State of Punjab

Vs

Joginder Singh

Civil Appeal No. 388 of 1962

(K. Subha Rao, K. N. Wanchoo, J. C. Shah JJ)

16.11.1962

JUDGMENT

AYYANGAR, J. –

This is an appeal by special leave against the judgment of the High Court of Punjab dated October 3, 1961. That Judgment was rendered in a petition under Art. 226 of the Constitution filed by the respondent - Jogendra Singh and by their order allowing the said petition in part, the learned Judges struck down r. 2(d) & (e) and a part of r. 3 of the Punjab Educational Service (Provincialised cadre) Class III Rules 1961, which for convenience we shall call the impugned Rules, on the ground that those clauses were violative of the rights guaranteed by Art. 14 & Art. 16(1) of the Constitution.

Certain facts have to be stated in order to appreciate both the manner in which the question was raised as well as the decision of the learned Judges now under appeal.

The respondent was before October 1, 1957, working as a "Junior vernacular teacher" in a District Board High School in District Hoshiarpur. The points in controversy in this appeal turn on the precise changes which were effected in the status and conditions of service of teachers like the respondent employed in District Board and Municipal Board Schools by certain executive instructions issued by the Punjab Government in September 1957, to take effect from October 1, 1957, by reason of which these teachers became State employees, but before proceeding to the details of these changes, it would be convinent to set out the position and conditions of service of teachers employed in State schools which prevailed on that date.

At that date teachers in State employ were governed by rules framed under Art. 309 of the Constitution which had been promulgated on May 30, 1957. These rules were entitled "The Punjab Educational Service Class III School Cadre Rules, 1955". We shall have occasion to refer to these Rules in detail after narrating the facts which have given rise to the present appeal. For the present it is sufficient to state that these rules prescribed inter alia the qualification for appointment, the recruiting authority, the conditions of service and seniority inter se of members of the Service. The appendices to these rules specified the scales of salary to which teachers falling within the various grades which were specified would be entitled. The scales of pay of these State teachers were revised as as result of the acceptance by government of the recommendation of a committee for pay revision and under an order of government dated July 23, 1957, "junior teachers" in the State service, the class of officers with whom we are now concerned were spilt up into three grades : (a) Head Masters, (b) those in the middle scale, and (c) those in the lower scale. The Government order fixed the percentages of the teachers to be comprised in each group. It would be seen that so far as Head Masters were concerned, there could be no definite number because that depended upon the

number of schools in which they could function but for teachers other than Head Masters i.e., in what has been termed "the junior teacher grade", 15 per cent of the total strength of junior teachers were put in the "middle scale" on a salary scale of 120-5-175 and this percentage included the head masters also though they were on a still higher scale of salary, while the rest of the 85 per cent were to be in the "lower scale" on a salary scale of 60-4-80/-5-100/5-120. This government order further directed : "Fifteen per cent of teachers in this group should straightaway be promoted to the middle class by selection based on seniority and merit while the rest should be given the lower scale". These were the rules governing the category called "junior teachers in the State Cadre" on October 1, 1957.

By an Executive instruction dated September 27, 1957, (to be effective from October 1, 1957), in the form of a communication from the Secretary to the Education Department of the State to the Director of Public Instruction, a change was made in the terms and conditions of service of teachers in the District Board and Municipal Board Schools. It might be mentioned that the executive action was later ratified by legislation in 1959 which was to have retrospective effect from October 1, 1957, but as nothing turns on the terms of this enactment relevant to the points in controversy before us, it is not necessary to make any further reference to it. As the decision of this appeal hinges on the proper construction and the legal effect of the "Provincialisation" effected by this executive direction, it would be necessary to scrutinize its terms with reference to the then existing state of circumstances in some detail. But to this we shall revert a little later, but will at the present stage be content to mention that under this order the schools theretofore run by Municipal Boards and District Boards in the Ambala and Jullundur Divisions were taken over by the Education Department of the Punjab Government with effect from October 1, 1957. The teachers then employed in these schools were also taken over, becoming State employees. The order recites that on October 1, 1957, there were, in the class of "junior teachers" in the schools taken over with whom we are concerned, 20709 teachers. Applying to them the same proportion of 15 : 85 of "lower" and "middle" class which applied to junior teachers in the State cadre dealt with in the government order dated July 23, 1957, 3184 teachers were placed in the higher grade entitled to the higher emoluments and 17525 in the "lower" grade drawing the minimum salary open to junior teachers. This order also stated generally that the junior teachers employed in Local Body Schools which were being "provincialised" would be given "the same grades of pay and other allowances as were given to their counterparts in government employment."

It is in evidence that subsequent to October 1, 1957, the government had under consideration three questions :

> (1) whether the "provincialised" teachers had to be kept in a cadre separate and distinct from the cadre of teachers in the State cadre or whether the two cadres were to be integrated into one; (2) if they were to be integrated, how their inter se seniority was to be determined; (3) if they were not to be integrated, what was to be the relationship between the teachers in the two cadres and similar allied questions.

The conclusions which the government arrived at were published and given effect in the form of a letter dated January 27, 1960, from the Secretary to the Government, Punjab, to the Director, Public Instruction, Punjab. Briefly stated, the decision was that the two cadres - of "provincialised" teachers and teachers in the State cadre - were to be kept distinct, and principles were formulated according to which promotions in the two cadres from the lower to the middle grade were to be determined. It is the validity of the terms of this decision that is challenged in this appeal by the respondent. The decision and directions contained in it were given effect to in the case of all

employees belonging to the "provincialised" schools and thereupon the respondent filed the petition under Art. 226 impugning the Constitutionality of this direction on various grounds. One of these grounds was that the direction contained in this communication dated January 27, 1960, did not have any statutory force since the same was not and did not purport to be a rule framed under Art. 309 of the Constitution. To obviate this objection the Government of the Punjab promulgated the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961, on February 13, 1961. These rules conformed to the formal requirements of Art. 309 but were otherwise in the same terms as and operated in the same manner and from the same date as the impugned directions of January 1960. The petition by the respondent before the High Court was therefore converted into one challenging the constitutional validity of the Rules of February, 1961 instead of the government communication of January 1960.

The arguments in support of the challenge to the validity of these rules could briefly be formulated thus : On the provincialisation of the District Board and the Municipal Board Schools on and from October 1, 1957, all the teachers theretofore serving in these schools became the employees of the State. On the date when they attained this status there were teachers in schools run by the State who were governed by the rules published in May, 1957, with the scales of pay and grades revised under orders of July 23, 1957. Whether or not the government had the power to keep these "provincialised" teachers, in a seprate category, the government did not do so but by the orders that they passed on September 27, 1957, they were granted the "same grades and scales of pay and other allowances" as those applying to the teachers in the then State cadre. The necessarily implied a complete integration of the two cadres with the result that the two became a single class of teachers and thereafter the fact that the "provincialised" teacher had been previously employed in District Board or Municipal Board Schools and not in schools run by the State was merely of historical interest and carried no legal significance. Any later order of government therefore which drew any distinction between the class of "provincialised" teachers and teachers in the State cadre to the prejudice of the former was discriminatory and void under Art. 14 of the Constitution. As all the schools as and from October 1, 1957, were being run by the State, all teachers employed in them, whatever their previous history, belonged to the same class, since they performed the same functions, were entitled to the same salaries and had as such to be governed by the same rules and conditions of service. On this basis it was urged that the impugned rules discriminated against the "junior teachers" in the "provincialised" cadre in two ways : (1) as regards their right or opportunity to obtain promotions and proceed to the "middle scale, and (2) disparity in the rules relating to pension. It was contended that the discrimination as regards promotions was violative of Art. 16(1) and that as regards pension on the broader ground of an irrational classification violating Art. 14. The learned Judges of the High Court acceded to the prayer of the respondent as regards the first objection in these terms :

> "The 1961 rules in so far as the same create two cadres of persons in the same service and in so far as the same create inequality of opportunity for promotion in between the two cadres by providing the formula of promotion are void rules and in particular those rules are No. 2, in so far as it relates to the definitions of two cadres, and No. 3, in so far as it provides for the effect of two cadres on the matter of promotion in the same."

but they rejected that in respect of pension on being satisfied that Art. 14 was not violated in that regard. It is from this judgment that the State has preferred this appeal with special leave.

This will be a convenient stage where we might summarise briefly the provisions of the impugned

rule and their impact on the right to promotion of the respondent and the other "junior teachers" of the "provincialised" service to which he belongs. Before however, doing so it is necessary to mention a preliminary objection that was taken to the hearing of the appeal. Along with the respondent Jogindra Singh there were three others who had filed similar petitions and sought the same relief. Writ Petitions 161 and 162 of 1961 were by "junior teachers" like the respondent, while Amrik Singh petitioner in the remaining petition (Petition 163 of 1961) was a Head Master among the "provincialised" teachers. All the four petitions were dealt with together and were disposed of by a common judgment so that relief accorded to Jogindra Singh the respondent before us in Writ Application 1559 of 1960 was also granted to the other three petitioners. The State however has preferred no appeal against the orders in the other three petitions, and Mr. Agarwal, learned Counsel for the respondent, raises the contention that as the orders in the other three petitions have become final, any order passed in this appeal at variance with the relief granted in the other three petitions would create inconsistent decrees in respect of the same matter and so we should dismiss the present appeal as incompetent. We, however, consider that this would not be the legal effect of any order passed by the Court in this appeal and that there is no merit in this objection as a bar to the hearing of the appeal. In our opinion, the true position arising, if the present appeal by the State Government should succeed, would be that the finality of the orders passed in the other three writ petitions by the Punjab High Court would not be disturbed and that those three successful petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed. That however would not help the present respondent who would be bound by our judgment in this appeal and besides, so far as the general law is concerned as applicable to everyone other than the three writ petitioners (who would be entitled to the benefit of decision in their favours having attained finality), the law will be as laid down by this Court. We therefore overrule the preliminary objection.

The impugned rules are entitled "Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961" and they were deemed to have come into force from October 1, 1957 i.e., the date when the provincialised" cadre was formed. Rule 2 contains the definitions and of these those relevant to the present context, which have been struck down by the High Court in their judgment under appeal are cls. (d) & (e) which respectively define the word "Service" as meaning "The Punjab Educational (Provincialised Cadre) Class III Service" and cl. (e) defining 'State Cadre' as meaning "The Punjab Educational (State Service) Class III (School Cadre)". Rule 3 with which Part II headed 'Conditions of Service' starts is the one which is the most relevant for the points arising in this appeal. It reads :

3. Number and character of posts :-

> (1) The service shall comprise the posts shown in Appendix 'A' but shall be a diminishing one. The number of posts in various cadres of the Service shall be regulated in the following manner :-
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> (i) All the posts created for any provincialised school subsequent to its being taken over by the Government, whether on account of its being upgraded to a higher standard, removal of congestion therein or for any other purpose shall not constitute a part of the Service but will be borne on the State Cadre or such other Educational State Service as may comprise similar posts at the time of their creation.
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> (ii)(a) All such posts of Headmasters as well as of Masters or Teachers, in selection grades of the Service, as were vacant on October 1, 1957, shall continue to be borne on the Service but an equal number of posts in ordinary pay scales in the relevant

cadres of the service falling vacant as a result of promotion to the posts of Headmasters, Masters and Teachers in the selection grade shall be transferred to the State Cadre.

(b) All such posts of Masters and Teachers, in ordinary pay scales of the Service, as were vacant on October 1, 1957, shall be transferred to the State Cadre.

(iii) The posts in various cadres of the service falling vacant due to the normal incidence of promotions, retirements or any other cause subsequent to the date of provincialisation of local authority schools shall be adjusted in the following manner :-

(a) All vacant posts of masters as well as of Junior Teachers in the Service shall be separately split up into blocks of seven and six posts by rotation. All selection grade posts in the first six vacancies in each block of seven and first five vacancies in each block of six shall continue to be borne on the Service but an equal number of posts in ordinary pay-scales of Masters or Junior Teachers as the case may be, together with other vacancies in ordinary pay-scales in each block shall be transferred to the State Cadre. The last vacancy in each block shall be transferred to the State Cadre :

Provided that if the last vacancy in the block is not in the selection grade one other post in the selection grade from within that block shall be transferred to the State Cadre, and if adjustment within the same block is not possible it shall be made in the next following a block but in no case in any block thereafter :

#....."##

The other rules which have some materiality are rr. 4, 5, 8 and 9 and we shall set out the relevant portions of these :

"4. Liability to transfer : Members of the Service who are borne on a statewise cadre may be posted in any Government or provincialised school throughout the State and members of the Service who are borne on district-wise cadre may be posted in any Government or provincialised school throughout that district....."

"5. Confirmation : Members of the Service who were confirmed prior to the provincialisation of local authority schools shall be deemed to have been confirmed in the Service :

#....."##

"8. Method of Recruitment : (1) Posts in Selection grades left over after the transfer of posts to the State Cadre as specified in rule 3 shall be filled by promotions from lower grade of the Cadre :

Provided that no member shall be promoted to selection grade of the Service unless he possesses the qualifications and experience as specified in Appendix 'B'.

#....."##

The only thing to be noted in regard to the qualifications set out in the Appendix 'B' as regards "junior teachers" with whom alone we are concerned is that for appointment to the selection grade (Rs. 120/175) they were not required to be matriculates this being a minimum qualification prescribed by the rules under the State Cadre, but it was sufficient if they were "junior trained" or "junior basic trained" or "special certificate teachers" with five years teaching experience in which case they were eligible to be appointed to the "selection" grade.

> "r. 8(2) All promotions, whether from one grade to another or from one class of service to another, shall be made on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone".

Rule 9 lays down how the inter se seniority of members of the service shall be determined as on October 1, 1957.

We shall briefly summarise the effect of these provisions on the class of "provincialised" teachers : (1) They were treated as falling under a cadre separate and distinct from teachers in the State cadre governed by the rules promulgated on May 30, 1957. (2) Though the proportion of selection grade teachers to the total strength, viz., 15 : 85 was the same in both the cadres, it operated differently as regards the members in the two services. This was due to the fact that the government decided that the "provincialised" teachers were to be a diminishing class to become extinct in course of time, whereas a number equivalent to that which the provincial cadre lost was added to the State cadre. When the provincialisation of Local Board and Municipal Board teachers was effected by the Government Order of September 27, 1957, there were, as we have pointed out, 20709 "junior teachers" of whom, by applying the 15 per cent rule, 3184 were to be in the "selection grade" drawing the higher salary, while the rest of the 17,525 were in the ordinary or the "lower" scale. The corresponding figures for the State Cadre teachers on the same day, i.e., October 1, 1957, was 107 of whom 15 per cent would have been in the selection grade. The "provincialised" cadre being marked out for extinction, there was to be no further recruitment to that cadre and became, so to speak, closed at one end. All vacancies arising by retirements, deaths etc. in the provincialised cadre were to be replenished by direct recruitment to the State Cadre. The consequence of this would naturally be that the selection grade of 15 per cent in the State Cadre would be progressively increasing in strength which was determined by the total cadre strength, while the selection grade in the "provincialised" cadre would be progressively decreasing in strength for the converse reason. As the cadres were kept separate the result would be that those recruited to the State Cadre would have a progressively larger chance of getting into the "selection" grade of that cadre than the corresponding member of the "provincialised" service. Thus a member of the State cadre who possessed the minimum educational qualifications required for appointment to the selection grade and also the minimum service prescribed as qualification therefor stood a better chance of promotion to the selection grade than did a teacher of the "provincialised" cadre getting into the selection grade of his cadre. The rigour of this rule was, however, greatly tempered by the division into blocks under r. 3 itself by reason of which roughly 11/13 of the total vacancies in the selection grade were directed to be filled by "provincialised" teachers leaving only the balance for those in the State Cadre. It is the disparity in the chances of promotion existing between the members of the State cadre and the teachers in the "provincialised" cadre that has been held to be discriminatory and violative of Arts. 14 and 16(1) of the Constitution by the learned Judges of the High Court. The summary of the rules that we have given earlier would show that this disparity has been caused (a) by the impugned rule treating the "provincialised" teachers as belonging to a cadre different and distinct from the teachers in the State cadre and not providing for any inter-se seniority as between the two groups, and (b) the "provincialised" cadre being a diminishing cadre to be extinguished in

course of time, the State cadre being selected for expansion and perpetuation by becoming the sole cadre in which recruitment for vacancies could take place. The reason why we are stating the position in this form is that though the learned Counsel for the respondent based his argument to sustain the plea of a violation of Arts. 14 and 16(1) on the "division" of the two services as distinct cadres whereas in law they were one and ought to have been so treated, the "provincialised" teachers could have had no complaint if theirs was not made a vanishing cadre, for it the two services had been kept distinct and the vacancies in each filled up so as to replace the loss in the strength of each cadre, there would have been no scope for any complaint of discrimination.

The main basis upon which the learned judges of the High Court have rested their Judgment is that the order dated September 27, 1957, which was brought into force on October 1, 1957, by which the teachers in the erstwhile District Board and Municipal Board schools were "Provincialised" and made State employees, effected a complete integration of these teachers with the then existing members of the State Educational Service governed by the rules of May 30, 1957. It would be manifest that unless this step were established there could be no basis for the contention that the impugned rules which proceded on the basis that the Provincialised teachers were not in the State cadre violated Art. 14 or Art. 16(1). The first step in the enquiry has therefore to be whether this order of September 27, 1957, effected a complete integration between the two services. This question can, in our opinion, be solved not by hypothetical or theoretical considerations but by a careful examination of the terms of the order dated September 27, 1957, with a view to find out whether such a result was intended to be or was brought about. The justification for this observation of ours is because of the line of argument addressed to us by learned Counsel for the respondent. He submitted that there might have been differences in the qualifications of persons entitled to be recruited as teachers in the erstwhile Board schools as compared to the qualifications to be possessed by or the machinery set up to recruit teachers in the State cadre. When once the "provincialisation" took place, the argument ran, they became teachers employed directly by the State, the schools in which they were formerly employed having been taken over by the State. Under the order dated September 27, 1957, their pay-scales were rendered the same as those applicable to teachers in the State cadre. Besides, they could be transferred to State schools and teachers in the State cadre transferred to work in former Board schools, i.e. there was complete interchangeability so far as posts were concerned. If, it was contended, they did the same work, drew the same pay as the teachers in the State cadre and the members of the two Services were freely liable to transfer inter se nothing more remained to effect a complete integration. In further reinforcement of this submission reliance was placed on a paragraph of the memorandum of September 27, 1957, under which these teachers were taken over into State employ which ran :

> "All the incumbents of the Local Body schools to be provincialised with effect from the 1st of October, 1957 will be given the same grades of pay and other allowances as are given to their counterparts already in government employ. Their pay will be fixed under the rules and there will be no drop in their present emoluments."

and from all this it was urged that a complete integration of the two services was intended to be and was brought about from and after October 1, 1957. Besides the above there was a subsidiary argument that consistently with Art. 14 the State could not create or maintain two parallel services of employees for doing the same work but with differences either in their emoluments or in their conditions of service. This however was on the basis that the submission about a complete integration having been effected was not acceptable, and so we shall consider this further argument later.

We shall now proceed to examine the primary contention, viz., that there was a complete integration of the two Services by the Government order which had effect from October 1, 1957, and that it was the impugned rules which brought about a division of this united or unified service by the creation of two new cadres with differences between members of the Service based on no intelligible differentia which was violative of Art. 14, and as the same adversely affected the chances of promotion of the "provincialised" group vis-a-vis the State Cadre teachers infringed Art. 16(1).

We do not find it possible to accede to the contention that the memorandum dated September 27, 1957, integrated the "provincialised" teachers with the teachers governed by the Punjab (Educational Service) Class III School Cadre Rules, 1955. In the first place, it is conceded that the rules as to pension applicable to the State cadre employees are not applicable to the "provincialised" teachers. The Government framed rules as regards the pension of the "provincialised" teachers in October 1958, which were distinct and different from the Pension Rules applicable to teachers in the State cadre. A complaint was made on this score by the respondent in his petition before the High Court but the same was rejected and there has been no appeal from that portion of that order. It must also be pointed out that the pension of the State Cadre teachers is determined by para. 11 of the Class III School Cadre Rules, 1955 and it is common ground that the said provision does not govern the conditions and quantum of pension of the "provincialised" teachers.

> (2) The inter se seniority of members of the State Cadre Service is determined by r. 9 of the Rules which contain elaborate provisions for its determination. The first paragraph of the rule runs :
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> "The seniority inter se of the members of the Service holding the same class of posts and in the same or identical grades of pay shall be determined by the dates of their confirmations in such posts."
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> We do not find it possible to read r. 9 as governing the inter se seniority between the "provincialised" and the State Cadre employees. The date of confirmation in the Service is the crucial date for determining such seniority under r. 9 and the order dated September 27, 1957, cannot, by any stretch of language, be read as confirming all the provincialised teachers in the State Cadre on October 1, 1957, on which date it is said they were brought into the service. In the normal and ordinary course it would be possible that teachers had been working in the erstwhile Board Schools on probation and they had not been confirmed in their appointments on October 1, 1957, when they were taken over. It cannot be that all the teachers who had not even completed their probation were straightaway treated as confirmed in the State Cadre so as to permit a determination of their seniority inter se with members of the State Service.
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> (3) Notwithstanding the paragraph quoted earlier conferring on the "provincialised" teachers "the same grades of pay and allowances as are allowed to their counter-parts already in government service" there is no specific provision or term in the government order expressly pointing to an intention to integrate it with the existing State service. On the other hand, the very specification that the grades of pay and allowances of the provincialised teachers would be the same as of the others is, to say the least, more consistent with the absence of an intention to integrate, for if integration were intended, they would have the same pay and allowances by virtue thereof and no separate provision thereof would be necessary.

> (4) It is an admitted fact that of the twenty thousand and odd teachers falling within this category nearly 12 or 13 thousand were unqualified in the sense that they had not even passed the Matriculation examination. To apply to them the State Cadre Rules particularly as regards promotion to the selection grade would have meant considerable hardship to them and this is certainly a circumstance that has to be borne in mind before drawing an inference that a complete integration was intended, or was brought about. In fact, as has already been pointed out, while in the case of the State cadre teachers a minimum educational qualification of Matriculate with five years teaching experience is prescribed for appointment to the selection grade, the requirement as to being a Matriculate has been dispensed with in the impugned rules in the case of the "provincialised" cadre. The conclusion we reach from the above analysis is that by the order dated September 27, 1957, which came into effect from October 1, 1957, teachers in the erstwhile Board schools became employees of government and were given the same scales and grades of pay as were applicable to their counterparts in the State cadre, but except this equality of grade and pay there was nothing more that was contemplated or provided for by that order.

We consider therefore that there is force in the submissions made to us on behalf of the appellant that the determination of the precise status of the "provincialised" teachers and their relationship vis-a-vis the teachers in the State Cadre was the subject of consideration by the government which resulted in the promulgation of the impugned rules. In the document marked as Ex. R-1 which was in the nature of a memorandum explaining the impugned rules, the State Government stated :

> "Consequent upon the provincialisation of Local Bodies' Schools the staff working in such schools was taken over into Government Service. It was necessary to determine their seniority vis-a-vis the old Government staff. The following three alternative with regard to the integration of the two services were considered :-
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> (a) Grouping formula i.e., counting of full service of the local body teachers for the determination of joint seniority list;
>
> (b) Integration of the two services into a joint cadre on the basis of counting service of the local body teachers from the date of provincialisation on grade to grade and cadre to cadre basis;
>
> (c) Keeping separate cadres of the provincialised staff and of the staff of the erstwhile Government schools."

The government considered that the third alternative was the best to be followed in the interests of a sound educational policy and also in the interests of these very teachers and r. 3 of the impugned rules which we have set out earlier was evolved in order to reconcile the conflicting and divergent interests of the two Services which it was decided should be kept apart.

Apart from questioning the validity of the impugned rules we did not understand the respondent to deny that the government had considered this problem in the manner set out between 1957 and January 1960.

If, as we hold, there was no integration (and integration has no meaning unless it is complete, for there is no such thing as partial integration) either expressly or by necessary implication, it would

follow that it was not the impugned rules that created the two distinct cadres but that they existed independently of the rules and the only charge that could be laid against the rules in this respect was that they failed to effect an integration. There was some argument before the High Court that the mere existence of two Services with similar grades and scales of pay and almost similar other conditions of service was itself illegal as amounting to discrimination prohibited by Art. 14. In the counter-affidavit which was filed by the State the Writ Petition of the respondent it was stated that there were very wide differences in the qualifications possessed by the members of the two Services and great disparity in the methods of recruitment. There were minimum educational qualifications prescribed by the Educational Service Class III Rules, 1955 as well as the rules as they stood as notified on May 30, 1957 under which teachers in the State cadre were recruited. Besides, they were recruited after interview by the Public Service Commission, but this was not the case in the Board schools, between which even there were very great variations both in the minimum qualifications to be possessed and in the methods of recruitment. In view of these differences the counter-affidavit by the State averred that the "provincialised" teachers and the State teachers could not be said to form the same class as to require identity of treatment. The facts stated in this respect were not controverted before the High Court by the respondent and by those whose petitions were disposed of along with his and it was for this reason that counsel for the respondent specifically abandoned before the High Court all argument about the differentiation of the two Services per se not amounting to a discrimination within Art. 14. The reasons therefore which underlay the abandonment of any argument regarding Art. 14 would negative any submission that the recognition of the two Services as independent cadres was itself discriminatory, once the argument about their having been integrated by the Government Order of September 27, 1959 be rejected. It would therefore follow that if the respondents cannot sustain their contention that the order dated September 27, 1957, effected a complete integration of the two Services, there could be no basis for the submission that the "provincialised" teachers and teachers in the State Cadre formed the same class so as to enable a complaint to be made under Art. 14 if they were treated differently.

It now remains to consider a point which was raised that the State cannot constitute two Services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service and that the constitution of such services would be violative of Art. 14. Underlying this submission are two postulates : (1) equal work must receive equal pay, and (2) if there be equality in pay and work there have to be equal conditions of service. So far as the first proposition is concerned it has been definitely ruled out by this Court in Kishori Mohanlal v. Union of India (A.I.R. (1962) S.C. 1139.). Das Gupta, J., speaking for the Court said :

> "The only other contention raised is that there is discrimination between Class I and Class II officers inasmuch as though they do the same kind of work their pay scales are different. This, it is said, violates Art. 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Art. 14. The contention that Art. 14 of the Constitution has been violated, therefore, also fails."

The second also, is, in our opinion, unsound. If, for instance, an existing service is recruited of the basis of a certain qualification, the creation qualification, the creation of another service for doing the same work, it might be in the same way but with better prospects of promotion cannot be said to be unconstitutional, and the fact that the rules framed permit free transfers of personnel of the two groups to places held by the other would not make any difference. We are not basing this answer on any theory that if a government servant enters into any contract regulating the conditions of his

service he cannot call in aid the constitutional guarantees because he is bound by his contract. But this conclusion rests on different and wider public grounds, viz., that the government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the administration and that the limitations imposed by the constitution are not such as to preclude the creation of such services. Besides, there might, for instance, be temporary recruitment to meet an exigency or an emergency which is not expected to last for any appreciable period of time. To deny to the government the power to recruit temporary staff drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by different rules and conditions of service, it might be including promotions, would be to impose restraints on the manner of administration which we believe was not intended by the constitution. For the purpose of the decision of this appeal the question here discussed is rather academic but we are expressing ourselves on it in view of the arguments addressed to us.

Besides the disparity in the chances of promotion between teachers of the provincialised and the State Cadre created by r. 3 of the impugned rules, the learned Judges of the High Court have held that there was a further disparity by reason of the teachers of the State Cadre being borne on a Divisional list, while under the rules the inter se seniority and promotions of "provincialised" teachers was determined district-wise. It was pointed out by the learned Solicitor General for the appellant that the State Cadre was kept on a Divisional basis because of the very small number of the members of that Service, whereas it was found administratively inconvenient to have a similar geographical classification of members of the provincialised service and for that reason and no other, district-wise seniority, promotion and transfers was laid down for provincialised teachers. Learned Counsel for the respondent did not rely on this reasoning of the learned Judges of the High Court in deciding the case now under appeal. We therefore do not consider it necessary to make any further reference to it.

As we have stated already, the two services started as independent Services. The qualifications prescribed for entry into each were different, the method of recruitment and the machinery for the same were also different and the general qualifications possessed by and large by the members of each class being different, they started as two distinct classes. It the government order of September 27, 1957, did not integrate them into a single service, it would follow that the two remained as they started as two distinct services. If they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Art. 14 or Art. 16(1). They started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity, for it is common ground that within each group there is no denial of that freedom guaranteed by the two Articles. The foundation therefore of the judgment of the learned Judges of the High Court that the impugned rules created two classes out of what was formerly a single class and introduced elements of discrimination between the two, has no factual basis if, as we hold, the order of September 27, 1957, did not effectuate a complete integration of the two Services. On this view it would follow that the impugned rules cannot be struck down as violative of the Constitution.

Before concluding it is necessary to point out that, as explained earlier, the source of the prejudice caused by the impugned rules to the "provincialised" teachers lies not in the fact that the two cadres were kept separate but on account of the fact that the "provincialised" cadre was intended to be gradually extinguished. The real question for consideration would therefore be whether there was anything unconstitutional in the Government decision in the matter. In other words, had the respondent and his class any fundamental right to have their cadre strength maintained undiminished

? This is capable of being answered only in the negative. If their cadre strength became diminished, the proportion thereof who could be in the grade, viz., 15% of the total strength being predetermined, there must necessarily be a progressive reduction in the number of selection posts. In other words a mere reduction of the cadre strength would bring about that result and unless the respondent could establish that the Government were bound in law to fill up all vacancies in the provincialised cadre by fresh recruitment to that cadre and thus keep its strength at the level at which it was on October 1, 1957, he should fail. It is manifest that such a contention is obviously untenable.

There could not be any dispute that the impugned rules which enable vacancies in the selection grade of the State Cadre to be filled in part by teachers belonging to the "provincialised" service by the devise of the block system greatly improves their position. The claim in the memorandum accompanying the impugned rules Ex. R 1 that the system has been framed so as to improve their conditions should therefore be considered to have some justification.

The appeal is accordingly allowed and the order of the High Court striking down r. 2(d) and (e) are r. 3 in so far as it relates to promotions is set aside. In the peculiar circumstances of this case we consider that there should be no order as to costs in this appeal.

SHAH, J. –

In this appeal the validity of the Punjab Government Notification No. 12832-ED-II-59/2935 dated January 27, 1960, and the Rules framed under Art. 309 of the Constitution by the Governor of Punjab, on February 13, 1961 in so far as they purport to prescribe a scheme for Promotion of "provincialised" junior teachers to the selection grade is challenged.

On the re-organisation of the State of Punjab on November 1, 1956, and Patiala and East Punjab States Union which was a part 'B' State was merged with the State of Punjab, but for administrative purposes, in so far as it related to matters educational, the area was maintained as a separate division and the teachers serving in that region were maintained in a separate cadre. In this appeal we are not concerned with the rights and obligations of those teachers. On July 23, 1957, the Government of the State of Punjab issued a scheme of revision of scales of pay of low-paid public servants. By paragraph 3 which applied to employees in the Education Department it was directed that all teachers according to their qualifications be placed in two board categories - category 'A' and Category 'B'. Teachers in Category 'B' were divided into three classes, Lower Rs. 60-4-80/5-100/5-120. Middle Rs. 120-5-175, and Upper Rs. 140-10-250. It was decided that "with a view to providing incentives, posts falling in these groups should be in the following percentages :-

#Group I - Lower scale ..... 85 per cent Middle scale ..... 15 per cent##

15 per cent of teachers in this group should straightway be promoted to the middle scale by selection, based on seniority and merit, while the rest should be given the lower scale."

We are not concerned with Group II and Group III in this appeal.

Before October 1, 1957, in the State of Punjab (excluding the territory of the Patiala and East Punjab States Union which had merged with the State on re-organisation of the States on November 1, 1956) there were two sets of schools - schools maintained by the District and Municipal Boards and schools maintained by the State. On September 27, 1957, the Government of the State of Punjab issued a Notification "provincialising' all District Board and Municipal Board schools with

effect from October 1, 1957, and took over the management of those schools. The number of schools to be taken over and the posts to be created in respect of the teaching and other staff in the various grades were set out in paragraph 2 of the scheme. Out of the 'provincialised teachers' 3016 (J.V.S, J.T.S, and J.B.F.S, and others) were to be absorbed in the grade of Rs. 120-5-175 and 17123 in the grade of Rs. 60-4-80/5-100/5-120. and it was recited in the Notification that "all the incumbents of the Local Body Schools to be provincialised with effect from 1st October, 1957 will be given the same grades to pay and other allowances as are given to their counter-parts already in Government employ. Their pay will be fixed under the rules and there will be no drop in their present emoluments".

The Government of Punjab thereafter appointed a Committee for framing rules for fixing inter-State seniority of the 'provincialised teachers' and the State Schools teachers, the terms of pension and other allied matters. By letters dated January 27, 1960, from the Secretary, Education Department, the Director of Public Instructions was informed that it had been decided, inter alia, that "the staff of provincialised schools and the erstwhile Government schools will be kept in separate cadres. All new entrants into service after the date of provincialisation will be deemed to have joined the ranks of the staff of erstwhile Government schools. The provincialised staff cadre would be a continuously diminishing cadre and would in course of time completely vanish leaving in the field only one cadre i.e. the cadre of Government staff. It is considered that this would ensure the same chances of promotion to the staff of erstwhile Government schools as existed before provincialisation whereas the provincialised staff would get the benefit of promotion to a large number of posts created directly as a result of provincialisation. There would be no administrative difficulty with regard to the transfers of teachers borne on both the cadres from one school to the other irrespective of the fact whether it is a provincialised school or a Government school, inasmuch as the two cadres would be separate only for the purpose of future promotions". It was also stated that "the two separate cadres will be known as "State Cadre" and "Provincialised Cadre". All the vacancies arising out of the normal incidence of retirements, promotions, etc. etc. in the Provincialised Cadre, will be transferred to the State Cadre. In the State Cadre, the posts will be split up in the ratio of 15 (Rs. 250-300 and 250-350) : 85 (Rs. 110-250) in the case of Anglo-Vernacular Teachers; and 15 (Rs. 140-220) : 35 Rs. 120-175) : 50 (Rs. 60-120) in the case of Vernacular staff. The number of posts in the higher grades released as a result of retirements, promotions etc. in the provincialised cadre minus those created on the State Cadre will be utilized for the promotion of teachers on the provincialised Cadre from lower to higher grades".

The respondent Jogendra Singh who was a District Board Junior Vernacular teacher addressed a memorandum to the Government of the State that the bifurcation of the Junior vernacular teachers into two categories was "unnatural" and put the teachers from the 'provincialised schools' to a great disadvantage and that the treatment being discriminatory "was wholly illegal, unreasonable and invalid and offended Art. 14 of the Constitution". It was submitted that the scheme should not be introduced without promulgation by the Governor of the State of Punjab rules under Art. 309 of the Constitution. The respondent and others having failed to obtain any relief filed petitions under Art. 226 of the Constitution being petitions Nos. 1559 of 1960 and 61, 162 and 163 of 1961 for writs or orders or directions quashing the Punjab Government Notification No. 12832-ED-II-59/2935 dated January 27, 1963.

Subsequent to the institution of the petitions the Governor of Punjab published rules on February 13, 1961, under Art. 309 of the Constitution setting up a separate cadre of 'provincialised' teachers and regulating conditions of service of the teaching staff taken over by the State Government from the Local authorities consequent upon 'provincialisation' of the Board schools. Simultaneously with

the publication of the rules, a 'policy statement' explaining the reasons for setting up a distinct cadre, and the scheme for promotion to higher scale and other matters was also published. It was recited in the 'policy statement' that after considering three alternative schemes one of grouping, other of integration of the two services into a joint cadre and the third of keeping separate cadres of provincialised staff and the staff of the erstwhile Government schools, the following important 'policy decision' was taken by the Government -

> "(i) The staff of the provincialised schools and the erstwhile Government schools will be kept on separate cadres;
>
> (ii) All higher posts created on 1st October, 1957 directly due to the provincialisation of Local Body schools will be filled up by promotion from amongst the staff borne on the provincialised cadre
>
> (iii) Provincialised Cadre will be a diminishing cadre and all future recruitment will be made on the State Cadre;
>
> (iv) All the vacancies arising out of the normal incidence of retirements, promotions, etc. in the Provincialised Cadre will be transferred to the State Cadre. X X X X The number of posts in the higher grades released as a result of retirements, promotions, etc. in the Provincialised Cadre minus those transferred to the State Cadre will be utilised for promotion in the Provincialised Cadre,"

In dealing with the Vernacular Junior teachers it was stated : There are the following two grades in this section and the posts were divided in the ratio of 15 : 85(a) Rs. 120/175 : 15 per cent and (b) Rs. 60/120 : 85 per cent. Before a teacher is promoted from category (b) to (a), he/she must have at least five years'service to his/her credit."

By rule 2(d), the expression 'service' was defined as meaning the Punjab Educational (provincialised Cadre) Class III Service. `State Cadre' was defined as meaning the Punjab Educational State Service, Class III (School Cadre). By rule 3 it was provided that the Service shall comprise the posts shown in the Appendix which shall be a diminishing cadre and the number of posts in various cadres of the Service shall be regulated in the manner set out therein. Sub-rule 1(i) provided that all posts created for any 'provincialised' school subsequent to its being taken over by the Government shall not constitute a part of the Service but shall be borne on the State Cadre. By sub-rule 1 cl. (iii) it was provided that the posts in various cadres of the Service falling vacant due to the normal incidence of promotions, retirement or any other cause subsequent to the date of 'provincialisation' of local authority schools shall be adjusted in the manner detailed therein. Sub-rule (2) provided that all posts in the Service shall be borne on a State-wide cadre except the posts of Vernacular and Classical Teachers, J.A.V., or J.S.T. Teachers and Junior Teachers which will be borne on District-wise Cadres.

After promulgating the Rules and the Policy Statement, the Government of Punjab filed their written statement to the petitions and contended, inter alia, that they were competent to take the decision even after 'provincialisation' with regard to the service conditions of the 'provincialised' staff : that all the service rules including rules of seniority did not become automatically applicable to the 'provincialised' staff on October 1, 1957, and as the 'provincialised' staff formed a separate cadre for the purposes of promotion, there was reasonable classification and no discrimination between the State Cadre and the 'Provincialised' Cadre.

The High Court of Punjab rejected the plea raised by the State of Punjab and held that the teachers of the 'provincialised' cadre, and State cadre were "Government servants of the same class" and the former were deprived by the Rules and the scheme equality of opportunity of promotion, and a discriminatory treatment was accorded to the 'provincialised' staff by keeping them in a separate cadre and treating recruitment to the vacancies accruing in the 'provincialised' cadre as in the State Cadre and at the same time maintaining a uniform ratio of 15 and 85 per cent between the teachers drawing higher scale and the lower scale salary. The High Court accordingly declared that the Rules of 1961 in so far as they created two cadres created inequality of opportunity for promotion in the 'provincialised' cadre and in particular Rules 2 and 3 to the extent as stated above were void and inoperative against the petitioners. The Government of Punjab acquiesced in the order in three out of the four petitions, but for some reason which is not apparent on the record and none is furnished by counsel for the State filed an appeal only against the present respondent. That, however, is not a ground on which we may be justified in refusing to consider the appeal on the merits as submitted by counsel for the State.

It is undisputed that there were more than 20,000 teachers in the "provincialised schools" out of whom 15 per cent were under the scheme of "provincialisation" to be immediately posted in the higher scale and the remaining in the lower scale. In the State Service there were only 107 posts before October 1, 1957. The State teachers, and the provincialised teachers were by the rules and the statement made in the policy decision formed into two separate cadres, though they were given the same grades of salary, performed the same duties, and were liable to be transferred so as to interchange their posts. The vice of the scheme lay in the provision that all the vacancies in the provincialised cadre were not to be filled by entrants to that cadre but new entrants were to be treated as entrants to the State Cadre. The practical effect of that provision was that the 'provincialised' cadre was gradually diminishing cadre which would be extinguished in approximately about 30 years whereas the State cadre was an expanding cadre. By maintaining the uniform ratio of 15 to 85 in both the cadres between the higher scale and the lower scale some teachers in the "provincialised" cadre and in the lower scale were relegated to a perpetual state of remaining juniors even to new entrants in the State cadre. This is manifest from a simple illustration. Assuming that 3 per cent of the total strength fall vacant at the end of each year on account of death, retirement, resignation and other causes, their would be approximately 630 vacancies in the first year of the operation of the scheme 630 new appointments would therefore be made in the State Cadre, in that year, and the 'provincialised' Cadre would be reduced by that number. The State Cadre which consisted of 107 on October 1, 1957, would on October 1, 1958, be a cadre of 737 teachers, and because of the uniform ratio of 15 to 85 per cent in each cadre between the higher scale and the lower scale 15% of 737 teachers would have to be placed in the State cadre in the higher scale. That would mean that practically all the teachers in the State Cadre would be promoted to the higher scale at the end of the year irrespective of their seniority provided they satisfied the requirement of the rule relating to educational qualifications and the requisite qualifying length of service. Assuming that all the 107 teachers possessed those qualifications all the members of the old State Service would be promoted to the higher scale. At the end of the year ending September 30, 1959 the scheme would break down, because in the State Cadre there would be a total strength of 1345 out of whom more than 201 would be in the higher scale. For that purpose more than a hundred would have to be promoted to the higher scale, and the Government would have to draw upon the junior scale of the State Cadre who may not have satisfied the requirement as to the duration of service. If the condition of length of service is waived about 100 teachers who are new entrants in the State Service would be promoted to the higher scale, whereas a large number of 'provincialised' teachers would still continue to remain in the lower scale even

though they would be many years senior to the new entrants and may otherwise have the requisite qualifications for promotion. That this would be the result of complying with the terms of the scheme, is not disputed by the Solicitor-General who appeared on behalf of the State.

Article 16(1) of the constitution provides : "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State." This Court in dealing with the extent of protection of Art. 16(1) observed in General Manager Southern Rly. v. Rangachari ([1962] 2 S.C.R. 586.),

> "it would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Art. 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression 'matters relating to employment' in Art. 16(1) X X X X What Art. 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us. X X X X The three provisions (Art. 16(1), Art. 14 and Art. 15(1)) form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment."

Dealing with Art. 16(1) the Court observed :

> "Art. 16(2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Art. 16(1). The words 'in respect of any employment' used in Art. 16(2) must, therefore, include all matters relating to employment as specified in Art. 16(1). Therefore, we are satisfied that X X X promotion to selection posts is included both under Art. 16. (1) and (2)."

Ex facie, by the promulgation of the rule and the implementation of the scheme of promotion the fundamental right of the junior teachers in the 'provincialised' cadre and in the lower scale is infringed. But the Solicitor-General appearing on behalf of the State of Punjab contended that the 'provincialised Cadre' was a newly created cadre, and it was open to the Government of the State to offer such terms of employment as they thought proper to the new entrants in the Service when the District Board and Municipal Board schools were 'provincialised'. The Government in exercise of their admitted right, said counsel, offered terms of service which though substantially similar to the terms by which the 'State Cadre' was governed, differed in two important respects (i) that the transfer of junior teachers was to be within the District and (ii) that the right of promotion was restricted in the manner proscribed, and the provincialised teachers having accepted those terms, they formed a separate grade with different terms of employment and they could not be deemed to belong to the same class as members of the State Cadre, and therefore the case of the respondent was one covered by the decision of this Court in All India Station Masters' & Assistant Station Masters' Association v. General Manager, C.R. ([1960] 2 S.C.R. 311.) and Kishori Mohanlal Bakshi

v. Union of India (A.I.R. (1962) S.C. 1139.). Counsel relied upon the principle enunciated by this Court in All India Station Masters' case ([1960] 2 S.C.R. 311.) that "the question of denial of equal opportunity required serious consideration only as between the members of the same class. The concept of equal opportunity in matters of employment, does not apply to variations in provisions as between members of different classes of employees under the State. Equality of opportunity in matters of employment can be predicted only between persons who are either seeking the same employment, or have obtained the same employment. Equality of opportunity in matters of promotion, must mean equality as between members of the same class of employee and not equality between members of separate, independent classes"; and in Kishori Mohanlal Bakshi's case (A.I.R. (1962) S.C. 1139.) that "inequality of opportunity for promotion as between citizens holding different posts in the same grade may, therefore, be an infringement of Art. 16". That no such question can arise at all when the rules make the members of two grades eligible for promotion to different posts, there is in strict sense, no denial of equality of opportunity as among citizens holding posts of the same grade. As between citizens holding posts in different grades in Government service there can be no question of equality opportunity and that Art. 16 does not forbid the creation of different grades in the Government service.

The crucial point falling for determination in this case is whether the members of the 'Provincialised Cadre' belong to the same grade as the members of the 'State Cadre.' It is true that two separate cadres - the State Cadre, and the Provincialised Cadre - were formed by the Government, but in our judgment the division into two cadres was not decisive of the question whether there was denial of equal opportunity. The same scales of remuneration were paid to members of both the cadres. They performed the same duties and functions and held the same posts. Posts occupied by State Cadre teachers could be occupied by the 'Provincialised' school teachers and vice versa. It is admitted in the letter dated January 27, 1960, addressed by the Secretary to the Government of Punjab, Education Department to the Director of Public Instructions, which formed the basis of the setting up of the two cadres, that the two cadres were separate only for the purposes of future promotion. We are in the circumstances unable to hold that between the members of the State Cadre and the 'Provincialised' Cadre there was any valid basis for classification so as to justify a differential treatment between their members inter se for the purposes of promotion without infringing the Constitutional guarantee of equality of opportunity in the matter of employment. In the All India Station Master's case ([1960] 2 S.C.R. 311.) there were two distinct classes of Railway employees - Roadside Station Masters and Guards. These two classes of employees performed distinct duties : each class had separate rules fixing the number of personnel of each class, posts to which the men in that class will be appointed, questions of seniority, pay of different posts, the manner in which promotion will be effected from the lower grades of pay to the higher grades. It was the view of the Court that they could be reasonably considered to be separate classes each in many matters an independent entity with its own rules of recruitment, pay and prospects and other conditions of service varying considerably from another.

In Kishori Mohanlal Bakshi's case (A.I.R. (1962) S.C. 1139.), the Income-tax services were reconstituted. One of the features of the reconstitution was that in place of a single class of Income-tax Officers, two classes came into existence, one consisting of Income-tax Officers of Class I Service and the other class in which all the then existing Income tax Officers were placed forming the Class II Officers. Class I Officers were eligible to be promoted to the higher posts of Commissioners and Assistant Commissioners; Class II Officers were not however eligible to be directly promoted to the higher posts. A percentage of the vacancies in the posts of Class I Officers was to be filled by promotion of Class II Officers and the rest by direct recruitment. The two classes of Officers did undoubtedly perform the same kind of work but their pay scales were different. The

Court on those facts held that there was no denial of equal opportunity among citizens holding posts of the same grade. In the present case, it cannot be said that the grades of the 'Provincialised' teachers and the State Cadre were different. It may be true that in some cases, a lower degree of efficiency may have been insisted upon at the time of recruitment to the service which ultimately became the 'Provincialised' Cadre. But once the District Board and Municipal Board school teachers were taken over by the Government of Punjab and an amalgamated Educational Service was evolved, and special provision relating to promotion depending solely upon the source of recruitment and upon no other ground seriously affected the rights of the members of the 'Provincialised' Cadre to promotion, and infringed Art. 16 cl. (1) of Constitution. It may be noticed that for promotion to the higher grade the conditions in respect of both the State Cadre and the 'Provincialised' Cadre are the same namely that the teacher must be a Matriculate and must have put in service for five years in the Education Department. Therefore persons not possessing the prescribed educational qualifications admitted to the District Board and Municipal Boards as teachers will have no right to promotion.

It was submitted on behalf of the State that it was open to Government to give to the members of the 'Provincialised' Cadre such terms as they thought proper and the Government was not bound to give the 'Provincialised' Cadre the same grades as were in fact given and therefore it was not open to the members of the 'Provincialised' Cadre to raise a dispute about the validity of the provisions relating to promotions. But if the Government in fact gave the same terms of employment and have in effect constituted a single grade of teachers State and 'provincialised', any discrimination between the members of that grade based on the source of recruitment so as to treat persons who have subsequently entered the service differently would clearly infringe Art. 16(1) and (2). It was doubtless open to the Government at the initial stage to give to the 'Provincialised' Cadre different terms and not to constitute them into a service with the same grade as the State Cadre, but the Government did give the same terms to the 'Provincialised' teachers, and it was not then open to the Government to make rules relating to promotion so as to discriminate between the 'Provincialised' teachers and the State Cadre teachers.

It was also suggested that if the Government had treated all the teachers equally, the teachers who were absorbed from the Pepsu region would have taken precedence over the 'Provincialised' teachers and the members of the 'Provincialised' Cadre would not have even the slender chance of promotion to which they are entitled under the present scheme. It is unnecessary to consider as to what would have happened under a different scheme if adopted by the Government. It is common ground that the teachers who were absorbed from the Pepsu region were formed into a separate Cadre, distinctive character of which has been maintained. We are concerned in this case with the 'State' teachers and the 'Provincialised' teachers under the scheme which came into effect on October 1, 1957 and in that scheme teachers absorbed from the Pepsu region have not been integrated. It is problematical whether 'Provincialised' teachers would have stood to gain by being integrated into a common service with the teachers in the Pepsu region. That is a question which does not fall to be determined in this appeal.

Finally, it was contended that the rules having been given retrospective operation from October 1, 1957, it was open to the Government to accord to the new entrants such terms as the Government thought proper and thereby no right of the new entrants was infringed. But it cannot be forgotten that in the first instance Government of the State admitted the 'Provincialised' teachers into a single unit of employment and thereafter by retrospective provision they have sought to provide a differential treatment between the two sections constituting one unit. It is against this differential treatment that the protection of Art. 16 is claimed and in our judgment avails.

In our view the High Court was right in holding that the rules in so far as they provide for differential treatment between the members of the 'State Cadre' and the 'Provincialised Cadre' in the matter of promotion to the higher scale must be regarded as invalid. The appeal must therefore fail.

BY COURT : In view of the opinion of the majority, the appeal is allowed and the order of the High Court striking down r. 2(d) and (e) and r. 3 in so far as it relates to promotions is set aside. There will be no order as to costs in this appeal.

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