

(1987) 08 MAD CK 0059
In the Madras High Court

T. Alagarsamy and Others

APPELLANT

Vs

Director of School Education and Others

RESPONDENT

Date of Decision : 10-08-1987

Acts Referred:

Citation : (1988) 2 MLJ 60

Hon'ble Judges : M.N. Chandurkar, C.J;M.N. Chandurkar, J

Bench : Division Bench

Judgement

M.N. Chandurkar, J.—These five writ appeals arise out of a common order passed by the learned single Judge in five writ petitions filed by the respective appellants challenging the provision made with regard to the determination of seniority as between the teachers who were originally employed in the District Boards Secondary Schools which were originally run by the District Boards before the abolition of the District Boards in the year 1960-61 and the teachers in the regular Government schools consequent upon the teachers in the employment of the erstwhile District Boards Secondary Schools being integrated with the teachers in the Government schools. The facts which gave rise to the five writ petitions which are filed in all by 23 teachers are not in dispute. Consequent on the formation of the Panchayat Unions, the District Boards were abolished in the year 1960-61. In 1963, the administration of the former District Board Schools was brought under the Control of the Special District Educational Officers. In G.O.Ms. No. 539,/ Education, dated 13.4.1966 the Government ordered that these schools should be transferred to the Government and treated as Government Secondary Schools with effect from 1.4.1966. This G.O. was followed by G.O. No. 761, Education, dated 16th May, 1970. By this G.O. the Government specifically directed that the absorption of the teaching and non-teaching staff in the erstwhile District Board Secondary Schools in Government service shall take place from 1.4.1970. It was also directed that the personnel so absorbed will constitute a separate service in the Education Department, each category of posts forming a separate cadre under the service with the present scales of pay. This service was to be named as the Tamil Nadu Educational

Subordinate Service (B). Paragraph 4 which dealt with the promotion of these teachers read as follows:

promotion to posts such as Headmasters, in the service that existed on the date of absorption shall be normally be made from teachers included in the service who are qualified for such consideration. Such of the substantive vacancies arising in future as could not be filled as above and the new posts created on or after the date of absorption shall be filled by recruitment through the Tamil Nadu Public Service Commission or as per the service rules applicable to respective similar posts in Government service.

It is also provided by this G.O. that the new Government schools to be opened by Government on or after 1.4.1970 shall be only regular Government schools.

2. While the teachers who were originally working in the District Boards Secondary Schools were after absorption with effect from 1.4.1970 formed "B" wing of the Tamil Nadu Educational Subordinate Service, the teachers in regular Government Schools were classified as "A" Wing of the Tamil Nadu Educational Subordinate Service.

3. On 17th October, 1974 the Government issued G.O.Ms. No. 1786, Education, in which they mentioned that the Government had carefully examined the question of integration of "A" and "B" wings of teaching staff in Government schools in consultation with the Director of School Education and they considered that complete integration of "A" and "B" wings was administratively difficult and it would be in the best interests of teachers in both the wings if they were kept separate upto the category of Headmasters (Gazetted). Therefore, they directed:

The teaching staff in "B" wing schools appointed prior to 1.4.1970 should be kept separate as "B" wing staff and separate service rules should be framed regulating the conditions of their service. Teaching staff in B wing schools appointed on or after 1.4.1970 and the staff in A wing schools will be kept separate as A wing staff and their service conditions will be regulated under the Tamil Nadu Educational Subordinate Service Rules. The teaching staff viz., A and B wings will be two separate wings in the Tamil Nadu Educational Subordinate Service and the Tamil Nadu Educational Service.

With regard to the promotion to the posts of Headmasters/ Headmistresses, the following orders were issued:

(1) promotion to posts of Headmasters/Headmistress (non-gazetted) in B wing Schools shall be on the basis of their seniority as school assistants in the Revenue District as a unit.

(2) Appointment to the posts of Headmasters/Headmistress (Gazetted) shall be by recruitment by transfer from Headmasters/ Headmistresses (Non-gazetted) in B wing schools in consultation with the Tamil Nadu Public Service Commission. For the purpose of selection and appointment the State shall be the unit.

(3) 30% of the substantive vacancies of the posts of District Educational Officers shall be filled up by promotion from among the Gazetted Headmasters/Headmistress in the B wing schools.

The above order did not relate merely to the promotion to the posts of Headmasters/Headmistresses but the Government had also taken a decision that 30% of the substantive vacancies of the posts of District Educational Office's shall be filled up by promotion from among the Gazetted Headmasters/Headmistresses in the "B" Wing schools. Therefore the teachers in the erstwhile District Board Schools were held entitled not only to promotion to posts of Headmasters, but to 30% of the substantive vacancies of the posts of District Educational Officers.

4. A further G.O., G.O.Ms. No. 1968 (Education) dated 2.11.1978 was then issued by the Government. This G.O. was the result of the representations made to the Government by personnel in the "B" wing who were fullfledged Government servants from 1.4.1970 that it would not be equitable to deny them for ever the advantages available to their counter parts in the "A" wing when persons of both the wings were doing identical work and that the Government should consider merging both the wings on some rational basis. After a full consideration, the Government adopted a formula to integrate the two wings and thus attempted to equalise their service conditions to the extent possible. To bring about this integration the Government issued directions as follows:

The Government accordingly now direct, in partial modification of the orders in the G.O& referred to above, that the staff of A and B wings be integrated with immediate effect following the procedure indicated below:

(i) Statewide seniority lists shall be drawn up and maintained by the Director of School Education for B wing staff similar to the statewide list maintained all along for Gazetted Headmasters, non-gazetted Headmasters, B.T., Assistants, Language Pandits, Grade I and Physical Directors in A wing.

(ii) The date of regular appointment of a person in the post in B wing on 31.3.1970 should be the basis for drawing up the statewide seniority lists for different categories in B wing.

(iii) For filling up substantive vacancies existing on the date of this order or that may arise there thereafter the ratio between the two wings for the different categories of posts shall be as follows:

A. For filling up the posts by promotion.

1. From the non-gazetted Headmasters to Gazetted Headmasters.

2. from the B.T. Assistants to Non-gazetted Headmasters.

3. From Secondary grade Assistants and other Specialists teachers to the cadre of B.T. Assistants.

The vacancies will be filled up between A wing and B wing in the ratio of 2:3. The cycle of 5 shall be followed as indicated below:

A - 1 D - 1 A - 1 B - 1 B - 1 ---- 5 ----

As stipulated in Clause (ii) above for the purpose of drawing the statewide seniority list for different categories in "B" wing, the date of regular appointment of the person concerned in the post in "B" wing as on 31.3.1970 was to be treated as the basis. All substantive vacancies existing on 2.11.1978 and occurring thereafter were to be filled up according to the ratio indicated in paragraph 4(A) above. Clause (C) of paragraph 4 of this G.O. dated 2.11.1978 which dealt with the promotion from Gazetted Headmasters to District Educational Officers read as follows:

The existing ratio of 40% for A wing and 60% for B wing will continue to be operated as heretofore until the promotion of all the eligible B wing personnel is exhausted.

It was made expressly clear in paragraph 6 of the G.O. that all promotions from the date of the Government Order dated 2.11.1978 shall be only with reference to the combined seniority lists prepared in the manner indicated in the G.O. A concession was given to the personnel belonging to the "B" wing who had not passed the tests prescribed for "A" wing personnel as follows:

All personnel belonging to the "B" wing who have not completed 45 years of age on the date of this order shall within a period of three years from the date of this order pass all the tests prescribed for "A" wing personnel of similar categories. The Government however reserve the right to grant exemption from this stipulation in respect of "B" wing personnel who had crossed 45 years of age on the date of this order. The Director of School Education shall send proposals for relaxation of relevant rules in respect of each persons.

5. This G.O.Ms. No. 1968 (Education), dated 2.11.78 was challenged before the Supreme Court in Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, , by the Tamil Nadu Education Department Ministerial and General Subordinate Services Association which consisted of members of the "A" wing i.e., teaching and non-teaching staff of the Government schools. The two decisions of the Government which were challenged were: (1) fixing the ration between the two wings in the matter of promotion and (2) fixing the principle for computation of service in determining common seniority. These decisions were challenged as capricious, arbitrary and traumatic It may be remembered that the ratio prescribed for the ministerial and the teaching staff as between the "B" wing and the "A" wing was 5:3 and 3:2 respectively. While upholding the G.O., the Supreme Court pointed out that "all schools to be opened after 1.4.1970 were to be Government schools and so the dichotomy between the staff of erstwhile District Board schools and Government schools and so the dichotomy between the staff or erstwhile District Board schools and Government schools no

longer persisted". The Supreme Court upheld the ratio with the following observations:

Bearing in mind the strength of the District Board staff to be inducted, the ratio is rational. May be, a better formula could be evolved, but the Court cannot substitute its wisdom for Government's, save to see that unreasonable perversity, MALA FIDE manipulation, indefensible arbitrariness and like infirmities do not define the equation for integration.

The Supreme Court pointed the fact that the length of service of the erstwhile District Board employees could not be ignored. In paragraph 16 the Supreme Court observed as follows:

What is important is to know whether MALA FIDES vitiates or irrational and extraneous factor fouls. It is impossible to maintain that the length of service as District Board employees is irrational as a criterion. Let us assume for argument's sake that the mode of selection by the District Boards is not as good as by the Public Service Commission. Even so it is difficult to dislodge the Government's position that the teachers with mostly the same qualifications, discharging similar functions and training similar students for similar examinations, cannot be equated from a pragmatic angle without being condemned as guilty of arbitrariness.

(Underlining ours).

An argument was advanced before the Supreme Court on behalf of the members of the "A" wing, that a few hundred "A" wing members have been passed over by some one in "B" Wing far junior to them. While rejecting this argument the supreme Court observed as follows:

Once the principle is found to be rational the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however unhappy we be to see the seniors of yesterday becoming the juniors of today, this is an area where absent arbitrariness and irrationality, the Court has to adopt a hands-off policy.

The Supreme Court then referred to the grievance of the "B" wing members who complained that it was they who have really suffered by being denied what is due to them on account of the length of service all these years after 1970. Dealing with this contention, the Supreme Court observed as follows:

Probably, the injustice of the past, when suddenly set right by the enquiry of the present, puts on a molested mien and the beneficiaries of the status quo cry for help against injustice to them. The law, as an instrument of social justice, takes a longer look to neutralise the sins of history. Be that as it may, judicial power cannot rush in where even administrative fete fear to tread.

Then in paragraph 19 of the judgment, the Supreme Court made the following observations on which reliance has been placed by way of justification by the

State Government for the action which they took and which led to the filing of the writ petitions.

We see the force of the petitioners grievance and realise that an alternative policy may well be fabricated. That is a matter for the State and not for the Court.

This decision upholding the G.O.Ms. No. 1968 was given by the Supreme Court on 23.10.1979.

6. Before the above decision of the Supreme Court came, the Government by G.O.Ms. No. 1079 dated 2.7.1979 made rules styled as Special Rules for the Tamil Nadu Educational Subordinate Service (B) Wing which were to be included as Section 6A under part III-B of Volume III of the Madras Services Manual, 1970. These rules were to be deemed to have come into force on the 1st of April, 1970. The rules dealt with the constitution of the Tamil Nadu Educational Subordinate Service (B) Wing of which class I consisted of four categories as follows:

Category I - Headmasters/Headmistresses Category II - B.T. Assistants

Category III - Pandit and Munshis, Grade I.

Category IV - Physical Directors.

Class II consisted of categories of different kinds of instructors with which we are not concerned. Class III consisted of three categories viz., (1) Secondary Grade Teachers, (2) Pandits and Munshis - Grade II and (3) Physical Training Instructors and Instructresses, Grades I and II, Rule 2 prescribed the manner of appointment to the various classes and categories of officers. The appointment to the category of Headmasters and Headmistresses was to be made by promotion from among the B.T. Assistants in the Revenue District as a unit. The promotions to these posts was to be made on grounds of merit and ability, seniority being considered only where merit and ability are approximate the same.

7. We now come to the crucial G.O., G.O.Ms. No. 1307, (Education), dated 12.7.1980 by which in exercise of the powers under the proviso to Article 309 of the Constitution an amendment to the rules by adding Rule 2-A in the Tamil Nadu Educational Subordinate Service Rules was made. This rules read as follows:

2-A Mode of promotion to the post of teaching staff:

All substantive vacancies existing or that may arise on and from the 2nd November, 1978 in all categories of teaching staff which are to be filled up by promotion shall be filled or reserved to be filled from among the holders of the specified posts both in "A" and "B" wings of the School Education Department in the ratio of 2:3 (namely 40% of A wing and 60% for B wing) as per the seniority lists of A and B wings drawn up as on the 31st March, 1970.

The Explanation to the rule specified how the ratio was to be implemented.

Another addition made by the said G.O. was in Rule 12 where after Sub-rule (c) the following was added as Sub-rule (d):

All persons belonging to B wing who have not completed 45 years of age on the 2nd November, 1978 shall within a period of three years from the 2nd November, 1978 pass all the tests prescribed for similar categories of persons in "A" wing".

8. On 22.7.1980, after the G.O.Ms. No. 1968 (Education) was upheld by the Supreme Court, the Government addressed a letter to the Director of School Education stating that the Government had examined the observations made by the Supreme Court about an alternative policy and the Government considers that there was no better possible alternative solution to the problem than the order of integration confirmed by the Supreme Court. Paragraphs 2 and 3 of this communication read as follows:

2. I am also to state that the Government have carefully examined the observation made in the concluding portion of the Supreme Court judgment about alternative policies and the Government consider that there is no better possible alternative solution to the problem than the integration order confirmed by the Supreme Court.

3. In the above circumstances, I am to request you to implement the integration order issued in the G.O. referred to at para 1 above. The Associations concerned may also be informed accordingly.

9. In spite of the above express position taken by the Government, however, the Government came out with G.O.Ms. No. 98 (Education), dated 21.1.1981 by which the date 31st March, 1970 as specified by the amendment dated 12.7.1980 was suddenly changed to 1st of November, 1978. In place of Rule 2-A as framed by G.O.Ms. No. 1307 dated 12.7.1980, a new Rule 2-A was substituted. The new rule reads as follows:

2-A Mode of promotion to the post of teaching staff.

All substantive vacancies existing or that may arise on and from the 2nd November 1978 in all categories of teaching staff which are to be filled up by promotion shall be filled or reserved to be filled from among the holders of the specified posts both in the "A" and "B" wings of the school Education Department as per the combined seniority lists of "A" and "B" wings drawn up as on the 1st November, 1978 in the ratio of 2:3.

Explanation:

For the purpose of preparation of combined seniority list of "A" and "B" wings the cycle of 5 (2: 3 in respect of all categories of teaching staff) shall be followed as indicated below:

"A" wing - 1 "B" wing - 1 "A" wing - 1 "B" wing - 1 "B" wing - 1 ----- 5

The effect of this amendment was that the combined seniority list which was to be made taking into account the services of the persons in the "A" and "B" wings as on 31st March, 1970 in the prescribed ratio was now required to be made taking into account the service as on 1.11.1978. This has seriously prejudiced the employees in the "B" wing because after 1.4.1970 there were no fresh appointments in the "B" wing and all appointments were made only in the "A" wing and all schools with effect from 1.4.1970 had become Government schools. The result was that even the teachers who were not in employment prior to 31.3.1970 were placed in the seniority list over the employees who were already in the "B" wing before 31.3.1970. The ground on which the appellants who are members of the "B" wing ever since before 31.3.1970 challenge the new rule is that it was inconceivable that persons who entered service on or after 1.4.1970 should be placed over and above the members of the "B" wing who were already in service on that date and such persons must necessarily be placed below the "B" wing staff who were already in service as on 31.3.1970. The appellants have given figures which show that as on 1.4.1970 the B.T. Assistants in the "A" wing were only 890 and the services of 225 B.T. Assistants in the "A" wing were regularised after 1.4.1970 but with retrospective effect. Thus, as on 1.4.1970 there were only 1115 B.T. Assistants. As against this, as on 31.3.1970 the B.T. Assistants in the "B" wing were 5836. The B.T. Assistants appointed in the "A" wing after 1.4.1970 were 3004. Thus, the grievance was that more than 3000 B.T. Assistants who have been appointed after 1.4.1970 were being put in the seniority list over the appellants, even though they were not even in Government service on 1.4.1970. This, according to the appellants was clearly arbitrary and violative of the rights of equality under Article 14 and Article 16 of the Constitution of India.

10. On behalf of the State Government, the change of the date from 1.4.1970 to 2.11.1978 with reference to which the common seniority list was to be made is sought to be justified on the ground that the assumption of the appellants that the integration of the "A" and "B" wings took effect on 31.3.1970 was not justified and that actual integration came only with effect from 2.11.1978. The argument is that the ratio 2:3 between "A" and "B" wings of the B.T. Assistants as on 1.1.1978 was fixed on the basis of the strength of the two wings as on 1.11.1978 and not as on 1.4.1970. An additional ground on which the integration with reference to the date 1.11.1978 is sought to be justified is that if the integration was to be given effect to from 1.4.1970 the promotions already given to "B" wing staff between 1.4.1970 and 1.11.1978 in the posts exclusively allocated for "B" wing staff will have to be re-examined and fresh promotions would have to be ordered based on the integrated seniority list as on 1.4.1970 as the promoted persons in the "B" wing could not be treated as "A" wing personnel because they were promoted as per the rules applicable to "B" wing staff till 1.11.1978. This, according to the learned Government Pleader will result in serious disruptions in the service. The Government seeks shelter for the amendment in Rule 2-A in the observations of the Supreme Court that an

alternative policy could have been fabricated but that was a matter for the State and not for the Court. It was because of this observation, according to the Government, that the matter was reconsidered and the date was altered to 2.11.1978.

11. Mr. Ramamurthy appearing for the 3rd respondent in W.A. No. 735 of 1986 and respondents 3 to 9 in W.A. 650 of 1987 has however contended that the appellants were guilty of laches and they had also not joined the persons who would be affected, if their contention that the integration should take place with effect from 1.4.1970 is accepted. It is argued that out of more than 5,000 "B" wing teachers only 23 of those teachers viz., the appellants have challenged the order of the Government and others have accepted the integration and this Court should not therefore interfere when a majority of teachers have accepted the integration. It is also argued that the date of integration could be different from the date of absorption. Reliance has been placed by Mr. Ramamurthi on some decisions of the Supreme Court in support of his proposition that in the case of integration of services difficulties of individual employees cannot become a touchstone for testing the constitutionality of the scheme of integration. Since those decisions lay down the principle on which a scheme of integration of service is to be tested we may straightaway refer to those decisions. In *State of Punjab Vs. Joginder Singh*, , the Supreme Court was dealing with an executive order dated 27.9.1957 by which schools run by Municipal Boards and District Boards in the Ambala and Jullunder divisions in the Punjab were taken over by the Educational Department of the Punjab Government with effect from 1st October, 1957. The teachers employed in those schools were also taken over and thus became State employees. They were given the same grades of pay and other allowances as were given to their counter-parts in Government employment. The Government made certain rules giving retrospective effect from 1st October, 1957 the effect of which was that (1) the provincialised teachers were treated as falling under a cadre separate and distinct from the teachers, in the State cadre and (2) though the proportion of the lower grade teachers who would be promoted to higher grade was the same in both the cadres, it operated differently as regards the members in the two cadres. The contention was that the executive order dated 27th September, 1957 completely, integrated the two cadres and that the rules made by the State Government brought about a division in the united or unified service by creating the two new cadres with differences between the members of the service based on no intelligible differential which was violative of Article 14 and as the same adversely affected the chances of promotion of the provincialised cadre vis-a-vis the State cadre, they infringed Article 16 (1) of the Constitution. Holding that there was no integration of the two cadres either expressly or by necessary implication, the Supreme Court in paragraph 23 observed as follows:

If the Government order of September 27, 1957 did not integrate them into a single service, it would follow that the two remained as they started as two distinct services. If they were distinct services, there was no question of INTER

SE seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Article 14 or Article 16 (1). They started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a -denial of equal opportunity, for it is common ground that within each group there is no denial of that freedom guaranteed by the two Articles.

12. In Reserve Bank of India Vs. N.C. Paliwal and Others, , the Supreme Court after referring to the decision in Kishori Mohanlal Bakshi Vs. Union of India, , observed that it was well settled that Article 16 and a fortiori Article 14 did not forbid the creation of different cadres for Government service and if that be so equally these two Articles did not stand in the way of the State integrating different cadres into one cadre. It was a matter of policy and it was entirely a matter for the State to decide whether to have, several different cadres or one integrated cadre in its Services. After having made these observations, the Supreme Court referred to the scope of enquiry when the validity of a scheme of integration of two cadres is challenged. In paragraph 16 the Supreme Court observed as follows:

Now there can be no doubt that it is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not competent to the Court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The only enquiry which the Court can make is whether the rule laid down by the State is arbitrary and irrational so that it results in inequality of opportunity amongst employees belonging to the same class.

(Underlining ours)

13. In Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, , the Supreme Court has observed that it was not safe to test the constitutionality of service rule on the touchstone of fortunes of individuals. In paragraph 53 it was observed as follows:

In regard to the individual instances cited before us as exemplifying the injustice caused to the promotees, it is not safe to test the constitutionality of a service rule on the touchstone of fortunes of individuals. No matter with what care, objectivity and foresight a rule is framed, some hardship, inconvenience or injustice is bound to result to some members of the service. The paramount consideration is the reconciliation of conflicting claims of two important constituents of service, one of which brings fresh blood and the other mature experience.

14. In V.T. Khanzode and Others Vs. Reserve Bank of India and Another, the Supreme Court observed that "any scheme of seniority was bound to produce isolated aberrations and that could not justify the argument that the entire scheme was for that reason violative of the guarantee of equality".

15. In Reserve Bank of India and Others Vs. C.N. Sahasranaman and Others, , the Supreme Court once again pointed out the test to be applied while judging the constitutionality of a service rule and referred to the earlier decision in Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, . In paragraph 58 it was observed as follows:

Whether there has been denial of equality of the view of promotion or any constitutional right infringed or not cannot be judged, where interest of large number of people are concerned, in the abstract.... It has. to be borne in mind that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals is not the touchstone. See in this connection the observations of this Court in Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, .

16. As a result of the above decisions of the Supreme Court, it can now therefore be taken as settled law that framing of a service rule is essentially a matter a policy and it is for the State Government to decide how best it can harmonise the interests of different groups when the services of employees in these groups are to be integrated into one service and a common seniority list is to be prepared In determining the validity of a rule in the matter of combined seniority list, merely because some individuals are adversely affected by such seniority list the rule itself cannot be struck down as invalid and the true nature of the enquiry is to ascertain whether the rule is fair, reasonable and not arbitrary and does justice to the majority of the employees. The further proposition which flows from the decisions also is that if as a result of this rule, there is a denial of equal opportunity, there will be violation of Article 14 of the Constitution of India and also a consequent violation of the fundamental right under Article 16 (1) of the Constitution of India. It is with reference to this settled law that the challenge which is made before us to the Government order, dated 21.1.1981 will have to be determined. Before we go to the merits of the challenge to the Government order dated 21.1.1981, we would prefer to deal with the contention with regard to laches on the part of the appellants and the contention that the affected persons were not made parties to these petitions and the petitions are therefore to be rejected. There is hardly any substance in the contention that the appellants are guilty of laches. The combined seniority list was published only on 17.3.1983. The writ petition No. 9237 of 1983 has been filed in 1983. All the other writ petitions also appear to have been filed in 1983, though they were numbered in 1984. It cannot therefore be said that the appellants are guilty of any laches.

17. So far as the other contention that persons who were adversely affected, if the seniority list is directed to be redrawn, are not made parties it appears to us that this contention also deserves to be rejected. The several appellants are not agitating their individual claims with regard to. the placements in the seniority

list. What they are challenging is the date with reference to which the seniority list is directed to be drawn. They are challenging Rule 2-A which was made by G.O.Ms. No. 98, dated 21.1.1981 in place of the original Rule 2-A which was notified by G.O.Ms. No. 1307, dated 12.7.1980. The appellants are therefore challenging the policy decision of the Government that the date with reference to which seniority list is to be prepared is not 31.3.1970 but 2.11.1978. The present case, in our view, is squarely covered by the ratio of the decision of the Supreme Court in *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, . In that case, the decision of the Railway Board containing administrative rules of general application, regulating absorption in permanent departments, fixation of seniority, pay etc, of the employees of the erstwhile grain-shop departments was challenged. One of the objections raised to the maintainability of the writ petition was that the writ petitions had not impleaded about 120 employees who were likely to be affected by the decision in the case. It was argued that those employees were necessary parties and their non-joinder was fatal to the petition. While rejecting this contention, the Supreme Court observed as follows:

The respondents-petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of Government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-a-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of October 16, 1952 were at the most, proper parties and not necessary parties, and their nonjoinder could not be fatal to the writ petition.

Having regard to the above statement of the law, it is clear that since what is challenged in these writ petitions was the policy decision of the Government that for the purpose of seniority list, 2.11.178 should be the relevant date and no relief having sought in respect of any particular petitioner as against any other employee, there is no infirmity in the petition,

18. There is also no substance in the contention that most of the "B" wing teachers having accepted the seniority list, no challenge to the policy decision now contained in new Rule 2-A at the instance of the appellants should be entertained. The main challenge the appellants are raising is that new Rule 2-A is violative of Article 14 and Article 16 of the Constitution of India. If there is constitutional infirmity in that rule the appellants are clearly entitled to challenge. Now, as earlier stated we are dealing with a case where, as the

Supreme Court pointed out, the dichotomy between the District Board employees and the State Government teachers came to an end on 31.3.1970. The question which therefore falls for consideration is whether after this dichotomy came to an end and when the two cadres which were separately maintained were to be integrated, the choice of the date made by the State Government is arbitrary and irrational so as to result in inequality of opportunity amongst employees who now belong to the same class. In Rule 2-A as it originally stood it was specifically directed that the integration of the "B" wing and the "A" wing was to be made with reference to 31st March, 1970. This was done obviously because as from 1.4.1970 the teachers in the "B" wing had become government servants like the teachers in "A" wing and consequently they would have the same rights including the right to be considered for promotion in the same manner as the teachers in the "A" wing as on and after 1.4.1970.

19. No reason has, however, been disclosed as to why this date was changed to 1.11.1978. Admittedly, there was no fresh recruitment of B.T. Assistants in the "B" wing after 1st of April, 1970. The new recruitment took place only in the "A" wing. If there was no further recruitment in the "B" wing after 31.3.1970 and if the teachers in the "B" wing had become Government servants as on 1.4.1970, there were two courses open to the State Government. They could have continued "B" wing as a separate cadre. They had also prescribed certain percentage of promotional posts being made available in the cadre of District Educational Officer to the Headmasters who were promoted from the posts of B.T. Assistants in the "B" wing. But having taken a decision to integrate the two cadres then the integration could not be so made as to adversely affect the equality of opportunity in the matter of promotion to the teachers who constituted the "B" wing. The difficulty in this case arises because after 1st of April, 1970 there was fresh recruitment only in the "A" wing, with the result the number of employees in the "A" wing were continuously increasing. As a result of the integration on the footing that the position of the respective teachers as on 1.11.1978 should be taken into account, a wholly arbitrary result has occasioned. In the case of a seniority list commencement of service is normally a good criterion. The concept of the seniority list is normally a good criterion. The concept of the seniority list is normally the placements in the seniority list would be determined with reference to the date on which the respective employees entered employment or the date from which they have been continuously officiating in the relevant posts. The Government in this case had fixed a ratio. The result of the ratio being given effect to on the footing of the seniority list was to be prepared as on 1.11.1978 was that persons in the "A" wing who were not even in Government service at the time when the persons in the "B" wing had joined employment are being placed above the persons in the "B" wing. To say the least, to put an employee who was never in Government service over a person who was already in Government service, appears to us to be expressly arbitrary and irrational. This amounts to unequals being treated as equals which is not permissible under Article 14 of the Constitution of India.

20. By way of illustration we may point out that R. Narayanasamy, the petitioner in W.P. No. 9237 of 1983 has his seniority at serial No. 2799. He entered service on 4th July, 1964. Going backwards, the persons from the "A" wing who have been put above him are those who have joined in service between 17th September, 1965 and 3rd of July, 1970. These persons are at serial Nos. 2798, 2796, 2793, 2788, 2786, 2784, 2781 and 2778 to take a few illustrations. All these persons have joined service between 17th December, 1969 and 3rd July, 1970. 794 persons in the "A" wing who were never in Government service on the date on which the writ petitioner R. Narayanasamy joined service have superseded him and have been placed higher. To take another illustration, K. Shanmuga Guru one of the writ petitioners in W.P. No. 21 of 1984 ranks in the seniority list at serial No. 5535. He joined service on 16th June, 1967. According to him he has been superseded by 1454 persons who were never in employment on 16th of June, 1967 and by way of illustration he has pointed out that the person at Sl. No. 4928 had joined service in the "A" wing on 3rd August, 1973 and the person from the "A" wing immediately above the writ petitioner K. Shanmuga Guru had joined service on 3rd August, 1973 at S. No. 5533, K. Anbalagan. Several instances have thus been given which show that persons who have joined service in the "A" wing on or after 1st of April, 1970 have been given seniority over those who had joined service years prior to April, 1970. The principle of equality of opportunity of employment which includes opportunity for promotion necessarily contemplates that the appellants can be compelled to compete for the purpose of promotion only with persons in the integrated cadre who are already in service at the time when they were in service. It is true that integration of two services may not necessarily be obligatory and may not necessarily follow absorption in Government service. But once it is decided that two cadres are to be integrated then in the instant case that integration has to be only with reference to the date on which the absorption has taken place. In the present case, the effect of integrating the two cadres with effect from 1.11.1978 is that those who entered service much later than the persons in the "B" wing have been given a preferential right of promotion by being placed higher in the seniority list.

21. Indeed, in the instant case, the Supreme Court had upheld the absorption and once the dichotomy between the two branches had come to an end, principle of equality demanded that in case the two branches had to be integrated they should be integrated with reference to 31st March, 1970, alone. As a matter of fact, the communication issued by the Government to the Director of School Education clearly indicated that no other alternative policy was possible and the integration as confirmed by the Supreme Court should be given effect to. Once this was the stand taken by the Government unless a plausible explanation is given as to why it was thought necessary to change the date, the change of date to 1.11.1978 must be held to be wholly arbitrary and irrational. We have already indicated the irrational results which follow the determination of the combined seniority list on the basis of the date as 1.11.1978. The ground that some

promotions would have to be readjusted is no justification for the arbitrary results which have followed from the manner in which integration has been brought about.

22. It is clear that as a result of arbitrarily fixing 1.11.1978 as the date with reference to which integration has to be given effect to in the prescribed proportion, persons belonging to the "A" wing are being given undue preference in the matter of promotion by placing them higher in the seniority list than those who are already in Government service and thus unequals have been treated as equals. It is true that having regard to the ratio fixed by the G.O. dated 2.11.1978 it may be that some persons from the "A" wing might become senior to the personnel in the "B" wing irrespective of the date of appointment. But as long as the integration is given effect to as from 1.4.1970 it would not be possible for personnel of the "B" wing to complain of any unfair or unequal treatment and indeed no such grievance has been made before us. There was clearly a rationale behind the adoption of 1.4.1970 as the date with reference to which the "A" wing and the "B" wing personnel were to be integrated. The rationale was that all those who were in service as on 1.4.1970 as Government servants were given equal treatment in the process of integrating the two wings.

23. We are therefore satisfied that there is a clear infirmity in the G.O. dated 21.1.1981 by which the old Rule 2-A was substituted by the present Rule 2-A. The said rule is clearly violative of the guarantee of equality under Articles 14 and 16 of the Constitution. The said rule is therefore liable to be quashed. The result is that these appeals are allowed, the order of the learned Judge is set aside and a writ of MANDAMUS will issue to the State Government to redraw the seniority list as originally contemplated by G.O.Ms. No. 1968, dated 2.11.1978. There will however be no order as to costs in these appeals.