be said to be void. For this purpose, it would be enough if we refer to two recent decisions of the Apex Court : these being : (1) Shiv Chander Kapoor Vs. Amar Bose, and (2) State of Punjab v. Gurdev Singh AIR 1991 SC 2219. In Shivchander's case it was stated in paragraph 22 that an invalid order is presumed to be valid unless declared otherwise, and it is for the person assailing the validity to get such a declaration in a proper forum in a proper proceeding. Reference was then made to paragraph 23 of Wade's Administrative Law, 6th Edn., wherein it pages 351-353 there is an illuminating discussion on this topic by pointing out that the word "void" is meaningless in an absolute sense and "unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset it, it will remain as effective for its ostensible purpose as the most impeachable of orders". In the words of Lord Diplock, the order would be presumed to be valid "unless the presumption was rebutted in competent legal proceedings by a party entitled to sua".

22. In Gurdev Singh's case, this aspect was dealt with in paragraph 5 while dealing with the effect of an order of dismissal being illegal and inoperative, for which reason a declaration of the dismissal as void was sought for. The Court observed that if an act is void or ultra vires, it is enough for the Court to declare it so, and it collapses automatically. The aggrieved party can simply seek a declaration that it is void and not binding. But then, the dismissal order would remain in de facto operation unless and until it is declared to be void or a nullity by a competent body or Court, as pointed out in paragraph 6. Further, as stated in Nawab Khan v. State of Gujarat AIR 1471 SC such a declaration becomes ineffectual from the beginning if the injury be to a constitutionally guaranteed right, which is not so here.

23. The combined result of these decisions is that appointments/promotions of assistant teachers as Headmasters, even if made without their having become eligible to hold the post on the dates they were promoted, the promotions would not ipso facto become void, and as such non est. We, therefore, state that those promotions which had been made earlier, even without the incumbents having had the eligibility qualification as found by us, and which had also been approved, the same shall remain undisturbed.

24. The question is what about the cases which have not been approved. As to this, we would observe that as the normal understanding so far has been that if an incumbent acquires seven years teaching experience as a trained graduate, which he did not have at the time of his appointment as Headmaster, the appointment would be approved from the date of acquisition of the required length of "experience. This apart, as stated in *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, if sufficient experience is gained subsequent to the entry in service., that may also be taken note of while confirming an incumbent, which may not be refused only on the ground that the incumbent did not possess the requisite qualification when he had been appointed. Because of all these, we do not propose to state that in all such cases which are pending, approval may not be granted from today onwards, because that would create a chaotic situation and anomalous position which we have to avoid.

25. We would rather say that in so far as those cases in which appointments of Headmaster have not been approved by today on the ground that the incumbents did not have seven years" teaching experience as trained graduate teacher by the time they were, promoted to the post of Headmaster, approval shall be accorded in those cases where the incumbents had acquired seven years teaching experience as aforesaid before 3-6-1983, on which date Rule 8(3) of the 1974 Rules became operative. In those cases where this length of experience has not been acquired before 3-6-1988, the posts of Headmaster shall be treated as vacant, which would bring into operation Rule 8(3) of the 1974 Rules, and the posts shall be filled up in accordance with the provisions contained in Rule 8(3).

26. We record our conclusions as below :

(1) Seven years" teaching experience as trained graduate teacher was necessary for an assistant teacher to be promoted to the post of Headmaster with the aid of Rule 8(2)(b) of the 1974 Rules in those cases where the appointments had been made on or after 29-4-1977, when the amended regulation 17(2)(i) of the Board's Regulations had come into force. This applies both to aided and unaided schools.

(2) The promotions of incumbents made even after 29-4-1977 despite their not having had the requisite qualification (i. e. seven years" teaching experience as trained graduate teacher) would not be re-opened if the appointments have already been approved.

(3) Those cases of promotion relating to which approval orders. have not been

passed by today shall be decided Keeping in view what we have stated above, namely, that if the incumbents had acquired the requisite qualification before 3-6-1988, the promotions/appointments shall be approved.

(4) Those cases, in which the requisite qualification had not been: obtained before 3-6-1988, shall not be approved, and the posts shall be treated as vacant on and from 3-6-1988 and shall be filled up by complying with the requirements of Rule 8(3) of the 1974 Rules.

(5) Rule 8(3) of the 1974 Rules applies to all aided schools irrespective of whether the school has started receiving full salary-cost or not.

27. Let a copy of the judgment be urgently sent to the Secretary to Government of Orissa, Education Department, who would apprise all concerned about it, so that they may act as per the aforesaid conclusions reached by us.

28. Before parting, we put on record our appreciation for the very able assistance rendered by both Shri Mohapatra for, the petitioners and Shri G. Rath for the intervenors.

29. Let the case be now placed before the Division Bench for disposal.

S.C. Mohapatra, J.

30. I agree.

A. Pasayat, J.

31. I agree.