

TAMIL NADU TEACHERS ASSOCIATION ETC  
v.  
ASSOCIATION OF THE HEAD OF THE GOVT. (B WING) HIGH  
AND HIGHER SECONDARY SCHOOLS AND ORS. ETC.

APRIL 28, 1998

[K. VENKATASWAMI AND A.P. MISRA, JJ.]

*Service law—Service Rules—Amendment of—Existing right prior to amendment—If the same can be taken away—‘A’ and ‘B’ Wings of teachers working in the State of Tamil Nadu integrated w.e.f. 01.04.1970 vide GOMs No. 1968 of 02.11.1978—B Wing was a dying cadre as all fresh appointments were ordered to be made in Wing ‘A’ only—Vide GOM No. 98 dated 21.01.1981, combined seniority list of both Wings directed to be redrawn in the ratio of 2:3—Result of this amendment was that the teachers in A Wing who were not in employment prior to 31.03.1970 were placed in the seniority list over the staff already in B Wing long before 31.03.1970—GOM 98 struck down High Court and SLP was also dismissed by a reasoned judgment—In between, Government issued various GOMs which had the effect of separating the seniority of two Wings—Held, two Wings already integrated w.e.f. 01.04.1970—Further, the right to combined seniority list and the promotional opportunities as provided in GOMs 1968, became crystallised in the High Court order as upheld by Supreme Court—Hence this right could not be taken away by resorting to rule-making power of the Government—Also that Government in one of its GOMs had itself asserted that integration of two Wings was the best solution—Seniority—Cadre—Integration of—Madras Service Manual, 1970, Section 6-A, Part III- B (Special Rules)—T.N. Educational Subordinate Service Rules, Rule 2-A.*

**Consequent to the formation of the Panchayat Unions, the Government abolished the District Boards in the year 1960-61. The administration of the erstwhile District Board Secondary Schools was brought under the control of Special District Education Officers in the year 1963. Later on, the Government by G.O.Ms. No. 539 dated 01.04.1966 directed to treat the erstwhile District Board Schools as Government Secondary Schools w.e.f. the said date. However, no decision was taken regarding the staff of the District Board Schools in the said G.O.**

**By G.O.Ms. No. 761 dated 15.06.1970, the Government ordered the**

- A absorption of the teaching and not-teaching staff of the District Board Schools in Government Service w.e.f. 01.04.1970. On such absorption the staff of the District Board Schools was governed by a separate service named as Tamil Nadu Subordinate Service (B) and regular staff in the Government Secondary Schools was governed by the Tamil Nadu Educational Subordinate Service.
- B By G.O. Ms. No. 289 dated 20.02.1971, the staff of the Regular Government Schools was treated as 'A' Wing and the staff of the erstwhile District Board Schools, but later absorbed as Government staff, was treated as 'B' Wing. The Government also decided that any school to be opened on or after 01.04.1970 was to be only regular Government school which meant that there won't be any addition to the Government school under 'B' Wing category after 01.04.1970.
- C

- By another G.O.Ms. No. 1786 (Education) dated 17.10.1974, the Government expressed that the integration of 'A' Wing and 'B' Wing was administratively not feasible and, therefore, it was decided to reserve 30% of the posts of District Education Officers (promotional post) for 'B' Wing.
- D By G.O.Ms. 1968 (Education) dated 02.11.1978, the Government directed, in partial modification of the earlier G.Os., that the staff of 'A' and 'B' Wings be integrated with immediate effect. 'A' Wing staff, aggrieved by the integration challenged the same by filing a Writ Petition before Supreme Court. The Challenge to the said G.O., in particular, was directed, against
- E the fixing of ratio between the two Wings in the matter of promotion and fixing the principle for computation of service in determining common seniority. Supreme Court upheld the ratio fixed in the said G.O. between the two Wings in the matter of promotion and also the principle for computation of service in seniority, and dismissed the Writ Petition on 20.10.1979, Before the judgement, the Government issued G.O.Ms. No. 1079 dated
- F 02.07.1979 framing Rules under Article 309 of the Constitution, styled as Special Rules for the Tamil Nadu Subordinate Service 'B' Wing and made those rules as part of Volume-III of the Madras Services Manual 1970 with retrospective effect from 01.04.1970. After the judgment of Supreme Court, the Government issued another G.O.Ms. No. 1307 dated 12.07.1980 by adding
- G Rule 2-A to the Tamil Nadu Educational Subordinate Service Rules, which related to 'A' Wing. Rule 2-A provided for the mode of promotion to the teaching staff and as per the amendment the combined seniority lists of 'A' and 'B' Wings would have to be drawn up on 01.11.1978 in the ratio of 2:3 instead of as on 31.03.1970 as per original Rule 2-A. The effect of the amendment seriously prejudiced the staff in the 'B' Wing because after
- H 01.04.1970 there were no fresh appointments in 'B' Wing and all

appointments were made only in 'A' Wing and all the schools w.e.f. 01.04.1970 had become the Government schools. Therefore, 'B' Wing staff challenged the amended Rule 2-A before the High Court on the ground that if the amended rule was given effect to, then persons who entered service on or after 01.04.1970 were likely to be placed above the staff of 'B' Wing, who were already in service on that date. Single Judge, however, dismissed the writ petition. On appeal, Division Bench allowed the writ appeal by holding that the amended Rule 2-A violated Articles 14 and 16 of the Constitution. Against this Judgement, the staff of the 'A' Wing filed an S.L.P. (C) which was dismissed by Supreme Court by a reasoned order.

In the meanwhile the Government issued G.O.Ms. No. 37 dated 07.01.1982 amending Special Rules for the Tamil Nadu Education Service wherein Rules 2-A and 2-B were introduced. On the same date, the Government also issued G.O. No. 38 amending the Tamil Nadu Educational Subordinate Service Rules. By this amendment, the posts of Headmaster and Headmistress were taken away from Special Rules. Still later, by G.O. Ms. No. 753 dated 15.07. 1985 issued under Article 309 of the Constitution, the Government brought into existence the Special Rules for the Tamil Nadu School Educational Subordinate Service in supersession of the earlier Special Rules for the same service.

After the dismissal of S.L.P. by Supreme Court, Government issued G.O. Ms. 1583 and 1584 on 12.10.1988 under which integration order under G.O. 1968 was given a go-bye and separate seniority lists of A Wing and B Wing teachers were directed to be prepared for the purpose of promotions followed by promotional orders given to A Wing teachers.

Aggrieved by G.O. Ms. 1583 and 1584 and the promotional orders, certain individual teachers from B Wing, the association concerning B Wing teachers field a petition before the Administrative Tribunal. The Tribunal quashed the G.Os impugned before it and also the promotional orders given to A Wing teachers and directed the Government to prepare a combined seniority list. Hence this appeal by aggrieved A Wing teachers, State and the Association.

It was contended by the appellants that the challenge that was made by the B Wing teachers before the Tribunal related to G.Os. amending the Educational Subordinate Service, which had nothing to do with the posts of Headmaster, District Education Officer and Chief Education Officer, etc. which were governed by the Educational Service; that before G.O. Ms. 1968

A was passed giving retrospective effect from 01.04.1970, numerous promotions had taken place in the 'B' Wing in accordance with the then existing rule which could not be set at naught by giving the date of integration as 01.04.1970 and was the reason for fixing the date of integration as 02.11.1978; that before the 'B' Wing School teachers were taken over, there was no category of gazetted Headmasters, Deputy Inspectors of Schools, Inspector of School etc. as was the case in the service of 'A' Wing teachers; and that there was difference in mode of promotion to the post of Headmaster and further promotion to the post of DEO and CEO etc; and that there was no integration from 01.04.1970 under G.O. 1968, the Government passed G.O. Ms. No. 1584 on 12.10.1988 by keeping both the Wings separately.

B  
C Respondents contended that G.O. 1968 made the integration of both the Wings complete on and from 01.04.1970 as the said G.O. had not been rescinded or withdrawn; and that Supreme Court had already interpreted the scope of G.O. 1968 in particular the date of integration as 01.04.1970, it was no longer for the Government to go back on that, especially after the rights of the 'B' Wing teacher had become crystallised and the same rights could not be taken away by resorting to rule-making power of the State Government.

D  
E Dismissing the appeals, this Court

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G HELD : 1.1. The Tribunal on the basis of the facts and records placed before it, has arrived at the correct conclusion. The contention of the appellants to support the change brought about in the date of integration from 01.04.1970, to 02.11.1978, and the reasons given therefor are either overruled already in the two rounds of litigation or they are too technical. The submissions that the mandamus issued by the High Court was a futile one as the rule struck down by it was not there on the statute book when the judgement was rendered, cannot be taken note of as the Government, accepting the decision of the High Court as upheld by this Court, had issued the G.Os. impugned in these cases. Further, the High Court, apart from holding G.O. 98 as illegal and void, also settled other contentious issues like the of integration between the parties. The High Court further commanded the State to re-draw the seniority list as originally contemplated by G.O. 1968. That being the position, it is too late in the day to contend that the judgment of the High Court, as upheld by this Court, has to be totally ignored. The respondents are right in making the submission that the right to combine seniority list as well as the promotional opportunities provided in G.O. 1968 became crystallized in the said writ of mandamus issued by the High Court as upheld by this Court and the same could not be taken away by resorting to the rule-

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making power of the State Government. [20-B-E]

1.2. It is pointed out that the Government after the judgment of this Court upholding G.O. 1968, expressed that there was no better possible alternative to the problem than the integration order affirmed by this Court. After all this, the Government again purporting to give effect to the writ of mandamus issued by the High Court as upheld by this Court, issued G.Os impugned in these cases, which had the effect of disintegrating an integrated cadre contrary to the principles contained in G.O. 1968. Therefore, the Tribunal was compelled to quash the G.Os impugned before it. The technical objections taken by the appellants that in the absence of challenge to G.O. Ms Nos. 37 dated 07.01.1982 and 603 dated 15.04.1987, the respondents 'B' Wing teachers cannot get the fruits of the Tribunal's direction, is also not tenable. As rightly pointed out by respondents that G.O 37 dated 07.01.1982, had no impact at all on the principle of integration contained in G.O. 1968 and it did not even touch the quotas prescribed from promotion from gazetted Headmasters post to that of District Educations Officer for 'A' and 'B' Wings. In the circumstances G.O. 37 must be read down to sustain its validity to mean that the combined seniority list should be drawn with reference to 30.03.1970, i.e. the date on which 'B' Wing teachers were absorbed in Government service and made up-to-date as on 01.11.1978 by deleting the names of persons promoted, resigned or dead in the meanwhile, for operating the same for purposes of filling up vacancies. Similarly, G.O. 603 dated 15.04.1987 has no effect on the integration process initiated under G.O. Ms No. 1968 and, therefore, there was no need to challenge the same by 'B' Wing teachers. [20-F-H; 21-A-C]

*K.V. Kamath v. R Baliga*, [1969] 3 SCR 40, relied on.

*T.N. Education Deptt. Ministerial and General Subordinate Services Association v. State of Tamil Nadu & Ors.*, AIR (1980) SC 379 and *M.M. Pathak v. Union of India*, [1978] 3 SCR 334, referred to.

*K Subramaniam v. Director of School Education & Ors.*, SLP 14685-89/87 decided on 15.12.1987.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5164-5166 of 1990 Etc., Etc.

A From the Judgment and Order dated 4.5.90 of the Tamil Nadu Administrative Tribunal, in O.A. Nos. 847 and 46/89, 885 of 1989.

B K.V. Venkatapathy, Attorney General, R. Mohan, P.P. Rao, K.R. Choudhary, V. Selvaraj, Sudarsh Menon, (Dr. A.Francis Julian) for M/s. Arputham, Aruna & Co., M.A. Krishanmoorthy, J.B. Ravi, Mrs. K. Suguna, Mrs. K. Dhanalakshmi and V. Balachander for the appearing parties.

The Judgment of the Court was delivered by

C **K. VENKATASWAMI, J.** These appeals can be disposed of by a common judgement and the Tamil Nadu Administrative Tribunal disposed of the matters by a common order in view of the fact that the issues arising out of these cases are inter-related and, therefore, necessary to be disposed of by a common order.

D This is the third round of litigation up to this Court between the two categories (A & B Wings) of Teachers, who were later on integrated into one category and as a result of which litigations started concerning seniority and further promotions. The first round of litigation, which came up to this Court, was disposed of by this Court in, *The Tamil Nadu Education Department Ministerial and General Subordinate Services Association etc. v. State of Tamil Nadu & Ors.*, AIR (1980) SC 379 on 23.10.79. The second round of litigation was disposed of by this Court in *K. Subramanian v. Director of School Education & Ors.*, at the admission stage itself by dismissing the S.L.P.(C) Nos. 14520, 14685-89/87 on 15.12.87 with a short, reasoned order. We are now disposing of the third round of litigation with the hope that this will give a quietus at least in the matter of seniority and promotions between the parties as one of the categories, which was merged with another category, is due to vanish by efflux of time. We propose to give only skeletal factors necessary to appreciate the rival submissions.

G Consequent on the formation of the Panchayat Unions, as a first step, the Government abolished the District Boards in year 1960-61. The administration of the erstwhile District Board Secondary Schools was brought under the control of the Special District Educational Officers in the year 1963. Later on, the Government by G.O.Ms. No. 539 dated 1.4.66 directed to treat the erstwhile District Board Schools as Government Secondary Schools with effect from the said date. However, no decision was then taken regarding the staff of the District Boards Schools in the said G.O. By G.O. Ms. No. 761 dated 16.5.70, H the Government ordered the absorption of the teaching and non-teaching

staff of the District Board Schools in Government Service w.e.f. 1.4.70. On such absorption, the staff of the District Board Schools was governed by a separate service named as Tamil Nadu Educational Subordinate Service (B). We may mention that the regular staff in the Government Secondary Schools was governed by the Tamil Nadu Educational Subordinate Service. By G.O.Ms. No. 289 dated 20.2.71, the staff of the Regular Government Schools was treated as 'A' Wing and the staff of the erstwhile District Board Schools, but later absorbed as Government staff, was treated as 'B' Wing. The Government also decided that any school to be opened on or after 1.4.70 shall be only regular Government school. That means, there won't be any addition to the Government School under 'B' Wing category after 1.4.70. By another G.O.Ms. No. 1786 (Education) dated 17.10.74, the Government expressed that the integration of 'A' Wing and 'B' Wing was administratively not feasible and, therefore, it was decided to reserve 30% of the posts of District Educational Officers (promotional post) for 'B' Wing. By G.O.Ms. No. 1968 (Education) dated 2.11.78, the Government directed, in partial modification of the earlier G.Os., that the staff of 'A' and 'B' Wings be integrated with immediate effect. The Government also indicated the procedure for integration in the following manner:-

(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 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 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 BT Assistants to Non-Gazetted Headmasters.
3. From Secondary Grade Assistants and other specialist teachers to the cadre of BT Assistants.

The vacancies will be filled up between A Wing and B Wing in the ratio

A' of 2:3. The cycle of 5 shall be followed as indicated below:-

A .....1

B .....1

B A .....1

B .....1

B .....1

5"

C 'A' Wing staff, aggrieved by the integration as per G.O.Ms. No.1968, challenged the same filing a Writ petition in this Court. The challenged to the said G.O., in particular, was directed against fixing the ratio between the two Wings in the matter of promotion and fixing the principle for computation of service in determining common seniority. This Court, upholding the ratio fixed in the said G.O. between the two Wings in the matter of promotion and also the principle for computation of service in determining common seniority, dismissed the Writ Petition. The decision, upholding the validity of the said G.O. No.1968, was given by this Court on 23.10.79. Before that, the Government issued G.O.Ms.No.1079 dated 2.7.79 framing the rules under Article 309 of the Constitution, styled as Special Rules for the Tamil Nadu Educational Subordinate Service 'B' Wing and made those rules as part of Volume-I I I of the Madras Services Manual 1970 under Section 6A, Part-I I I B. These rules were given retrospective effect from 1.4.70. After the judgment of this Court, the Government issued another G.O.Ms. No1307 dated 12.7.80 by adding Rule 2-A to the Tamil Nadu Educational Subordinate Service Rules, which related to 'A' Wing. Rule 2-A, as introduced by the said G.O., reads as follows:-

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

G All substantive vacancies existing or that may arise on and from the 2nd Nov. 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."

H One important aspect that has to be borne in mind before proceeding

further is that the Government on 22.7.80 addressed a letter to the Director of School Education on the effect of the judgment of this Court dated 23.10.79 upholding G.O.Ms. No.1968. Paragraphs 2 and 3 of that letter are relevant for our purpose, which read as follows:- A

"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.* B

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." C

(Emphasis supplied)

After taking the abover decision, the Government, presumably under pressure of 'A' Wing staff, issued another G.O.Ms No. 98 (Education) dated 21.1.81 amending Rule 2-A, which was introduced just a few months earlier and the amended Rule 2-A reads as follows:- D

"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 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 social Education Department as per the combined seniority lists of 'A' and 'B' wings drawn up on the 1st November, 1978 in the ratio of 2:3. E F

*EXPLANATION :*

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

A Wing 1

B Wing 1

A Wing 1 H

A B Wing 1

B Wing 1

5"

B It will be noticed that as per the amended Rule 2-A, the combined seniority lists of 'A' and 'B' Wings will have to be drawn up on the 1st of November, 1978 in the ratio of 2:3 instead of as on 31.3.70 as per the original Rule 2-A. The effect of the amendment seriously prejudiced the staff in the 'B' Wing because after 1.4.70 there were no fresh appointments in the 'B' Wing and all appointments were made only in the 'A' Wing and all the schools with effect from 1.4.70 had become the Government Schools. The result was that even the teachers, who were not in employment prior to 31.3.70, were placed in the seniority list over the staff, who were already in the 'B' Wing, long before 31.3.70. Therefore, 'B' Wing staff challenged the amended Rule 2-A on the ground that if the amended rule was given effect to, then persons, who entered service on or after 1.4.70, are likely to be placed above the staff of 'B' Wing, who were already in service on that date. The 'B' Wing staff challenged the validity before the Madras High Court. The learned Single Judge, who initially heard the matter, was not inclined to accept the case put forward by the 'B' Wing staff and consequently dismissed the Writ Petition. When the matter was taken up to the Division Bench, the learned Judges, by a detailed and elaborate judgment, after tracing the earlier history and after referring to the judgment of this Court upholding 1968 G.O., held that the amended Rule 2-A violated Articles 14 and 16 of the Constitution and on that ground, allowed the Writ Appeals on 10.8.87 and held as follows:-

F "We are therefore satisfied that there is a clear infirmity in the G.O. dated 21.1.1981 by which the old Rule 2A was substituted by the present Rule 2A. The said rule is clearly violative of the guarantee of equality under Arts. 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. No.1968 dated 2.11.1978. There will however be no order as to costs in these appeals."

H Against this judgment of the Division Bench of the Madras High Court, the staff of the 'A' Wing filed S.L.P.(C) Nos.14520/87, etc. and this Court dismissed the said S.L.Ps by a reasoned order as noticed above.

In the meanwhile, the Government issued G.O.Ms. No.37 dated 7.1.82 amending Special Rules for the Tamil Nadu Educational Service. Rules 2-A and 2-B *inter alia* were introduced, which read as follows:-

2A Appointing Authority:

The appointing authority for the posts of Headmasters and Headmistresses including Headmasters and Headmistresses in the Model High Schools attached to Training Colleges in Class V shall be the Director of School Education.

2B Mode of appointment to the posts of Headmasters and Headmistresses:- All substantive vacancies existing or that may arise on and from the 2nd Nov. 1978, in the category of Headmasters and Headmistresses which are to be filled up by recruitment by transfer shall be filled or reserved to be filled from among the holders of the posts of Deputy Inspectors of Schools and Assistants and Career Masters both in the A and B Wings of the School Education Department as per the combined seniority list 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 3 (2:3) shall be followed as indicated below:-

A Wing ... 1

B Wing ... 1

A Wing ... 1

B Wing ... 1

B Wing ... 1

5

On the same date, namely, 7.1.82, the Government also issued G.O.No.38 (Education) amending the Tamil Nadu Educational Subordinate Service. By this amendment, *inter alia*, the posts of Headmasters and Headmistresses were taken away from the said rules. Still later, by G.O.Ms No.753 dated 15.7.85 issued under Article 309 of the Constitution, the Government brought into existence the special Rules for the Tamil Nadu School Educational Subordinate Service in supersession of the earlier Special Rules for the same service. Again, the Government issued G.O.Ms. No.603 dated 15.4.87 to be effective from 1.3.85. This Government Order provided for three separate sources

A including promotion from Class-V (Headmasters and Headmistresses) to the post of DEOs and that while making the said appointments the proportion in service by direct recruitment (20 + 10 = 30%) and by promotion (70%) was to be ensured.

B After the dismissal of the Special Leave Petitions by this Court, as noticed above, the Government passed another G.O.Ms.No. 1583 dated 12.10.88.

C The said G.O. was passed purporting to give effect to the judgment of the Division Bench of the Madras High Court in Writ Appeal Nos 633-636/86 and the order of this court in SLP(C) Nos. 14520-14589/97 dated 15.12.1987. On the same date, the Government passed another G.O. Ms. No. 1584 by amending Rule 4 of the Special Rules for Tamil Nadu School Educational Subordinate Service. The effect of the said two G.Os. was that the integration order under G.O.Ms. No. 1968 dated 2.11.1978 was given a go-bye and separate seniority lists of A Wing and B Wing teachers were directed to be prepared D for the purpose of promotions. These two G.Os. were followed by promotional orders given to A Wing teachers on 3.12.1988 and 5.12.1988.

E Aggrieved by the G.O Ms. Nos. 1583 and 1584 both dated 12.10.1988 and the promotional orders dated 3.12.1988 and 5.12.1988, certain individuals belonging to B Wing teachers the association concerning B Wing teachers preferred O.A. Nos. 46/88, 847/89 and 885/89 before the Tamil Nadu Administrative Tribunal.

F The Tribunal after perusing the pleadings, hearing the counsel on both sides and after tracing the previous history relating to earlier two rounds of litigation between the same parties, ultimately held that the G.Os. impugned before it had brought into existence a situation which was directed to be avoided by the Division Bench of the High court and giving effect to the impugned G.Os. will result in perpetrating something which was struck down by the High court and Supreme Court. Accordingly, the Tribunal quashed the G.Os. impugned before it and also the promotional orders given to A Wing G teachers. Consequently the Tribunal directed the Government and the authorities concerned to prepare a combined seniority list (a) for B.T. Assistants (b) Gazetted Headmasters and (c) Administrative Staff as on 31.3.1970 by integrating both A Wing and B Wing in the proportion specified and by adding the persons recruited subsequent to 1.4.1970 to the respective lists. It further clarified that the list so prepared will form the basis for filling up H Vacancies in the above said three categories.

Aggrieved by the said order of the Tribunal, three sets of appeals have been filed separately by the aggrieved 'A' Wing teachers, State of Tamil Nadu and the Association. A

The submissions made on behalf of the appellants can be summarised as follows:-

The challenge that was made by the 'B' Wing teachers before the Tribunal related to G.Os. amending Educational Subordinate Service, which has nothing to do with the posts of Headmaster, District Educational Officer and Chief Educational Officer, etc. which are governed by the Educational Service. It was also the contention of the learned counsel appearing for the appellants that when the Division Bench of the Madras High Court had struck down G.O. 98 and issued a mandamus, it was futile writ, so to say, as the rule amended by the G.O. impugned before it, was altogether removed from the statutory book. However, that was not brought to the notice of the High Court or when the matter was further taken up to this Court. The further contention of the appellants was that before G.O.Ms. 1968 was passed in the year 1978 giving retrospective effect from 1.4.70, numerous promotions had taken place in the 'B' Wing in accordance with the then existing rule which cannot be set at naught by giving the date of integration as 1.4.70 and that was the reason for fixing the date of integration as 2.11.78. It was also contended that before the 'B' Wing Schools teachers were taken over, there was no category of gazetted Headmasters, Deputy Inspectors of Schools, Inspectors of Schools, etc. as was the case in the service of 'A' Wing teachers. Likewise, there was difference in mode of appointment, qualification, etc. Two categories, therefore, cannot be considered similar and integrated from 1.4.70. The 'B' Wing teachers never challenged the relevant G.Os. prescribing the mode of promotion to the post of Headmaster and further promotion to the post of Headmaster and further promotion to the post of D.E.O. and C.E.O., etc. The promotions given to 'A' Wing teachers were in accordance with the rules of promotion for the post of Headmasters, D.E.O., etc. and in the absence of challenge to those rules, the Tribunal was not justified in quashing their promotions. Though the difficulties in the integration of various posts in the Tamil Nadu Educational Subordinate Service was brought to notice of the Tribunal, this has not been properly dealt with by the Tribunal. In any event, the matter of integration being a policy matter, the Tribunal ought not to have interfered with the various orders of the Government. It was also submitted that G.O.1968, which was issued under Article 162 of the Constitution of India, cannot hold the field when the relevant rules B  
C  
D  
E  
F  
G  
H

A governing the service were passed under Article 309 of the Constitution of India. The Tribunal failed to appreciate, according to the appellants, that if the Government were to give effect to the directions given by it, it would result in nullifying hundreds of appointments made and unsettling the service conditions of hundreds of teachers both in 'A' Wing and 'B' Wing. A proper reading of G.O.1968, in particular, Clause (4) (iii) will clearly show that the

B integration was to be given effect to on and from 2.11.78 while filling up the vacancies existing or that might arise thereafter. It is impossible to read the said Clauses (4) (iii) as integrating both Wings as on 1.4.70. To make it clear that there was no integration from 1.4.70 under G.O. 1968, the Government passed G.O. Ms.No. 1584 on 12.10.88 by keeping both the Wings separately.

C The counsel appearing on behalf of the respondents vehemently opposed the arguments advanced on behalf of the appellants. Their submissions can be summarised as follows:-

D The G.O. 1968 clearly and in unequivocal terms made the integration of both the Wings complete on and from 1.4.70 and the said G.O. has not been rescinded or withdrawn by the State Government till date. Further, this court and the Division Bench of the Madras High Court had already interpreted the scope of G.O. 1968, in particular, the date of integration as 1.4.70, and the Government having accepted the judgment of this Court and the Division Bench judgment of the Madras High Court, which was also affirmed by this

E Court, it is no longer open to the Government to go back on that, especially after the rights of the 'B' Wing teachers had become crystallised. The rights so crystallised cannot be taken away by resorting to the rule-making power of the State Government. In support of this, reliance was placed on a judgment of this Court in *M.M Pathak v. Union of India*, [1978] 3 SCR 334. While that

F being the position, the Government by the G.Os. impugned before the Tribunal, namely, 1583 and 1584, attempted to disintegrate an integrated cadre contrary to the principles of integration contained in G.O. 1968 and as interpreted by this Court. The question of integration of two categories would arise only with respect to teachers, who were in Government service as on 31.3.70. No such question would arise with respect to fresh appointees after 1.4.70 as the

G schools to be opened and recruitment of teachers after 1.4.70 will all be under 'A' Wing. Surprisingly, the Government, purporting to give effect to the mandamus issued by the Division Bench of the High Court, as affirmed by this court, has disintegrated the two categories by passing the G.Os. impugned before the Tribunal. Therefore the Tribunal was absolutely right in quashing

H the same and giving directions as contained in its order. The question of

challenging the G.O. 37 dated 7.1.82 by 'B' Wing teachers did not arise as it had no impact at all on the principles of integration contained in G.O. 1968. Therefore, the contention based on that was devoid of substance. In any event, G.O.Ms. 37 has to be read down to mean that the expression "combined seniority list drawn up as on the 1st November, 1978" means combined seniority list drawn up with reference to 31.1.70, i.e., the date on which the 'B' Wing teachers were absorbed in Government service and made up-to-date as on 1.11.78 by deleting the names of persons promoted, resigned or dead in the meanwhile, for operating the same for purposes of filling up the vacancies. Any other interpretation as suggested by the appellants would render the said rules ultra vires the Article 14 in the light of the pronouncements of this Court confirming the judgment of the High Court. The well-settled principle in the matter of interpretation is that if two interpretations are possible, the one which sustains the validity of the rule should be preferred. Likewise, the arguments that the Division Bench of the Madras High Court struck down a non-existent rule and, therefore, the mandamus issued based on such striking down cannot be enforced, is also devoid of substance. According to the respondents, the G.O. impugned, namely, G.O 1584 dated 12.10.88 having retrospective effect from 15.7.85, itself was one intended to substitute G.O. 1584 dated 12.10.88 having retrospective effect from 15.7.85, itself was one intended to substitute G.O. 98 in the light of a judgment of this Court in *K.V. Kamath v. R. Baliga*, [1969] 3 SCR 40, in which it was laid down that the old rule once substituted by the new rule ceases to exist and it does not automatically get revived when the new rule is held to be invalid. In other words, the respondents submit that as a result of the striking down of G.O. 1584, the old rule 4 which, for the first time, came into existence on 15.7.85 did not revive. Therefore, there was no old rule 4 in the eyes of law which needs to be challenged separately. The further argument of the learned counsel for the respondents was that reliance placed by the appellants on G.O.Ms. No. 603 dated 15.4.87 was misplaced as that did not affect the principles of integration initiated under G.O. 1968. On the other hand, in para 2 of the said G.O. (G.O. 603), the right of the 'E' Wing Headmasters for promotion against 30% vacancies reserved for them till all the 'B' Wing gazetted Headmasters are exhausted, was reiterated. In terms of the mandamus issued by the Madras High Court, which was affirmed by this Court, and in the absence of combined seniority list on that basis, no reliance can be placed on the statement of the Director of School Education, issued prior to the judgment to the effect that all eligible 'B' Wing gazetted Headmasters had already been promoted. Viewed from this angle, no prejudice is caused to the 'B' Wing Headmasters on account of G.O.Ms. No. 603 which has no bearing on the combined

A seniortiy list to be drawn up in terms of the mandamus issued by the Division Bench of the High Court and, therefore, there was no need for 'B' Wing teachers to challenge the said G.O.No.603. The Government has provided for the integration of the two categories of teachers under G.O. 1968 and the principles of integration had already been approved by this Court. It is unfortunate that the Government failed to implement the binding judicial decisions, but instead attempted to circumvent the same by resorting to amendments to the rules. The Tribunal was right in striking down the impugned orders and giving consequential reliefs. On the basis of these submissions, the respondents prayed for dismissal of all the appeals.

C After hearing Senior Counsel appearing on both sides, ably assisted by other counsel, we find that the crucial issue that arises for decision relates to the actual date of integration of two categories of teachers (A & B Wings). In other words, whether the integration of A & B Wing teachers took place on 1.4.1970 as contended by the B Wing teachers, or only on 2.11.1978 as contended by the A Wing teachers and also by the State of Tamil Nadu.

D Before factually considering the rival submissions on the crucial issue as well as the subsidiary issues, it will be worthwhile to bear in mind certain background facts even though those facts have already been noticed elsewhere. It is relevant to note that the integration G.O. 1968 dated 2.11.1978 has not so far been rescinded or withdrawn by the Government. On the other hand, the Government by passing the G.Os. impugned before the Tribunal, have expressly stated that they are giving effect to the judgment of the Division Bench of the Madras High Court as affirmed by this Court. The next important aspect to be borne in mind is the observations of this Court in the Tamil Nadu Education Department Ministerial and General Subordinate Services Association's case (supra). This Court in the said case while repelling the arguments advanced by 'A' Wing teachers in challenging the validity of G.O. Ms. 1968 that A Wing teachers stand entirely on a different footing in the matter of qualification, appointment, service etc, observed in para 14 as follows:-

G "14. The students who are coached for examinations, the syllabus for such courses and the nature of the teaching are virtually identical in the two sets of schools and the qualifications of the teachers also resemble. In this background, the State probably assumed as inadmissible of contrary argument that the quality of the service, the nature of other qualifications for employment and other features were de facto identical and consequentially service in District Board Schools

and Service in Government Schools could be legitimately equated for purposes of reckoning seniority. In this imperfect world mathematical precision in equation is a vain chase.”

The next aspect to be borne in mind is that this Court in the said case while dismissing the Writ Petition in para 19 observed as follows:-

“19. 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.”

The above observations of this Court were seriously taken note of by the Government and after deep consideration, the Government came to the conclusion [vide Government letter dated 22.7.80 (supra)] that there is no possible alternative solution to the problem except to implement the integration order in G.O.Ms. No. 1968 as affirmed by this Court. Accordingly, the Government decided to implement the integration order issued in the said G.O. and instructed the concerned authorities to inform the associations accordingly.

We have noticed that in the second round of litigation, the teachers belonging to B Wing challenged G.O. Ms. No. 98 dt. 21.1.1981 and the Division Bench of the Madras High Court, while accepting the challenge, held in clear and categorical terms that the integration has taken place on 1.4.1970. The Madras High Court also gave reasons in support of its finding. It held as follows :-

“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.”

In para 21 of the said judgment, the High Court again observed as follows:-

“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

A 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.”

C We have also noticed that the Special Leave Petition filed against the said judgment of the Madras High Court was dismissed by this Court not in limine but by giving reasons.

D From all this, one thing is clear and that is that the date of integration was 1.4.1970. Once that conclusion is reached on the basis of the facts gathered from records, the other minor/subsidiary issues will go to background.

The Tribunal was also of the same view that the integration as per G.O. 1968 has taken place as early as on 1.4.70. The Tribunal observed thus:-

E “..... the history of the present case clearly indicates that the method of integration between the two wings had been settled long ago and the same had been confirmed by the Courts. The only thing that remained to be decided was whether the adoption of crucial date for the purpose of enforcing integration as 2.11.1978 instead of 1.4.1970 is justifiable. The finding of the court is otherwise. Hence, the Government cannot relay the steps relying on the observation of the Supreme Court in the case of *B.K. Mahabatra v. State of Orissa*. The Government will have to follow the directions contained in W.A. Nos.733 to 736/86 in enforcing G.O.Ms. No.1968, Education dated 2.11.1978 and the combined seniortiy list of 'A' and 'B' Wings should be redrawn. There is no scope for preparing and keeping two separate lists of 'A' and 'B' Wings as contemplated in paragraphs 10 and 11 of G.O.Ms. No. 1583 dated 12.10.1988. A combined seniority list will have to be prepared as per G.O.Ms. No. 1968, Education, dated 2.11.1978 and promotions will have to be made as per the combined seniority list. As per the judgment of the Division Bench the respondents are bound to redraw the combined seniority list of 'A' and 'B' Wings as

H on 1.4.1970.

In other words, the B.T. Assistants who were in service as on 31.3.1970 in both the wings will have to be integrated in the ratio prescribed, and the 'A' Wing teachers recruited after 1.4.1970 will have to be added to the list so prepared to arrive at a combined seniority list."

The Tribunal also observed the manner of preparing a common seniority list and the promotions given on that basis. It observed as follows:-

"The common seniority list of 'A' Wing and 'B' Wing Headmasters will have to be evolved on the basis of common seniority list of 'A' Wing and 'B' Wing teachers and the seniority of each Headmaster will have to be based on his seniority as a teacher in the common seniority list for 'A' Wing and 'B' Wing teachers. Though it involves a complicated working out the same cannot be avoided in view of the rights crystallised by the rules and judgments of the Courts of the rights crystallised by the rules and judgments of the Courts confirming the same. Giving a go-bye to the integrated seniority list of Headmasters on account of the alleged difficulties in the matter of working out, the same will amount to doing violation to the rules and not following the dictum of the Supreme Court and we have no hesitation in rejecting the above said contention of 'A' Wing teachers."

Ultimately, the Tribunal came to the conclusion as follows :-

"The respondents cannot be allowed to alter the provisions contained in G.O.Ms. No. 1968, Education, dated 2.11.78 by means of impugned Government orders in view of the fact the Bench had declared that in doing so it will amount to:

- (1) Inequality of opportunity among the employees belonging to the same class.
- (2) Employees of 'A' Wing who were not in service as on 1.4.70 are likely to be placed above 'B' Wing teachers who were in service as on 1.4.70.

If the impugned Government orders are to be enforced after 1.4.1970 by adding subsequently recruited people of 'A' Wing then if the subsequent promotions are given effect to as per the ratio it will result in the same condition viz., 'A' Wing teachers recruited subsequent to 1.4.70 getting precedence over 'B' Wing teachers who were in service, as on 1.4.1970. Hence, the passing of the impugned Government

A orders will bring into existence the situation which was directed to be avoided by the Division Bench Judgment. Enforcing the impugned Government Orders will result in perpetrating something which was struck down by the High Court and the Supreme Court.”

B We find that the Tribunal on the basis of the facts and records placed before it, has arrived at the correct conclusion. The contention of the learned counsel appearing for the appellants to support the change brought about in the date of integration from 1.4.70 to 2.11.78 and the reasons given therefor are either overruled already in the two rounds of litigation or they are too technical. The submission that the mandamus issued by the Madras High Court was a futile one as the rule struck down by it was not there on the statutory book when the judgment was rendered, cannot be taken note of as the Government, accepting the decision of the Madras High Court as upheld by this Court, had issued the G.Os. impugned in these cases. Further, the Madras High Court, apart from holding the G.O. 98 as illegal and void, also settled other contentious issues like the date of integration between the parties. The High Court further commanded the State to re-draw the seniority list as originally contemplated by G.O. 1968. That being the position, it is too late in the day to contend that the judgment of the Madras High Court, as upheld by the Court, has to be totally ignored. Mr. P.P. Rao, the learned senior counsel appearing for the respondents, was right in placing reliance on a judgment of this Court in M.M. Pathak’s case (supra) and in making the submission that the right to combine seniority list as well as the promotional opportunities provided in G.O. 1968 became crystallised in the said writ of mandamus issued by the Madras High Court as upheld by this Court and the same could not be taken away by resorting to the rule-making power of the State Government. At the risk of repetition, we point out that the Government after the judgment of this Court upholding G.O. 1968, expressed that there was no better possible alternative to the problem than the integration order affirmed by this Court. After all this, the Government again purporting to give effect to the writ of mandamus issued by the Madras High Court as upheld by this court, issued G.Os. impugned in these cases, which had the effect of disintegrating an integrated cadre contrary to the principles contained in G.O. 1968. Therefore, the Tribunal was compelled to quash the G.Os. impugned before it. The technical objections taken by the learned counsel for the appellants that in the absence of challenge to G.O. Ms. Nos. 37 dated 7.1.82 and 603 dated 15.4.87 the respondents ‘B’ Wing teachers cannot get the fruits of the Tribunal’s direction, is also not tenable. As rightly pointed out by the learned senior counsel, Mr. P.P. Rao, that G.O. 37 dated 7.1.82 had no impact

at all on the principles of integration contained in G.O. 1968 and it did not even touch the quotas prescribed for promotion from gazetted Headmasters post to that of DEO for 'A' and 'B' Wings. In the circumstances, the learned counsel was right in his submission that G.O. 37 must be read down to sustain its validity to mean that the combined seniority list should be drawn up with reference to 31st March, 1970, i.e., the date on which 'B' Wing teachers were absorbed in Government service and made up-to-date as on 1.11.78 by deleting the names of persons promoted, resigned or dead in the meanwhile, for operating the same for purposes of filling up vacancies. Similarly, G.O. 603 dated 15.4.87 has no effect on the integration process initiated under G.O.Ms. No. 1968 and, therefore, there was no need to challenge the same by 'B' Wing teachers.

As pointed out earlier, once if we come to the conclusion that the date of integration was 1.4.70 and not 2.11.78, all other questions will go to the background and this was not seriously disputed by Mr. Selvaraj, learned counsel appearing for one of the appellants.

In the circumstances, the appeals fail and are dismissed accordingly. However, there will be no order as to costs.

R.K.S.

Appeals dismissed.