

K.C. GUPTA AND 117 ORS.

v.

LT. GOVERNOR OF DELHI AND 43 ORS.

WITH

K.C. LAKHANPAL AND 10 ORS.

v.

DELHI ADMINISTRATION AND 4 ORS.

AUGUST 16, 1994

[S.C. AGRAWAL AND FAIZAN UDDIN, JJ.]

Constitution of India, 1950: Articles 14 and 16 read with Rules/Administrative Instruction under Article 309—Where the Scheme for merger of two cadres is implemented, it must be implemented in a manner so as to see that no cadre is discriminated against.

Service Law : Delhi Administration—Municipal Corporation of Delhi—School Teachers—Merger of cadres—Implementation of—Ratio of promotion—No cadre to be discriminated against.

Prior to July 1, 1970 Post Graduate Teachers (PGT) in the pay scale of Rs. 275-550 and Trained graduate Teachers (TGT) in the pay scale of Rs. 190-425 were employed in the High Court Secondary Schools run by the Delhi Admn. Besides, M.C.D. also used to run several Middle and Higher Secondary Schools with the categories of teachers as follows :

I.	TGT (Middle)	Rs. 175 - 350
II.	TGT (Higher Secondary)	Rs. 190 - 425
III.	Headmasters of Middle School	Rs 220 - 470
IV.	PGT	Rs. 275 - 550

Corporation's schools were taken over by the Administration on the terms and conditions mentioned in the letter dated April 20, 1970 sent by the Additional Secretary. All the merged employees of the Corporation who were to be absorbed by Delhi Administration also accepted the terms and conditions of the service for absorption. In pursuance of the resolution of the Municipal Corporation and the notification of the Lt. Governor the

A services of all the teacher serving in the schools run by the Corporation were taken over from the Municipal Corporation were to be absorbed in the services of Delhi Administration to be placed in the separate cadre and designated as 'Special Cadre' and regarded as diminishing cadre.

Administration Teachers were designated as Administration cadre.

B The ratio of the aforesaid two cadres for the purposes of promotion was as under :

(a)	TGTs Admn. Cadre	TGTs Spl.
	21	1

C	(b)	PGTs in Admn. Cadre	PGTs in Spl. Cadre
		23	1

D Delhi Administration Cadre teachers filed writ petition in the High Court challenging the take over of corporation teachers. The petition was dismissed holding that there was no infirmity in the principles on which the take over of the schools was effected. The pay-scales of different categories were revised with effect from May 27, 1970.

E According to this revision of pay scales the TGTs (Middle) whose scale of pay was 175-350 and the TGTs (Higher Secondary) whose pay scale was 190-425 were merged together in one cadre and were given unified merged together in one cadre and were given unified revised pay scale of Rs. 220-500. The existing pay-scales to the Headmasters of the Middle Schools was Rs. 220-470 which was revised to Rs. 300-600 and the PGTs whose existing pay scale was Rs. 275-550 was also revised to Rs. 300-600. On the basis of the aforesaid revision of pay scales of the TGTs (Middle) and TGTs (Higher Secondary) as both were placed in one unified scale a change of proportion of ratio/quota between the Administration cadre and special Cadre, was worked out by the Delhi Administration. Retrospectively from May 27, 1970 the TGT (Middle) and the TGT (Higher Secondary) both were placed in a unified common scale of pay of Rs. 220-500 and, therefore, there was no question of promotion of TGT (Middle) to the post of TGT (Higher Secondary) as the scale of both became one. By the order dated September 18, 1970 which was brought into force with effect from May 27, 1970 the same pay scales were also made applicable to Headmasters and PGTs. As regards to seniority and promotion of the Administrative Cadre and Special Cadre H are administrative decision was taken by the Chief Secretary Delhi Ad-

ministration on October 22, 1970, to the effect that the PGT will rank senior to the Headmaster and similarly, both the categories of TGTs from Municipal Corporation Delhi (Middle and Higher Secondary Teachers) will be placed in the same panel but the TGTs of Higher Secondary School will rank senior to the TGT of the Middle schools. The Headmasters of middle schools of Corporations became surplus and, therefore, those who possessed qualification of M.A. would be promoted to the post of PGT and those who did not hold M.A. degree would work as TGT but they would be entitled to the revised scale of Rs. 300-600.

This decision was revised and separate quota of PGTs and Headmasters in the Special Cadre for promotion to the post of Vice-Principal/Principal was fixed whereby the ratio of 1:4 between PGTs Special Cadre and Administration Cadre was also disturbed by including PGTs working on *ad-hoc* basis in the list of Administration Cadre but by subsequent circular the special quota for Headmasters were withdrawn. The Administration issued another circular dated June 30, 1974 and fixed the strength of Administration Cadre and Special Cadre on year to year basis and a new ratio was fixed for each year separately and appointments were made accordingly. Being aggrieved the appellants who were PGTs before take over filed a Writ Petition in the High Court which was allowed on the ground that the decision taken by the Chief Secretary on October 22, 1970 was rational and reasonable and the Administration was not empowered to make a change in the said decision. The learned Single Judge held as under:

- (1) That the Delhi Administration has no authority in law to lay down the rules or administrative instructions in regard to the first promotion less favourable to PGTs of the Corporation service.
- (2) In combined panel/cadre for PGTs and Headmasters the PGTs. rank *en-bloc* senior to the Headmasters.
- (3) Till the time the original cadre of PGTs (in the Corporation service) is exhausted, no Headmaster can be considered for promotion to the post of Vice Principal/Principal.
- (4) The ratio for promotion to the Special Cadre (PGTs and Headmasters together) and the PGTs in Administration Cadre is 1:4. Appointments to the post of Vice-Principal/Prin-

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A ciplal made on September 7, 1976 should have been made only on the basis of the said ratio of 1:4."

B The Single Judge directed the Delhi Administration to review and re-consider the promotions in the light of the principles laid down by the Court. Teachers of both the cadres filed writ petitions in the High Court and the Order in the earlier Writ Petition was also challenged in LPA. All the cases were clubbed together and the Division Bench held that :

C (1) That the proportion that must be worked out between the TGTs (Higher Grade) of the Administration Cadre and the Special Cadre will be worked out on the respective strength as it existed on April 30, 1970. In this principle all Special Cadre TGTs (Middle) whose grades were revised with effect from May 27, 1970 will not be included. The proportion, of course, will be worked out every year and not frozen as in April, 1970, because otherwise not to take stock of the existing situation but to freeze, it will work great hardship and also give lopsided advantage.

D (2) The Headmasters belonging to the Special Cadre will be treated and continue to belong to he Special Cadre. The claim of the administration cadre in his regard is rejected. In the Special Cadre promotions to the Post of vice-Principal/Principals have to be made both from Headmasters as well as PGTs. For this purpose, however, the promotion will be given in accordance with the respective strength of Headmasters and the PGTs Cadre separately. The Headmasters should not be placed for the purposes of promotion *en-block* junior to the PGTs of the Special Cadre as held by the Learned Single Judge.

F (3) The date for calculating the respective strength will be done at the end of each academic session which means – April of every years and not frozen as was in April, 1970, as has been done by the learned Single Judge.

Partly allowing the appeal, this Court

G HELD : 1. The proportion between the TGTs of the Administration Cadre and the Special cadre (Higher) will be worked out on their respective strength as it existed on the last day of the last academic session i.e. on April 30, 1970 and thereafter the said proportion will be worked out on yearly basis. So long as TGTs administration Cadre and TGTs Special
H Cadre (Higher), as on April 30 1970, are available no TGT (Middle) can

be considered for promotion to the Higher post of PGT. When TGTs in the said cadres, as on April 30, 1970 are no longer available the promotion quota for TGTs Administration Cadre and TGTs Special Cadre will have to be fixed yearly on the basis of the respective strengths of the two cadres by taking into account TGTs (Middle) whose pay scales were revised with effect from May 27, 1970. [658-G-H, 659-A]

2. In the combined panel of PGTs and the Headmasters, the PGTs *en-block* shall rank senior to the Headmasters and till the members of the original cadre of PGTs (in the Corporation services) is exhausted no Headmasters can be considered for promotion to the post of Vice Principal/Principal. [654-B]

3. The ratio of promotion of the Special Cadre (PGTs and Headmasters together) and the PGTs in administration Cadre would be 1:4. As a consequence of this the promotions/appointments made to the post of Vice Principals and Principals by the order dated September 7, 1976 contrary to the said ratio is quash. The Delhi administration shall work out the promotions afresh to the made to the post of Vice Principle/Principal from Amongst the PGTs, in the Manner and in accordance with the ratio stated above. But it is made clear that those incumbents who were promoted by virtue of the judgment of the Division Bench and are affected by this order/judgment they will have to be reverted but no recoveries for the difference of salaries, etc. shall be made from them. [659-C-D]

4. Those incumbents who have since retired or have died after retirement are found entitled to any benefit by our decision the same shall be considered by the respondents Nos. 1 to 4 and the benefits, if any, be worked out and paid to their nominees or legal representatives as the case may be. [659-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2824 of 1984 etc.

From the Judgment and Order dated 27.5.83 of the Delhi High Court in C.W. No. 503 of 1974.

WITH

Civil Appeal No. 2825 of 1984.

A From the Judgment and Order dated 27.5.83 of the Delhi High Court in L.P.A. No. 204 of 1981.

R.K. Jain, N.N. Goswami, Ms. Indu Malhotra, A. Khatri, T.C. Sharma and R. Sharma for the Appellants.

B S.C. Gupta, K. Lahiri, A.K. Sharma, S.N. Terdol and C.V. S. Rao, for the Respondents.

The Judgment of the Court was delivered by

C **FAIZAN UDDIN, J.** 1. Both the appeals are being disposed of by a common judgment as they arise out of the same judgment passed by the Delhi High Court in LPA No. 204/81 decided on May 27, 1983 alongwith Writ Petition No. 503/74 and (c) Writ Petition No. 1450/81. In both the appeals the question raised is with regard to the seniority and promotion of various categories of teachers presently serving in the Delhi Administration but some of whom were previously employed as teachers in Middle and Higher Secondary Schools which were being run by the Municipal Corporation of Delhi.

D 2. A brief resume of the facts giving rise to these two appeals may be stated thus :—

E Prior to July 1, 1970 Post Graduate Teachers (in short PGT) in the pay scale of Rs. 275-550 and Trained Graduate Teachers (in short TGT) in the pay scale of Rs. 190-425 were employed in the Higher Secondary Schools run by the Government. Besides, these Government Higher Secondary Schools Municipal of Delhi also used to run several Middle and Higher Secondary Schools with the categories of teachers as follows :

F	I.	TGT (Middle)	Rs. 175 - 350
	II.	TGT (Higher Secondary)	Rs. 190 - 425
G	III.	Headmasters of Middle School	Rs 220 - 470
	IV.	PGT	Rs. 275 - 550

H 3. Since the Municipal Corporation of Delhi was not inclined to continue to run the schools, Delhi Administration came forward with a proposal to take over the Middle and Higher Secondary Schools run by

the Corporation on the terms and conditions mentioned in the letter dated April 20, 1970 sent by the Additional Secretary, Delhi Administration to the Commissioner, Delhi Municipal Corporation stating that the acceptance of the terms and conditions by the Municipal Corporation and that of the staff to be absorbed by the Delhi Administration be communicated to the Delhi Administration so that the transfer of the schools run by the Municipal Corporation may take place with effect from May 1, 1970. Consequently, in response to the said letter of the Additional Secretary, Delhi Administration, the Municipal Corporation, Delhi passed a resolution on May 12, 1970 to close down the Higher Secondary and Middle Schools run by the Corporation on transfer of the staff employed in the said schools to the Delhi Administration with effect from May 1, 1970 accepting the terms and conditions embodied in the letter of the Delhi Administration dated April 20, 1970 referred to above. All the employees of the Corporation who were to be absorbed by Delhi Administration also accepted the terms and conditions of the service for absorption. For some reasons take over of the Municipal schools could not be effected on May 1, 1970 as per resolution of the Municipal Corporation and the schools could be taken over only on July 1, 1970. The Lt. Governor, Delhi with the prior sanction of the President of India issued a notification dated May 27, 1970 for general information that the decision has been taken to take over the Middle (classes VI and VIII) and Higher Secondary (Classes VI and XI) Schools from the Municipal Corporation, Delhi with effect from July 1, 1970. In pursuance of the resolution of the Municipal Corporation and the notification of the Lt. Governor the services of all the teachers serving in the schools run by the Municipal Corporation were transferred to Delhi Administration on the terms and condition contained in the letter dated April 20, 1970.

4. According to the terms and conditions on which the Corporation schools were taken over, all the employees of the said schools which were taken over from the Municipal Corporation were to be absorbed in the services of Delhi Administration to be placed in a separate cadre and designated as 'Special Cadre' and regarded as diminishing cadre. According to the said terms the employees of the Education Department, Delhi Administration were designated as 'Administration Cadre' probably with a view to identify the employees of the two sources under the Delhi Administration.

A 5. The terms and conditions of the take over and agreed upon between the Municipal Corporation and the Delhi Administration which are relevant for the purposes of decision of these appeals relating to seniority and promotions read as follows :

B 4. *"NUMBER OF POSTS IN THE SPECIAL CADRE*

The Special Cadre for the absorbed employees from the Delhi Municipal Corporation shall be a diminishing one. The number of posts in various categories of the Special Cadre shall be regulated in the following manner:—

C (a) The required number of posts will be created for the employees from the Delhi Municipal Corporation to be absorbed by the Delhi Administration .

D (b) Any additional post subsequently created for any school or class so taken over from the Delhi Municipal Corporation shall be borne on the Administration cadre in its appropriate category and shall not constitute a part of the Special Cadre.

E (c) Any post in the Special Cadre falling vacant in any school or class taken over from the Delhi Municipal Corporation, as a result of normal incidence of promotion, retirement, death, dismissal or any other cause, may either be abolished or filled up from the Special Cadre or Delhi Administration Cadre, as per rules of promotion.

F (d) A member of the Special Cadre when appointed to a higher post either by promotion or by direct recruitment shall cease to be borne on the Special Cadre, and shall become a member of the administration Cadre, his seniority in the Administration being determined according to the normal rules on the matter.

G 5. *SENIORITY:*

H The seniority of any employee in the Special Cadre, as fixed in the Delhi Municipal Corporation before his absorption in the Delhi Administration, will not be disturbed. Where a seniority list is not in existence, such a list will be drawn up on accordance with the rules for the determination of seniority in force in the Delhi

Municipal Corporation immediately before the absorption. A

11. PROMOTION

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(3) PROMOTION TO THE POST OF VICE-PRINCIPAL (350-650)/PRINCIPAL (425-900).

The promotion quota for the promotion to the post of Vice-Principal (350-650)/Principal (425-900) from the post PGTs will be fixed separately for the Special Cadre and the Administration Cadre, in proportion to the number of PGTs in the respective cadres as calculated on the last day of the last academic session. C

(4) PROMOTION TO THE POST OF PGTs (275-550): D

The promotion quota for the promotion to the post of PGTs (275-550) from the posts of Headmasters (220-470), TGTs/Language Teachers (190-425) will be fixed separately for the Headmasters in the Special Cadre, and the TGTs/Language Teachers (190-425) in the Administration Cadre, in proportion to the respective number as calculated on the last date of the last academic session. E

(7) PROMOTION TO THE POST OF TGTs. LANGUAGE TEACHERS (190-425): F

Seniormost TGTs will be considered for promotion to the post of TGT (190-425) in the promotion to the post of TGT (190-425) in the Higher Secondary Schools to the extent of 40% of vacant/new posts of TGTs in the scale of Rs. 190-425. The rest of the TGT posts (190-425) will continue to be filled by direct recruitment and promotion as hitherto." G

6. On the last day of the academic session of the year of take over i.e. 30.4.1970 the strength of the relevant category of teachers in the Special Cadre and the Administration Cadre was as under : H

A	Category	Admn.	Special Cadre
	A. TGTs (Trained Graduate Teachers) Higher Secondary Schools - Scale Rs. 190-425	4209	181
B	B. PGTs (Post Graduate Teachers) Scale Rs. 275-550	2126	98
	C. TGTs - Middle Schools Scale Rs. 175-350	Nil	2641
C	D. Head Masters Middle Schools Scale Rs. 220 - 470	Nil	413
	E. School Inspectors	Nil	35

The ratio of the aforesaid two categories for the purposes of promotion worked out on the aforesaid figures would be as under :

D	(a) TGTs Admn. Cadre	TGTs Spl.
	21	1
	(b) PGTs in Admn. Cadre	PGTs in Spl. Cadre
	23	1

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7. Some of the teachers belonging to the Delhi Administration Cadre challenged the take over of the Municipal Corporation schools, the terms and conditions for taking over contained in the letter dated 20.4.70 as well as the quota fixed between the administration Cadre and Special Cadre, in Civil Writ Petition No. 1010 of 1971 which was dismissed by a Division Bench of the Delhi High Court by Judgment dated 30.7.1973, expressing the view that there was no infirmity in the principle on which the take over of the schools was effected.

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8. Thereafter the President revised the pay scales of the Principals, Vice-Principals, Post graduate Teachers and Trained Graduate Teachers, etc. of the Higher Secondary schools vide order dated 18.9.1970 of the Assistant Secretary to the Government of India, Ministry of Education, New Delhi. These revised pay scales were brought in force with retrospective effect from 27.5.1970. According to this revision of pay scales the TGTs (Middle) whose scale of pay was 175 - 350 and the TGTs (Higher Secondary) whose pay scale was 190-425 both were merged together in one cadre

and were given unified revised pay scale of Rs. 220-500. The existing pay-scales of the Headmasters of the Middle Schools was Rs. 220-470 which was revised to Rs. 300-600 and the PGTs whose existing pay scale was Rs. 275-550 was also revised to Rs. 300-600. On the basis of the aforesaid revision of pay scales of the TGTs (Middle) and TGTs (Higher Secondary) as both were placed in one unified scale a change of proportion of ratio/quota between the Administration Cadre and Special Cadre, was worked out by the Delhi Administration.

9. Before the schools were taken over and the same were being run the Municipal Corporation the next promotion for the TGT (Middle was to the post of TGT (Higher Secondary) for the reason that the former were in a lower pay scale. By reason of the order dated 18.9.1970 which was issued after the take over but made effective retrospectively from 27.5.1970 the TGT (Middle) and the TGT (Higher Secondary) both were placed in a unified common scale of pay of Rs. 220-500 and, therefore, there was no question of promotion of TGT (Middle) to the post of TGT (Higher Secondary) as the scale of both became one. Similarly before the take over the Headmasters of the Middle schools who were in the lower grade used to be promoted as PGT who were in the higher grade. But due to the order dated 18.9.1970 which was brought into force with effect from 27.5.1970 the pay scales of Headmasters and PGTs both were also made the same. But since there was no cadre of Head Masters in the Delhi Administration and they were absorbed in Delhi Administration, their designation and salaries in the corporation service were protected, till the time that cadre exhausted vide condition No. 9-B (ii) of the Takeover rules.

10. After the revision of the pay scales as aforesaid and consequent unification of various categories of teachers, the Chief Secretary, Delhi Administration under the authority of Lt. Governor took administrative decision on 22.10.1970 in regard to the seniority and promotions of various categories in Administration Cadre and the Special Cadre. Having regard to the previous history of various categories and their pay scale and both of them having been placed in the same grade by order dated 18.9.1970, the Chief Secretary took the decision that the PGT will rank senior to the Headmaster and similarly, both the categories of TGTs from Municipal Corporation, Delhi (Middle and Higher Secondary Teachers) will be placed in the same panel but the TGTs of Higher Secondary School will

A rank senior to the TGT of the Middle schools. Keeping in view the strength of each Cadre the Chief Secretary worked out the ratio of 1 : 4 for promotion to the higher post from amongst the PGTs - Headmasters of Special Cadre and PGTs of Administration Cadre. As regards the future promotion from amongst the TGT Administration Cadre and TGT Special Cadre the Chief Secretary fixed the promotion ratio as 2 : 3 on the basis of perspective strength of each as it existed on the date of take over. The Chief Secretary also took the decision that the Head Masters of Middle Schools of corporations have become surplus and therefore those who possess qualification of M.A. will be promoted to the post of PGT and those who do not held M.A. degree they will work as TGT but they will be entitled to the revised scale of Rs. 300 - 600.

11. It appears that after the revision of pay scales by order dated 18.9.1970 and the aforesaid decision of the Chief Secretary, the administration authorities have second thought to the decision of the Chief Secretary dated 22.10.1970 referred to above fixing the promotion quota/ratio. Consequently on June 30, 1974 the Administration issued a circular introducing separate quota for PGTs and headmasters in the Special Cadre for promotion to the post of Vice-Principal/Principal. Whereby the ratio of 1:4 between PGTs Special Cadre and Administration Cadre of fixed by the Chief Secretary, was also disturbed by including PGTs working on *ad hoc* basis in the list of Administration Cadre. But by a subsequent circular issued on December 24, 1974 the special quota to the Headmasters was withdrawn. Till the end of December, 1974 no quota was fixed in the Common Panel of PGTs and Headmasters of the Special Cadre. Some of the members of the Special Cadre filed Civil Writ Petition No. 151/76 -*Des Raj & Ors. v. Delhi Administration & Ors.*, for the implementation of the decision of Chief Secretary, Delhi Administration dated 22.10.1970, challenging the circular dated 13.6.1974 whereby the ratio was disturbed and separate quota was fixed for the Headmasters. But the said petition was withdrawn on 19.5.1977 on the assurance given by the counsel appearing for the Delhi Administration that grievances of the petitioners of that petition would be considered within two months.

12. But instead of considering the grievances within two months accordance with the assurance, the Delhi Administration issued another circular laying down equation of posts and promotion ratio for the year 1974-75 and 1975-76, fixing the strength of Administration Cadre and

Special Cadre on year to year basis and a new ratio was fixed for each year separately. A copy of the said circular is annexed as Annexure 7 in Civil Appeal No. 2825/84. Not only this but by another circular dated May 26, 1976 the special quota for the Headmaster and the strength of the cadre-Administration and Special, was again fixed on year to year basis with a new ratio each year separately. Thereafter, on September 7, 1976, fourteen PGTs were promoted on *ad hoc* from the Administration Cadre and again seventeen PGTs from Administration Cadre were promoted to the post of said Principal from Administration Cadre on the basis of said circular dated May 26, 1976. Being aggrieved by the aforesaid appointments and circulars laying down equation of posts and promotion ratio for the years 1974-75 and 1975-76 fixing the strength of each cadre, Administration and Special on year to year basis on a new ratio and promotion of PGTs from the Administration Cadre as Vice- Principals and Principals, the appellants who were working as PGTs in the Higher Secondary Schools before take over filed the Civil Writ Petition No. 1206/76 in the Delhi High Court which was disposed of by the learned Single Judge by Judgment dated 16.12.80. While allowing the writ petition the learned Single Judge took the view that the decision taken by the Chief Secretary on 22.10.1970 was rational and reasonable, and the Administration was not empowered to make a change in the said decision. The learned Single Judge, therefore, held as under :

(1) That the Delhi Administration has no authority in law to lay down the rules or administrative instructions in regard to the first promotion less favourable to PGTs of the Corporation service.

(2) In combined panel/cadre for PGTs and Headmasters the PGTs rank *en-block* senior to the Headmasters.

(3) Till the time original cadre of PGTs (in the Corporation service) is exhausted, no Headmaster can be considered for promotion to the post of Vice Principal/Principal.

(4) The ratio for promotion to the Special Cadre (PGTs and Headmasters together) and the PGTs in administration Cadre is 1 : 4. Appointment to the post Vice-Principal/principal made on 7.9.1976 should have been made only be the basis of the said ratio of 1 : 4.

13. On these findings the learned Single Judge quashed the order of the Joint Director of Education (Administration) dated 26.5.76 and

A directed the Delhi Administration to review and reconsider the promotions made on 7-9-1976 by two orders, in the light of the principles stated above within two months from the date of the said decision after giving hearing to the petitioners and the teachers promoted by the two orders.

B 14. As said earlier due to the revision of pay scales by order dated 18.9.70 brought into force retrospectively with effect from 27.5.70 the TGTs (Middle) were merged with the grade of TGT (Higher Secondary) and one unified scale for both was made as a result of which the ratio between Administration Cadre and Special Cadre which was originally worked out as 21:1 came down to 3:2 due to the increase in the number of TGTs of a
C Special Cadre by merger of TGTs (Middle) in TGT (Higher) for the purpose of common scale of Rs. 220-500. The TGTs Administration Cadre felt that this change of ratio adversely effected their future prospects of promotion to higher post and, therefore, they filed Civil Writ Petition No. 503/74 in Delhi High Court. The members of the Administration Cadre
D also filed Civil Writ Petition No. 1405/81 *K.C. Vashist v. Lt. Governor*, in Delhi High Court, claiming that the Headmasters belonging to the Special Cadre be included in the Administration Cadre.

E 15. The judgment and order of the learned Single Judge dated 16.12.80 passed in Civil Writ Petition No. 1206/76 was also challenged in LPA No. 204/81 in the Delhi High Court. *Civil Writ Petition No. 503/74* and *Civil Writ Petition No. 1450/81* as well as *LPA No. 204/81* were clubbed together, heard and disposed of by a common judgment dated 27.5.83 by the Division Bench of the Delhi High Court. The Division Bench held that the TGTs of the Middle school who looked forward for promotion to TGTs
F of the Higher Schools by simple merger of the pay scales can not be permitted to seek fixation of seniority on the basis of length of service in the lower grade and that TGTs of Middle Schools en-block be treated as junior to TGTs higher of the Special Cadre as length of service of TGTs (middle) had to be counted from the date of merger of the pay scales i.e. with effect from 27.5.70 as prior to that date they were altogether in lower
G grade and could not get themselves equated with the TGTs Higher. The Division Bench also held that since the Headmaster of the Municipal Corporation Schools were on a lower pay scale and looked forward for promotion to the post of PGTs and, therefore, the Headmasters could not claim seniority merely on the basis of length of service when they worked
H as Headmasters and their service as equivalent to PGTs should be treated

as such only from the day the two scales became equal i.e. with effect from 27.5.70. With regards to a TGTs who were in the High Court grade in the Municipal Corporation and the TGTs in the Administration Cadre, the Division Bench took the view that certain proportion has to be worked out every year and the proportion should not be frozen as held by the learned Single Judge in Civil Writ Petition No. 1206/76 on the reasoning that the TGTs (Higher Secondary) who were in the said cadre in April, 1970 and were actually drawing that pay scale will continue to have the benefit of their proportionate quota for promotion as decided in the take over rules and thus the benefit of this proportionate promotion will be available to only those TGTs who were in the scale of TGTs higher grade in April, 1970. On overall consideration of the facts and circumstances of the case Division Bench ultimately recorded its conclusions as under :

(1) That the proportion that must be worked out between the TGTs (Higher Grade) of the Administration Cadre and the Special Cadre will be worked out on the respective strength as it existed on 30.4.70. In this principle all Special Cadre TGTs (Middle) whose grades were revised with effect from 27.5.70 will be included. The proportion, of course, will be worked out every year and not frozen as in April, 1970, because otherwise not to take stock of the existing situation but to freeze, it will work great hardship and also give lopsided advantage.

(2) The Headmasters belonging to the Special Cadre will be treated and continue to belong to the Special Cadre. The claim of the Administration Cadre in this regard is rejected. In the Special Cadre promotions to the Post of Vice-principal/Principals have to be made both from Headmasters as well as PGTs. For this purpose, however, the promotion will be given in accordance with the respective strength of Headmasters and the PGTs Cadre separately. The Headmaster should not be placed for the purposes of promotion *en-block* junior to the PGTs of the Special Cadre as held by the Learned Single Judge.

(3) The date for calculating the respective strength will be done at the end of each academic session which means - April of every year and not frozen as was in April, 1970, as has been done by the learned Single Judge.

16. Being aggrieved by the aforesaid decision of the Division Bench dated 27.5.83 the TGT (Middle) and the TGTs (Higher Secondary

- A Schools) belonging to the Special Cadre have filed Civil Appeal No. 2824/84 which arises out of C.W. No. 503 of 1974 and the PGTs working in the Higher Secondary Schools, Delhi Administration but who were previously working as PGTs in Higher Secondary Schools, Municipal Corporation, Delhi before 1.7.70 have also filed Civil Appeal No. 2825/84
- B against the same judgment of the Division Bench dated 27.5.83. This is how these two appeals have been preferred against the same judgment passed in LPA by the Division Bench of the Delhi High Court.

17. Learned counsel appearing for the appellants in Civil Appeal No. 2824/84 filed jointly by TGTs Middle and Higher Secondary whose scales were merged and unified with effect from 27.5.70, assailed the findings and conclusions recorded by the Division Bench that the TGTs of Middle Schools cannot seek fixation of their seniority on the basis of length of their service in the lower grade and that length of service of the TGTs Middle Schools had to be counted only from the date of merger of the pay scale
- C i.e. with effect from 27.5.70, which is contrary to the rules governing the take over which are only prospective intended to operate from the date of take over i.e. 1.7.70. It was contended that the Division Bench of the High Court committed an error in holding that the TGTs Middle will count their seniority in the TGTs Higher Secondary with effect from 27.5.70 and will be treated *en-block* junior to TGTs higher of the Special Cadre, ignoring
- D the fact that it was prior to 1.7.70 (the date of take over) that the two grades of TGTs Middle and TGTs Higher were merged and integrated into one and them same grade with effect from 27.5.70 and, therefore, they were entitled to the fixation of their *inter se* seniority with reference to their date of initial appointment as Trained Graduate Teachers and said seniority was
- E protected under the very terms and conditions of take over. It was further submitted that the rules of take over provide for fixation of strength with effect from the beginning of the next academic session with reference to the position as on the last date of the academic session of the year in which the absorption took place and, therefore, the crucial date was 30.4.71 and not 30.4.70 as held by the High Court. The learned counsel strenuously
- F urged that this position should have been accepted by the Division Bench of the High Court which rendered the judgment in LPA specially when there was no grievance made by any of the Trained Graduate Teachers (Higher Secondary) of the Special Cadre and the TGTs of the Administration Cadre had no *locus standi* whatsoever to challenge the *inter se* seniority
- G of the Special Cadre. It was, therefore, urged that the High Court was
- H

wrong in holding that the TGTs Middle will count their seniority as TGTs Higher Secondary only with effect from 27.5.70. After giving serious consideration to the aforementioned submissions and on perusal of the rules of take over and the impugned judgment of the Division Bench rendered in this LPA we find that there is absolutely no substance in any of the aforesaid submissions made by the learned counsel for the appellants.

18. The claim of the appellants for fixation of their *inter se* seniority with reference to their initial appointment as TGTs is not supportable on any justifiable basis. It may be noted that prior to the merger and integration of the two scales of the TGTs, the TGTs Middle were in a lower pay scale of Rs. 175-350 while TGT Higher Secondary were in a higher pay scale of Rs. 190- 425 and both were revised to the pay scale of 220-500. That apart the TGTs in lower grade were recruited and appointed to teach Middle classes while the TGTs Higher were recruited and appointed to teach higher classes in th High Court Secondary Schools. The incumbents of the lower grade were used to be promoted to the higher grade for the two Cadres were not common as the teaching upto Middle classes and teaching the Higher classes could not be treated to be one and the same function. Thus the posts of TGTs (Middle) and TGTs (Higher) were created separately with distinct cadre and scales for different work in Municipal Schools - Lower Cadre for teaching lower classes and the Higher Cadre for teaching higher classes. The claim of the TGTs Middle on the unification of the two pay scales that their seniority should be counted from the date of their initial appointment on the basis of length of service to the post of TGT is not justified because in that even some of them may even become senior to the members of the Administration Cadre of that category who are or were working as TGT High Court much before the date of unification of the scales. It may also be pointed out that by accepting the seniority of the TGTs Middle on the basis of their length of service there may be occasions when they may get a chance of promotion over their senior in the Administration Cadre who are working as TGTs since much longer a period than the TGT Middle who since much longer a period than the TGT Middle who were in lower grade which was equated with the grade of TGT (higher) only with effect from 27.5.70. This situation would certainly be detrimental to the interest of TGTs on the Administration Cadre and would cause great injustice to them.

19. The contention of the TGTs (Middle) that they should be treated

- A at par with the TGTs (Higher) on the merger of the two grades/pay scales on the principle of seniority in accordance with the length of service is also not supportable from the terms and conditions of the takeover. Term No. 5 reproduced in early part of this judgment and which relates to 'Seniority' militate against the claim advanced by the appellants and clearly
- B demolishes the contention. It contemplates that "the seniority of any employee in the Special Cadre, as fixed in Delhi Municipal Corporation before his absorption in Delhi Administration, will not be disturbed and where a seniority list is not in existence, such list will be drawn up in accordance with the rule for the determination of seniority in force in the
- C Delhi Municipal Corporation immediately before the absorption." This term certainly cannot be interpreted to mean that an employee belonging to a lower grade/scale of pay when merged to a higher grade/scale of pay to which he originally did not belong, he would be entitled to claim seniority or a status at par with the employee of the higher grade on the
- D basis of length of his service when he was not at all in that grade. Ordinarily *inter-se* seniority amongst members of grade has to be fixed in accordance with continuous length of their service in that grade. But in the instant case as pointed out repeatedly there were two grades of TGTs in the Municipal service—One lower, another higher. In the present case before us the
- E TGTs (Middle) were merged with the TGTs (Higher) and the two pay scales were amalgamated and unified into one single grade by order dated 18th September, 1970 which was made effective retrospectively from 27-5-1970 and, therefore, the date of integration of the two cadres in the Delhi Administration services (27-5-1970) is the crucial date for determining the seniority. That being so, the seniority of the TGTs (Middle) must
- F be reckoned only from the date when they were brought at par with the higher grade of TGTs and they cannot be permitted to supersede the existing rights of their counterparts. In view of these facts and circumstances the Chief Secretary, Delhi Administration was fully justified in taking the decision dated 20th October, 1970 that both the categories of TGTs
- G drawn from Municipal Corporation Delhi will be placed in the same panel, but TGTs of Higher Secondary School will be senior to the TGTs of Middle Schools. The Division Bench was, therefore, fully justified in holding that TGTs Higher Secondary will count their seniority in the TGTs Higher Secondary only with effect from 27.5.70 and they shall be treated *en-block*
- H junior to the TGTs higher of the Special Cadre.

20. The argument that since the Trained Graduate Teachers Higher Secondary had not grievance to the fixation of *inter se* seniority between TGTs Middle and TGTs High with reference to their date of initial appointment as Trained Graduate Teachers and, therefore, the TGTs of Administration Cadre had no *locus standi* to challenged the *inter se* seniority of the Special Cadre is fallacious and without any merit. The TGTs (middle) who were in the lower grade/scale of pay till 27-5-1970 became unreasonably ambitious to be reckoned as equal to the TGTs in higher grade from the date of their initial appointment which within no stretch of any rule or practice can be said to be justified. If the seniority of the TGTs Middle is counted from the date of their initial appointment the combined strength by integration of the two TGTs Middle and TGTs Higher will be enlarged and swell up manifold adversely affecting the TGTs of the Administration Cadre not only in the proportion of ratio but also affecting their promotional avenues to th post of PGTs, Vice-Principals and Principals as by inflation of the strength of the TGTs Special Cadre due to addition of TGTs (Middle) the ratio of TGTs Administration Cadre will go down and decrease to a great extent.

21. Learned Counsel appearing for the appellants in civil Appeal No. 2825/84 strenuously urged that it is evidently clear from the terms and conditions of take over rules that the PGTs from the Special Cadre as well as the Administration Cadre were name source for recruitment and promotion to the post of Vice Principal/Principal and from no other source yet the Division Bench of the High Court in LPA No. 204/81 erroneously held that there would be a quota for two categories of PGTs i.e. PGTs and Headmasters within the Special Cadre on the basis of which promotion to the post of Vice Principle and Principal would be made according to their respective strength which is contrary to the terms and conditions of take over. The learned counsel further submitted that the Division Bench failed to appreciate that the rights accrued to the PGTs at the time of take over could not be taken away by the subsequent events as held by the learned Single Judge in Civil Writ Petition No. 1206/76 in which it has been held that according to the terms and conditions of the absorption the promotion quota of PGTs in the Special Cadre and in the Administration Cadre was to be fixed and the quota and proportion to PGTs in respective cadres has to be calculated as on the last day of the last academic session. As against this the learned counsel appearing for the respondents sought to support the view taken by the Division Bench and urged for the dismissal of the appeal.

- A 22. As said earlier all the eleven appellants in Civil Appeal No. 2825/84 were working as Post Graduate Teachers (PGTs) in the Higher Secondary School run by the Municipal Corporation, Delhi before the same were taken over by the Delhi Administration and who after the take over on 1.7.1970 were transferred to the service of Delhi Administration as
- B Post Graduate Teachers (PGTs). Admittedly there was no cadre of Headmasters in the Delhi Administration and as there was Headmasters cadre in the schools run by Municipal Corporation which were taken over by the Delhi Administration and hence the Headmasters who were absorbed in Delhi Administration service, their designation and salaries were protected in the take over rules till the time that cadre exhausted in course of time:
- C It could not be disputed that there were separate cadres for the PGTs and Headmasters and the PGTs were placed higher in rank as well as in pay scale to that of the Headmasters when they were in Corporation service. The qualification for both the cadre was different and the next promotional post for the Headmasters was the post of PGT. It was of all these reasons
- D that when after the take over some of the Headmasters of the Middle Schools became surplus then according to the terms of take over those who were M.A. were to be promoted to the post of PGT and those who did not possess the qualification of M.A. were to work as TGT though in the revised pay scale of Rs. 300-600. As there were two different cadres of the
- E PGTs and Headmasters in Municipal Service, Therefore, there could not have been any conflict with regard to the seniority between the said two cadres. But conflict surfaced when the PGTs and Headmasters were placed in a common cadre and pay scale with effect from 27.5.70 by order dated 18th September, 1970. It appears that in order to meet the problem posed
- F by the amalgamation of the two cadres - the PGTs and Headmasters into one single grade the Chief Secretary, Delhi Administration with the approval of the Lt. Governor took a decision on October 22, 1970 in regard to the seniority and promotions. The said decision has been reproduced by the learned Single Judge in his Judgment dated 16th December, 1980 and has also been placed on record of these appeals. The Chief Secretary took
- G the decision that the PGTs will rank senior to the Headmasters. On the basis of the respective strength of PGTs and Headmasters of the Special Cadre and the PGTs of Administration Cadre existing on the date of take over, the Chief Secretary fixed the promotion ratio of 1:4 between them for promotion to the post of Vice Principal or the Principal. The learned
- H Single Judge found the decision of the Chief Secretary to be rational and

reasonable and, therefore, took the view that the subsequent decisions date A
 June 13th June, 1974. December 24, 1974 and May 26, 1976 disturbing the
 ratio quota and fixing the quota on year to year basis in the face of the
 decision of the Chief Secretary was wrong and the *ad hoc* promotions of
 the PGTs from the Administration Cadre to the Post of Vice Principle and
 principal made on basis of said subsequent decisions was bad in law. B

23. In our opinion on the parity of same reasoning as has been taken
 by us in fixing the seniority between TGTs (Middle) and TGTs (Higher),
 there should be no difficulty in fixing the seniority and promotion in
 between the PGTs and Headmasters taken from Municipal Service and
 absorbed in Delhi Administration. We, therefore, find ourselves in agree- C
 ment with the view taken by the learned Single Judge in this behalf and
 hold that the contrary view taken by the Division Bench is not justified.
 There is no material on record to show that the decision of the Chief
 Secretary dated 22nd October, 1970, referred to above was ever modified,
 withdrawn or cancelled by the competent authority. That being so the D
 Deputy Secretary and the Joint Secretary of the Delhi Administration who
 issued the said subsequent orders, circulars and promotion orders cannot
 prevail over the decision of the Chief Secretary. In view of the facts and
 circumstances discussed above, the Headmasters shall also count their
 seniority in PGT Cadre only from the date on which the two Cadres were
 integrated and unified into one single grade by order dated 18th Septem- E
 ber, 1970 which was brought into force retrospectively with effect from 27th
 May, 1970.

24. In Civil Appeal No. 2824 of 1984 appellants Nos. 1 to 42 were
 working as TGT (High Secretary) and appellants Nos. 43 to 118 were
 working as TGT (Middle). As a result of revision of their pay scales with F
 effect from May 27, 1970 TGTs (Middle) have claimed that their seniority
 in the Cadre of TGTs should be fixed on the basis of their initial appoint-
 ment as TGT (Middle). As explained earlier the said claim cannot be
 accepted for the reasons already discussed in earlier part of this judgment.
 The appellants in this appeal have also claimed that the promotion quota G
 of TGTs special Cadre vis-a-vis TGTs Administration Cadre should be
 fixed by taking into account strength of TGTs Special Cadre as on July 1,
 1970 when the schools run by the Municipal Corporation of Delhi were
 taken over by the Delhi Administration and not on the basis of the strength
 on April 30, 1970. This claim of the appellants also cannot be accepted.
 while dealing with the matter of seniority we have pointed out that if the H

A seniority of TGTs (Middle) was fixed on the basis of their length of service there may be occasions when they may get a chance of promotion over their seniors in the Administration Cadre who were working as TGTs since much longer a period than the TGTs (Middle) who were in lower grade which was equated with the TGT (Higher Secondary) only with effect from May 27, 1970 and this situation would be detrimental to the interest of

B TGTs on the Administration Cadre and would cause great injustice to them. The same considerations would govern the fixation of promotion quota between the TGTs (Higher) Special Cadre and TGTs Administration Cadre. Is the promotion quota is fixed on the basis of the strength of TGTs Special Cadre and TGTs Administration Cadre as on July 1, 1970,

C as claimed by the appellants, TGTs (Middle) in Special Cadre, though junior, would be promoted as PGT earlier than Senior TGTs in the Administration Cadre. Such a consequence is avoided by the fixation of the promotion quota on the basis of strength of the TGTs in Special Cadre and TGTs Administration Cadre a on April 30, 1970 which is the last day

D of the last academic session as indicated in the rule governing the take over of the schools. The said quota has, therefore, to be worked out on the basis of the respective strength of the two Cadres, namely, TGTs Administration Cadre and TGTs Special Cadre (Higher) on the last day of the last academic session on yearly basis and so long as TGTs Administration Cadre and TGTs Special Cadre (Higher), as on April 30, 1970, are available

E no TGT (Middle) can be considered for promotion to the higher post of PGT. When TGTs in the said cadres, as on April 30, 1970 are no longer available the promotion quota for TGTs Administration Cadre and TGTs Special Cadre will have to be fixed yearly on the basis of the respective strength of the two cadres by taking into account TGTs (Middle) whose

F pay scales were revised with effect from May 27, 1970.

25. Having regard to all the facts and circumstances of the case in the two appeals our conclusions are as follows :

G (1) That the proportion between the TGTs of the Administration Cadre and the Special Cadre (Higher) will be worked out on their respective strength as it existed on the last day of the last academic session i.e. on 30.4.70 and thereafter the said proportion will be worked out on yearly basis. So long as TGTs Administration Cadre and TGTs Special Cadre (Higher), as on April 30, 1970, are available no TGT (Middle) can be

H considered for promotion to the higher post of PGT. When TGTs in the

said cadres, as on April 30, 1970 are no longer available the promotion A
quota for TGTs Administration Cadre and TGTs Special Cadre will have
to be fixed yearly on the basis of the respective strengths of the two cadres
by taking into account TGTs (Middle) whose pay scales were revised with
effect from May 27, 1970.

(2) In the combined panel of PGTs and the Headmasters, the PGTs B
en-blocs all rank senior to the headmasters and till the members of the
original cadre of PGTs (in the Corporation service) is exhausted no Head-
masters can be considered for promotion to the post of Vice Prin-
cipal/Principal.

(3) The ratio of promotion of the Special Cadre (PGTs and Head- C
masters together) and the PGTs in Administrations Cadre would 1:4. As a
consequence of this the promotions/appointments made to the post of Vice
Principles and Principles by order dated 7.9.76 contrary to the said ratio
is quashed. The Delhi Administration shall work out the promotions fresh D
to be made to the post of Vice Principal/Principal from amongst the PGTs
in the manner and in accordance with the ratio stated above. But it is made
clear that those incumbents who were promoted by virtue of the judgment
of the Division Bench and are effected by this order/judgment delivered by
us, they will have to be reverted but no recoveries for the difference of
salary, etc. shall be made from them.

(4) Those incumbents who have since retired or have died after E
retirement are found entitled to any benefit by our decision the same shall
be considered by the respondents Nos. 1 to 4 and benefits, if any, be
worked out and paid to their nominees or legal representatives as the case
may be. F

28. The order passed by the Division Bench is modified accordingly.
In the facts and circumstances of the case we make no order as to costs.

A.G.

Appeal partly allowed.