

(1977) 04 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 629 of 1975

R.C. Sharma and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-04-1977

Acts Referred:

Citation : (1978) ILR Delhi 175

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : D.K. Kapur, D.P. Sharma, K.S. Bindra and R.P. Sharma, for the Appellant;

Judgement

D.K. Kapur, J.

(1) This petition under Article 226 of the Constitution has been moved by as many as 32 petitioners. Initially, there were six respondents, but later on by amendment a 7th respondent Shri R. N. Goswamy was added to the array of parties. The petitioners are all Language Teachers serving in various schools in Delhi under the Department of Education in the Union Territory of Delhi. The petition has set out the history of each one of the petitioners but, it is not necessary to reproduce the entire history of all the petitioners. The basic facts in each case can be summed up in a very few words. With a change of dates, the facts are common to all the petitioners. Each one of the petitioners was appointed as a Language Teacher in the scale of Rs. 100-250. There were at that time two categories of teachers teaching languages-one lot in the pay scale of Rs. 100-250 and another not in the pay scale of Rs. 120-300. There were thus two classes of Language Teachers. It also appears from the submissions made before me that in certain cases, teachers in the grade Rs. 100-250 used to be promoted into the other grade with a pay scale of Rs. 120-300. The Second Pay Commission recommended that the pay scale of the two sets of teachers should be revised to Rs. 160-300 and Rs. 170-380, respectively. The petitioners were first placed in the scale of Rs. 160-300, but later the qualifications held by them

were recognised and hence they entered the pay scale of Rs. 170-380, which was on par with the pay scale of other Language Teachers. Still later, many of the petitioners have been posted to a still higher grade, i.e., to the post of Post Graduate Teacher in the pay scale of Rs. 350-700. The question for decision in this case is as to where the petitioners rank in seniority qua the teachers who were already in the pay scale of Rs. 170-380, at the time of the integration of the two groups. The petition, Therefore, raises a point of great general importance concerning all the teachers serving as Language Teachers in Delhi.

(2) It seems from the fact set out in the petition that a seniority list called the final seniority list of teachers working in the scale of Rs. 190-425 was prepared in April, 1970. This list was prepared after considering various objections. The list as finally settled is annexure "L" to the petition. It seems that there was no challenge to this seniority list for a considerable period but, later on there were certain changes made in the list. For instance, the position of Shri B. D. Sharma, respondent No. 5 is alleged to have been altered from 1326 to 305A. Similarly, the seniority of Shri R. N. Goswamy, which was at No. 470A was altered to 121 A. This respondent has appeared in this Court and has alleged that actually he was never in the seniority list at all and hence his re-fixation of seniority is a mistake. I find from annexure "P-15" which is a circular issued by the Joint Director of Education, Delhi, that Shri R. N. Goswamy's seniority position was changed from 470A to 121A, although he was not in the list at all in 1970.

(3) The present Writ Petition was filed in 1975, although the seniority list was settled in April, 1970. Hence, one of the questions that is raised in this petition by the respondents is that this is a very much delayed petition. However, the cause of action in this case has arisen as a result of certain representations which had been made by the petitioners at various stages claiming that their seniority had not been properly fixed. The case of the petitioners is entirely based on the seniority rules issued in 1954, which are called the Delhi State Service (Seniority) Rules, 1954. These rules show the manner in which the inter se seniority of various persons in a service has to be fixed. It is also shown that in 1973, the Chief Secretary of Delhi Administration wrote to the Heads of all Departments indicating that it was desirable that the seniority lists should be framed in accordance with the Rules of 1954. It was pointed out in that letter that though the Delhi Administration (Seniority) Rules, 1965 had come into force from 31 st July, 1965, employees appointed prior to that date should have their seniority determined in the light of the previous Rules. It was stated :-

"The position of continuing the Joint seniority lists thus prepared on the advice of the Government of India was examined and it was found legally binding to reconstruct them to in strict compliance of the provisions of the respective seniority Rules of 1954 and the 1965."

There were then other letters showing that the seniority list should be reconstructed in accordance with the Rules of 1954 and 1965. After that, many of the petitioners have also been making representations for having their

seniority refixed in the light of the Rules. Letters of many of the petitioners in this respect making a representation and claiming the assigning of a new seniority have been filed along with the petition. According to the petitioners, the real controversy in this case is that a selection grade has to be granted by the Departmental Promotion Committee on the basis of the seniority lists. If the seniority lists are not correct, then this grade cannot be properly granted. As a subsidiary question, the change of the seniority of respondents Nos. 5 and 7 has been relied upon to show that the lists as framed are not sacrosanct.

(4) There is not much dispute on the facts although there are a lot of documents on the record and I must confess there is great deal of confusion as to the questions involved in the case. Respondent No. 7 is opposed to any change in the seniority list and as he was appearing in person and the question was of some difficulty, Mr. R. P. Sharma, Advocate offered to appear amicus curiae for respondent No. 7 and he has addressed me on many questions that arise in this case.

(5) The principal question; and indeed, the only question that requires decision is, as to how the seniority list should be prepared in view of the integration of two classes of Language Teachers brought about by the integration of the pay scales. In this respect, the relevant portions of the Delhi State Service (Seniority) Rules, 1954, have to be referred to. Rule 2 defines "grade" as follows :-

"(2). "Grade" means a post or a group of posts created for work of the same nature in the 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 purpose of these rules."

The question of seniority and its fixation is dealt with by Rule 4. which reads :-

"4. (1) Members of a grade who were holding a lien or a lien on a permanent post in that grade on the 31-12-1953 shall retain their seniority inter se unchanged and shall rank senior to other members of that grade. (2) The inter se seniority among members of a grade who became permanent on or after 1-1-1954 and temporary qualified members of the grade shall be fixed in accordance with the continuous length of their service in that grade. Explanation : A person who is selected by the Central Staff Selection Board (As a result of a test, interview or other wise) and is declared to be approved for grade shall be deemed to be qualified. (3) The inter se seniority of temporary unqualified members of a grade shall be fixed on the basis of length of continuous service in the grade and such members shall rank junior to those referred to in sub-rule (2) of this rule"

Then there are other Rules which are also of help in deciding any subsidiary question that might arise in this respect and I quote Rules 5 and 6, which are as follows :-

"5.(1). The length of service in a grade referred to in rule 4 shall include service in an equivalent grade irrespective of the fact whether the latter service was rendered in a substantive or officiating capacity or was under the Central Government, the Government of any State or the Government of any province as constituted prior to 15-8-1947. Provided that as between any two Government servants with the same length of service reckoned as above, the one who is older in age shall rank senior to the other. Provided further that where a person selected for appointment to a grade on the basis of an examination, test, interview or otherwise is prevented from joining his post due to delay caused by circumstances beyond his control, the appointing authority may at its discretion direct that inter se seniority shall be fixed in accordance with the order of merit accorded to him by the selecting authority. (2) The following service shall count as "service in an equivalent grade" for the purpose of sub-rule (1) :- (a) Service on a rate of pay higher than the minimum of time scale of the grade in which the seniority is to be fixed. (b) Service in any grade which may be declared by a competent authority to be equivalent to the grade in which seniority is to be fixed. Where a strict application of the rules creates anomalies or gives rise to hardships or is not in the interest of service, the State Government reserves to themselves the right to make such modifications in fixing seniority as they consider necessary in the circumstances of each case."

(6) The case of the petitioner is that they have been Language Teachers from the date of their appointment in the scale of Rs. 100-250. It is also claimed that after the pay scale was revised and the two groups of Language Teachers became one group, the petitioners must be deemed to have entered the group on the date of their initial appointment and not on the date when the two groups were integrated. Thus, the question to be decided on principle, is : What is the length of the service of the petitioners in the grade ? To illustrate this point: one may take up the case of petitioner No. 1. His name is Shri R. C. Sharma. He is shown at No. 274 in the impugned seniority list. He became a Language Teacher on 25th November, 1954. The integration of the pay scales became effective from 6th September, 1962. He is shown in the joint seniority list to have joined the service on 6th September, 1962, and hence, all other persons who joined service before 6th September, 1962 in the grade of Rs. 170-380 have been shown as seniors to him. There are a number of similar anomalies not only in the case of the petitioners but, in the case of many other persons who are not petitioners. It is quite apparent that the first petitioner had put in nearly eight years of service as a Language Teacher when his pay scale was raised on 6th September, 1972. On the other hand, Shri Dharam Dev Nandal appearing at No. 260 in the seniority list joined the service on 27th August, 1962 for the first time in the higher scale and he has been ranked senior to the first petitioner. The first petitioner is 15 years older than the said Shri Dharam Dev Nandal and had put in eight years service on 6th September, 1962, whereas Shri Dharam Dev Nandal had put in only a few days. It may be noticed that the first petitioner and the other petitioners are carrying on exactly the same jobs and are teaching the

subjects as they used to teach before. The question for consideration, Therefore, is : Are the petitioners deemed to have joined the grade on 6th September, 1962, or are they to be deemed to have joined the grade on the date they became Language Teachers ?

(7) There are several subsidiary questions that require analysis. One of the points is that a number of persons who are not parties to the petition will be effected by any order that this Court may pass. The second question is that some of the persons who were in the upper scale of Rs. 170-380 had previously been in the scale of Rs. 100-250, and Therefore, their entry into the higher scale was a promotion from the lower scale. However, on account of the integration of the two grades, it has become one grade. I must confess, that this question presents a problem of unusual difficulty, because there is no principle of law that seems to apply to the situation in question. As far as the joining of other parties is concerned, I think that this is not important in the present case, because what is being attacked is not the assignment of the seniority, but the principle on which the seniority list has been prepared. It is quite apparent that all the petitioners who were integrated were given seniority from 6th September, 1962, and although there are only 32 petitioners, there are many other persons who have been effected, by having their seniority determined on the basis that they entered service on the date on which the integration became effective, rather than their date of initial appointment.

(8) The first question for decision is whether the petition must fail because all the other persons who might be affected by the grant of the petition have not been joined either as petitioners or respondents in this case. An examination of the seniority list shows that practically all the persons now working as Language Teachers will be effected by any decision given in this Writ Petition. The number of persons shown in the list filed as annexure "L" is 632. However, there may be even more persons effected, because the seniority of respondent No. 5 was altered from 1,326 to 305-A. It would follow that all the Language Teachers serving under the Education Department in Delhi would have to be joined as parties to this Writ Petition if it is held that the petitioners cannot get relief except by joining all the persons effected by a possible acceptance of their Writ Petition. As far as can see, there are two well-established lines of cases which have a bearing on this subject. The first line of cases is that if the seniority of a person is to be re-assigned, then the entire group of persons effected by that re-assignment should be joined as parties. The other line of cases is that if the seniority has been fixed wrongly, in the sense that the entire list is defective, then the other parties effected by the striking down of the list need not be joined. The difference between these two lines of cases, to my mind, is that in one case, the challenge is not to the principle on which the list has been prepared, but on the manner in which the principles have been applied. For instance, if seniority has to be assigned, say, from the date of joining the service, and in actual practice this date has been taken incorrectly, then only the persons effected by making the correction have to be joined. The other case is one where

the principles themselves have been overlooked or wrong principles have been applied. For example, if as in the present case, the date of joining a particular grade is the test given in the Rules. If the seniority list is fixed (say) on the principle of date of joining, then the senior-most person will be the oldest and the entire list will be defective, because it will have been made in utter disregard of the rules under which it had to be made. In such a case, the list itself will be void and there will be no necessity to join any one. That is how I understand the case-law.

(9) I now refer to the case, *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, , where this point has been examined by the Supreme Court. It is sufficient to set down the conclusions of the Court in extenso :-

"As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc. of the employees of the erstwhile Grain-Shop departments. The Respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952, were, at the most, proper parties, and not necessary parties, and their non-joinder could not be fatal to the writ petition. The ratio of this Court's decision in *Padarn Singh Jhina's* case, Civil Appeal No. 405 of 1967, D/14-8-1967 (SC) (*Supra*) is not applicable to the facts of the instant case. Jhina's contention was that he had been mala fide reduced in the list of seniority, from the 5th to the 7th place and that one Prem Sagar had been placed above him in contravention of the Rules. The validity or validity of the Rules was not in question. All the persons whose placement in the seniority list was converted were not impleaded, and as such, had no opportunity of replying to the case set up by Jhina, and, in the absence of persons directly affected, it was not possible for the Court to adjudicate the matter. The ratio of Jhina's case does not help the appellant. The cases relevant for our purpose are *B. Gopalaiah and Others Vs. Government of Andhra Pradesh and Another*, , *J. S. Sachdev v. Reserve Bank of India*, New Delhi, New (1973) 2 Delhi 392 and *Mohan Chandra Joshi v. Union of India*, Civil Writ No. 550 of 1970 (Delhi) (4) we approve of the rule enunciated on this point in those cases."

The above observations show that the Court drew a distinction between a case where a mere placement in the seniority list was sought to be altered and case in which the whole list was challenged. This case, to my mind, fully covers the question raised in the present case. The petitioners do not merely challenge the assignment of seniority given to them, but they also challenge the principles on which the list has been drawn up. They say that the list has not been prepared in accordance with the Rules. Whether they are right or wrong in this contention has to be examined subsequently; but, this is their contention. The challenge is based on the contention that the seniority has been assigned in this list on the basis of entry into the scale of Rs. 170-380 and not on the basis of the date on which each person was appointed as a Language Teacher. They say the correct procedure is to determine the date of appointment and settle seniority accordingly. If the contention is correct, then the entire seniority list is void. If the contention is incorrect, then the petition fails in any case. In the circumstances, I come to the conclusion that it is not necessary for the petitioners to join all the other Language Teachers as petitioners or respondents in this case. If this petition is allowed, then a fresh seniority list will have to be drawn up by applying the correct legal principles.

(10) The next question for examination is, as to what is to happen to persons who have previously been brought to the grade of Rs. 170-380 from the grade of Rs. 100-250. I feel that these persons would also not be much affected by any order now recorded, because they also would get the advantage of having their seniority fixed on the basis of their original entry into the grade Rs. 100-250 and not on the basis of their entry into the scale of Rs. 170-380. That being so, I can now proceed to deal with the basic question which is concerned with the application of the Rules of 1954 to the integrated service as brought into being in 1962, or thereabouts.

(11) It is now necessary to analyze the facts in some detail. It is necessary to trace the history of the changes which have taken place in the service. For this purpose, the affidavit of Shri A. Biswas, Director of Education, Delhi Administration, filed in opposition to the petition is very relevant. The complete facts are set out in this affidavit. Originally, there were two grades of Language Teachers Grade I, taught class Xi was in the scale of Rs. 200-400. Grade Ii, taught classes Vi to X, but enjoyed two different scales of pay which were Rs. 120-300 and Rs. 100-250. The persons in the scale of Rs. 120-300 were those who held a degree or a Teaching Diploma or had 15 years teaching experience ; others, not having these qualifications, were in the scale of Rs. 100-250. Thus, there were two scales enjoyed by Language Teachers dependent on their qualifications. The Second Pay Commission altered the pay scales from Rs. 120-300 and Rs. 100-250 to Rs. 170-380 and Rs. 160-300 respectively. The petitioners did not have the qualifications required to enter the scale of Rs. 170-380 and were, Therefore, in the scale of Rs. 160-300. However, the Second Pay Commission also recommended that the qualification of Shastri should be recognised by the Government of India as being equivalent to a degree. This

principle was accepted by the Government of India on 6th September, 1962. Accordingly, the petitioners were placed in the grade of Rs. 170-380 with effect from 6th September, 1962. The affidavit also discloses that the qualification of Prabhakar was recognised by the Government of India as being equivalent to B.A. on 12th April, 1966, and accordingly some persons entered the grade of Rs. 170-380 on 12th April 1966. The affidavit seems to show that some of the petitioners entered the grade Rs, 170-380 in April, 1966, but unfortunately, I have not been able to make out from the petition or reply as to which of the petitioners entered the scale Rs. 170-380 in 1966, because as far as I can see, most of them entered that scale, according to the joint seniority list in September, 1962. However, for the purpose of discussion, I am going to assume that there are some petitioners who entered the scale of Rs. 170-380 in 1966, and even if there are no such petitioners, there may be some other persons who are not petitioners, who may have entered the scale in 1966. As the question for decision is an ascertainment of the principles on which the joint seniority list has to be prepared, any decision recorded in this case must also cater for all persons who entered the scale of Rs. 170-380 in April, 1966. as alleged in the counter-affidavit. The result of this discussion would Therefore be as follows : At first there were two scales of pay for Language Teachers-(a) Rs. 120-300, and (b) Rs. 100-250. These scales were raised to Rs. 170-380 and Rs. 160-300, respectively. Later, by a recognition of qualifications, some of the persons who were previously in the scale of Rs. 160-300 came into the scale of Rs. 170-380 not through promotion, but by a recognition of their qualifications. The recognition in this case seems to be that Shastri was treated as equivalent to M.A. and Prabhakar was treated as equivalent to B.A. Previously neither of these qualifications was treated as sufficient. Thus, there would be three classes of Language Teachers. Persons who were originally in the scale of Rs. 120-300, who got into the scale of Rs. 170-380 as a result of the Pay Commission's Recommendations teachers who were in the scale of Rs. 100-250 who got the scale of Rs. 160-300 as a result of the recommendations and who later entered the scale of Rs. 170-380 by reason of another recommendation being accepted to the effect that Shasiri was recognised as equivalent to M.A. Lastly, we have the class originally in the scale of Rs. 100-250, who got into the scale of Rs. 160-300 and then entered the scale of Rs. 170-380 when their qualification of Prabhakar was treated as equivalent to B.A. Thus, we have the case of three categories of Language Teachers who have been integrated in one single grade. The question posed for decision is as to how the seniority of these three groups should be arranged inter se. The actual principle followed in the impugned seniority list is to treat the persons who were originally in the scale of Rs. 120-300 as being graded senior to the other two groups. Similarly, the second group having the qualification Shastri is placed second and lastly, the group with the qualification of Prabhakar is placed at the bottom. In between these groups there may be other persons interposed, being fresh appointees, who can fairly be described as new entrants. The question for decision, Therefore, is whether this procedure for affixing seniority is one which is in accordance with the afore-quoted seniority Rules.

(12) Some judgments have been cited to show how the seniority has been ascertained in similar cases. In the judgment of the Supreme Court referred to earlier by me, *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, , certain administrative directions had been given concerning the staff in the temporary Grain Shop Department of the Railways which had originally been drawn from three different sources. On the winding up of the Department, differential treatment regarding the future seniority of the three groups had been given. Some of the directions were held to be valid by the Supreme Court and others were held to be invalid. In the present case. this question does not arise at all, because the Rule in question is Rule 4 of the Delhi State Service (Seniority) Rules, 1954, which merely states that the date of entry into the grade determines the seniority. At present. all the three sets of Language Teachers are in the same grade. This is not disputed by anyone. 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. The definition of "grade" shows that it means a group of posts created for work of the same nature. To my mind, all the petitioners and other Language Teachers were Language Teachers whether they enjoyed a lower scale of pay or a higher scale of pay. They thus formed a part of one single grade. Hence, their seniority has to be fixed on the basis of their original appointment and not on the basis of the date on which their scale of pay was raised. This conclusion is inevitable in view of the definition of "grade". It is quite possible to have persons in the same grade within the meaning of the definition who have different scales of pay. I do not think that the seniority in this case depends on the amount of salary, because all the petitioners as well as the other Language Teachers were doing the same work. It so happens, that the petitioners were getting a lower scale of pay, because they had not the necessary qualifications. Even if the scales had not been integrated, the inter se seniority would have to be determined from the date of appointment and not from the date of integration of scales of pay.

(13) Another judgment cited before me is *Nawal Kishore Singh v. Union of India and others*, 1973(1) S.L.R. 509, in which the question was as to how seniority between officers coming from two different grades was to be fixed. The petitioner was promoted to the post of Assistant (junior Class 1) in October, 1957. It seems that. at some later stage, some persons who were in the lower grade were placed above the petitioner. This was done by application of the Indian Statistical Service Rules, 1961. The Court held that a person in the lower grade could not be placed above the petitioner at the time of the initial constitution of the service. I think, there can be no quarrel with this principle but, it has no application to the present case. There has been no initial constitution of the service of Language Teachers. All that has happened is that persons who were Language Teachers have been given different salary scales from those they enjoyed earlier. As the whole group is of Language Teachers, I consider that there was always one grade and there has been no alteration in this merely

because some of the members of the service who were enjoying a lower scale of salary have now been given the right to get the same scale of pay as other persons in the same grade.

(14) My conclusion on the nature of the service of the petitioners and other Language Teachers is that there is only one grade consisting of all the Language Teachers in the service. I also come to the view that there was always one grade in the service. Some of the members of this grade had better qualifications than others. The persons holding a degree or Diploma in Teaching enjoyed a slightly better scale of pay. The difference was that the persons holding a degree or Diploma in Teaching were in the scale of Rs. 120-300, whereas the others were in the scale of Rs. 100-250. The mere enjoyment of a superior salary did not make some Language Teachers senior to the others. I think, that the superior scale was only given so as to give an incentive to the Language Teachers to get a better qualification. Later on, there was an alteration in the qualifications themselves in the sense that Shasiri and Prahakar were also recognised for the purpose of getting the higher scale of salary. This has no effect at all on the inter se seniority of the persons who were Language Teachers. Thus, the result would be that all the Language Teachers have to be assigned seniority on the basis of their continuous length of service as Language Teachers, which means that the entire seniority list as prepared is incorrect. Seniority has to be fixed on the basis of the date on which all the teachers became Language Teachers and not on the basis of the scale of pay which any or all of them might be enjoying on any particular date.

(15) This brings me to a consideration of the question of laches which has been raised with some force by Mr. Sharma on behalf of respondent No. 7. The seniority list was fixed in 1970 and seems to have been in operation for some time without any challenge from any one. It was only when the Chief Secretary of the Delhi Administration brought to the notice of the Heads of the Departments that the Rules of 1954 had to be applied when it became obvious that the lists had not been prepared properly. In this sense, the petition can be described as being late. At the same time, when a list is entirely incorrect, I do not think that the question of delay has any bearing. It may be that no one noticed the principles on which the seniority list had to be prepared. In any case, I think that the interests of justice demand that the seniority list should in this case, be prepared on the proper basis. It is indeed noteworthy that the application of the present seniority list leads to, what may be described as ridiculous results. Many Language Teachers of eight or nine years standing have been shown as junior to new entrants. There are many instances of persons appearing in the list, as senior to persons who have been teaching for years before they entered the service. I have gone through the list and I feel that it cannot be justified except on the sole consideration that persons enjoying a superior scale of pay form a grade by themselves. The only way in which the impugned list can be held to be valid is by saying that Language Teachers enjoying the scale of Rs. 120-300 were a separate grade from those enjoying the scale of Rs. 100-250. This is quite

possible and indeed would be possible if the definition of "grade" had been different. Unfortunately, the definition of "grade" in the Seniority Rules has been co-related to the sort of work the official was doing and not to the salary being paid to him. It may be recalled that in *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, there were two sets of Income- Tax Officer-Grade I and II, who were doing the same sort of work, but there were promotions from one grade to the other. Therefore, it is possible to have two grades of persons doing the same type of work. It depends on what the rules of a particular service provide. In the instant case, the Rules do not provide for there being two grades merely because the scale of pay is different. Hence, it has to be held that instances of other services where two grades may exist for doing the same sort of work are of no application to the present case.

(16) The result would be that this petition would have to succeed and a writ has to be granted to quash the Departmental Promotion Committee's proceedings convened on 19th May, 1975. The entire seniority list being void, such proceedings would have to proceed on the basis of the correct list. As far as respondent No. 7 is concerned, the order fixing his seniority at No. 120-A would automatically become ineffective, and his seniority would have to be refixed on the correct basis. He would naturally be entitled to all the advantages he would get from the length of his service. As would naturally follow from this analysis, a writ in the nature of mandamus is issued to the petitioners directing respondents Nos. 1 to 4 to prepare a new seniority list based on the length of service of all Language Teachers, irrespective of the scale of pay enjoyed by them. This would mean that the seniority of each teacher in the grade of Language Teacher would be determined from the date of appointment as Language Teacher and not from the date on which any particular scale of pay was granted to such teacher. In order to prevent any misunderstanding of the directions contained in this judgment, I must also say that these directions have no application to any persons who joined service after the Delhi Administration (Seniority) Rules, 1965, came into force with effect from 31st July, 1965. The seniority of such persons as joined service after those rules came into force would have to be determined in accordance with those rules. As far as persons, who joined service when the Delhi State Service (Seniority) Rules, 1954, were in force, are concerned, only their seniority has to be determined according to the directions contained in this judgment. Thus, the effect of this judgment will be that the seniority of persons who joined service when the old rules were in force will be governed by the old rules and seniority of the persons who joined service when the Rules of 1965, came into force, will be governed by that set of rules.

(17) As this judgment is being delivered in 1977, and has the effect of undoing something which happened in 1970, it is also necessary to give certain other directions to prevent any other complications arising. The grade immediately above the grade with which this judgment is concerned is the grade of Language Teacher, Grade I, which teaches Class XI, according to the affidavit of Shri A. Biswas, Director of Education, Delhi Administration. That grade, being quite

different from the grade in question, will be unaffected by any decision in this case. If any promotions have taken place to that grade, the inter-se seniority of the promoted persons will have to be determined in the light of the rules and regulations governing the determination of inter se seniority applicable to that grade. This judgment should not be read as having any effect on the seniority in that grade. In view of the nature of this case. I am making no order as to costs.

(18) I must thank Mr. R. P. Sharma, Advocate, for acting as amicus curiae for respondent No. 7, and put on record my appreciation of the valuable assistance he has given to the Court.