

**(2011) 12 GAU CK 0001**

**In the Gauhati High Court**

**Case No : Writ Petition (C) 3172 of 2011**

Sri Nirendra Mohan Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision : 20-12-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation : (2012) 1 GLD 856**

**Hon'ble Judges : Iqbal Ahmed Ansari, J**

**Bench : Single Bench**

**Advocate :** A.S. Choudhary, Mr. I. Hussain, Mr. A. Maleque, Mr. I.H. Saikia, Mr. N.N. Ahmed, Mr. M.H. Ahmed and Ms. S. Kanungoe, for the Appellant; A. Deka, Public Prosecutor Baruah and Mr. R. Sarma, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

I.A. Ansari, J.—With the help of the present writ petition made under Article 226 of the Constitution of India, the petitioner, who is an Assistant teacher in Ganakpukhuri High School, in the district of Barpeta, has put to challenge the Order, dated 05.06.2011, passed by the Government of Assam, Education (Secondary) Department, whereby respondent No. 4 herein (in short, "the private respondent") has been allowed to hold the charge of the office of the Headmaster of the said school. In order to correctly appreciate the controversy involved in the present writ petition, I deem it necessary to summarize the background facts enumerated in the writ petition. These facts may be set out, in brief, as under:

(i) Ganakpukhuri High School was provincialised, with effect from 01.02.1985, by order, dated 26.01.1985. The date of birth of the petitioner is 01.07.1956, while the date of birth of the private respondent is 01.09.53. Thus, the private respondent would retire before the present petitioner. The date of appointment of the writ petitioner, as a graduate teacher, by the Managing Committee of the School was 1.5.1978. The date of appointment of the private respondent, as

classical teacher, by the Managing Committee of the school, was 4.5.1977. Though appointed as a classical teacher, the private respondent was, at the time of his appointment, as a classical teacher, a graduate. The private respondent was, thus, appointed by the Managing Committee of the said school earlier than the present petitioner. What also needs to be noted is that classical teacher has not been defined in any statutory provisions, but what the expression "classical teacher" means, in the light of the Full Bench decision, in Rukmini Bora and Another Vs. State of Assam and Others, , is that teacher, who had Hindi, Arabic, Persian, Assamese, Bodo, etc., as one of the subjects in the school and teach one of these subjects on being appointed therefor.

(ii) On provincialisation of the school, with effect from 1.2.1985, both, the petitioner as well as the private respondent, became regular teachers of the said school, the petitioner being treated as a graduate teacher, while the private respondent remained being treated still as a classical teacher. Before provincialisation, while the petitioner had been receiving scale of pay of Rs. 620-1315 per month, the private respondent, being classical teacher, used to receive the scale of pay of Rs. 580-1065 per month.

(iii) The headmaster of the school retired on 28.02.2004 and, on the following day, i.e., on 29.02.2004, the petitioner was made in-Charge headmaster. On coming into force of the Assam Secondary Education (Provincialised) Service Rules, 2003, the petitioner was, on 02.04.2004, removed from the post of in-Charge Headmaster of the said school and he was substituted, as in-Charge Headmaster of the said school, by the private respondent.

(iv) Assam Service (Revision of Pay) Rules, 1983, was notified by gazette notification, dated 22.07.1983. Under the notification, dated 07.06.1983, classical teachers had been granted pay scale of Rs. 620-1315/-. By notification, dated 15.05.1986, classical teachers were classified into grades. The pay scale of Senior Grade was Rs. 620-1315/-, whereas the pay scale of Junior Grade was Rs. 625/- to Rs. 920/-.

(v) Pursuant to the advertisement, dated 02.11.2010, issued by the Director of Secondary Education, Assam, inviting applications for appointment to the post of headmaster, the petitioner and also the private respondent, being qualified, applied. The interview was held on 29.01.2011 and both of them participated in the interview for appointment as regular headmaster.

(vi) The petitioner alleges that respondent No. 2, namely. Director of Secondary Education, Assam, without considering the petitioner's case, passed an order, on 14.12.2010, relieving the petitioner from the post of in-Charge headmaster without even serving a notice on the petitioner and without even affording an opportunity of being heard to the writ petitioner. By the said order, dated 14.12.2010, respondent No. 4 (i.e. the private respondent) has been, once again, made, points out the petitioner, in-Charge of the office of the Headmaster of the said school under the provisions of FR 49(c) temporarily. In the order,

dated 14.12.2010, private respondent (i.e., respondent No. 4) has been shown as senior-most Assistant Teacher of the said school.

(vii) Aggrieved by the order, dated 14.12.2010, the petitioner, who was, at the relevant point of time, holding the charge of the office of the Headmaster of the said school, had come to this Court with the help of a writ petition, namely, WP(C) No. 6841/2110, which was disposed of, on 12.05.2011, setting aside and quashing the order, dated 14.12.2010, and remanding back the matter to the Commissioner and Secretary to the Govt. of Assam, Education (Secondary) Department to take a decision afresh after hearing the parties concerned. Pursuant to the High Court's order, dated 12.05.2011, hearing took place, on 02.06.2011, in the office of the respondent No. 1, and, on completion of hearing, respondent No. 1 has passed the impugned order, dated 06.06.2011, holding the private respondent senior to the petitioner and asking the petitioner to hand over charge, as in-Charge Headmaster, to the private respondent No. 4. It is the order, dated 06.06.2011, which is under challenge in the present writ petition.

2. I have heard Mr. A.S. Choudhury, learned Senior counsel, for the petitioner, and Mr. A. Deka, learned Standing Counsel, Education Department. I have also heard Mr. P.P. Baruah, learned counsel, for the respondent No. 4.

3. Appearing on behalf of the petitioner, Mr. Choudhury, learned senior counsel/ submits that the finding, as regards seniority, is perverse inasmuch as the petitioner had received his graduate scale of pay with effect from 01.02.1985, when the school came to be provincialised; whereas the private respondent received his graduate scale of pay in the year 1992. This apart, submits Mr. Choudhury, the petitioner is M.A. B.Ed; whereas the private respondent is BA BT and that under the Assam Secondary Education (Provincialised) Service Rules, 2003, musical teachers have been encadred as graduate teacher. This encadrement has, however, taken place, according to Mr. Choudhury, by virtue of Assam Secondary Education (Provincialised) Service (Amendment) Rules, 2010, (in short, "the 2010 Rules"), which was notified on 26.07.2010, Sub-rule (2) of Rule (1) of the 2010 Rules having made it clear that the 2010 Rules shall come into force from the date of its publication in the official gazette. Since the publication in the official gazette of the 2010 Rules was 26.07.2010, the 2010 Rules shall be treated, contends Mr. Choudhury, as prospective and not retrospective in nature. As this encadrement, according to Mr. Choudhury, is prospective nature, it is not possible to treat the private respondent, who was a classical teacher, until his encadrement as graduate teacher, senior to the petitioner.

4. Resisting the writ petition, it has been submitted, on behalf of the respondents, that Rule 24(2)(ii) had been struck down as ultra vires by the Full Bench in Rukmini Bora and another v. State of Assam and others, reported in 2009(3) GLT 834, on the ground that clause (ii) was discriminatory, because clause (ii) had provided that seniority regarding Classical Teacher, shall be counted as per Govt. letter No. R(3)S-244/99/42, dated 3.8.1990, wherein it had

been stated that the Classical Teachers of Hindi, Sanskrit, Arabic, Persian, Assamese, Bodo etc., having degree qualification, may be included in the cadre graduate teacher for giving benefit of promotion to the higher post in the same line a general teacher i.e. from the date of the aforesaid Govt. letter dated 03.08.1990.

5. It has also been pointed out, on behalf of the respondents, that the Full Bench has mentioned, in Rukmini Bora (supra), that in terms of the Assam Secondary Education (Provincialised) Service Rules, 1982, as amended on 30.12.1991 (hereinafter referred to as the "1991 Rules"), graduate classical teachers were encadred, for the first time, in grade IV of the service and it is grade IV of the service, wherein graduate teachers were also included and, hence, though might have been distinct and separate, a classical teachers became equivalent to, and at par with, a graduate teacher on having been included, as already indicated hereinbefore, within Grade-III. Thus, both classes of teachers, namely, graduate teachers as well as classical teachers, fell in the same grade and this was made clear by the provisions contained in Rule 9 of the 1991 Rules inasmuch as Rule 9 made provisions for promotion to Grade-II and Grade-III of the service from the serving members of Grade-IV of the service subject to their having requisite period of qualifying service. The Full Bench, in Rukmini Bora (supra), concluded, points out the respondents, that graduate classical teachers became eligible for promotion to higher grades in the service in the same manner as general graduate teachers. The Full Bench has also pointed out, contend the respondents, that in so far as the period of qualifying service stipulated by Rule 9 is concerned, the seniority of a member of the service is primarily required to be determined from the date of continuous appointment, date of joining and if the said dates are same, then, by reference to the date of birth. Consequently, according to the Full Bench, in Rukmini Bora (supra), by virtue of the provisions of 1982 Rules, general graduate teachers were given seniority with effect from the date of their initial appointment and once graduate classical teachers were encadred in the service by the 1991 Rules, no different treatment could have been given to such teachers, because Rule 13 continued to hold the field and, hence, graduate classical teachers, too, became entitled to seniority from the date of their initial appointment.

6. Repelling the submissions made on behalf of the respondents Mr. Choudhury has pointed out that on the decision having been rendered by the Full Bench, Rukmini Bora (supra), on 25th June, 2009, there was a void created inasmuch as Clause-II of Rule 24 of the 2003 Rules had been struck down by the Full Bench and this void was filled up by the notification, dated 26th July, 2010, issued by Commissioner and Secretary to the Govt. of Assam, Education (Secondary) Department, Govt. of Assam. Mr. Choudhury submits that before this encadrement, which was notified on 26.07.2010, classical teachers could not have been treated at par with the graduate teachers and, hence, the private respondent could not have been treated, before the date of the notification, dated 26th July, 2010, at par with, or equivalent to, a graduate teacher, such as;

the petitioner, and since the private respondent could not have been treated at par with, or equivalent to, a graduate teacher, such as, the petitioner, the consequence was, according to Mr. Choudhury, that the private respondent became at par with the present petitioner, who is a graduate teacher, on 1.2.1985 and when the private respondent became a graduate teacher, on 01.02.1985, it was impossible to treat him senior to the present petitioner inasmuch as the present petitioner became a graduate teacher as far back as on 01.05.1978.

7. On a query made by this Court as to whether the issuance of the notification, dated 26th July, 2010, was at all necessary by the Government, when the Full Bench, Rukmini Bora (supra), had, while striking down clause (ii), clearly held that graduate classical teachers had become equivalent to, and at par with, general graduate teachers by the 1991 Rules and their seniority had to be counted from their initial date of appointment, Mr. Choudhury had no answer, far less convincing answer, to offer.

8. Since the whole writ petition revolves around correct interpretation of the decision, rendered in Rukmini Bora (supra), it is appropriate to take note of the facts, which had been taken note of in Rukmini Bora (supra), by the Full Bench. In Rukmini Bora (supra), the writ petitioners were classical teachers, who possessed graduate degree. Classical teachers, as pointed out in Rukmini Bora (supra), are, if I may reiterate, those, who had Hindi, Sanskrit, Arabic, Persian, Assamese and Boro as one of the subjects, while acquiring the degree qualification. They taught the aforesaid languages in the schools in which they are/were appointed.

9. It is time, now, to point out that with the object of providing provincialisation of secondary education covered by the deficit scheme prevailing in the State of Assam, the Assam Secondary Education (Provincialisation) Act, 1977 (hereinafter as "the Provincialisation Act, 1977") was enacted, which came into force w.e.f. 1.10.1977. Section 2(v) and (vi), which define the expression "employee" and "existing employee", being relevant, are reproduced 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.

10. Section 3 of the Act provides that on and from an appointed date, that is, 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.

11. The Full Bench, in Rukmini Bora (supra), as already indicated above, pointed out that at the time, when the Provincialisation Act, 1977, was brought into force, there were two classes of teachers, namely, graduate teachers and classical teachers, but, by virtue of Section 3(1) of the Provincial Sation Act, 1977, the services of both categories of teachers were provincialised and they became State Government employees with effect from the respective 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 into force, in the year 1982, in the form of the Assam Secondary Education (Provincialised) Service Rules, 1982 (hereinafter as "the 1982 Rules"). Rule 3 of the 1982 Rules provides that the word, "service", as defined in Rule 2(k) of the 1982 Rules, shall consist of the cadres specified under Rule 3. Rule 3(1)(e), being relevant, is extracted below :

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

(i) Graduate teachers Higher Secondary and Multipurpose schools, High Schools hereinafter 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.

12. The Full Bench pointed out, in Rukmini Bora (supra), that the provisions of Rule 3(1)(e) make it clear that classical teachers of any kind, including graduate teachers, were not specifically encadered. The Full Bench has also pointed out that as the classical teachers were being excluded from consideration for promotion under the 1982 Rules, representations were made by the classical teachers and, thereafter, by communication, dated 03.08.1990, addressed by the Deputy Secretary to the Government of Assam, Education Department, the Director of Secondary Education, was informed that classical teachers of Hindi, Sanskrit, Arabic, Persian, Assamese, Bodo etc., having degree qualification, may be included in the cadre of general teacher for giving promotion to higher posts in the same line as in the case of general teachers and it was thereafter that promotions were given to many incumbents, who were working as classical teachers.

13. The Full Bench also pointed out that the 1982 Rules were amended in the year 1991 and, as per Rule 3 of the amended Rules graduate teachers of Higher Secondary and Multipurpose Schools or High Schools, on the one hand, and senior classical teachers and senior Hindi teachers having Bachelor degree, on the other, were encadered in Grade-IV of the service and, in this manner, 4 (four) categories of employees were included in Grade-IV of the service having the same scale of pay. The Full Bench also pointed out that by virtue of Rule 9 of the amended Rule, classical teachers, with graduate degree, had become eligible

for promotion to Grade-III as well as Grade-II of the service.

14. It may, now, be noted that the Assam Secondary Education (Provincialised) Service Rules, 2003 (hereinafter referred to as the "2003 Rules") came into force, on 11.8.2003, by repealing the earlier 1982 Rules. Rule 2(n) of the 2003 Rules defines the word, "graduate teacher", to mean the category of Assistant Teacher in High/Higher Secondary/Higher Secondary and Multipurpose/High Madrasa Schools for whose appointment the minimum qualification prescribed is a Graduate degree in Arts, Science or Commerce including Demonstrators in Higher Secondary/Higher Secondary and Multipurpose School. The observations made by the Full Bench, in Rukmini Bora (supra), at paragraph 30, 32, 33, 34 and 35, being relevant, are quoted below:

(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 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.

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(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, 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 3.8.1990. 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 be 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.

15. From a bare reading of what have been observed above in *Rukmini Bora (supra)*, it becomes clear that the Full Bench, in no uncertain words, held, in *Rukmini Bora (supra)*, that the classical teachers and graduate teachers were brought at par with each other by the 1991 Rules, their seniority being counted from the date of their initial appointment and this position was sought to be changed by the 2003 Rules, particularly, Rule 24 (2) (ii) thereof, which placed graduate classical teachers at a disadvantageous position compared to the general graduate teachers, which was violative of Articles 14 and 16 of the Constitution of India inasmuch as, reiterated the Full Bench, in *Rukmini Bora (supra)*, that though the graduate classical teachers were equal with the general graduate teachers under the 1991 Rules, the classical teachers have been sought to be treated differently by the 2003 Rules.

16. In the light of the decision of the Full Bench, in *Rukmini Bora (supra)*, there can be no manner of doubt that a graduate classical teacher stands on the same footing as does a general graduate teacher and their inter se seniority has to be considered with reference to the initial date of their respective appointments. After the Full Bench decision, in *Rukmini Bora (supra)*, there was really no necessity of the Notification, dated 26.07.2010, bringing into force the Assam Secondary Education (Provincialised) Service (Amendment) Rules, 2010 (hereinafter referred to as the "2010 Rules"), whereby it has laid down that the classical teachers of Hindi, Arabic, Persian, Bodo, etc., having graduate degree from any recognized university, shall be counted at par with the general graduate teachers for consideration of promotion to the next higher grade with effect from

the date of their appointment as graduate classical teachers. In the light of the Full Bench decision, in *Rukmini Bora* (supra), the 2010 Rules have to be read as redundant or, at best, retrospective in nature notwithstanding the fact that it has been brought into force in the year 2010. When the Full Bench decision, in *Rukmini Bora* (supra), has already made graduate classical teachers equivalent to, and at par with, the general graduate teachers, by striking down Clause (ii) of sub-rule (2) of Rule 24 of the 2003 Rules, making of the 2010 Rules was not really necessary. The end result was that, under the 1991 Rules, as pointed out, in *Rukmini Bora* (supra), the classical teachers, having graduate degree, stood at par with the general graduate teachers and their seniority were to be counted from the initial date of their respective appointments.

17. In the backdrop of the above facts, it needs to be noted that in the order, dated 05.06.2011, passed by the Government, which the petitioner has put to challenge, it has been pointed out that the school, in question, was provincialised with effect from 01.02.1985 and with the provincialisation, both the petitioner as well as the private respondent received graduate scale of pay on 1.2.1985.

18. Thus, with the provincialisation, their initial date of appointment, in a way, was from the date of the provincialisation of the school, i.e. 01.02.1985. But, as the private respondent joined the school earlier, he was held to be treated as senior to the present petitioner in the impugned order. The conclusion, so arrived at by the Government, is a justified one. Since it would have been impossible to treat all teachers to have been appointed on the same date, it logically follows that though provincialised on 02.02.1985, it is the initial date of appointment, in the school, which is the relevant factor.

19. In the case at hand, the private respondent was appointed, on 4.5.1977, as a classical teacher; whereas the present petitioner was appointed as an Assistant reader on 01.05.1978. Thus, the initial date of appointment of the private respondent was almost a year before the present petitioner came to be appointed in the school, in question. When the 1991 Rules were brought into force, both the classical teachers having graduate degree as well as general graduate teachers became at par with each other and the consequence was that inter se seniority between a graduate classical teacher and a general graduate teacher was to be counted from their initial dates of appointments. In the present case the seniority of the petitioner was to be counted from the date of his initial appointment, i.e. 01.05.1978; and the seniority of the private respondent too was to be counted, and has to be counted, from the date of his initial appointment, which was 04.05.1977. Thus, there can be no manner of doubt that the private respondent was, and has remained, senior to the petitioner since the time of bringing into force of the 1991 Rules. Had Clause (ii) of sub-rule (2) of the 2003 Rules not been struck down by the Full Bench, as indicated hereinabove, there would have been considerable force in the submission of Mr. Choudhury, learned senior counsel, appearing for the petitioner, that the pay scale between the two, i.e., private respondent and the

petitioner, being different and the pay scale of the petitioner being higher, the petitioner ought to have been treated as senior.

20. Considering the fact that the Full Bench, in Rukmini Bora (supra), has made it clear that the graduate classical teachers and the general graduate teachers are at par with each other, difference in pay scale becomes irrelevant in determining inter se seniority between a graduate classical teacher and a general graduate teacher and their inter se seniority is required to be counted from their respective dates of initial appointment. Seen in this light, it becomes clear that the 2010 Rules cannot be treated as prospective in nature or having changed the decision of the Full Bench in Rukmini Bora (supra).

21. What, clearly emerges from the above discussion is that the respondent No. 4 is senior to the petitioner and, consequently, respondent No. 4 is entitled to hold the charge of the office of the Headmaster of the school in question.

22. Because of what have been discussed and pointed out above, I do not find that the impugned order, dated 5.6.2011, suffers from any infirmity, legal or factual, and, therefore, the same is not interfered with.

23. As a result and for the reasons discussed above, this writ petition fails and the same shall accordingly stand dismissed. No order as to costs.