

(2009) 06 GAU CK 0080

In the Gauhati High Court

Case No : Writ Appeal No's. 144 of 2002, 128, 206, 207 and 233 of 2005, 13 of 2006 and 324 of 2008, Writ Petition (C) No. 4301 of 2003 and Review Petition No. 128 of 2004

Rukmini Bora and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Administrative Service (Regulation of Seniority) Rules, 1954 — Rule 3(3)
Assam Secondary Education (Middle English Schools and High Schools) (Provincialisation) Rules, 1979 — Rule 3
Assam Secondary Education (Provincialisation) Act, 1977 — Section 13, 2, 3, 3(1), 3(3)
Assam Secondary Education (Provincialised) Service (Amendment) Rules, 1991 — Rule 9
Assam Secondary Education (Provincialised) Service Rules, 1982 — Rule 13, 2, 3, 3(1), 9
Assam Secondary Education (Provincialised) Service Rules, 2003 — Rule 14, 14(2), 14(3), 14(4), 2
Constitution of India, 1950 — Article 14, 16, 309, 311

Citation : (2009) 3 GLT 834

Hon'ble Judges : Ranjan Gogoi, J;I.A. Ansari, J;Anima Hazarika, J

Bench : Full Bench

Advocate : D.K. Mishra, A.M. Mazumdar, N. Saikia, S. Sarma, A. Bora, S.S. Goswami, D. Goswami, P.K. Baruah, B.D. Konwar, J.M. Konwar, S. Sarkar, D.K. Sarmah, U.K. Goswami, P. Sarma, B.M. Chetri, I. Choudhury, R. Deka, R. Dubey, J. Patowary, A. Dasgupta and K.M. Haloi, for the Appellant; N. Dutta, K.N. Choudhury, M.K. Choudhury, M.R. Pathak, R.C. Saikia, P.K. Goswami, N.N. Upadhaya, H. Cherry, D. Buragohain, K. Devi, K.K. Mahanta, D.C. Borah, U.K. Nair, B.D. Goswami and S.S. Barooah, for the Respondent

Judgement

Ranjan Gogoi, J.—Rule 24(2)(ii) of the Assam Secondary Education (Provincialised) Service Rules, 2003, having been adjudged to be constitutionally impermissible by a learned Single Judge of this Court the Writ Appeals under consideration have been instituted. A Government Letter dated 3.8.90, which has been understood to have laid down essentially the same prescription as

contained in Rule 24(2)(ii) is the subject matter of the Writ Petitions that were heard along with the appeals in question. The views expressed by a Division Bench of this Court in W.A. No. 476, 560 and 562 of 2002 with regard to the purport and effect of the Government Letter dated 3.8.90 having been highly debated and contrary as well as mutually inconsistent orders having been recorded by several Single Benches, a reference of the question of validity of Rule 24(2)(ii) to a larger Bench was considered necessary. This is how the Writ Appeals and the Writ Petitions came to be referred to this expanded Bench.

2. The leading case where arguments have been offered is W.A. No. 128/2005. In the said Appeal the order dated 14.12.2004 passed by the learned Single Judge in, inter alia, WP (C) No. 7125/2003 has been assailed. Learned Counsels for both sides have agreed that the aforesaid order of the learned Single Judge in so far as WP (C) No. 7125/2003 is concerned, may be set aside and the writ petition i.e. WP (C) No. 7125/2003 be re-heard. The reasons for the aforesaid stand taken need not detain the Court. As already indicated, the core issue arising in all the cases is one relating to the constitutional validity of Rule 24(2) (ii) of the Assam Secondary Education (Provincialised) Service Rules, 2003. We, therefore, proceed to adjudicate the said issue in the light of the facts of WP (C) No. 7125/2003 which facts would be largely common to the other cases under consideration.

3. The writ Petitioners are Classical Teachers who possess a graduate degree. Classical Teachers for the purposes of the present cases are those who had Hindi, Sanskrit, Arabic, Persian, Assamese and Boro as one of the subjects while acquiring the degree qualification. They teach the aforesaid languages in the schools in which they are/were appointed. The expression "Classical 1 each" is not defined in any of the statutory provisions that will require consideration by the Court. It may also be put on record, at this stage, that there are other species of Classical Teachers who, however, are not graduates. The cases of such Classical Teachers are not the subject matter of any of the writ appeals or writ petitions covered by the present order.

4. With a view to provide for provincialisation of secondary education covered by the deficit scheme prevailing in the State of Assam, the Assam Secondary Education (Provincialisation) Act, 1977 (hereinafter referred to as "the Provincialisation Act, 1977") was enacted which came into force w.e.f 1.10.1977. Section 2(v) and (vi) which defines the expression "employee" and "existing employee", being relevant for the purposes of the present cases, are extracted below:

(v) "employee" means a person in the employment of a school working against a regularly sanctioned post and whose appointment has been approved by the School authority wherever such approval was necessary;

(vi) "existing employee" means an employee who is, on the appointed day, in the regular pay roll, employee against regular sanction and whose appointment has

been approved by the school authority.

5. Section 3 of the Act provides that on and from an appointed date i.e. the date on which the Act came into force, all employees of all secondary schools in the State of Assam are deemed to have become employees of the State Government with effect from the date of their appointments. Section 3(3) provides that services of all employees shall be encadred in appropriate cadres in accordance with the Rules framed by the State Government.

6. At the time of provincialisation effected under the provisions of the Provincialisation Act, 1977 in the schools covered by the Act, there were Graduate Teachers as well as graduate Classical Teachers. By virtue of Section 3(1) of the Act, services of both categories of teachers were provincialised and they became State Government employees with effect from the dates of their initial appointments. However, their encadrement in appropriate cadres was left to be determined by the Rules to be framed for the said purpose. Such Rules came in the year 1982 in the form of the Assam Secondary Education (Provincialised) Service Rules, 1982 (hereinafter referred to as "the 1982 Rules"). Rule 3 prescribes that the service which was defined by Rule 2(k) to mean the Assam Secondary Education (Provincialised) Service, shall consist of the cadres specified under Rule 3. For the purposes of the present cases it will be sufficient to notice the provisions contained in Rule 3(1)(e) which are to the following effect:

3. (1)(e) Class-III (Non-Gazetted).

(i) Graduate teaches of Higher Secondary and Multipurpose schools, High Schools herein after called Graduate teachers.

(ii) Graduate teacher of High Madrassa.

(iii) Junior teachers of Higher Secondary and Multipurpose schools and High Schools herein after called as Junior teachers.

(iv) Junior teachers of High Madrassa.

The provisions of the aforesaid Rule 3(1)(e), therefore, make it clear that Classical Teachers of any kind including graduate Classical Teachers were not specifically encadred.

7. Rule 9(iv) of the 1982 Rules specify that post Graduate Teachers with ten years teaching experience and Graduate Teachers with twelve years teaching experience are eligible for consideration for promotion to the post of Vice-Principal whereas, Rule 9(v) stipulated ten years teaching experience as a graduate teacher for being eligible for consideration for promotion to the post of Assistant Headmaster.

8. Rule 13 laid down principles by which the inter se seniority of existing employees in each cadre is required to be determined. Rule 13, therefore, is extracted below:

13. Seniority.--(1) The intense-seniority of the existing employees in the respective cadre shall be determined in relation to the:

(a) Date of continuous appointment.

(b) Date of Joining.

(c) Date of birth.

(2) In case of any dispute, the Director shall refer the matter in details to the State Government whose decision shall be final.

(3) In case of the members entering into the service on and after the appointed date their interse-seniority shall be determined on the basis of the merit list furnished by the Board or the Commission, as the case may be.

9. As Classical Teachers were being excluded from consideration for promotion under the Provincialisation Rules of 1982, representations were made by the teachers of that category, whereafter, by communication dated 3.8.90 addressed by the Deputy Secretary to the Govt. of Assam, Education Department, the Director of Secondary Education, Assam was informed that "Classical Teachers of Hindi, Sanskrit, Arabic, Persian, Assamese, Boro etc. having degree qualification may be included in the cadre of general teachers for giving benefit of promotion to higher posts in the same line of general teachers". It is the case of the Appellants and the writ Petitioners that thereafter promotions were given to many incumbents who were working as Classical Teacher. As the said document dated 3.8.1990 would be relevant for the discussions that will follow, the said is being extracted hereinbelow:

Government of Assam Education (Personnel) Department

Dated Dispur, the 3rd August, 1990

No. EPG890/87/29

To: The Director of Secondary Education, Assam, Kahilipara, Guwahati-19

Subject: Inclusion of the classical teacher of Hindi, Sanskrit, Arabic, Persi, Assamese, Bodo etc. having degree qualification in the cadre of General Teachers for promotion to higher posts.

Reference: Your letter No. GB-EST/ASSO/3/86/216, dated 26.6.90.

Sir,

With reference to your letter on the subject cited above, I am directed to say that the classical teachers of Hindi, Sanskrit, Arabic, Persi, Assamese, Bodo etc. having degree qualification may be included in the cadre of general teachers for giving benefit of promotion to higher posts in the same line of general teachers.

Yours faithfully (R.A. Hazarika) Deputy Secretary to the Govt. of Assam Education Department.

10. The Provincialisation Rules of 1982 were amended in the year 1991. Of the several amendments made it will be necessary for the Court to notice the amendment of Rule 3 of the 1982 Rules by which the Graduate Teachers of Higher Secondary Schools and Multi Purpose Schools or High Schools and senior Classical Teachers or senior Hindi Teachers having Bachelor's degree as general qualification were included in Grade IV of the Service. Consequently, in Schedule-I to the Rules the following four categories of employees were included in Grade IV of the Service having the same scale of pay:

(i) Graduate Teacher of Higher Secondary and Multipurpose School.

(ii) Graduate Teacher of High School,

(iii) Graduate Teacher of High Madrassa.

(iv) Senior Classical Teachers or Senior Hindi Teachers (only the categories shown in Sl. 4 in Schedule-II).

11. The senior Classical Teachers or senior Hindi Teachers so encadred in Grade IV were specified by Rule 3, as amended, to be only of the category shown at serial No. 4 of Schedule II details of which are extracted below:

Qualification	No.	post	Sl. Name of the Cadre
1.	2.	3.	4. Sr. Classical Grade-IV Graduate Teacher/ Senior with Hindi/ Hindi Teacher Sanskrit/ Arabic/ Persian as one of the subject.

12. Similarly, senior Classical Teachers or senior Hindi Teachers shown at serial No. 5 of Schedule II, junior Classical Teachers or junior Hindi Teachers shown at serial No. 8 of Schedule II and junior Classical Teachers or junior Hindi Teachers shown at serial No. 10 of Schedule II were included in Grade V, VI and VII of the Service respectively.

13. Different pay scales had been provided to the incumbents included in Grade IV of the Service by Schedule I to the 1991 Amendment Rules as well as to those included in Grade V, VI and VII respectively. Schedule II to the 1991 Amendment Rules prescribed different qualifications for the incumbents holding different posts of Classical Teachers included in Grade IV, V, VI and VIII of the Service. Another significant fact which must be taken note of is that the 1991 Amendment Rules did not cause any alteration in Rule 13 of the 1982 Rules dealing with fixation/determination of seniority.

14. Under Rule 9, as amended by the 1991 Rules, promotional avenues to Grade II and III of the Service have been provided for the incumbents in Grade IV subject to their fulfilling the qualifying service mentioned in Rule 9. In other words, Classical Teachers with graduate qualification had been made eligible for

promotion to the Grade II as well as Grade III of the Service as constituted by Rule 9, as amended, brought into force by the 1991 amendment.

15. The Assam Secondary Education (Provincialised) Service Rules, 2003 came into force from 11.8.2003 by repealing the Rules in force i.e. the 1982 Rules, as amended from time to time. Rule 2(n) of the 2003 Rules defines graduate teacher in the following terms:

2(n). "Graduate Teacher" means the category of Assistant Teacher in High/Higher Secondary/Higher Secondary and Multipurpose/High Madrassa Schools for whose appointment the minimum qualification prescribed is a Graduate degree in Arts, Science or Commerce including Demonstrators in Higher Secondary/Higher Secondary & Multipurpose School.

16. Rule 3(1) sets out the different classes and categories constituting the Service. By Rule 3(1)(b)(ii), Hindi Teachers having Bachelor's degree and Classical Teachers (Sanskrit, Arabic, Persian, Assamese language Teachers) have been included along with Graduate Teachers in Class II (Junior) of the Service. Rule 14 deals with recruitment to the post of Vice-Principal/ Headmaster/ Assistant Headmaster etc. and provides that the post of Vice-Principal shall be filled up by promotion, inter alia, from Graduate Teachers having twelve years' teaching experience. Rule 14(2) provides for promotion to the post of Headmaster whereas Rule 14(3) provides for promotion to the post of Assistant Headmaster. Promotion to both the posts of Headmaster and Assistant Headmaster is required to be made on the basis of seniority determined in accordance with Rule 24(2) of the Rules. Rule 14(4) prescribes the conditions of eligibility for promotion to the post of Headmaster/Assistant Headmaster by requiring a candidate to be a graduate in Arts, Science or Commerce with B.T. or B.Ed. degree and further requiring such a candidate to possess at least ten years of teaching experience as a graduate teacher in so far as the post of Headmaster is concerned and seven years of such experience in so far as the post of Assistant Headmaster is concerned. Rule 24(2)(i) stipulates that the seniority for promotion to the post of Headmaster/Assistant Headmaster shall be determined from the date of joining of the incumbent as a graduate teacher in the school. Rule 24(2)(ii) contemplates that Classical Teachers of Hindi, Sanskrit, Arabic, Persian, Arabic, Boro etc. having a degree qualification are to be included in the cadre of Graduate Teachers for giving the benefit of promotion to the higher post in the same line of general teachers. However, their seniority is to be counted with effect from 3.8.1990 i.e. the date of the Government Letter referred to earlier. It is the validity of the aforesaid provisions of Rule 24(2)(ii) of the 2003 Rules that has come under challenge in the present cases.

17. Sri D.K. Mishra, learned senior Counsel for the Petitioners in W.P. (C). No. 7125/2003 has submitted that in all the schools covered by the Provincialisation Act of 1977 apart from graduate teachers, posts of Language Teachers and Classical Teachers were in existence. This has been sought to be demonstrated by Sri Mishra by placing before the Court the provisions contained in the Assam

Secondary Education (Middle English & High Schools) (Provincialisation) Rules, 1979 framed in exercise of powers u/s 7 of the Provincialisation Act of 1977. Sri Mishra has relied on Rule 3 of the aforesaid Rules of 1979 to show that existence of one post of graduate Classical Teacher and one Hindi Teacher having qualification in Hindi equivalent to Bachelor's degree were essential conditions of eligibility for provincialisation under the 1977 Act. Classical Teachers, therefore, were existing employees within the meaning of the said definition contained in Section 2(vi) of the 1977 Act. u/s 3(1) of the said Act, by the deeming provision contained therein, such employees became Government servants from the date of their appointments subject to encadrement in the appropriate cadre to be made by the Rules framed in exercise of powers u/s 3(3) of the Act. It is the further contention of Sri Mishra that the encadrement effected under the 1982 Rules though did not specifically mention Classical Teachers, as such Classical Teachers are also graduates, the expression "Graduate Teacher" appearing in Rule 3(1)(e) included all graduate Classical Teachers also. Sri Mishra also referred to the provisions of the ROP Rules of 1964, 1975, 1983 (as amended), the ROP Rules of 1990 and 1994 to show that under each of the aforesaid ROP Rules the pay scale of Graduate Teachers of High Schools and Hindi/Classical Teachers (Senior Grade) is one and the same.

18. Sri Mishra has further contended that both Graduate Teachers and graduate Classical Teachers were existing employees of the schools provincialised under the 1977 Act; both had the same qualifications and were in the same scale of pay. In such circumstances, according to the learned Counsel, there was an implied encadrement of Classical Teachers in the cadre of Graduate Teachers as made by the 1982 Rules. Under Rule 13 of the 1982 Rules seniority was to be determined from the date of continuous appointment/date of joining, Rule 24(2) (ii), therefore, could not have conferred the benefit of seniority to Classical Teachers w.e.f 3.8.90. Vested rights of the Graduate Classical Teachers have been arbitrarily sought to be taken away by the 2003 Rules, contends the learned Counsel.

19. In so far as the letter dated 3.8.1990 is concerned, Shri Mishra has submitted that the same cannot be construed to be an authority for the encadrement of Classical Teachers in as much as under the Provincialisation Act of 1977, encadrement is to be made by Rules framed. The learned Counsel has pointed out that because the Classical Teachers were already in the cadre of Graduate Teachers the promotional avenues spelt out by the letter dated 3.8.1990 could have been provided.

20. It is the further submission of Shri Mishra that the encadrement of Classical Teachers along with Graduate Teachers in Grade-IV of the service by the 1991 Rules had merely made it explicit what was all along implicit and further that Rule 13 of the 1982 Rules stood unaltered by the 1991 amendment so as to justify adoption of any other criteria for determination of seniority except length of service. Shri Mishra has also referred to certain promotion orders of Classical

Teachers enclosed to the reply affidavit filed in the writ petition (W.P. (C) No. 7125/03) to contend that such promotions had been given to Classical Teachers without computation of qualifying service on the basis of the date of the Government letter i.e. 3.8.1990 and some classical Teachers had been promoted even though they had not completed the requisite 12/7 years of service computed with effect from 3.3.1990. All the said facts, according to the learned Counsel, squarely indicate that Classical Teachers were very much a part of the cadre of Graduate Teachers and it is the wrongful denial of promotion which was corrected by the Government letter dated 3.8.1990 and the amendment of the 1982 Rules made in the year 1991. However, the said position was sought to be unsettled by two other Government letters dated 4.5.2001 and 15.6.2002. Consequently, the same were challenged in proceedings before this Court registered and numbered as W.P. (C) No. 462 of 2002 and 5026 of 2002. Both the aforesaid writ petitions were withdrawn once the Rules of 2003 were enacted and brought into force with effect from 12.8.2003.

21. As the aforesaid letters/communications dated 4.5.2001 and 15.6.2002 would have relevance to the discussions that will follow, the contents of the said letters/communications may be noticed hereinbelow:

GOVERNMENT OF ASSAM EDUCATION (SECONDARY) DEPARTMENT

Dated Dispur, the 4th May/2001

Memo No. B(3)S-244/99/42.

From: Shri S. Brahma, Deputy Secretary to the Govt. of Assam, Education, Department.

To: The Director of Secondary Education, Assam, Kahilipara, Guwahati-19.

Sub: Seniority in service-regarding.

Sir,

I am directed to refer to Govt. letter No. LP-890/87/29, dated 3-8-1990 (copy enclosed) and your endorsement dated 2-3-2001 vide U/O No. CB-EST/Misc/2/2001 in this Department file No. B(3)S-244/99 and convey the approval in respect of the seniority given to the classical teachers of Hindi, Sanskrit, Persian, Assamese, Bodo etc. having degree qualification in the cadre of General Teachers from the date of issue of Govt., letter under reference i.e. with effect of 3-8-1990 for having benefit of promotion to the Higher posts.

Yours faithfully, Sd/- Deputy Secretary to the Govt. of Assam, Education Department.

GOVERNMENT OF ASSAM EDUCATION (ELEMENTARY & SECONDARY) DEPARTMENT

Dated Dispur, the 15th June, 2002

OFFICE MEMORANDUM

For the purpose of removing the stagnation in giving promotional benefit of classical teachers to the Higher post Government vide letter No. EPG 890/87/29 dt. 3.8.90 had decided to include the Classical Teacher of Hindi, Sanskrit, Persian, Assamese, Bodo etc. having degree qualification to the cadre of General Teacher for promotion in the same line of General Teachers. Government has now hereby decided to continue the earlier policy decision adopted vide letter No. EPG 890/87/29 dt. 3.8.90 and the inter-se-seniority of those Classical Teacher having degree qualification with that of the General Teacher will be fixed with effect from 3.8.90 i.e. the date of issue of Government decision.

This supersedes all the Government earlier letters/circulars issued in this regard.

Sd/- P.C. Sharma, Principal Secretary to the Govt. of Assam, Education Department.

22. Shri Mishra has summed up his arguments by contending that Classical Teachers and Graduate Teachers being at par having the same pay, qualifications and duties, patent discrimination will arise if the provisions of Rule 24(2)(ii) is allowed to remain in the statute book. Consequently, Rule 24(2)(ii), according to the learned Counsel is constitutionally invalid having brought about a hostile discrimination against Classical Teachers without there being any reasonable basis for the classification sought to be made.

23. Shri Mishra has also brought to the notice of the Court the statements made on behalf of the Petitioner in the reply affidavit dated 27.4.2006 (wrongly shown to be filed in WP (C) No. 7125/2003). In this regard, the learned Counsel has submitted that the aforesaid statements adequately explain the somewhat inconsistent position indicated in the writ petition filed particularly in paragraphs 4, 5 and 6. Shri Mishra has submitted that the statements made in the aforesaid para-4, 5 and 6 to the effect that Classical Teachers were not encadred by the 1982 Rules were so made on the basis of the information furnished to the Petitioner and in any event in para-5 of the reply affidavit the position has been clarified to mean that what has been urged before the Court on behalf of the Classical Teachers is that they along with Graduate Teachers were encadred "conjointly and compositely as Graduate Teachers".

24. Shri N. Dutta, learned Counsel for the Respondents Graduate Teachers in WP (C) No. 7125/2003 has countered the arguments advanced on behalf of the Petitioners contending that all employees including Graduate and Classical Teachers who became Government servants by virtue of the provincialisation Act of 1977 were not encadred under the 1982 Rules. In this regard, Shri Dutta has been emphatic in his submissions that encadrement can only be made by Rules framed in exercise of powers u/s 3(3) of the Provincialisation Act of 1977. Shri Dutta has argued that Classical Teachers was a heterogeneous group consisting

of Graduates, persons with Degrees or Diploma equivalent to Graduation as well as persons who are Matriculates. The 1982 Rules did not encadre any category of Classical Teachers and it is only Graduate Teachers who were encadred in Class-II (Non-Gazetted) of the service. Such encadrement, according to Shri Dutta, took place by virtue of the 1991 Rules whereby only Graduate Classical Teachers were encadred in Grade-IV of the Service along with Graduate Teachers of Higher Secondary and MP Schools or High Schools. Classical Teachers of other denominations were also encadred but in other grades of service i.e. Grade-V, VI and VII. Shri Dutta has submitted that the Petitioners who are Graduate Classical Teachers and encadred in Grade-IV of the service have gained an advantage over other Classical Teachers who may have had an earlier date of joining as Classical Teachers despite which such Classical Teachers were encadred in a lower grade of the service. The Petitioners having accepted the advantageous position conferred on them by the Rules of 1991 must accept the provisions of the said Rules as a whole i.e. their encadrement thereunder. In any event, according to Shri Dutta, it is not the pleaded case of the Graduate Classical Teachers that they were encadred along with Graduate Teachers under the 1982 Rules. Pointing out the averments made in para 4, 5 and 6 of the writ petition i.e. WP (C) No. 7125/2003, Sri Dutta has contended that what is sought to be argued is in fundamental departure from what has been pleaded and, therefore, should not be allowed.

25. Proceeding further. Sri Dutta has argued that no record has been placed before the Court by any of the contesting parties including the State Government to show that the encadrement of Graduate Teachers under the 1982 Rules included Graduate Classical Teachers also. In this regard, Sri Dutta has pointed out that under the 1982 Rules, ex facie, it is the Graduate Teachers of Higher Secondarily, M.P. and High Schools who have been understood to be Graduate Teachers and, furthermore, that under the 1991 Rules though Classical Teachers have been brought at par with Graduate Teachers by their inclusion in Grade IV of the Service, the distinct identity of the two groups of teachers i.e. Classical Teachers and Graduate Teachers have been maintained by the said Rules.

26. Sri Dutta has taken the Court through the provisions of the Rules of 2003 to contend that though Classical Teachers have been included in Class-II (Junior) of the Service along with Graduate Teachers, their distinct identity has been maintained. It is also pointed out that Rule 14(4) which deals with eligibility for promotion mentions qualifying service as Graduate Teachers only. It is only by virtue of Rule 24(2)(ii) that Classical Teachers have also been made eligible for promotion by including them in the cadre of Graduate Teachers. However, such inclusion is only for the purpose of benefit of promotion in the same line subject to the condition that such inclusion will be counted w.e.f. 3.8.90. In this regard, Sri Dutta has submitted that had it not been for Rule 24(2)(ii), the Classical Teachers would not have been entitled for promotion. The cadre of Classical Teachers is distinct and different from Graduate Teachers and under the 2003 Rules members of two different cadres have been made eligible for promotion in

the general line by counting of service of the Members of one cadre i.e. Graduate Classical Teachers with effect from a particular date. Rule 24(2)(ii), therefore, according to Sri Dutta, is an exercise to pick up a date and unless there is a fundamental flaw in the exercise undertaken, interference of the Court will not be justified. The said Rule, really, reflect a policy decision of the Government to make Classical Teachers eligible for promotion in the general line but subject to certain conditions which conditions, according to the learned Counsel, are perfectly justified keeping in mind that the two sets of incumbents have distinct and noticeable differences in terms of qualifications and duties. Sri Dutta has further submitted that Rule 24(2)(ii) of the 2003 Rules, in effect, gives seniority to Graduate Classical Teachers from a date which is anterior to their encadrement. Teachers belonging to the said category cannot, therefore, have any legitimate grievance with regard to grant of such seniority with effect from 3.8.90.

27. Sri Dutta has placed reliance on a judgment of the Apex Court in the State of Punjab Vs. Joginder Singh, to contend that it is within the powers of the State to constitute two grades in a service consisting of employees doing the same work with same scales of pay but subject to different conditions of service. Such an action, according to Sri Dutta, would not be violative of Article 14 of the Constitution.

28. Reliance has also been placed by Sri Dutta on a judgment of the Apex Court in Anand Parkash Saxena Vs. Union of India (UOI) and Others, to contend that like Rule 3(3)(b) of the I.A.S (Regulation of seniority) Rules, 1954, Rule 24(2)(ii) of the 2003 Rules attempts to strike a balance between the competing claims of Graduate Teachers and Classical Teachers and such attempts ought not to be thwarted by the Court merely because some imbalance has been perceived to be caused by the Members of one of the groups.

29. Relying on Anr. decision of the Apex Court in Reserve Bank of India Vs. N.C. Paliwal and Others, , Sri Dutta has submitted that it is within the power of the State to lay down any appropriate Rule for determination of seniority and the Court should not cause interference merely because in its opinion Anr. Rule would have been more appropriate. The touchstone for judging the validity of the State action is apparent arbitrariness and irrationality in the Rules adopted by the State resulting in denial of equality of opportunity to employees belonging to the same class. In the aforesaid case, the employees coming to clerical cadre from non-clerical cadre were given some benefit for service rendered in the non-clerical cadre i.e. 1/3rd. The Apex Court understood the adoption of the aforesaid principle to be an attempt to strike a just balance between conflicting claims of the clerical and non-clerical staff and refused to view the adoption of the said principle as arbitrary or discriminatory. Sri Dutta has argued that in the present cases, the two cadres being different, reckoning of service from a particular date for Classical Teachers, for consideration of their eligibility for promotion in the general line, cannot be termed to be an arbitrary decision resulting in hostile

discrimination, as urged on behalf of the Petitioners. Sri Dutta has also relied on the observation of the Apex Court contained in para 33 of the decision in Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, The aforesaid observation being most apt, are quoted hereinbelow:

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date, but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.

30. A pointed query was made by the Court that assuming that Graduate Classical Teachers were encadred for the first time in the year 1991, why the Court should not understand them to be entitled to seniority from the date of their initial appointment by virtue of the provisions contained in Section 13 of the Provincialisation Act of 1977, particularly when seniority to Graduate Teachers with effect from the date of their initial appointment had been given following their encadrement under the 1982 Rules. In reply, Sri Dutta has submitted that Section 3(1) of the 1977 Act should be understood to have conferred the status of Government servant on all employees of the provincialised schools from the date of encadrement and not from the date of initial appointment. In this regard, Sri Dutta has submitted that such an interpretation should be made notwithstanding the expressed language contained in Section 3(1) of the Act as any other view would lead to incongruous and undesirable results.

31. We have considered the rival submissions advanced on behalf of the parties with the utmost care. An analysis of the provisions of the Provincialisation Act of 1977 and the Rules framed, as amended from time to time, indicates that all existing employees of the schools covered by the Provincialisation Act of 1977 were conferred the status of Government servants with effect from the date of their appointments. However, encadrement of such employees in appropriate cadres was left to be determined by the Rules. The 1982 Rules had specifically encadred only Graduate Teachers. As the Act had left the question of encadrement to be dealt with by the Rules framed, obviously, there could have been no implied encadrement of Classical Teachers. The Government Letter dated 3.8.90 providing avenues of promotion to the Classical Teachers in the same line as general Graduate Teachers could not have been understood to have encadred Classical Teachers as such encadrement had to be made by the Rules framed. If Classical Teachers were not encadred under the 1982 Rules promotional avenues to higher echelons in service could not have been provided to Classical Teachers, inasmuch as, it is only upon encadrement that an existing employee could be legitimately understood to be a member of the Service. The aforesaid anomaly was sought to be corrected by the 1991 Rules which specifically encadred Graduate Classical Teachers in Grade IV of the Service along with Graduate Teachers in the general line. The said Rules of 1991 besides providing the same scale of pay to both categories of teachers also provided the

same avenues of promotion for persons encadred in Grade IV. That apart, seniority as per Rule 13, which continued to remain in the statute book, was required to be fixed on the basis of the date of initial appointment. Accordingly, promotions were conferred to many Graduate Classical Teachers by counting their seniority in accordance with Rule 13 and without reference to the date 3.8.90. However, by the subsequent Government Letters dated 4.5.2001 and 15.6.2002, the position was sought to be reversed and the seniority of Graduate Classical Teachers were again sought to be fixed with reference to the Government Letter dated 3.8.90. The aforesaid Government Letters were challenged as being contrary to the provisions of the 1991 Rules in WP (C) Nos. 462 and 5026 both of the year 2002. While the said writ petitions were pending, the 2003 Rules were brought into effect on and from 12.8.2003. Under the 2003 Rules once again Graduate Classical Teachers were encadred along with general Graduate Teachers in Class II (Junior) of the Service. Though so encadred, promotional avenues to higher posts was afforded only to general Graduate Teachers and not Classical Teachers. This is evident from Rule 14(4) of the 2003 Rules. Seniority of general Graduate Teachers under Rule 24(2)(i) was to be from the date of joining. However, Rule 24(2)(ii) though provided that Graduate Classical Teachers may be included in the cadre of general Graduate Teachers for the benefit of promotion, such inclusion is to be counted from the date of the Government Letter dated 3.8.90 and seniority of Classical Teachers is to be counted from the same date i.e. 3.8.90. The 2003 Rules, therefore, made Classical Teachers eligible for promotion in the same line as general Graduate Teachers by a deeming provision effective from the date of the Government Letter dated 3.8.90.

32. The analysis of the law relevant to the present adjudication being over, the Court must now proceed to examine the rival contentions of the parties. The issue raised on behalf of the Appellants that Graduate Classical Teachers were included in the cadre of general Graduate Teachers since the very inception is capable of being answered by the provisions of the Provincialisation Act of 1977 under which encadrement is required to be made by specific Rules framed in this regard. Obviously, the mandate of the statute will have to be followed. There can be no other manner of encadrement than what has been prescribed under the Act. The concept of implied encadrement sought to be built-up on behalf of the Appellants, therefore, cannot be accepted by the Court. Under the 1982 Rules, it is only the general Graduate Teachers who had been encadred.

33. We have noticed from our understanding of the provisions of the Rules framed from time to time as delineated above that Graduate Classical Teachers were encadred for the first time by the 1991 Rules in Grade IV of the Service and further that in the said Grade general Graduate Teachers were also included. The two cadres, therefore, though may have been distinct and separate to begin with became equivalent subsequently. This is further made clear by the provisions contained in Rule 9 of the 1991 Rules providing promotion to Grade II and III of the Service from serving members of Grade IV of the Service subject to their

having the requisite period of qualifying service. Graduate Classical Teachers, therefore, became eligible for promotion to higher Grades in the Service in the same manner as general Graduate Teachers. In so far as the period of qualifying service stipulated by Rule 9 is concerned, under Rule 13 of the 1982 Rules, which remained unaltered by the 1991 Rules, the seniority of a member of the Service is primarily required to be determined on the basis of the date of continuous appointment/date of joining and if the said dates are same, by reference to date of birth. By virtue of the provisions of the 1982 Rules, general Graduate Teachers were given seniority with effect from the date of their initial appointment. Once Graduate Classical Teachers were encadred in the Service by the 1991 Rules, no different treatment could have been given to such teachers because the aforesaid Rule 13 continued to hold the field. Graduate Classical Teachers, therefore, also became entitled to seniority from the date of their initial appointment. Such entitlement was actually implemented in some cases as evident from the specific details furnished by the Petitioners in their pleadings in WP (C) No. 7125/2003. The Government Letters dated 4.5.2001 and 15.6.2002 attempted to strike a discordant note in this regard. The said orders were, therefore, challenged before this Court. However, before an answer could be provided to the issue raised by the Graduate Classical Teachers in the writ petitions filed challenging the said orders i.e. WP (C) Nos. 462 and 5026 of 2002, the 2003 Rules came into force essentially granting legislative recognition to the principles contained in the aforesaid two Government Orders.

34. Under the 1991 Rules Graduate Classical Teachers were encadred and included in Grade IV along with general Graduate Teachers. By the said Rules Graduate Classical Teachers became entitled to promotion in the same line as general Graduate Teachers and further Graduate Classical Teachers were entitled to have the benefit of service from the date of initial appointment for computation of seniority. The Court will have to understand that though the two cadres were made to keep their independent identities, yet. Graduate Classical Teachers were brought at par with general Graduate Teachers by the 1991 Rules in so far as status/rank (both groups became members of Grade IV of the Service); pay and promotional avenues and benefit of service prior to provincialisation is concerned. In contradiction to the above what the 2003 Rules had attempted to do is clear and obvious. Though encadred along with general Graduate Teachers as members of Class II (Junior) of the Service, Graduate Classical Teachers have been excluded from the promotional avenues provided by Rule 14(4). It is only the general Graduate Teachers who have been made eligible for promotion and by the deeming provision contained in Rule 24(2)(ii) of the 2003 Rules Graduate Classical Teachers have been included in the cadre of general Graduate Teachers for the purpose of promotion in the same line but only with effect from 3.8.90. Their seniority is also to be counted from the same date. In effect, what the 2003 Rules purports to do is to wipe out the pre-existing and accrued rights of the Graduate Classical Teachers conferred by the predecessor Rules. The question that confronts the Court is whether what has

been contemplated by the 2003 Rules is tenable in law.

35. There can be no manner of doubt that the power to frame Rules to regulate the conditions of service carries with it the power to amend or alter the Rules framed even with retrospective effect. However, the above principle is subject to one exception. Existing or conferred rights, which have accrued, cannot be taken away in violation of the fundamental rights of the concerned incumbents. In other words, any alteration or change in the service conditions of a set of employees must conform to the provisions of Part-III of the Constitution, particularly Articles 14 and 16. If graduate classical teachers were at par with general graduate teachers by virtue of the provisions of the 1991 Rules as the analysis of the statutory Rules made above would indicate, the successor Rules i.e. 2003 Rules could not have altered the aforesaid position by placing the graduate classical teachers at a disadvantageous position compared to the general graduate teachers. Any such attempt will have to be construed to be violative of the rights of the graduate classical teachers under Articles 14 and 16 of the Constitution, inasmuch as, though equal with the general graduate teachers under the 1991 Rules they have been sought to be treated differently by the 2003 Rules.

36. The above conclusion has been reached by the Court on a careful consideration of the judgment of the Apex Court in the State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, The aforesaid judgment of the Apex Court will, naturally, require a close look to understand whether the reliance placed upon it in coming to the conclusion has been so placed correctly.

37. The facts in Raman Lal Keshav Lal Soni (supra) may first be noticed.

To achieve democratic decentralization of important governmental functions the Gujrat Panchayats Act, 1961 was enacted. A Gram or Nagar Panchayat depending on the population of the local area for each Gram or Nagar; a Taluka Panchayat for each Taluka and a District Panchayat for each district was constituted. With the coming into force of the aforesaid enactment. District Local Boards under the Bombay Local Boards Act, 1923, stood transformed as District Panchayats; Village Panchayats under the Bombay Village Panchayats Act, 1958, stood transformed as Gram Panchayats and Municipalities under the Bombay District Municipal Act, 1901 and Bombay Municipal Boroughs Act, 1925 were transformed as Gram and Nagar Panchayats depending on the population. The officers and servants in the employment of the District Local Boards and the erstwhile Village Panchayats and Municipalities were transferred to the service of the District Panchayats, new Gram Panchayats or Nagar Panchayats and stood allocated to the Panchayat service. A single centralized Panchayat Service was constituted to work at three levels i.e. District, Taluka and Local. Benefits relating to equation of posts, promotions, fixation of pay scales and revision thereof (as per recommendations of the Pay Commission) under the Gujrat Panchayat Service (Absorption, Seniority, Pay and Allowances) Rules, 1965 were extended to the District and Taluka cadres as well as to the members of the local cadre

drawn from the ranks of Secretaries, Officers and servants of the old Village Panchayats but not to the ex Municipal staff who transferred to the local cadre. The aforesaid difference in treatment to the ex Municipal employees in the local cadre were sought to be justified by the State on the ground that while all other categories of employees whose services stood transferred were initially Government servants, the ex Municipal employees were not. The aggrieved ex Municipal employees challenged the aforesaid action before the Bombay High Court which answered the question in their favour by holding that the ex Municipal employees were encadred in the local cadre of the Panchayat service which is a service under the State. Consequently, appropriate directions were issued by the Bombay High Court which came to be challenged before the Apex Court. During the pendency of the aforesaid challenge before the Apex Court, the Gujrat Panchayats Act, 1961, was amended by the Gujrat Panchayats (3rd Amendment) Act, 1978. By the amending Act the ex Municipal employees who were working as Secretaries, officers and servants of Gram and Nagar Panchayats were deprived of their status as members of the Panchayat Service under the State and hence they ceased to be Government servants. Instead, they became servants of the Gram and Nagar Panchayats and their conditions of service were to be as prescribed by the Panchayats. The amending Act, therefore, treated the ex Municipal employees of the local cadre differently from those working in the Taluka and District cadre as well as differently from employees working in the local cadre who were drawn from the old Village Panchayats. The amendment was also sought to be given retrospective effect. The justification for the aforesaid amendment, once again, appeared to be that while ex Municipal employees prior to their induction in the Panchayat service were not Government servants all other categories employees had been Government servants before becoming members of the Panchayat service.

38. The Apex Court after a long and elaborate consideration of the matter not only dismissed the appeal filed by the State of Gujrat against the order of the Bombay High Court, as noticed above, but also held the amending Act to be unconstitutional on the touch stone of Article 14. Briefly put, the Apex Court took the view that as the ex Municipal employees were a part and parcel of the Panchayat service and, hence, Government servants under the 1961 Act, the said position could not have been altered or reversed and the attempt to do so by the Amendment Act of 1978 offends Article 14 of the Constitution. The Apex Court specifically held that today's equal cannot be made unequal and that the attempt to show that they were unequal earlier by giving retrospective effect to the amendment cannot save the situation. In the above context the Apex Court specifically held that the retrospective effect sought to be given by the amendment was designed to frustrate any possible claim on the part of the ex-Municipal employees that they were singled out for differential treatment. If by giving retrospective effect to the aforesaid amendment the ex-Municipal employees could be treated to have ceased to be Government servants and to have never been in the Panchayat service, naturally, such employees could not

claim that their earlier status as Govt. servants have been altered to their prejudice resulting in hostile discrimination.

39. The illuminating views of the Apex Court in Raman Lal Keshav Lal Soni and Ors. (supra) as contained in paragraphs 50, 51 and 52 seems to amply answer the issues that have arisen in the present cases. The aforesaid paragraphs therefore are being extracted below:

50. It is here necessary to recapitulate a few facts. When the panchayat service was initially constituted soon after the passing of the Gujarat Panchayats Act, there were three cadres, the district cadre, the taluqa cadre and the local cadre. Secretaries, Officers and servants of the old Village Panchayats under the Bombay Village Panchayats Act, 1958 became Secretaries, Officers and servants of the new Gram Panchayats u/s 325(2)(x) of the Gujarat Panchayats Act, 1961. Talatis and Kotwals, who were government servants were Secretaries and Officers of the old Village Panchayats under the Bombay Village Panchayats Act and so they became Secretaries and Officers of the new Gram Panchayats under the Gujarat Panchayats Act, 1961. Some municipalities constituted for municipal districts and municipal boroughs under the Bombay District Municipal Act and the Bombay Municipal Boroughs Act as applied to areas in the State of Gujarat, were convened into Gram and Nagar Panchayats u/s 307 of the Gujarat Panchayats Act and all Officers and servants in the employ of such municipalities became officers and servants of interim panchayats and allocated to the panchayat service. Thus, Secretaries and Officers of dissolved municipalities also became Secretaries and Officers of Gram and Nagar Panchayats. District Local Boards constituted under the Bombay Local Boards Act stood dissolved on the passing of the Gujarat Panchayats Act and all Officers and servants in the employment of the Board were deemed to be transferred to the service of the successor District Panchayat u/s 326 of the Gujarat Panchayats Act. Also allocated to the panchayat service were those government servants who were transferred to the panchayats u/s 157 and such other officers and servants employed in the State service as were necessary [Section 206(iii)]. All these Secretaries, Officers and servants became members of a service under the State as soon as they were allocated the Panchayat service. Now, by the Amending Act, Secretaries, Officers and servants of Gram and Nagar Panchayats who were allocated to the panchayat service from the ranks of the ex-municipal employees are sought to be meted out differential treatment from the other members of the panchayat service, more particularly the Secretaries, Officers and servants of Gram and Nagar Panchayats who were drawn from the ranks of Secretaries, Officers and servants of old Village Panchayats, that is the Talatis and Kotwals. Their status as members of a service under the State is to go with no option to them. Retrospectivity is sought to be given to the Amending Act so that they could not claim that they were ever government servants and so could not be made to cease to be government servants and so that they could not claim that they were singled out for differential treatment, for, if they were never in the panchayat service, they could not complain of being taken out of the panchayat service.

51. Now, in 1978 before the Amending Act was passed, thanks to the provisions of the principal Act of 1961, the ex-municipal employees who had been allocated to the panchayat service as Secretaries, Officers and servants of Gram and Nagar Panchayats. had achieved the status of government servants. Their status as government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Article 14 of the Constitution. An attempt was made to justify the purported differentiation on the basis of history and ancestry, as it were. It was said that Talatis and Kotwals who became Secretaries. Officers and servants of Gram and Nagar Panchayats were government servants, even to start with, while municipal employees who became such Secretaries, Officers and servants of Gram and Nagar Panchayats were not. Each carried the mark or the "brand" of his origin and a classification on the basis of the source from which they came into the service, it was claimed, was permissible. We are clear that it is not. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a classification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Article 311 and Article 14 that the Amending Act is sought to be made retrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. Can a law be made to destroy today's accrued constitutional rights by artificially reverting to a situation which existed 17 years ago? No.

52. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this Court in *B.S. Yadav and Others Vs. State of Haryana and Others*, Chandrachud, C.J. speaking for the Court held: (SCC headnote)

Since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the

rules made under that provision. But the date from which the rules are made to operate must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case.

Today's equals cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Articles 311 and 14 and is arbitrary and unreasonable. We have considered the question whether any provision of the Gujarat Panchayats (Third Amendment) Act, 1978 might be salvaged. We are afraid that the provisions are so intertwined with one Anr. that it is well nigh impossible to consider any life-saving surgery. The whole of the Third Amendment Act must go. In the result Writ Petitions Nos. 4266-4270 of 1978 are allowed with costs quantified at Rs 15,000. The directions given by the High Court, which we have confirmed, should be complied with before June 30, 1983. In the meanwhile, the employees of the panchayats covered by the appeal and the writ petitions will receive a sum of Rs 200 per month over and above the emoluments they were receiving before February 1, 1978. This Order will be effective from February 1, 1983. The interim Order made on February 20, 1978 will be effective up to January 31, 1983. The amounts paid are to be adjusted later.

40. A question may arise with regard to the qualification and nature of duties performed by the Graduate Classical Teachers and general Graduate Teachers. Are they same and similar? After all in para 51 of the judgment in *State of Gujarat v. Raman Lal Keshav Lal Soni and Ors.* (supra) the similarity of duties performed by the Ex-Municipal Staff of the local cadre and other members of the service holding the same posts was specifically referred to by the Apex Court.

41. Peculiarly not much debate had been generated in the present cases on the said issue. Nonetheless the issue has to be examined. When under the 1991 Rules Graduate Classical Teachers and general Graduate Teachers were made equivalent or brought at par for promotion to higher posts by adoption of the same criteria of seniority i.e. length of service, the Court will have to understand the perception of the Rule making authority to be one pointing towards equivalence of duties also or at any rate that the differences, if any, are not material for the purpose of promotion to higher grades in the service. Such a view will also appear to be justified in the absence of any positive stand on the part of the State with regard to any difference in qualifications or in the nature of duties performed by the teachers belonging to the two categories. At any rate.

Classical Teachers are also graduates though in or with any of the particular subjects already noticed. The difference, therefore, is too insignificant to indicate any demonstrable difference in the nature of duties performed by the two categories of teachers.

42. It will be worthwhile to notice that the views expressed by the Apex Court in *Raman Lal Keshav Lal Soni and Ors. (supra)* has been consistently followed either by an express reference as in *Commissioner of Agricultural Income Tax, Trivandrum Vs. Kerala Estate Mooriad Chalapuram*, in *Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others*, or without such reference as in *P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others*, Paragraph 10 of the judgment in *P.U. Joshi and Ors. (supra)* being relevant to the instant matter, the said paragraph may be usefully reproduced herein below:

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/ subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

(Emphasis is ours)

43. The decisions cited by Sri N. Dutta, learned Senior Counsel appearing on behalf of the general graduate teachers, may now be noticed.

In *State of Punjab v. Joginder Singh (supra)* the question before the Apex Court

was whether the Government order dated 27.9.57 by which schools run by the Municipal Boards and District Boards were taken over by the Education Department with effect from 1.10.57 had integrated the provincialised teachers (expression used to refer to the teachers of the schools taken over by the executive order) with the teachers in employment under the State. The aforesaid question arose in the context of the promulgation of the Punjab Educational Service (Provincialised Cadre) Class-III Rules with retrospective effect from 1.10.57 under which a member of the State cadre had better chances of promotion than a teacher belonging to the provincialised cadre. The majority decision of the Apex Court was to the effect that the two cadres were all along distinct and independent and merely because same scales of pay and grades were given to the both sets of teachers it cannot be said that there was an integration of the two cadres. The Apex Court, in the aforesaid facts, took the further view that as the two cadres had started dissimilarly and had continued dissimilarly any further dissimilarity in their treatment will not amount to denial of equal opportunity. We find it difficult to appreciate how the aforesaid decision can have any application in the present cases where graduate classical teachers and general graduate teachers though may have constituted two separate cadres, both the aforesaid two cadres were included in Grade-IV of the services by the 1991 Rules which Rules also provided the same promotional avenues to higher grades to both categories on the basis of the same principle for determination of seniority i.e. length of service.

44. The decision of the Apex Court in Anand Prasad Saxena (supra) relied upon deals with the provisions of Rule 3(3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. The Apex Court found the aforesaid provision of the Rules not to be arbitrary or discriminatory as the Rule seeks to strike a balance between conflicting claims of the promotee Officers and those recruited directly. We do not see how the aforesaid judgment of the Apex Court can help us to resolve the present controversy when under the 1991 Rules both graduate classical teachers like the general graduate teachers became entitled to have their seniority determined in accordance with Rule 13 of the 1982 Rules i.e. from the date of initial appointment or date of joining.

45. Similarly, the decision in Reserve Bank of India v. N.C. Paliwal (supra), reliance on which has been placed by Sri N. Dutta, learned Senior Counsel, deals with the benefit of service in non-clerical cadre upon incumbents being admitted to the clerical cadre. Once again, the Apex Court took the view that what was provided by the Rules is an attempt to strike a balance between competing claims. The facts in which the aforesaid judgment was rendered and the context in which the observations contained in paragraph 16, relied upon, were made make it abundantly clear that the aforesaid judgment cannot have any application to the issues arising in the present cases. Moreover, it must be noticed that in paragraph 17 of the aforesaid judgment the Apex Court had recorded the fact that "no question of any existing seniority being disturbed by change in the Rule of seniority" had arisen in the case.

46. The last judgment relied upon by Sri N. Dutta, learned Senior Counsel i.e. Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, deals with the validity of a cut off date for determination of eligibility for promotion in the Marathwada Gramin Bank pursuant to the directions of the National Industrial Tribunal. In the above context the Apex Court in paragraph 33 of the judgment had observed that merely because a person happens to fall on the wrong side of the cut off date may not be a good ground for holding such cut off date to be arbitrary. Though Sri Dutta has sought to contend that the date 03.8.1990 stipulated by Rule 24(2)(ii) for counting of seniority of Graduate Classical Teachers for promotion is really a cut off date and the dispute hovers around the adoption of a cut off date we cannot persuade ourselves to agree with Sri Dutta. The question in the present case is not with regard to the adoption of a cut off date but whether any such date could have been fixed for purposes of determination of seniority of Graduate Classical Teachers when under the 1991 Rules they were entitled to have their seniority determined from the date of their initial appointment. The necessary corollary to the above is the issue with regard to the validity of the alteration of the service conditions of the Graduate Classical Teachers. The argument advanced and reliance placed on the decision in Rama Rao and Ors. (supra) would have been relevant had the 1991 Rules prescribed 03.8.1990 as a cut off date for determination of seniority of Graduate Classical Teachers. The said Rules did not do so; instead, seniority was to be determined on the principle of length of service.

47. In view of the above discussions we have considered it appropriate to come to the conclusion that graduate classical teachers and general Graduate Teachers though constitute two different cadres, by virtue of both categories having been included in Grade-IV of the service by the 1991 Rules, were brought at par or made equivalent with the same avenues of promotion on the basis of the same principle for determination of seniority. Consequently, parity or equality between the two categories of teachers was brought about by the 1991 Rules. Rule 24(2)(ii) of the 2003 Rules having made the Graduate Classical Teachers eligible for promotion in the same line as general graduate teachers by reckoning their services from 03.8.1990 metes out a differential treatment to Graduate Classical Teachers notwithstanding they being equal to general Graduate Teachers. The said provision of the 2003 Rules, therefore, has the effect of treating equals as unequals resulting in hostile discrimination against Graduate Classical Teachers. No intelligible basis for the said differentiation being discernible we are of the view that Rule 24(2)(ii) of the Assam Secondary Education (provincialised) Service Rules, 2003 is ultra vires the provisions of Articles 14 and 16 of the Constitution. Accordingly, we declare the said provision of the Rules as unconstitutional and, therefore, invalid

48. All the writ appeals and writ petitions including WP (C) 7125/2003 as well as Review Petition No. 128/2004 shall stand disposed of in terms of the above order.