

(2023) 01 GAU CK 0010
In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3272 Of 2018

Nirab Chandra Adhikary

APPELLANT

Vs

Union Of India And 5 Ors.

RESPONDENT

Date of Decision : 03-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(1), 226
Assam Services (Revision of Pay) Rules, 2010 — Rule 1(b)

Citation : (2023) 01 GAU CK 0010

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : F.Khan, S.S.Roy, J.K.Goswami, R.Borpujari, S.Bhuyan

Final Decision : Dismissed

Judgement

1. Heard Mr. F.Khan, the learned counsel appearing on behalf of the petitioner. Mr. S.S.Roy, the learned counsel appears for the respondent Nos. 1 and 3, Mr. J.K.Goswami, the learned counsel appears for the respondent No.2, Mr. R.Borpujari, the learned counsel appears for the respondent No.4, Mr. S.Bhuyan, the learned counsel appears for the respondent No.5 and Mr. D.Gogoi, the learned counsel appears for the respondent No.6, the Finance Department.

2. The instant writ petition has been filed by the petitioner challenging the action of the respondent authorities for not granting the pay protection to the petitioner w.e.f March, 2009 as well as for a direction upon the respondents to fix the petitioner's pay scale and grade pay w.e.f March, 2009 in pay band-3 and give pay scale of Rs.15,600-39,100/- along with the grade pay of Rs.5,400/-. Further to that, the petitioner has also prayed for an arrear salary dues in the revised pay scale of Rs.15,600-39,100/- and grade pay of Rs.5,400/-.

3. The facts of the instant case is that the petitioner pursuant to a regular selection process was appointed as a Senior Research Assistant vide an Office order dated 08.10.2002, issued by the Registrar of the Institute of Advance

Study in Science and Technology (for short IASST). The pay scale of the petitioner upon his appointment was Rs.4,390-90-11,425/- per month. The petitioner continued to discharge his service. In the meantime, on 09.03.2009, the IASST was taken over by the Ministry of Science and Technology, Government of India, as one of the Autonomous Research and Development Institute. Upon the taking over of the institute by the Government of India, the petitioner became a Central Government employee of IASST and his post was re-designated as Technical Officer-B.

4. At this stage it may be relevant herein to mention that pursuant to the recommendation made by the 6th Central Pay Commission and subsequent to the Cabinet approval and decision taken by the Government of India, the 6th Central Pay Commission was decided to be implemented w.e.f 01.01.2009. Under such circumstances, the petitioner whose pay scale was Rs.4,390-90-11,425/- at the time of his appointment was fixed at Rs.9,300-34,800/- w.e.f March, 2009 in Pay Band-2 with grade pay of Rs.4,800/-. It is also relevant herein to take note of that, in the Central Civil Services Revised Pay Rules, 2008, there was no exact pre-revised scale of Rs.4,300-90-11,425/-. However, equivalent to the said pre-revised scale under the Central Civil Services Revised Pay Rules, 2008 was Rs.7,500-250-12,000. Taking into account that the petitioner fell within the revised pay scale of 7,500-250-12,000/-, the petitioner's pay was fixed at Rs.9,300-34800/- with grade pay of Rs.4,800/-.

5. The petitioner accordingly enjoyed the pay scale of Rs.9,300-34,800/- with grade pay of Rs.4,800/-. Subsequent thereto, the Assam Services (Revision of Pay) Rules, 2010 (for short the Rules of 2010) was notified by the Notification dated 04.02.2010. In terms with Rules 1(b) of the said Rules of 2010, the said Rules were deemed to have been brought into force w.e.f 01.01.2006. Appendix-IV of the said Rules of 2010 stipulated, the revised structure at Sl. No.21 of Appendix-IV, the pay scale of Rs.4,390-90-11,425/- was revised to Rs.12,000-40,000 /- with a grade pay of 5,400/-.

6. Accordingly, in terms with the Rules of 2010, the petitioner who was in service of the State Government till 09.03.2009 became entitled to the revision of pay till 9th of March, 2009 w.e.f 01.01.2006 in terms with the Rules of 2010, by which the petitioners salary was increased in the pay band of Rs.12,000-40,000/- with grade pay of Rs.5400/-. However, in view of the fact that the petitioner's pay band w.e.f. 09.03.2009 as an employee of the Central Government was reduced to Rs.9,300-34,800/- with grade pay of Rs.4800/-.The petitioner being aggrieved have approached this Court under Article 226 of the Constitution of India. It is also the case of the petitioner that the pay scale and the grade pay which was fixed to the petitioner w.e.f 09.03.2009 as a Central Government employee was lower than other similarly situated employees of the Central Government at the same identical post and as such gross injustice has been caused to the petitioner. In that regard, it is the further case of the petitioner, that similarly situated employees of Indian Institute of Technology,

Guwahati, Indian Institute of Technology, Kharagpur, MACS-AGHARKAR Research Institute, Pune and others were placed at Pay Band-3 and given pay scale of Rs.15,600-39,100/- along with the grade pay of Rs.5,400/- whereas, the petitioner was placed at Pay Band-2 and given pay scale of Rs.9,300-34,800/- with grade pay of Rs.4,800/-. It is therefore the case of the petitioner that the petitioner is entitled to pay scale of Rs.15,600-39,100/- along with grade pay of Rs.5,400/- on the principle of 'equal pay for equal work'.

7. This Court vide an order dated 23.05.2018, issued notice making it returnable by 6(Six) weeks. It appears on record that the respondent No.6 have filed an affidavit. In the said affidavit, it is the case of the respondent No.6 that the Rules of 2010 had come into force in the year 2010 giving retrospective effect from 01.01.2006 and the service of the petitioner had been converted to the Central Government Employee w.e.f 09.03.2009 prior to Rules of 2010 coming into force. It was mentioned that at the time of conversion, the petitioner was enjoying pre-revised scale of pay of Government of Assam i.e., Rs.4,390-90-11,425/- per month. It was further mentioned that as per the revised pay scale under the Rules of 2010, the scale of Rs.4,390-90-11,425/-per month was revised to Rs.12,000-40,000/- with grade pay of Rs.5,400/- w.e.f 01.06.2006. However, the petitioner as on 2010 was no longer a Government of Assam employee to enjoy the said pay revision. It was mentioned that the petitioner was therefore entitled to the financial benefits as per the Rules of 2010 retrospectively w.e.f. 01.01.2006 till 09.03.2009, as the petitioner was a Government of Assam employee at that time. Further to that, it has been mentioned that the petitioner at the time of absorption i.e., on 09.03.2009 was carrying the pre-revised pay scale of Rs.4,390-90-11,425/- per month but prior thereto, the Central Civil Service Revised Pay Rules, 2008 (for short the Central Rules of 2008) had come into force and Central Government Employee were enjoying the salaries as per the revised scale. In such a peculiar situation, the IASST had adopted an equitable exercise to fix the salary of converted employees in the new form of IASST and in accordance with aforesaid exercise, the pay scale of employee of IASST was fixed at such pay band in the revised scale, the pre-revised of which was equivalent to the pre-revised scale of the erstwhile IASST under the State of Government of Assam. Accordingly, the petitioner's pay scale was fixed in the Pay Band-2 of Rs.9,300-34,800/- with a grade pay of Rs.4,800/- and the pre-revised scale of which was Rs.7,500-250-12,000/- which is equivalent to the pre-revised scale which the petitioner was receiving prior to the conversion of service. It was mentioned that there was no exact revised pay scale in the Central Rules of 2008 with that of the pre-revised scale pay of the petitioner, which he was carrying at the time of conversion/absorption i.e., Rs.4,390-90-11,425/- per month and the petitioner's scale of pay was fixed equivalent to the present revised pay scale i.e. in the Pay Band-2 of Rs.9,300-34,800/- with grade pay of Rs.4,800/-. Further to that, it has been mentioned that the petitioner's scale of pay cannot be compared with other similarly situated employees of the other Central Government Institution in view

of the fact that the petitioner's post was converted post from the Government of Assam to the Central Government and those referred posts are direct/regular employment. It has been mentioned that the history of the employment of the petitioner is completely different with the direct/regular employee and hence there is no injustice has been caused to the petitioner as alleged. Further to that, in the said affidavit-in-opposition, it has been mentioned that the pay scale which the petitioner had sought for in the writ petition could not be fixed as the said pay band of Rs.15,600-39,100/- with grade pay of Rs.5,400/- is the pay band of an Assistant Professor post and the pay band and grade of a Technical Officer is not the same that of an Assistant Professor.

8. It appears from the records that the petitioner has filed an affidavit-in-reply, reiterating its stand which have been mentioned in the writ petition.

9. I have perused the materials on record and have heard the learned counsels appearing on behalf of the parties. From the contention so made by the learned counsels for the parties as well as from the pleadings on record, two issues arises for consideration, (i) whether the petitioner is entitled to the revised pay scale in terms with the Rules of 2010; (ii) whether the petitioner is entitled to pay parity on the principle of 'equal pay for equal work'.

10. To decide the first issue, it would be relevant to take note of the contentions made by the learned counsels for the parties. Mr. F.Khan, the learned counsel appearing on behalf of the petitioner had submitted that the petitioner was enjoying the pay scale of Rs.4,390-90-11,425/-. By virtue of the revision of the pay and in view of the coming into effect the 2010 Rules, the petitioner's pay scale was increased to the pay band of Rs.12,000-40,000/- with grade pay of Rs.5,400/-. This was brought into effect w.e.f 01.01.2006, and as such after the petitioner have become a Central Government Employee, his pay band could not have been reduced to Rs.9,300-34,800/- with grade pay of Rs.4,800/- inasmuch as the same would violate the principle of pay protection.

11. On the other hand, Mr. D.Gogoi, the learned counsel appearing on behalf of the respondent No.6 had submitted that the petitioner was absorbed as a Central Government employee w.e.f 09.03.2009. The Central Government had accepted the 6th pay recommendation w.e.f 01.01.2009. In terms with the Central Rules of 2008, there was not an exact match to pay the band of Rs.4,390-90-11,425/-, which was enjoyed by the petitioner prior to conversion. However, the corresponding pre-revised pay scale for the Central Government Employee was Rs.7,500-250-12,000/-. Accordingly, in terms with the revision so carried out as per the Central Rules of 2008, the revised pay band for Rs.7,500-250-12,000/- was Rs.9,300-34,800/- with grade pay of Rs.4,800/-, and accordingly, the petitioner's pay has been fixed in terms of the Rules of 2008. He further submitted that the question of pay fixation is evaluated and determined by an expert body and interference with the same would have a cascading effect creating all kinds of problem for the Government and the Authorities. In the backdrop of the above contentions, the learned counsel for the respondent No.6

submitted that this Court in exercise of the powers under Article 226 of the Constitution of India has kept in mind that granting of pay scale is a purely executive function and the Court ought not to interfere with the same.

12. In the backdrop of the above, it would be seen that the petitioner was enjoying a pay band of Rs.4,300-90-11,425/- at the time of absorption as a Central Government Employee. At that relevant point of time, the Central Government employees were already enjoying the revised pay scale in terms with the 6th pay recommendation. A perusal of the Central Rules of 2008 shows that there is no corresponding pay band of Rs.4,390-90-11,425/- and the pay band which can be applied was Rs.7,500-250-12,000/-. Accordingly, the authorities concerned have applied the said pre-revised band of Rs.7,500-250-12,000/- and fixed the revised pay of the petitioner at Rs.9,300-34,800/- along with grade pay of Rs.4,800/- w.e.f March, 2009. Subsequent thereto, the Rules of 2010 of the State of Assam had revised the pay band of Rs.4,300-90-11,425/- in the pay band of Rs.12,000-14,000/- with grade pay of Rs.5,400/-. This came into effect from 01.06.2006 but the Rules of 2010 was brought by way of a Notification on 04.02.2010. Under such circumstances, the petitioner would definitely be entitled for the pay band of Rs.12,400-40,000/- with grade pay of Rs.5,400/- for the period from 01.01.2006 to 09.03.2009. However, for the period after that as the petitioner comes within ambit of the Rules of 2008 and his corresponding pre-revised pay was Rs.7,500-250-12,000/- which was in the similar band with Rs.4,300-90-11,425/-, the petitioner's entitlement to the revised pay band can only be Rs.9,300-34,800/- with grade pay of Rs.4,800/-. Any interference with the same as sought for by the petitioner would have the effect of changing the entire pay bands as notified by the Central Rules of 2008, which was based upon the recommendation by an expert body i.e., the Pay Commission. Under such circumstances, this Court is of the opinion that the respondent authorities more particularly the respondent No.6 have rightly fixed the pay band of the petitioner at Rs.9,300-34,800/- with grade pay of Rs.4,800/-.

13. The next question which arises as to whether the petitioner is entitled to claim 'equal pay for equal work', taking into consideration that the petitioner discharges similar function and work as that of similarly situated employees of Indian Institute of Technology, Guwahati and Indian Institute of Technology, Kharagpur etc., who enjoys the pay band-3 and given pay scale of Rs.15,600-39,100/- along with the grade pay of Rs.5,400/-. The learned counsel for the petitioner had submitted that the petitioner is holding the post of Technical Officer-B in the Physical Science Division of the IASST. The petitioner had submitted his Ph.D Thesis on March 2009 and had obtained the Ph.D. Degree from the Gauhati University Experimental Dusty Plasma Physics in the year 2010. He submits that for Technical Officer Grade-II in the Indian Institute of Technology similar qualifications and experience are required for appointment. He submits that, the petitioner is rendering similar services as has been done by his counter parts who are the employees of the Indian Institute of Technology,

Guwahati and Other Indian Institute of Technologies and counter parts are enjoying the Pay Band-3 and given pay scale of Rs.15,600-39,100/- along with grade pay of Rs.5,400/-. On the other hand, Mr. D.Gogoi, the learned counsel appearing on behalf of the respondent No.6 submits that the petitioner was recruited as a Central Government Employee on the basis of his post being converted from the Government of Assam to the Central Government and as such the petitioner's recruitment cannot be equated with direct/regular employment to the various institutions referred to by the petitioner. He further submitted that the petitioner's services are not transferable whereas, the Technical Officers Grade-II who are appointed to the Indian Institute of Technology are transferred from one place to other and as such the distinction which have been drawn of not giving 'equal pay for equal work' is based upon and intelligible differentia for which the same need not be interfered with by this Court.

14. The answer to the said contentions can be found from the judgment of the Supreme Court in the case of State of Bihar & Ors. Vs. Bihar Secondary Teachers Struggle Committee, Munger & Ors. reported in (2019) 18 SCC 301, wherein, the Supreme Court was dealing with the nature and duties performed by the Niyojit Teachers with the Government Teachers. In Paragraph No.87 of the said judgment, the Supreme Court had categorically observed that the Niyojit Teachers as well as Government Teachers performed the same nature of duties and both the set of Teachers taught in the same school as well as the same syllabus. The Supreme Court in the said judgment referred to the earlier case laws in copious detail. In doing so in paragraph No.96.9, the Supreme Court observed that before entertaining and accepting the claim based on the principle of 'equal pay for equal work' the Court must consider the factors like the source and the mode of recruitment/ appointment. This Court finds it relevant at this stage to refer to paragraph Nos. 100,101,102 of the said judgment, which are reproduced herein below:

"100. We may, at this stage, deal with the submission advanced on behalf of the State that the decision in Jagjit Singh did not take into account the earlier decisions rendered by this Court in State of Punjab v. Joginder Singh and Zabar Singh v. State of Haryana :

100.1. In the first case, respondent Joginder Singh was working as a teacher in a District Board High School in Hoshiarpur before 1-10-1957. By reason of government decision taken in September 1957, which came into effect on 1-10-1957 all teachers like respondent Joginder Singh, employed in District Board and Municipal Board schools, became State employees. Before such decision was taken, the State had decided to have two categories of teachers working in the State service. 15% of the total strength of teachers were put in a middle scale of a salary scale while the rest of 85% were put in a lower scale. The former, thus, had better chances of promotion to further levels. After taking over the schools run by District Board and Municipal Boards, which was called

"provincialisation" the teachers like respondent Joginder Singh, though became State employees, were part of cadre of provincialised teachers which was distinct from the cadre of State teachers. A decision was also taken not to make any further appointments in the provincialised cadre and thus the said cadre was to be a dying or vanishing cadre. It was also decided that the provincialised cadre would stand bifurcated on the same pattern of 15 : 85 as was done in the State cadre but any retirements in the provincialised cadre would not result in fresh appointments in that cadre but the appropriate number would get added to the State cadre and fresh appointments would be made only in the State cadre. It must be noted that the employees in both the cadres were given the same pay scale but their chances of promotion were completely different. The submission that with the passage of time, the strength of provincialised cadre would keep reducing and as such, the chances of promotion and being part of 15% group would keep diminishing and as such the employees in provincialised cadre would be put to prejudice was accepted by the High Court. It was observed by this Court in *State of Punjab v. Joginder Singh* as under : (AIR pp. 921-22, paras 21-24)

"21., It No. remains to consider a point which was raised that the State cannot constitute two Services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service and that the constitution of such services would be violative of Article 14. Underlying this submission are two postulates : (1) equal work must receive equal pay, and

(2) if there be equality in pay and work there have to be equal conditions of service. So far as the first proposition is concerned it has been definitely ruled out by this Court in *Kishori Mohanlal Bakshi v. Union of India*. Das Gupta, J. speaking for the Court said : (AIR p. 1141, para 3)

'3. The only other contention raised is that there is discrimination between Class I and Class II officers inasmuch as though they do the same kind of work their pay scales are different. This, it is said, violates Article 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Article 14. The contention that Article 14 of the Constitution has been violated, therefore, also fails.'

The second also, is, in our opinion, unsound. If, for instance, an existing service is recruited on the basis of a certain qualification, the creation of another service for doing the same work, it might be in the same way but with better prospects of promotion cannot be said to be unconstitutional, and the fact that the rules framed permit free transfers of personnel of the two groups to places held by the other would not make any difference. We are not basing this answer on any theory that if a government servant enters into any contract regulating the conditions of his service he cannot call in aid the constitutional guarantees because he is bound by his contract. But this conclusion rests on different and wider public grounds viz. that the Government which is carrying on the

administration has necessarily to have a choice in the constitution of the services to man the administration and that the limitations imposed by the constitution are not such as to preclude the creation of such services. Besides, there might, for instance, be a temporary recruitment to meet an exigency or an emergency which is not expected to last for any appreciable period of time. To deny to the Government the power to recruit temporary staff drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by different rules and conditions of service, it might be including promotions, would be to impose restraints on the manner of administration which we believe was not intended by the Constitution. For the purpose of the decision of this appeal the question here discussed is rather academic but we are expressing ourselves on it in view of the arguments addressed to us.

22. Besides the disparity in the chances of promotion between teachers of the provincialised and the State Cadre created by Rule 3 of the impugned rules, the learned Judges of the High Court have held that there was a further disparity by reason of the teachers of the State Cadre being borne on a divisional list, while under the rules the inter se seniority and promotions of "provincialised" teachers was determined district wise. It was pointed out by the learned Solicitor General for the appellant that the State Cadre was kept on a divisional basis because of the very small number of the members of that Service, whereas it was found administratively inconvenient to have a similar geographical classification of members of the provincialised service and for that reason and no other, district wise seniority, promotion and transfers was laid down for provincialised teachers. The learned counsel for the respondent did not rely on this reasoning of the learned Judges of the High Court in deciding the case now under appeal. We therefore do not consider it necessary to make any further reference to it.

23. As we have stated already, the two services started as independent services. The qualifications prescribed for entry into each were different, the method of recruitment and the machinery for the same were also different and the general qualifications possessed by and large by the members of each class being different, they started as two distinct classes. If the Government Order of 27-9-1957 did not integrate them into a single service, it would follow that the two remained as they started as two distinct services. If they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Article 14 or Article 16(1). They started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity, for it is common ground that within each group there is no denial of that freedom guaranteed by the two articles. The foundation therefore of the judgment of the learned Judges of the High Court that the impugned rules created two classes out of what was formerly a single class and introduced elements of discrimination between the two, has no factual basis if, as we hold the order of 27-9-1957 did not effectuate a complete integration of the two services. On this view it would follow that the impugned

rules cannot be struck down as violative of the Constitution.

24. Before concluding it is necessary to point out that, as explained earlier, the source of the prejudice caused by the impugned rules to the "provincialised" teachers lies not in the fact that the two cadres were kept separate but on account of the fact that the "provincialised" cadre was intended to be gradually extinguished. The real question for consideration would therefore be whether there was anything unconstitutional in the Government decision in the matter. In other words, had the respondent and his class any fundamental right to have their cadre strength maintained undiminished? This is capable of being answered only in the negative. If their cadre strength became diminished, the proportion thereof who could be in the grade viz. 15% of the total strength being predetermined, there must necessarily be a progressive reduction in the number of selection posts. In other words a mere reduction of cadre strength would bring about that result and unless the respondent could establish that the Government were bound in Law to fill up all vacancies in the provincialised cadre by fresh recruitment to that cadre and thus keep its strength at the level at which it was on 1-10-1957, he should fail. It is manifest that such a contention is obviously untenable."

100.2. In the second decision it was contended that the decision of the Constitution Bench in Joginder Singh case required reconsideration and as such a Bench of seven Judges was constituted which dealt with the matter in Zabar Singh v. State of Haryana. The discussion in paras 27 to 30, 32 to 33 and 35, 36 and 40 was as under : (Zabar Singh case, SCC pp. 289-93 & 295)

"27.The position which emerges from the aforesaid analysis is that prior to 1-10-1957, the two categories of teachers, those serving in the local bodies schools and those in government schools were distinct. Though the minimum qualifications and scales of pay might have been uniform, there were differences in other matters such as methods of recruitment, retiral benefits, rules for determining seniority, etc. It is also clear that whereas a government school teacher was liable to be transferred to any place throughout the Commissioner's division, a local body teacher could only be transferred within the territorial limits of that body. Appointments in Local Bodies schools, no doubt, were made by Inspectors appointed by Government, but they could do so only in consultation with the Chairman or President of such a body. That was the position also in regard to disciplinary matters. Further, although the prescribed minimum qualifications were the same, in point of fact 50% or more of the Local Bodies teachers were non-matriculates and quite a number of such non-matriculate teachers were also without the qualification of basic training as against a few non-matriculates and none without such basic training in the government schools. In any event the mere fact that minimum qualifications and scales of pay were the same could not mean, in view of other dissimilar conditions of service, that the two categories of teachers formed one class. Indeed, Mr Tarkunde conceded, as is even otherwise clear, that prior to 1-10-1957, teachers in local bodies and in

government schools did not form one class.

28. So far as the position on 1-10-1957, is concerned, as already noticed, the Government schools teachers were and continued to be governed by the Rules of 1955, which, no doubt, came into force with effect from 30-5-1957 and which prescribed the minimum qualifications as Matriculation in addition to Basic Training. Government school teachers who, under the 1937 Rules, were recruited by the Director of Public Instruction, were since 1954 selected by the Selection Board after their initial pay had been raised from Rs 47½ to Rs 50 per month. The Local Bodies teachers, on the other hand, were recruited by Inspectors in consultation with the Presidents or Chairmen of those bodies till July 1957 when fresh appointments in vacancies falling in those schools were stopped. Under the new Rules of 1955, Government provided for a selection grade for 15% posts. In fact, such a grade was given to them even before the 1955 Rules were framed and the new rules merely continued that benefit. Broadly speaking, the position on 1-10-1957, was that the two categories of teachers formed distinct classes. Though they were performing similar duties, they could not be said to form one integrated class.

29. The question then is, whether in spite of the Government school teachers and the provincialised teachers forming two distinct classes on 1-10-1957, they were, during the period between that date and 13-2-1961, integrated into one class, which was split up into two cadres by those Rules? It would perhaps appear from the statement of the Education Minister made at the Press Conference on the eve of provincialisation that Government had in the beginning the idea of bringing about integration between the two types of teachers. But no such concrete decision was ever taken. A few dates at this stage may clarify the position. As aforesaid, the decision to provincialise the local bodies schools was taken on 19-7-1957. In pursuance of that decision, the Government on 2-8-1957, placed a ban against any fresh recruitment of teachers in the Local Bodies schools. On 27-9-1957, the Governor sanctioned the scheme of provincialisation and at the same time sanctioned 20,000 and odd new posts to absorb the existing staff of the provincialised schools. Simultaneously with the provincialisation, the Government on 1-10-1957, gave the same scales of pay to the provincialised teachers as were available to government schools teachers. The problem, however, was how to fix and adjust the provincialised teachers in government service and fix their inter se seniority as also their seniority vis-à-vis the government schools teachers.

30. It is fairly clear from the memorandum published along with the 1961 Rules that Government was seeking to discover a proper formula to solve these questions. This process was, it appears, going on since 23-11-1959, when alternative proposals were framed for discussion and those proposals were communicated to the recognised associations of the teachers. Since no agreed consensus was forthcoming from the teachers themselves, Government formed its own decisions as formulated by the Secretary, Education Department in his

letter of 27-1-1960, to the Director of Public Instruction. These decisions were made around three basic principles : (i) that the two cadres will continue to be separate as before; (ii) that the provincialised cadre would be a diminishing cadre; and (iii) following upon (i) and (ii), vacancies arising as a result of promotions, retirements, resignations, etc., in the provincialised cadre should be transferred to the State cadre so that ultimately after about thirty years the provincialised cadre would vanish altogether leaving the State cadre alone in the field. These events leave no doubt that at no time after 1-10-1957, any decision for integrating the two categories of teachers was taken although after 1-10-1957, new teachers were appointed and posted in both the provincialised as well as government schools who carried out the same duties and were given the same scales of pay as the provincialised teachers. But such new teachers had to be deemed to have been appointed in the State cadre by reason of the two principles decided upon by the Government, (i) the diminishing character of the provincialized cadre, and (ii) that cadre having been frozen from even before 1-10-1957. Thus, the two categories continued to be separate and were never integrated. The Government schools teachers and those appointed after 1-10-1957, were governed by the 1955 Rules while the provincialised teachers continued to be presumably governed by the District Boards' Rules until new rules were framed for them by Government. Thus the Rules of 1961 could not be said to have split up the teachers, who formed one integrated cadre into two new cadres. These Rules had to be made as the inter- seniority among provincialised teachers appointed by different local bodies in different districts had to be determined and their position in the service had to be adjusted. The Rules were framed on the principles formulated in the decisions taken by the Government on 27-7-1960.

32. It will be observed that though the provincialised teachers were given the same scales of pay as the teachers in the State cadre, the Rules provided that unlike the latter they could be transferred only within the district where they were serving. Those who were already confirmed prior to the provincialisation were also deemed to be confirmed under these Rules. That meant that for purposes of their seniority their entire service, including service before such confirmation would be taken into account, except that inter se seniority of those promoted to the selection grade was to be determined from the date of their confirmation in that grade.

33. Thus, although the teachers in both the cadres were given the same scales of pay and did the same kind of work and those appointed after 1-10-1957, were posted and worked in the same provincialised schools as teachers in the provincialised cadre, the fact was that the State cadre teachers were and continued to be governed by the 1955 Rules while the provincialised teachers were governed by the 1961 Rules. This fact, coupled with the fact that one was a district and the other a divisional cadre, meant that the two cadres continued to

be separate cadres as before. The principal effect of the new Rules, however, was that the number of posts in the cadre would gradually diminish and together with that the total number of posts in the selection grade, despite the percentage of fifteen remaining intact. But that was the inevitable result of the freezing of the cadre, on the one hand, and its being a diminishing cadre on the other. The State cadre became correspondingly an expanding cadre, the total number of posts for all the schools, Government and provincialised, remaining more or less constant.

35. The controversy thus really turns on the question whether the Government was bound to integrate the two categories of teachers into one and not to continue them as separate cadres as before, and whether its refusal to do so meant violation either of Article 14 or Article 16. It is true that notwithstanding this Court upholding the validity of the 1961 Rules in *State of Punjab v. Joginder Singh*, the then Government of Punjab in 1965 adopted a uniform running scale for both the cadres of Rs 60-Rs 175 with a common 15% for higher grade posts. But that decision has nothing to do with the question of the validity of the 1961 Rules, and if those Rules were valid, with the validity of the decision of the new State of Haryana to implement those Rules instead of the common running scale adopted by Punjab State.

36. The principles on which discrimination and breach of Articles 14 and 16 can be said to result have been by now so well settled that we do not think it necessary to repeat them here once again. As already seen, ever since 1937 and even before, the two categories of teachers have always remained distinct, governed by different sets of rules, recruited by different authorities and having, otherwise than in the matters of pay scales and qualifications, different conditions of service. This position remained as late as 13-2-1961. On that day whereas the State cadre teachers were governed by the 1955 Rules, rules had yet to be framed for the provincialised teachers. The two cadres thus being separate, the Government was not bound to bring about an integrated cadre especially in view of its decision of making the provincialised cadre a diminishing one and bringing about ultimately through that principle one cadre only in the field in a phased manner. If through historical reasons the teachers had remained in two separate categories, the classification of the provincialised teachers into a separate cadre could not be said to infringe Article 14 or Article 16. It was also not incumbent on the Government to frame the 1961 Rules uniformly applicable to both the categories of teachers, firstly, because a rule-framing authority need not legislate for all the categories and can select for which category to legislate (see *Sakhawant Ali v. State of Orissa*, *Madhubhai Amathalal Gandhi v. Union of India* and *Vivian Joseph Ferreira v. Municipal Corpn. of Greater Bombay*) and secondly, because it had already come to a decision of gradually diminishing the provincialised cadre so that ultimately only the State cadre would remain in the service. That was one way of solving the intricate difficulty of inter-seniority. There can be no doubt that if there are two categories of employees, it is within

the Government's power to recruit in one and not recruit in the other. There is no right in a government employee to compel it to make fresh appointments in the cadre to which he belongs. It cannot also be disputed that Government had the power to make rules with retrospective effect, and therefore, could provide therein that appointments made between 1-10-1957 and 13-2-1961, shall be treated as appointments in the State cadre. That had to be done for the simple reason that the provincialised cadre was already frozen even before 1-10-1957 and Government had decided not to make fresh appointments in that cadre since that cadre was to be a diminishing one.

40. Regarding Respondents 37 to 96, all of them were appointed after provincialisation. They are junior in service than the petitioners and some others in the provincialised cadre. But their case is not comparable, for, they were appointed under the 1955 Rules and through the recruitment authorities prescribed under those rules i.e. the Selection Board. Obviously, they could not be appointed in the provincialised cadre as that had been frozen even before 1-10-1957. They may have been posted in the provincialised schools but that cannot mean that they were appointed in that cadre. Their appointment being in a separate cadre, it is impossible to say that they were similarly situated. By reason of their recruitment in the State cadre, their conditions of service, including their promotional chances and their seniority would be governed by the 1955 Rules and would only be comparable to those in that cadre only."

101. Heavy reliance was placed on the aforesaid decisions by the learned Attorney General and the learned counsel who appeared for the State. It was submitted that though the teachers in provincialised cadre and the State cadre were doing similar duties and discharging identical responsibilities and though, they were as a matter of fact drawing similar pay and emoluments, the services were considered to be distinct and different. The feature that one of the cadres was to be a dying or vanishing cadre was also present in those cases. It was accepted by this Court that the State was within its rights to let a particular service or cadre be a dying or vanishing cadre and keep making appointments in other service while maintaining distinct identities of both the services, even when the teachers coming from both the cadres were doing identical jobs. Though, strictly speaking, those two matters did not involve concept of "equal pay for equal work", these cases do point that the State can validly make such distinction or differentiation. The learned Attorney General and the learned counsel appearing for the State were, therefore, justified in placing reliance on these two decisions. It is also evident that the subsequent judgments have not noted the decisions of this Court in Joginder Singh and Zabar Singh. For the purposes of present discussion, we will proceed on the basis that even when the teachers from both the cadres were discharging similar duties and responsibilities, the decision of the State Government to maintain different identities of these two cadres was not found objectionable by this Court and further there could be inter

se distinctions between these two cadres. It is true that both the cadres were enjoying same pay structure but the submission that the chances of promotion ought to be similar was not accepted by the Court.

102. We must also consider observations of this Court in para 12 in its decision in Finance Deptt.v. W.B. Registration Service Assn., which bring out how a "pay structure" is evolved. The relevant portion of the said paragraph was : (SCC p. 166)

"12. ... Ordinarily a pay structure is evolved keeping in mind several factors e.g. (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchical arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well."

15. From the above quoted paragraph of the said judgment, it would transpire that the mode of recruitment can be taken as a factor for the purpose of accepting or rejecting the claim based on the principle of 'equal pay for equal work'. It would also be relevant herein to take note of that the petitioner's service is not transferable whereas, the service of the Technical Officers Grade II are transferable and as such, they fall in a different class from that of the petitioner.

16. Further, the mode of recruitment as a Central Government Employee of the petitioner with that of other persons who are employed in the IIT's is also distinct and different in as much as the petitioner's services were converted from a Government of Assam employee to a Central Government Employee whereas persons in the IIT's are recruited by either direct recruitment/promotion. It cannot also be lost sight of that the Pay Band No.3 as was sought for by the petitioner is given to the Assistant Professors and services of Technical Grade B cannot be equated with Assistant Professors. Considering the above, this Court is therefore of the opinion that the question of giving pay parity to the petitioner with similarly situated Technical Officers Grade-II of the Indian Institute of Technology, Guwahati or other Institutes of Technology cannot be applied to the case of the petitioner.

17. In view of the above observations, this Court therefore do not find any merit in the writ petition for which the instant writ petition stands dismissed.

18. The service book so produced by the learned counsel for the respondent No.6 is returned.