

Zabar Singh and Others

Vs

The State of Haryana and Others

Ram Lal Wadwa and Another

Vs

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Writ Petition Nos. 97 And 657 of 1970

(Shelat, JJ)

05.05.1972

JUDGMENT

SHELAT, J. -

1. [In W.P. 657 of 1970] (For himself, Ray, Jaganmohan Reddy, Khanna and Mathew, JJ.) - This petition is by four primary school teachers serving in what are called "the provincialised schools", i.e., schools run prior to October 1, 1957, by Local Bodies but taken over by the then State of Punjab with effect from October 1, 1957. The petition challenges the validity of (a) the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961; (b) the letter, dated January 5, 1968, by Haryana Government to the Director of Public Instruction communicating its decision for revision of pay-scales and prescribing two grades of teachers with effect from December 1, 1967, i.e., ordinary and selection grades, in proportion of 85 : 15; (c) letters, dated March 18, 1968, April 21, 1969, and August 5, 1969, granting with effect from December 1, 1967, selection grade to the respondents, all in State cadre through actually serving in provincialised schools in Gurgaon District; and (d) the joint seniority list of the provincialised teachers in Gurgaon District and the final list of teachers in Ambala Division in so far as Respondents 6 to 96 are shown in the Ambala Division Seniority List.
2. All the four petitioners are Matriculates Trained teachers and were respectively appointed in the former Local Bodies Schools on November 29, 1956, October 1, 1955, May 10, 1951, and September 14, 1957. Respondents 6 to 36 were originally teachers in schools conducted by Nai Talim Sangh run with Central Government funds by the Faridabad Town Development Board, which schools, together with their staff, were taken over by the then State of Punjab with effect from October 1, 1957. Respondents 37 to 96 were appointed on and after July 16, 1959, and posted in schools which were provincialised as stated above, and therefore, junior in service to the petitioners and several others appointed in Local Bodies schools prior to their provincialisation.
3. Briefly stated, the petitioners' case was that prior to October 1, 1957, when the then State of Punjab provincialised the primary schools there were mainly two types of schools, viz., (a) schools run by the District and Municipal bodies, and (b) Government schools, besides of course the Nai Talim Sangh schools and the schools and the schools in Pepsu area which had merged in the State in

1956. As a result of the Government taking over class (a) schools, all primary schools throughout the State became Government schools and the teachers serving therein became Government employees. According to the petitioners, the effect of provincialisation of these schools was that all the teachers henceforth were brought into a common service, performing the same functions and duties under the same authorities, viz., the State's Education Department. Teachers appointed after October 1, 1957, were posted in both the types of schools and were naturally junior to those appointed earlier in the schools run by the Local Bodies.

4. The impact of provincialisation was that all of a sudden, as from October 1, 1957, about twenty thousand and more teachers became government servants. The very first problem arising from this impact was how to fix (a) inter-seniority of teachers serving till then in the provincialised schools in different districts, and (b) inter-seniority between the provincialised teachers vis-a-vis the Government schools' teachers.

5. On February 13, 1961, the Government published the Punjab Educational Service (Provincialised Cadre) Class III, Rules, 1961 under Article 309 of the Constitution. These rules distinguished the provincialised teachers as teachers in provincialised cadre and the rest in the State cadre. Service for the purpose of these Rules meant the Punjab Educational (Provincialised Cadre) Class III Service. (Rule 2). These rules were based on the principle of the Provincialised Cadre being a diminishing cadre. The principle was that this cadre as time passed would gradually diminish in the number of posts ultimately becoming extinct within 30 years, so that, at the end of that period there would remain only the State cadre in the field. In pursuance of that principle, Rule 3(i) provided that all posts created for any provincialised school subsequent to its being taken over by the Government shall not constitute part of the service, i.e., provincialised cadre, but will be borne on the State cadre. Rule 3(ii) then provides as follows :

(a) All such posts of Headmasters as well as of masters or teachers, in selection grades of the service, 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 services falling vacant as a result of promotion to the post of Headmasters, Masters and teachers in the selection grade shall be transferred to the State cadre.

(b) All such post 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.

3(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

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(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 the first five vacancies in the block 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 blocks is not possible it shall be made in the next following block but in no case in any block thereafter.....

(4) Liability to transfer. - Members of the service who are borne on a State-wise 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 the local authority schools shall be deemed to have been confirmed in the service :

Provided that such Headmasters/Headmistresses of High Schools as were officiating or temporary immediately before the provincialisation of local authority schools shall not be confined in the service unless they qualify such departmental test as may, from time to time, be prescribed by the Director.

(7) Appointing authority. - All appointments to the posts in the Service shall be made by the Director and for the purpose of imposing punishment of dismissal or removal from service the members of the service holding appointments at time of commencement of these rules shall be deemed to have been appointed by the Director.

(8) Method of Recruitment -

(1) Posts in selection grades left over after the transfer of the posts to the State cadre as specified in Rule 3 shall be filled by promotions from the lower grade of the cadre :

Provided that no member shall be promoted to selection grade of the service unless he possess the qualifications as specified in the appendix (b)..... :

(2) All promotions, whether from one grade to another or one class of service to another, shall be made on the basis of seniority cum-merit and person shall be entitled to claim promotion on the basis of seniority alone.

(9) Seniority of members of Service -

(1) The seniority inter se of the members of the service as on October 1, 1957, shall be determined in the manner specified below -

(a).....

(b) The seniority inter se of the members of the service shall be fixed according to the length of continuous service whether temporary, officiating or permanent, in the equated posts as on October 1, 1957....

(6) The petitioners' complaint is that these rules created, without any valid

justification, two cadres, the State cadre and the provincialised cadre, the former including not only the Government schools teachers but also those recruited after October 1, 1957, and posted in the provincialised schools. According to them, by reason of having two cadres and providing for both a uniform 15 per cent. for selection grade posts, coupled with making the provincialised cadre a diminishing one, the result has been that the teachers deemed to have been appointed to the State cadre with effect from October 1, 1957, and even those recruited thereafter have been promoted to the selection grade while those in the provincialised cadre, though senior in service, have remained in the ordinary grade. Such a result has been reflected in the aforesaid orders under which selection grade has been awarded to Respondents 6 to 96 and the joint seniority list of teachers serving in the Gurgaon District and Ambala Division. According to the petitioners, these Rules and their implementation through the said orders contravened Article 14 and 16 and therefore bad.

7. The validity of the 1961-Rules was challenged by one Joginder Singh in a writ petition filed in the Punjab High Court. The said petition on appeal to this Court by a majority decision reported in *Punjab v. Joginder Singh* (1963 Supp 2 SCR 169 : AIR 1963 SC 913 : (1964) 1 SCJ 627.) and the said Rules were held valid. The petitioners, however, asserts that (a) that decision requires reconsideration as it was based on premises which have proved to be incorrect, and (b) that in any event, the present petition is based on facts which have come into existence since then, and therefore, is not barred by *res judicata*.

8. The new facts, which according to the petitioners have emerged, are briefly : (i) the emergence of the State of Haryana on November 1, 1966, (ii) the decision of Haryana Government to implement the 1961-Rules although their implementation was given up by the Punjab State in 1965 when instead of those Rules that State provided for a single uniform running scale of pay for all with a common selection grade of 15 per cent. in spite of the validity of the said Rules having been upheld. The discrimination arising from the implementation complained of in Joginder's case (*supra*) has continued, according to the petitioners, in spite of acceptance by Haryana Government on January 5, 1968, of the increased scales of pay with effect from December 1, 1967, recommended by Kothari Commission, viz., Rs. 125 - Rs. 250 for the ordinary grade, and Rs. 250 - Rs. 300 for the selection grade. This is because of the splitting up of the service into two cadres and marking the provincialised cadre a diminishing one, which results in the State cadre teachers, with the expansion of that cadre, getting more and quicker promotional chances than those in the provincialised cadre, frozen under these Rules, although the latter are senior in service and perform identical duties and have identical scales of pay.

9. On contention that Joginder's case (*supra*) requires reconsideration as the conclusions therein were on premises which have turned out to be incorrect the present larger Bench was constituted.

10. Mr. Tarkunde, in an elaborate address, raised the following points : (a) that on February 13, 1961, when the Rules came into force there were four categories of teachers (i) teachers in Government schools, (ii) teachers in Local Bodies schools. (iii) teachers from Nai Talim Sangh schools, and (iv) teachers appointed after October 1, 1957. All these teachers, however, performed the same duties were posted in the same schools and were entitled to the same scales of pay and allowances. They, therefore, belonged to the same class irrespective of whether they were integrated formally into one cadre or not. Consequently, there was no warrant to make rules which treated some, as against the others, in a manner which reduced the promotional chances of the provincialised cadre teachers; (b) that teachers recruited between October 1, 1957, and February 13,

1961, posted in provincialised schools and not specifically appointed to any cadre other than the provincialised teachers could not, by retrospectively taking them in State cadre, be given better promotional chances; (c) that there was no rational nexus between the object of the 1961-Rules and the differential created there under between teachers appointed before October 1, 1957, on the other hand, and the rest of the three categories of teachers, on the other. If the object of the Rules was to give better promotional chances to better qualified teachers, that could best have been achieved by providing that promotion to the selection grade should be available to matriculate trained teachers only. Since all the categories contained non-matriculantes non-trained teachers, the differential treatment provided by the Rules was discriminatory; (d) that since the validity of 1961-Rules was confirmed by the decision in Joginder's case (supra), on the footing of the interpretation of the Rules given by the majority, their implementation by Haryana Government had to be on the basis of that interpretation; (e) if that interpretation is found incorrect, the decision needs reconsideration as (i) the majority decision did not consider a whether the rules were discriminatory as between provincialised pre-1957 teachers and those appointed after October 1, 1957, (ii) it was largely influenced by its construction of Rule 3 and the effect thereof on provincialised teachers, (iii) the majority was under an incorrect impression that there was difference before October 1, 1957, in the two cadres as regards qualifications and the machinery for recruitment, (iv) the actual implementation of the Rules subsequent to that decision has recruited in gross discrimination as is clear from the non-promotion of the petitioners and the promotion of Respondents 37 to 96 who are clearly junior in service to them; (f) the decision of maintaining the provincialised teachers in a separate cadre and making that cadre a diminishing one was not based on any difference in qualifications. In fact the Government treated both as being of equal grade. It had three alternative methods for fixing the inter-seniority and relied upon the third alternative, rejecting the first two on the ground that the third alternative secured fairness and equality. In practice however, the third alternative of keeping the two cadres apart has resulted in discrimination.

11. The learned Attorney-General disputed the correctness of these contentions as also the factual premises on which they were founded and sought to support the majority decision in Joginder's case (supra), stating that some of the assumptions in the minority judgment were erroneous both in facts and reasoning.

12. On the working of Rule 3 of the said Rule and the provincialised cadre being made thereby a diminishing one, Mr. Tarkunde pointed out that there were on October 1, 1957, 20,709 junior teachers in that cadre, out of whom 3,184 would get selection posts on the ratio of 85 : 15. If, as is provided in the Rule, the total strength is reduced as a result of promotion, retirement death etc. in the course of time by 50 % (i.e. 10,354 ordinary posts) the remaining 50% posts would stand transferred to State cadre, thus, expending the number of posts in that cadre, out of which 1,593 would be selection grade post posts and 8,761 would be ordinary posts. So far as the provincialised cadre is concerned, it would have only 1,593 selection grade posts (instead of 3,184 as on October 1, 1957) and 8,764 ordinary posts, reducing thereby promotional chances for the provincialised teachers and giving more and more promotional chances to those in the State cadre. According to the learned Attorney-General, such a result was inevitable and flowed from the Government's decision to freeze the provincialised cadre and make it a diminishing one until it gradually disappeared leaving only the State cadre in the primary educational service, a decision, which the Government was entitled to take and which cannot be said to attract Article 14 or 16. As the number of posts in one cadre diminished and correspondingly increased in the other cadre, the number of selection grade posts was bound to get reduced in one cadre and correspondingly increased in the other.

13. To appreciate these contentions it will be necessary to examine the condition of service, the qualifications and the machinery and recruitment in the different categories of teachers as they existed during the period prior to October 1, 1957.

14. Before we proceed to do so, it is necessary to have a clear picture which existed on October 1, 1957. Apart from the Local Bodies school and the Government schools which existed during the pre-October 1, 1957, period, the Punjab State as a result of the merger of pepsu area in 1956 had also Government schools working in that region. The position, therefore, on October 1, 1957, was as follows : (i) teacher in Punjab Government schools - 107, out of whom 85 were, Matriculates Trained teachers; out of the remaining 22 non-matriculates, 20 were Trained teachers; (ii) teachers in Pepsu schools - 5,822, out of whom 4,325 were matriculates, and 3,236 were also Trained teachers. 1,037 were, thus, non-matriculates, but 886 of them were Trained teachers. Thus there were only 151 non matriculated non trained teachers amongst the Pepsu teachers; (iii) teacher in Local Bodies schools - 20,700, out of whom nearly 50% 10,214 were non-matriculates. In Gurgaon District, there were no Government schools, but only Local Bodies schools, whose teachers numbered 1,517. Of them, 97 were in schools conducted by Municipal Bodies and the rest, i.e., 1,420 in District Boards' schools.

15. Teachers in Local Bodies schools were governed by the District Boards Rules, 1926 framed under the Punjab District Boards Act, 1883. These rules provided that every District Board shall be bound by rules contained in the Punjab Education Code so far as they applied to the Local Bodies. Article 48 of that Code provided that question relating to the appointment, promotion, leave, dismissal, transfer etc., of teachers employed in the schools maintained by Local Bodies shall be disposed of by Inspectors appointed by the Education Department, but in consultation with the President, Execution Officer or Chairman of the Local Body concerned. Likewise, teachers in Gurgaon District were governed by the Gurgaon District Board Rules, 1934, Rules 6.2(f) and 8.1 whereof laid down that qualifications for a teacher shall be same as provided by the Departmental Rules for the time being in force and conditions of service of such teachers were to be in accordance with rules made from time to time for the Government servants. The pay-scale for the junior teachers in these school under the District Board Servants Conduct Rules, 1926, as amended from time in the Local Board Code was Rs. 47 1/2 - Rs. 117 1/2. The teachers were in the grades, 50% in ordinary grade 35% in the middle and 15% in the third or the selection grade with the pay-scale of Rs. 140-220. Thus, the division of the grade in the ratio of 85 : 15 appears to have existed in the District Board schools and the Government schools from the very beginning.

16. The Punjab Subordinate Educational Service Rules, 1937 governed the junior teachers in Government schools. Rule 4 of these rules provided that appointed of teachers was to be made by the Director of Public Instruction. The Rules also provided that appointees could not be more than twenty-five years of age. The scale of pay for junior teachers was the same as that of the corresponding Local Bodies teachers. The Rules did not also appear to have provided that the appointment had to be matriculates, though for masters the rules prescribed that the recruits had to be B.A., S.A.V. (or B.T.). Since those rules did not provide Matriculation as the minimum qualification, there could be non-matriculate teachers in Government schools as there were such non-matriculates in the Local Bodies' schools. The difference between the two kinds of schools factually, however, was that on October 1, 1957, whereas in the Government schools there were only 22 non-matriculation out of the total number of 107 teachers, nearly 50% of the teachers in Local Bodies' schools were non-matriculates.

17. By a Memorandum, dated April 18, 1952, Government accorded sanction with effect from April

1, 1951, allowing an initial salary of Rs. 50 per month to a Matric, Basic Trained teacher. By another Memorandum, dated June 21, 1955, the initial pay was raised to Rs. 57 1/2 per month for Matric, Basic Trained teachers with effect from April 1, 1953. In the meantime Government had set up a Subordinate Service Selection Board to select Government employees drawing a monthly salary of Rs. 50 and upward. An advertisement, dated November 25, 1954, issued at the instance of the Board of the recruitment of 34 junior basic teachers pointed out that recruits would be given the initial pay of Rs. 57 1/2 in the scale of Rs. 47 1/2 - Rs. 117 1/2, but then the qualification would be Matric-Basic Trained and the age limit not more than thirty years. The result of these changes was (i) that with the raise in the pay grade, teachers in Government schools henceforth were recruited by the Board, and (ii) Matric, Basic Trained Recruits were given a higher initial pay.

18. In 1955, Punjab Educational Class III School Cadre Rules were made superseding the 1937-Rules. The Rules prescribed for the matriculation and Basic Education Training as the minimum qualification. They, were no doubt, brought into force with effect from May 30, 1957. But, on October 1, 1957, when provincialisation was brought about, they were in force as against the Rules governing the Local Bodies School which did not prescribe these minimum qualifications. It may be that by reason of the District Board Rules of Business, 1962, the qualifications required by the 1955-Rules would also apply to teachers recruited in the District Boards' schools also. But as we have seen, there were on October 1, 1957, as many as 50% of teachers in those who were non-matriculantes, of whom quite a number were also non-trained. This was then the position on the eve of Government's decision to provincialise the Local Bodies' schools.

19. On July 19, 1957, the Government communicated to all Local Bodies its decision to provincialise schools run by those Bodies. The communication directed them not to appoint new teachers or to upgrade the existing schools and not to fill up vacancies, if any had fallen, except on temporary basis for three months only. On July 23, 1957, Government revised pay-scales of all low-paid Government servants with effect from May 1, 1957. This order divided Government school teachers according to their qualifications into two main categories; Category (A) - Graduate teachers : 85% ordinary and 15% selection, and Category (B) Matriculantes with Basic Training. Category (B) was divided into three grades : Lower with a scale of Rs. 60 -Rs. 120, Middle with a scale of Rs. 120 -Rs. 175 and Upper with a scale of Rs. 140 -Rs. 250. Both the Categories had thus two grades, ordinary and selection in the proportion of 85% to 15%. The percentage of 85 to 15 and the division into two grades, ordinary and selection, thus, subsisted in Government schools before provincialisation was brought about.

20. On September 27, 1957, Government issued the order of provincialising schools till then conducted by Local Bodies with effect from October 1, 1957, and of taking over the existing teachers and other members of their staff. The order announced that their scales of pay would be fixed under the Rules which would be framed, but that in any case there would not be any drop in their present emoluments. Three days later the Education Minister announced at the Press Conference that the Government had taken this decision with a view to ameliorate the conditions of teachers in the Local Bodies schools by bringing their scales of pay to the level of Government school teachers, that it felt that it could be done by provincialising the schools, that its decision was a big step involving 10,161 schools and 25,674 junior teachers bringing them all under Government control and their pay brought to the level of their counterparts in Government schools involving thereby an annual expenditure of Rs. 5.25 lacs. The statement also announced the provincialisation meant that all those teachers would be henceforth Government employees with grades of pay the same as those of Government school teachers, that recruitment henceforth would be made according to rules which would be made, and that principles governing their integration with the Government

schools teachers would be formulated.

21. The question as to what principle for fixing the inter seniority amongst the provincialised teachers servicing in different districts and the inter seniority between them and the Government schools teachers should be formulated was engaging the attention of Government after provincialisation. On January 27, 1960, The Education Department wrote to the Director of Public Instructions conveying the Government's decision in the matter of joint seniority of various categories of teachers and fixation of cadres. The decision was that (i) inter-seniority of provincialisation teachers, masters and head masters should be determined according to the principles laid down in Annexure A thereto; (ii) the staff of the two categories of schools should be kept in separate cadres; (iii) all new recruits appointed after October 1, 1957, should be deemed to have been appointed in States cadre, (iv) the provincialised cadre would be a continuing diminishing cadre and would in course of time completely vanish leaving only the State cadre; (v) keeping the two cadres separate would secure the same promotional chances to the State cadre teachers as before; at the same time provincialise teachers would get promotional chances to a larger number of posts by reason of their larger number within their own cadre; (vi) there would be no administrative difficulty in regard to transfer of teachers, whether to a Government or a provincialised school inasmuch as barring the question of future promotions there was no longer any difference between the two in the matter of pay scales, type of works and other conditions of service; (vii) the two cadres will be known as "State Cadre" and "provincialised cadre" and vacancies falling in the 'provincialised cadre' as a result of retirement, promotions etc. would be transferred to the 'State cadre'; and (viii) the provincialised cadre staff will be district-wise, while State cadre staff will be division-wise, such an arrangement making the fixation of inter-seniority easier. The letter requested follow-up action on the basis of these decisions and suggested that these decisions should be circulated amongst the recognised associations of teachers for their information.

22. The memorandum, dated February 13, 1961, published in the Gazette along with Rules as an explanation clearly set out the problems confronting Government as a result of provincialisation. The main problem was one of the determined seniority of provincialised teachers vis-a-vis the existing Government schools teachers and also amongst the provincialised teachers themselves servicing in different schools in different districts appointed by different Local Bodies in those districts. As the memorandum pointed out, there were three alternatives before the Government, (a) counting of full service of the Local Bodies for the determination of joint seniority, (b) integration of the two services in a joint cadre on the basis of counting the service of the Local Bodies teachers from the date of provincialisation, and (c) continuing the two cadres separate as before.

23. Adoption of alternative (a) would have meant counting the full service of the Local Bodies teachers for determining seniority. This was found to be unfair for several reasons : (a) In the past, when some of the Local Bodies' schools were taken over by Government, the rule followed was that services of the extent teachers taken over to Government services were for purposes of fixing their seniority counted only from the date of their joining Government service and their previous with the local bodies was not counted; (b) Recruitment to Government schools used to be made through the Selection Board. Several local bodies teachers used to apply but were rejected as their qualifications were lower. These very teachers would be now senior to those appointed then as their full service would be counted, although they had lower qualification and were on that ground actually rejected; (c) Even otherwise, those recruited through Selection or such other Board had better qualifications and they would suffer since full service of the local bodies teachers would be counted. The future chances of promotion of Government schools teachers would thus suffer in spite of their possessing better qualifications. Alternatively (a), therefore, was found unacceptable.

24. Alternatively (b) was equally unacceptable as the provincialised teachers would have to be placed at the bottom of the existing Government schools teachers with the results that all promotional posts would go to the latter. Thus the very purpose of provincialisation, viz., of their amelioration, would be frustrated. Only alternative (c) was, thus, left for acceptance. It meant the continuation of the position actually subsisted on October 1, 1957.

25. Considering the conflicting interest of the two services, their unions and association including those representing the Pepsu teachers were afforded an opportunity to place their points of view. They were, however, not able to agree to any formula. Government, therefore, decided upon acceptance of the third alternatives and continued the two separate cadres as before. It also accepted the principle of the provincialised cadre as a diminishing cadre. The memorandum pointed out that it was in view of these considerations that Governments decided that : (i) teachers in provincialised and the erstwhile Government schools should be kept in separate cadres; (ii) all higher grade posts created on October 1, 1957, directly due to provincialisation would go by promotion to the teachers in the provincialised cadre, (iii) provincialised cadre would be a diminishing cadre and therefore all the future recruitment would be in the State cadre, (iv) all vacancies due to retirement, promotion, etc., in the provincialised cadre would be transferred to the State cadre. In the State cadre posts would be transferred in the established ratio of 15 : 85. The number of posts in the higher grades released as a result of retirement, promotion etc., in the provincialised cadre minus those transferred to the State cadre would be utilised for promotions in the provincialised cadre (v) some of the local bodies schools were taken over for ten years only together with their staff. Their position being uncertain and in the event of retransfer of those schools to the local bodies, it would be convenient to retransfer them to those bodies, if the provincialised cadre was kept separate. At the same time it was possible that the new recruits might have to be appointed for such schools. If and when such schools were retransferred it would not be feasible to compel those local bodies to take over their new appointees. Therefore it was decided that all new recruits appointed after October 1, 1957, should be borne on the State cadre; (vi) the questions of promotion to the higher grades due to the provincialisation was one more problem that had to be solved. The representatives of the provincialised school teachers insisted that all posts created on account of provincialisation should be utilised for promotions among those in the provincialised cadre and that only future grade vacancies should be filled up in proportion to the strength of the two cadres. This proposal was found unjustified and was rejected. (vii) Another problem was the possibility of premature promotions in either of the two cadres, with the increase in the number of posts in the State cadre all the existing members in that cadre would get the 15% posts in the higher grade. To avoid the possibility it was decided that before a teacher was promoted from the ordinary to the selection grade, he had to have at least five years' service to his credit.

26. The implementation of these decisions would mean that a good number of posts in the selection grade in the junior teachers cadre in Ambala/Julundar Division would fall vacant. Therefore, it was decided that "in order to further improve the chances of promotion of J. B. T./J. T. teachers borne on the provincialised cadre, it was considered necessary that the condition of minimum experience should be rigidly enforced and number of selection grades posts which could not be filled up by promotion from within the Division cadre of the State teachers may be filled up by promotion from amongst the provincialised teachers on the district-wise cadre." This meant that over and above 15% posts reserved in the higher grade in their own cadre, the provincialised teachers, by reason of their long service, would get some more higher grade posts from the 15% ratio in the State cadre as well. This decision was intended to effect (a) acceleration of the diminishing process of the provincialised cadre as posts falling vacant as a result of such extra promotions would be transferred to the State cadre, and (b) bring about satisfaction among teachers in the provincialised cadre by affording them

these extra promotional chances.

27. The position which emerge from the aforesaid analysis is that prior to October 1, 1957, the two categories of teachers, those servicing in the Local Bodies schools and those in Government schools were distinct. Though the minimum qualification and scales of pay might have been uniform, there were differences in other matters such as methods of recruitment, retriial benefits, rules for determining seniority, etc. It is also clear that whereas a Government school teacher was liable to be transferred to any place throughout the Commissioner's division, a Local Body teacher could only be transferred within the territorial limits of that body. Appointments in Local Bodies schools, no doubt, were made by Inspector appointed by Government, but they could do so only in consultation with the Chairman or President of such a body. That was the position also in regard to disciplinary matters. Further, although the prescribed minimum qualifications were the same, in point of fact 50% or more of the Local Bodies teachers were non-matriculantes and quite a number of such non-matriculate teachers were also without the qualification of Basic Training as against a few non-matriculantes and none without such Basic Training in the Government schools. In any event the mere fact that minimum qualifications and scales of pay were the same could not mean, in view of the other dissimilar conditions of service, that the two categories of teachers formed one class. Indeed, Mr. Tarkunde conceded, as is even otherwise clear, that prior to October 1, 1957, teachers in the Local Bodies and in Government School did not form one class.

28. So far as the positions on October 1, 1957, is concerned, as already noticed, the Government schools teachers were and continued to be governed by the Rules of 1955, which, no doubt, came into force from May 30, 1957 and which prescribed the minimum qualifications as Matriculation in addition to Basic Training. Government school teachers who, under the 1937 Rules were recruited by the Director of Public Institutions were since 1954 selected by the Selection Board after their initial pay had been raised from Rs. 47 1/2 to Rs. 50 per month. The Local Bodies teachers, on the other hand were recruited by Inspector in consultation with the Presidents or Chairman of those bodies till July 1957, when fresh appointments in vacancies falling in those schools were stopped. Under the new Rules of 1955, Government provided for the selection grade for 15% posts. In fact, such a grade was given to them even before 1955-Rules were framed and the new rules merely continued that benefit. Broadly speaking, the position on October 1, 1957, was that the two categories of teachers formed distinct classes. Though they were performing similar duties, they could not be said to form one integrated class.

29. The question then is, whether in spite of the Government school teachers and the provincialised teachers forming two distinct classes on October 1, 1957, they were, during the period between that date and February 13, 1961, integrated into one class, which was split up into two cadres by those Rules ? It would perhaps appear from the statements or the Education Minister made at the Press Conference on the eve of provincialisation that Government had in the beginning the idea of bringing about integration between the two types of teachers. But no such concrete decision was ever taken. A few dates at this stage may clarify the position. As aforesaid, the decision to provincialise the Local Bodies schools was taken on July, 19, 1957. In pursuance of that decision, Government on August 2, 1957, placed a ban against any fresh recruitment of teachers in the Local Bodies schools. On September 27, 1957, the Governor sanctioned the scheme of provincialisation and at the same time sanctioned 20,000 and odd new posts to absorb the existing staff of the provincialised schools. Simultaneously with the provincialisation, the Government on October 1, 1957, gave the same scales of pay to the provincialised teachers as were available to the Government schools teachers. The problem, however, was how to fix and adjust the provincialised teachers in the Government services and fix their inter se seniority as also their seniority vis-a-vis

the Government schools teachers.

30. It is fairly clear from the memorandum published along with 1961-Rules that Government was seeking to discover a proper formula to solve the questions. This process was, it appears, going on since November 23, 1959, when alternative proposals were framed for discussion and those proposals were communicated to the recognised associations the teachers. Since no agreed consensus was forthcoming from the teachers themselves, Government formed its own decision as formulated by the Secretary, Education Department in his letter of January 27, 1960, to the Director of Public Instructions. These decisions were made around three basic principles : (i) that the two cadres will continued to be separate as before; (ii) that the provincialised cadre would be a diminishing cadre; and (iii) following upon (i) and (ii), vacancies arising as a result of promotions, retirements, resignations, etc., in the provincialised cadre should be transferred to the State cadre so that ultimately after about thirty years the provincialised cadre would vanish altogether leaving the State cadre alone in the field. These events leave no doubt that at no time after October 1, 1957, any decision for integrating the two categories of teachers was taken although after October 1, 1957, new teachers were appointed and posted in both provincialised as well as Government schools who carried out the same duties and were given the same scales of pay as the provincialised teachers. But such new teachers had to be deemed to have been appointed in the State cadre by reason of the two principles decided upon by Government, (i) the diminishing character of the provincialised cadre, and (ii) that cadre having been frozen from even before October 1, 1957. Thus, the two categories continued to be separate and were never integrated. The Government schools teachers and those appointed after October 1, 1957, were governed by 1955-Rules while the provincialised teachers continued to be presumably governed by the District Boards' Rules until new rules were framed for them by Government. Thus the Rules of 1961 could not be said to have split up the teachers who formed one integrated cadre into two new cadres. These Rules had to be made as the inter-seniority among provincialised teachers appointed by different Local Bodies in different districts had to be determined and their position in the service had to be adjusted. The Rules were framed on the principles formulated in the decisions taken by Government on July 27, 1960.

31. The new Rules were made retrospective as from October 1, 1957 and applied to the teachers provincialised as from that date. Such teachers under these Rules formed a cadre by themselves, called the provincialised cadre. Under Rule 3(i), teachers appointed in vacancies in the provincialised schools were to be borne on the State cadre. This was because provincialised cadre was already frozen and since the cadre was to be a diminishing cadre, the new appointments made after provincialisation could not be treated as borne in that cadre. Clause (ii) of Rule 3, however, preserved the number of selection posts in the provincialised cadre for teachers in that cadre but an equal number of posts in the ordinary pay-scale falling vacant as a result of promotions to the selection grade were transferred to the State cadre. So also the post which were vacant on October 1, 1957 and which were not to be filled in were transferred to the State cadre. Clause (iii) of Rule 3 sought to work out the principle of the provincialised cadre being diminishing one in a phased manner by providing the transfer of ordinary post falling vacant in future due to promotions, retirements, etc., to the State cadre. This was done by splitting up such vacant posts into blocks of seven and six posts by rotation. The blocks system provided that all section grade posts in the first six vacancies in each block of seven and first five vacancies in each block of six were to continue to be borne on the provincialised service but an equal number of posts in the ordinary grade together with other vacancies in that grade were to be transferred to the State cadre, and so also the last vacancy in each such block was to be transferred to the State cadre. The provision of blocks of seven and six was made for working out the principle of the cadre being a diminishing one. The blocks of seven and six meant that one post of seven vacant posts and one out of six vacant posts

was transferable by rotation to the State cadre. But the percentage of fifteen for selection grade posts was-kept intact.

32. It will be observed that though the provincialised teachers were given the same scale of pay as the teachers in the State cadre, the Rules provided that unlike the latter they could be transferred only within the District where they were serving. Those who were already confirmed prior to the provincialisation were also deemed to be confirmed under these Rules. That meant that for the purpose of their seniority their entire service, including service before such confirmation would be taken into account, except that inter seniority of those promoted to the selection grade was to be determined from the date of their confirmation in that grade.

33. Thus, although the teachers in both the cadres were given the same cadres of pay and did the same kind of work and those appointed after October 1, 1957, were posted and worked in the same provincialised schools as teachers in the provincialised cadre, the fact was that the State cadre teachers were and continued to be governed by 1955-Rules while the provincialised teachers were governed by 1961-Rules. This fact, coupled with the fact that one was a district and the other a divisional cadre, meant that the two cadres continued to be separate cadres as before. The principal effect of the new Rules, however, was that the number of posts in the cadre would gradually diminish and together with that the total number of posts in the selection grade, despite the percentage of fifteen remaining intact. But that was the inevitable result of the freezing of the cadre, on the one hand, and its being a diminishing cadre on the other. The State cadre became correspondingly an expanding cadre, the total number of posts for all the schools, Government and provincialised, remaining more or less constant.

34. However, in judging the Rules and the results flowing from their implementation, it has to be borne in mind that the ratio of eighty-five to fifteen for ordinary and selection grades was not abrogated. It is true, as Mr. Tarkunde pointed out, that as time went on the actual number of the higher grade of posts in the provincialised cadre would diminish as the total number of ordinary posts in that cadre diminished and correspondingly the number of higher posts in the State cadre would increase as ordinary posts therein increased. That was the result of the two principles accepted by Government, that of freezing the provincialised cadre and make it a diminishing one. Nevertheless, the earlier the number of selection grade posts available in this cadre would be larger than in the State cadre because of the large number of posts therein at that stage, viz., 20,000 and more. In addition, selection grade posts in the State cadre would go to the provincialised teachers, at least in the beginning because of the decision that the rule of five years' experience for promotion was to be rigidly followed, and therefore sufficient number of persons in the State cadre with that seniority might not be found.

35. The controversy thus really turns on the question whether the Government was bound to integrate the two categories of teachers into one and not to continue the as separate cadres as before, and whether its refusal to do so meant violation either of Article 14 or Article 16. It is true that in notwithstanding this Court upholding the validity of the 1961-Rules in *Punjab v. Joginder* (supra), the then Government of Punjab in 1965 adopted a uniform running scale for both the cadres of Rs. 60 - Rs. 175 with a common 15% for higher grade posts. But that decision has nothing to do with the question of validity of 1961-Rules, and if those Rules were valid, with the validity of the decision of the new State of Haryana to implement those Rules instead of the common running scale adopted by the Punjab State.

36. The principles on which discrimination and breach of Articles 14 and 16 can said to result have

been by now so well settled that we do not think it necessary to repeat them here once again. As already seen, ever since 1937 and even before, the two categories of teachers have always remained distinct, governed by different sets of rules, recruited by different authorities and having, otherwise the in matters of pay-scales and qualifications, different conditions of service. This position remained as late as February 13, 1961. On that day whereas the State cadre teachers governed by 1955-Rules, rules had yet to be framed for the provincialised teachers. The two cadre thus being separate, Government was not bound to bring about an integrated cadre especially in view of its decision of making the provincialised cadre a diminishing one and bringing about ultimately through that principle one cadre only in the field in a phased manner. If through historical reasons the teacher had remained in two separate categories, the classification of the provincialised teachers into a separate cadre would not be said to infringe Article 14 or Article 16. It also not incumbent on the Government to frame the 1961-Rules uniformly applicable to both the categories of teacher firstly, because a rule-framing authority need not legislate for all the categories and can select for which category to legislate. (See *Sakhawat Ali v. State of Orissa* ((1955) 1 SCR 1004 : AIR 1955 SC 166 : 1955 SCJ 262 : 1955 SCA 353.); *Madhubhai Amathalal Gandhi v. The Union of India* ((1961) 1 SCR 191 : AIR 1961 SC 21 : (1961) 1 SCJ 422.) and *Vivian Joseph Ferreira v. The Municipal Corporation of Greater Bombay* ((1972) 1 SCC 70.)), and secondly, because it had already come to a decision of gradually diminishing the provincial cadre so that ultimately only the State cadre would remain in service. That was one way of solving the intricate difficulty of inter-seniority. There can be no doubt that if there are two categories of employees, it is within the Government's power to recruit in one and not recruit in the other. There is no right in a government employee to compel it to make fresh appointments in the cadre to which he belongs. It cannot also be disputed that Government had the power to make rules with retrospective effect, and therefore, could provide therein that appointments made between October 1, 1957 and February 13, 1961, shall be treated appointments in the State cadre. That had to be done for simple reason that the provincial cadre was already frozen even October 1, 1957 and Government had decided not to make fresh appointments in that cadre since that cadre was to be a diminishing one.

37. In *Joginder's case* (supra), the argument urged on behalf of the respondent was based substantially on the same premise as the one urged by Mr. Tarkunde. That was that on becoming the State employees on October 1, 1957 and on their being given the same scales of pay and grades and the same promotional chances, the two categories became one integrated service. It was on that premise that a contention was raised that the rules by splitting up such a service infringed Article 14 and 16(1). The majority rejected those arguments by pointing out, (i) that pension rules for the two services were different, from the State cadre the 1955-Rules and for the provincialised cadre the rules framed in October 1958; (ii) that rules for determining seniority inter se of the members of two services were dissimilar; (iii) that there were no provision in the memorandum of September 27, 1957, by which the Local Bodies schools were taken over expressly providing for integration; and (iv) that whereas matriculates with five years' experience was necessary qualification for promotion to selection grade for State cadre teachers, that was not so for provincialised teachers. The majority held on the basis of these dissimilarities that though the provincialised teachers were given the same scales of pay and grades, save this equality, there was nothing more that was contemplated or provided by the said memorandum dated September 27, 1957 and the question of the precise status of the provincialised teachers and their relationship vis-a-vis the State cadre teachers was yet to be determined. The majority accordingly held that it was not the 1961-Rules which created the two services but that they were there independently of them and that the real grievance would be that the Rules did not integrate the two into one service. With respect to the other argument that even the retention of two parallel services with similar scales of pay and grades,

the same functions and liability to be transferred from one to the other type of schools, was by itself discriminatory, the majority relied on the Government's counter-affidavit which pointed out the differences in the rules governing the two services, viz., (a) in the minimum qualifications, and (b) recruitment authorities. The majority observed that these differences were not controverted by counsel for Joginder Singh in the High Court, who also had abandoned there his contention about differentiation of the two services being per se discriminatory. The majority pointed out that such abandonment itself negated the submission the recognition of the two services as independent cadres was discriminatory, once the premise about their having been integrated was rejected. They also rejected the further contention that the State could not constitute two services of employees doing the same work but with different conditions of service and the postulate underlying it, viz., equal work must receive equal pay and if there be equality in pay and work, there have to be equal conditions of service. The reasons for the rejection was that since the Government had to carry on administration, it must in the wider public interest have a choice in the constitution of services to man such administration. The conclusion reached by them was "the two services started dissimilarly and 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 no denial of that freedom guaranteed by the two articles" (p. 193). They finally held that Government was entitled to make the provincialised cadre a diminishing one for there is no right in an employee to require the Government to strengthen or expand or to make future appointments in the cadre in which he is serving.

38. Mr. Tarkunde argued that the majority decision required reconsideration. According to him the premise the minimum qualifications for appointments in the two services were dissimilar was not factually correct. Secondly, the 1961-Rules were upheld on the construction of Rule 3 that its rigour was tempered by the division of vacancies into blocks under which roughly 11/13 of the total vacancies in the selection grade would be filled up by the provincialised teachers which interpretation, if correct, was not being implemented. If that interpretation is not correct, the decision for that reason also needs reconsideration. We do not think that such an argument can be accepted. So far as the first limb of that argument is concerned, it may be said that under the District Boards Rule and the Education Code, the minimum qualifications were to be the same as those prescribed for Government schools teachers. But even if that was so, it cannot be gainsaid that on October 1, 1957 there were at least 50 per cent. of the provincialised teachers numbering more than 10,000 as against 22 out of 107 Government schools teachers, who were non-matriculantes and quite a number of them untrained, and actuality which must have been present before Government when it decided to keep the two services separate. Regarding the second limb of argument, the statement that the block system reduced the rigour of Rule 3 was not the basis for upholding its validity. That rule was sustained on more substantial grounds, viz., that there never was any integration of the two services, that those services were dissimilar, that Government was entitled to retain them as separate, that it was also entitled to make the provincialised service a diminishing cadre and not to keep up its existing strength in view of its decision that it had to vanish gradually leaving ultimately the State cadre in the field, and lastly, that if the number of selection posts in the provincialised cadre got reduced as time went by it was the direct result of the principle of that cadre being a diminishing one against which no objection on the ground of discrimination or unequal opportunity could be sustained. The minority differed from the majority view because of the assumption it started with that there was an integration of the services when the provincialised teachers were given the same pay and grades, the same kind of work and when teachers from both the services could be posted in either Government or provincialised schools. With great respect to the learned Judges in the minority, the analysis made by us of the different rules, orders and

memoranda clearly supports the majority view that the two services were not similarly situated, that there was no integrations at any time and for the reasons given by us earlier they were kept separate as the other alternatives before Government were found neither just nor proper. We are of the view that the majority decision does not need reconsideration.

39. Respondents 6 to 36 were originally teachers in the Nai Talim Sangh schools conducted by the rehabilitation department of the Central Government. These teachers were taken over long before provincialisation, and were therefore placed in the State cadre as from October 1, 1957 being already on that date in Government service. Once it is found that there had been no integration of the various categories of teachers, and what the Government did was merely to continue those services as separate as before, teachers in one category cannot complain of discrimination in regard to teachers in another category. It may be noted in this connection that the ex-Nai Talim School teachers were governed by the 1955-Rules on their being taken over by Government. Consequently, their previous service in those schools was not taken into account for the purpose of seniority, unlike provincialised teachers whose seniority was determined on the basis of continuous service. It is also of some interest to find that whereas only six non-matriculantes from Nai Talim Sangh teachers have been promoted to the selection post as many as 315 non-matriculantes from the provincialised cadre have been promoted to the selection grade in the Gurgaon District alone.

40. Regarding Respondents 37 to 96, all of them were appointed after provincialisation. They were junior in service than the petitioners and some others in the provincialised cadre. But their case is not comparable, for, they were appointed under 1955-Rules and through recruitment authorities prescribed under those rules, i.e., the Selection Board. Obviously, they could not be appointed in the provincialised cadre as that had been frozen even before October 1, 1957. They may have been posted in the provincialised schools but that cannot mean that they were appointed in that cadre. Their appointment being in a separate cadre, it is important to say they were similarly situated. By reason of their recruitment in the State cadre, their condition of service, including their promotional chances and their seniority would be governed by 1955-Rules and would only be comparable to those in that cadre only.

41. The impugned letter, dated January 5, 1968, merely communicated the Government's decision to revise the scales of pay with effect from December 1, 1967. This was as a result of Government accepting the recommendations of Kothari Commission. The revised scales are now Rs. 125 to Rs. 250 for the ordinary grade and Rs. 250 to Rs. 300 for the selection grade. Actually, therefore, the teachers in both the cadres stand to gain under the revised scales. It is difficult to appreciate how such a revision works out in any discriminatory way. Teachers in both the cadres continue to get their promotional chances in the same promotion of 85 : 15 according to their seniority in their own cadre. In the case of the provincialised cadre, seniority is counted on the principle of continuous service which includes temporary or officiating service before confirmation, while in the case of the State cadre, it is counted from the date of confirmation. Besides, seniority among provincialised teachers is maintained on district level, while that in the State cadre on divisional level as they are transferable within the entire division. The seniority lists which are challenged in this petition are made on the principles above stated and on the basis of the two cadre being separate. Once the 1961-Rules are upheld, a challenge to lists can scarcely be maintained.

42. To sum up the position, the two services were from as early as 1937 and before separate, At no stage, even after provincialisation was decided upon and the principle of its implementation were drawn up there was any integration of the two. In fact, after considering the alternatives which the Government had before it, it opted, on consideration of difficulties of integration, for the alternative

of keeping the two separate. Since the State cadre had its own Rules of 1955, the Government decided in 1960 upon certain principles upon which Rules could be framed for the provincialised cadre. The real grievance of the provincialised teachers could be not that an integrate service was split into two by the Rules, but that the Rules did not combine the two. No principle under Article 14 or Article 16 is involved if such an integration was not brought about, for considering the past history of the two services and the differences existing between them, Government could not be required to fuse them into one upon any principle emanating from the two Articles. The decision to make the provincialised cadre a diminishing one, to implement which that cadre had to be closed at one end, aimed at seeing the provincialised cadre gradually vanish leaving approximately at the end of 30 years the State cadre alone in the field. There is nothing in either Article 14 or Article 16 under which Government could be compelled to maintain that cadre in its original strength or make fresh appointments in that cadre. The logic of Government decision to make the provincialised cadre a diminishing one was that as the posts in that cadre gradually diminished, the number of selection posts also diminished. The proportion of 85 : 15, however, remained intact, and teachers in both the cadres according to their seniority continued to obtain their promotional chances. No injustice in this could justifiably be claimed as when the posts in the provincialised cadre were larger in number, its members got a larger number of selection posts. The block system in Rule 3 was devised to implement the process of diminution in a phased manner. Whether the ratio of 11 : 13 resulted from it or not is not material, for, once the principle of that cadre being a diminishing one is accepted as not violating the rule in Article 14 and Article 16, and so long as 15% remained untouched, the block system is no more than a method to further the process of diminution. The two services thus being a separate both before and after provincialisation and there being no complaint about dissimilar or arbitrary treatment among the members of the provincialised cadre, it is difficult to appreciate the grievances of discrimination or the denial of equal opportunity. The conclusion of the reasons hereabove given is that no infringement of either of the two Articles is involved in this case.

43. The petition, consequently, is dismissed but in the circumstances of the case there will be no order of costs.

Shelat, J. [In W.P. No. 97 of 1970] (For himself, Ray, Jaganmohan Reddy, Khanna and Mathew, JJ.). - On October 1, 1957, when the then State of Punjab brought about provincialisation of all schools till then run by the Local Bodies, there were 231 High Schools and 762 Middle Schools conducted by the said Local Bodies. There were at that time 321 headmasters/headmistresses getting a pay scale of Rs. 250 - Rs. 350, 294 masters/mistresses getting a scale of pay of Rs. 250 - Rs. 300 and 1,792 masters/mistresses getting a lower scale of Rs. 100 - Rs. 250. On October 1, 1957, all the schools together with their existing staff were taken over by the State Government. As in the case of the primary teachers, it was provided that all these masters/mistresses from the provincialised schools would be given the same scale of pay and allowances as were given to their counterparts serving in the Government schools.

45. According to the petitioners, the minimum qualifications required for the for the appointment of masters were the same for both the State schools and those conducted by the Local Bodies. That fact, coupled with the fact that they were to be given the same pay scale and allowances, meant that there was no difference between the provincialised masters and those appointed subsequent to the provincialisation between October 1, 1957 and February 13, 1961 when the 1961-Rules for the provincialised masters and teachers were promulgated, except that those who were appointed after the date of provincialisation were junior to them in service. According to the petitioners, the two category of masters, the provincialised and the Government school masters, therefore, formed one

class since both the categories were given the same scales of pay, both were Government employees and both carried out the same duties and performed the same functions in schools which on provincialisation became Government Schools.

46. The grievance of the petitioners was that Rules of 1961 divided masters, who for all practical purposes formed one class, into two arbitrary cadres, the State cadre and the provincialised cadre, and through their various provisions meted out differential treatment to those appointed after October 1, 1957, by their being treated as belonging to the State cadre, although the petitioners and several others like them were senior in experience than those recruited after the said date. The 1961-Rules thus created discrimination by dividing the masters into two categories, although there was no rational basis for such a classification.

47. As and by way of illustration of such alleged discrimination the petitioners stated that Petitioner Ram Lal, a trained graduate (B.Sc., B.T.) was appointed in the District Board's High School, Rukhi, District Rohtak in 1955. He was confirmed in that post on September 1, 1957. Respondent, Rajeshwar Parshad was appointed in the High School after provincialisation on May 12, 1958. Though the Petitioner Ram Lal was thus senior to him in experience and possessed the same qualifications, Rajeshwar had been called for promotion to the selection grade, while the petitioner was ignored. Likewise, petitioner Ram Niwas, also a trained Master (B.A., B.T.), was appointed on April 28, 1956, in the erstwhile District Board High School, Asandah, District Rohtak and confirmed as such on October 1, 1957. Respondent Dilawar Singh was appointed in the same school on April 16, 1958. Though, therefore, junior to him in service, Dilawar Singh had been called for promotion to the selection grade only because under the 1961-Rules he had been placed on his appointment in the State cadre. In 1965, Petitioner Ram Niwas was transferred to the Government High School at Rajlugarh District Rohtak, where in 1968 he was officiated headmaster for about six months. Yet, two of the appointees recruited after October 1, 1957, by reason of their being their being placed in the State cadre, would be promoted to selection grade, while the petitioner, though senior to them, will not get such a chance. Being thus promoted to the higher grade earlier than the petitioner, the petitioner not only lost his chance of higher grade but also chances of being appointed headmaster in future. Such a result has come about as a consequence of : (a) splitting of the service into two cadres, (b) the provincialised cadre being made a diminishing cadre, and (c) by transfer of post falling vacant in the provincialised cadre to the State cadre.

48. The complaint of the petitioners was that as a result of the implementation of the 1961-Rules : (a) all State schools masters appointed before October 1, 1957, have been promoted to the selection grade, and (b) masters appointed after that date, though junior in service than the provincialised masters, have got quicker chances of being promoted to the selection grade than their counterparts in the provincialised schools. The anomaly of such differential treatment was that though in some cases provincialised masters, by reason of their longer experience, have been called upon to officiate as headmasters, yet when it came to the promotion to the selection grade, those who were junior to them in service but were placed in the State cadre as a result of the said Rules, have been called earlier for being promoted to the higher grade. On the ground that the splitting of the service into two artificial cadres giving rise, as aforesaid, to differential treatment to the two categories of masters, the petitioner challenged also the validity of two memos, dated February 20, 1968, and March 3, 1970, issued by the Director of Public Instruction, under which selection from amongst the members of the State cadre for promotion to the selection grade was proposed. These proposals are for those deemed to have been appointed in that cadre between October 1, 1957 and February 13, 1961, although they were posted in the provincialised schools. The grievance was that although serving in the same schools, the working of the 1961-Rules had enabled those junior to the

petitioners to get better and quicker promotional chances to the detriment of the petitioner's interest. For reasons almost identical to those taken in the junior teachers' writ petition No. 657 of 1970, the petitioners claim that the 1961-Rules, as also the said memos, should be declared invalid and the respondent-State should be compelled to treat the petitioners and those others in a like position as senior to all the masters appointed subsequent to their appointments.

49. As in the case of the petition by the junior teachers, the basis of the present writ petition is that both these categories of masters formed one class prior to February 13, 1961, but that the Rules of 1961, split up arbitrarily that class into two cadre resulting in the discriminatory treatment to those placed in the provincialised cadre and giving a differential treatment to those placed in the State cadre. The respondent-State denied that basis and pointed out that on October 1, 1957, when provincialisation came into operation, there were State schools, teachers and masters who were governed by 1955-Rules made under Article 309 of the Constitution. These Rules did not apply to those who were taken over to the Government service from the provincialised schools and for whom rules were yet to be made and which rules were ultimately made and promulgated on February 13, 1961. Thus, the two categories of masters were separate, and therefore, there was no question of one class of employees split up by the 1961-Rules into two categories. The Government's plea was that the fact that the two categories of masters received the same scales of pay and allowances or that they did the same kind of work or were even transferable from one type of school to another made no difference to the actual fact that they belonged to two separate categories and were never fused into one class. In fact, even after provincialisation was brought about, the provincialised masters, until January 22, 1960, were not transferable to the State schools. Since the 1955-Rules did not apply to the provincialised masters, and the two categories of masters were not at any stage fused together, separate rules had to be made for them and conditions of service for them had to be laid down after they were taken over to the Government service. In framing the new rules, the Government expressly provided that the provincialised masters and teachers, should form a separate cadre, which cadre should be a diminishing one which would ultimately vanish leaving the State cadre alone in the Government Educational Service. Consequently, when vacancies fell and new teachers and masters were appointed, recruitment was made under 1955-Rules, and as laid down in those Rules, by the Subordinate Services Selection Board. Respondents 4 to 236, recruited after October 1, 1957, were, therefore, deemed to have been taken in the State cadre under 1955-Rules and their rules of service were governed by those Rules.

50. That being so, even though these masters appointed in State cadre were posted and served in the provincialised schools, it made no difference to the fact that the two categories of teachers and masters were distinct and were governed by different set of rules which laid down different sets of rules which laid down conditions of service obtainable to them. Therefore, the mere fact that a master from the State cadre was posted or transferred to a provincialised school did not mean that he should be governed by the Rules governing the provincial cadre or vice versa. The respondent - Government denied that discrimination resulted either as a consequence of the two categories being retained as distinct categories, or by the appointments after October 1, 1957 of new masters and teachers in the State cadre, or by the provision of transfer of posts from the provincialised cadre to the State cadre in the 1961-Rules. If as a result of the working of these Rules the number of posts in the provincial cadre slowly gradually decreased with a corresponding rise in the number of posts in the State cadre and posts in the selection grade also underwent a similar variation, it was due to the decision taken by the Government to make the provincialised cadre a diminishing one. But the Government was not bound to combine the two categories into one class, nor was it not entitled to make separate rules for the provincialised masters who were taken over to the Government service particularly since the Government was confronted with several difficult problems in adjusting and

fixing inter-seniority of the members of the two categories. Since the two categories were governed by different sets of rules and conditions of service obtainable thereunder, each having its own selection grade, even if a member of one cadre got a promotional chance in his own cadre earlier than a member in the other cadre, even though the latter may be junior service than the former, that did not mean that there was any discriminatory treatment to one against the other. The reason is that the two belong to different cadres, are governed by different sets of rules and conditions of service and are entitled to promotional chances within their own respective cadres.

51. According to the respondent-State, it would be erroneous to assume that a person appointed during the period between October 1, 1957 and February 13, 1961, was junior to a person in the provincialised cadre since the former did not belong to the provincialised cadre to which the latter belonged, and the seniority of each was governed by the position he occupied in his own cadre. Likewise, the promotional chances which each would be entitled to depended upon his own position in his own cadre. The fact again was that a person in the State cadre might obtain promotional chances earlier than his counterpart in the provincialised cadre by reason of the provincialised cadre being made a diminishing cadre, a decision to make it so being within the power of the Government. For, the Government was not bound to retain the strength of either of the two categories constant or to make new appointments in the provincialised cadre when vacancies fell therein.

52. The two categories being thus separate from the very inception and they not having been fused into one integrated class at any stage, there was no question of the Rules of 1961 having brought about any arbitrary classification by splitting up any integrated class into two or providing differential treatment or any undue or illegitimate preference being given to one against the other.

53. It is not necessary to dilate any further over the contentions raised by the petitioners since they go over substantially the same grounds as were taken in the teachers' petition. Therefore, the reasons given by us for our decision in the teachers' petition must also govern our decision in this petition.

54. In our view, this petition must fail for the reasons stated by us in our judgment in that writ petition and has therefore to be dismissed. As in that writ petition, there will also be no order as to costs.

Palekar, J. [In W. Ps. No. 97 of 1970 and 657 of 1970] (Dissenting). - These two petitions under Article 32 of the Constitution have been filed by the school teachers in the Haryana State complaining that they have been discriminated against in the matter of promotion to the higher grade. The first petition is by two High school teachers in District Karnal and the second petition is filed by four Primary school teachers in Gurgaon District.

56. Education in Punjab from the Primary to the Secondary stage was the Principal concern of the local bodies both before and after partition. On October 1, 1957, which is an important date for the purpose of these petitions, the local bodies namely the Local Boards and Municipalities were running 321 High Schools, 762 Middle schools and 9,008 Primary schools and one Training Institution. The teachers employed in the High schools and Middle schools were generally known as Head Masters and Masters and their number exceeded 2,400. The Primary school teachers numbered 20,709. Besides these schools run by the local bodies, there were also some schools run by the State Government but they were very few and the teachers employed therein were also few.

57. In the middle of July, 1957, several important decisions were taken by the Punjab Government

with regard to education in the State. The Government decided to take over all the educational institutions of the local bodies and also the personnel thereof. The Council of Ministers accepted the suggestion on July 17, 1957, that all non-graduate teachers like the Primary school teachers in the State schools should be placed in the District cadre and that the further recruitment of such teachers should be at the District level. By a directive, dated July 19, 1957, the Government asked the local bodies that they should not open new schools or appoint new teachers with effect from July 1, 1957, because Government had decided to take over all the local bodies schools with effect from October 1, 1957. This take-over is described as provincialisation of the schools.

58. So far, the pay scale of Masters was Rs. 110-8-190-10-250 and that of the Primary school teachers who were also known as vernacular teachers or junior teachers Rs. 60-4-80-5-120. The Government took a decision that there should be two grades in each of them, 85% of the posts being in the lower grade and 15% in the higher grade which is also known as the selection grade. The higher grade for Masters was Rs. 250-10-300 while that for the junior teachers Rs. 120-5-175. This decision was made applicable both to the teachers of the provincialised schools and the teachers from the State schools on October 1, 1957.

59. Since posts in the schools of local bodies were falling vacant by reason of death, retirement, promotion and the like the Government by their letter, dated August 2, 1957, permitted the appointment of qualified and trained persons against vacant posts but strictly on a temporary basis till October 1, 1957. These posts were to be treated as being vacant on October 1, 1957.

60. On September 27, 1957, the Director of Public Instructions, Punjab, conveyed the sanction of the Governor of Punjab to provincialise all Municipal Boards and District Boards schools with effect from October 1, 1957. By this order, Government created new posts for absorbing all the staff, including the teachers of the schools of the local bodies and declared what should be the scales of pay for these posts. It further declared that the incumbents of the local bodies schools to be provincialised with effect from October 1, 1957, will be given the same grade 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".

61. With a view to explain the new policy of the Government the Education Minister issued a statement on September 30, 1957, to the effect that all provincialised teachers would enjoy the status of fullfledged Government employees, that they would be given the same grades of pay as were given to their counterparts already in Government service, that a joint seniority list of local bodies teachers would be drawn up in accordance with the rules and that principles were being formulated with a view to govern their integration with their counter-parts already in Government service. The policy statement shows that the Government wanted to integrate and have one unit of service and with that end in view, principles were being formulated.

62. Apparently, it took a long time for the Government to come out with its formulation of principles. In the meantime posts in the provincialised schools were falling vacant and new teachers were required to be employed. Promotions had to be effected and the posts which the Government had asked the local bodies not to fill permanently with their letter, dated September 2, 1957, had also to be filled on a permanent basis. Those who were temporarily employed in those vacancies by the local bodies were called for an interview and selection by the Subordinate Services Selection Board of the Government. It may be noted here that the Primary teacher Ganpat Rai, who is petitioner No. 4, was interviewed and selected by the Government Board and his appointment was regularised from September 14, 1957, the date on which he had been appointed by the local body on

a temporary basis. Special reference is made to this appointment here because if he had been regarded as selected for appointment on the date of his interview, he would have been regarded as having been appointed after October 1, 1957, in which case under the impugned Rules he would be treated differently from the other three petitioners and would have been entitled to be promoted like the Respondents over the head of the other petitioners who were admittedly senior to him in service. Several new appointments were made after October 1, 1957, and most of them were in the posts created on October 1, 1957, for absorbing local bodies teachers. In the High School teachers' petition, viz., Writ Petition No. 97 of 1970, all those 236 respondents who are mentioned at serial No. VII in that petition are High school teachers appointed after October 1, 1957. Respondents 37 to 96 in the Writ Petition of the Primary school teachers, viz., Writ Petition No. 657 of 1970, are the teachers appointed after October 1, 1957. As a matter of fact the latter have been appointed on the recommendation of the Subordinate Services selection Board actually in 1959.

63. As already stated Government was thinking of formulating principles for the integration of the provincialised teachers with their counter-parts in Government service and in that respect the Government came to certain decisions in January, 1960. These decisions are contained in a letter, dated January 27, 1960, written by the Secretary to the Government to the Director of Public Instruction. The subject was described as determination of joint seniority of various categories of teachers and fixation of cadres. Several decisions were taken to that end. One was that the staff in the provincialised schools, that is to say, the erstwhile local bodies schools and the Government schools may be kept in separate cadres, one known as the provincialised cadre and the other known as the State cadre. Since the object was to have one unit of educational service it was expedient to treat the provincialised cadre as the diminishing cadre. The vacancies occurring therein would be transferred to the State cadre so that in course of time the provincialised cadre would completely vanish leaving only the State cadre in the field. The State cadre would comprise those who were appointed before October 1, 1957, in the State cadre and those who were freshly recruited after that date. In both the cadres there would be two grades of pay 15% of the strength in each cadre being filled by promotion from the lower grade. All vacancies expected to occur in the lower grade of provincialised teachers by death, retirement and promotion were to be transferred to the State cadre and a proportionate number of posts in the higher grade would also stand transferred to the State cadre. It was decided that roughly for every 11 posts transferred from the lower grade to the State cadre, two posts in the higher cadre should be transferred. That way it was thought there would be no disturbances in the ratio of 15% of higher posts provided for the provincialised cadre. Administrative difficulties in transferring members of the cadre from one school to another would also be obviated and there would be no chances of friction or inefficiency even when in the same schools members of both cadre function. It was clearly enunciated that the two cadres were to be considered as different only for the purpose of future promotions.

64. On coming to know about these decisions, teachers in the provincialised schools were upset. One Joginder Singh who was a Primary school teacher and one Amrik Singh who was a High school teacher filed Writ Petitions in the Punjab High Court. Apart from this contention that the above decisions of the Government were discriminatory, it was further contended that the above decisions had no statutory basis and were therefor illegal. To obviate the latter objection the Government of Punjab promulgated the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961 on February 13, 1961. The Rules embodied the decision under challenge. As the petition was pending the High Court permitted challenges to these rules also. On merits the contention was that the teachers were given equal in all respects and the Rules framed in 1961 by the Government giving effect to the same retrospectively from October 1, 1957, introduced discrimination between the teachers similarly situated and hence were bad under Article 14 and

Article 16 of the Constitution. These contentions were upheld by the Punjab High Court which declared that the 1961-Rules in so far as they created two cadres of persons in the same service and inequality of opportunity for promotion by providing a formula were void being discriminatory. From that decision the State of Punjab came in appeal to this court but that was only in the case filed by Joginder Singh. The State did not file an appeal from the Order passed in the Writ Petition of Head master Amrik Singh. The decision of this court in Joginder Singh's case (*infra*), is reported in the State of Punjab v. Joginder Singh (1963 Supp 2 SCR 169 : AIR 1963 SC 913 : (1964) 1 SCJ 627.). The court was divided. The majority (Sinha, C. J., Wanchoo and Ayyanagar, JJ.), were of the view that the rules did not violate Articles 14 and 16 of the Constitution. In view of the majority "the two cadres started as independent services and the Government never integrated them into one service. They started dissimilarly and they continued dissimilarly and, therefore, the dissimilarity of the treatment by the Rules was not a denial of equal opportunity. The question of denial of equal opportunity could arise only as between members of the same class and since the two services were different and dissimilar there was no question of discrimination". The minority consisting of Subba Rao Shah, JJ., took a different view. They held that the rules differentiated the two cadres only for purpose of future promotions, otherwise they had treated them equal in all respects. There was, therefore, no valid basis for classification so as to justify a differential treatment between their members inter se for the purpose of promotion. They held that the Government, in fact, had given the same terms of employment to the two cadres and in fact constituted a single grade of teachers and, therefore, discrimination between the members of the grade based merely on the source of recruitment clearly infringed Article 16(1) and (2). The above decision was rendered on November 16, 1962.

65. Though the decision of the Supreme Court upheld the contention of the Punjab Government that the two cadres or services were dissimilar, it does not appear that the Punjab Government implemented the rules any time. It is not quite clear why effect was not given to that decision. Perhaps it may be due to the fact that the minority judgment had powerfully pointed out what the result would be if the situation after a few years were to be contemplated. It was pointed out that the discrimination would continue for the next 35 years and juniors in service appointed after October 1, 1957, would steal a march over their seniors in the provincialised service and block entry into the higher posts. It is also possible that the State Government was not happy with certain observations made in the majority judgment to the effect impugned rules enabled vacancies in the selection grade of the State cadre to be filled, in part, by teachers belonging to the provincialised service whenever there were no sufficient members of the lower grade of the State cadre eligible for promotion to the higher cadre. Whatever it may be, it is a fact that the State Government did not try to give effect to the rule; and actually on March 25, 1965, the Government cut the gordian knot and put an end to all bickerings between the teachers by unifying the two scales into one. The unified scale for Primary school teachers became Rs. 60 - 120 - 175 and for the Masters Rs. 110 - 200 - 300. By reason of this unified scale the teachers got pay according to their seniority. The grievances of all Primary teachers and Masters in the junior scale came to an end.

66. On November 1, 1966, the State of Haryana came into existence and some parts of the old Punjab State were included in the State of Haryana. Gurgaon and Karnal are two of the Districts which became part of the State of Haryana. On reorganisation the teachers brought with them their own scales of pay, i.e., the unified scales prescribed by the Punjab Government. On January 5, 1968, the Government of Haryana took some decisions. The unified scale was split up into lower and higher scales, the higher scale being given to 15% and the lower scale being given to 85%. The scales were also revised by merging of allowances and the like. The scale of Primary teachers became Rs. 125 - 250 for the lower grade and Rs. 250 - 300/- for the higher or selection grade. For

the Masters the lower grade was revised to Rs. 220 - 8 - 300 - 10 - 400 and for the higher grade of 15%, which included the Senior Masters, it was Rs. 400/- to Rs. 500/-. After this the Haryana Government put the Punjab Rules of 1961 again into operation. The cases of Masters who had been appointed after October 1, 1957, were called up for considering their promotion and so were the cases of Primary teachers of Gurgaon District appointed in 1959 taken for consideration for promotion. It is not disputed that on an application of the rules these appointees are October 1, 1957, being deemed to be part of the State cadre, would be entitled to be immediately promoted to the higher scale while the petitioners in both the petitions now before us though senior in age and experience and working in the same schools and on the same scales of pay would not be considered for promotion. By the time the petition of the Primary school teachers (W.P. 657 of 1970) was filed, respondents Nos. 6 to 96 were already promoted. In the school masters' petition (W.P. 97 to 1970) this Court directed that if promotions as contemplated were made, they would be subject to the orders of this Court.

67. In Writ Petition 97 of 1970 the two petitioners are masters in High Schools in Karnal District. Both of them are trained graduate teachers. One is B.Sc., B.T. and the other B.A., B.T. The former was appointed as Master in 1955 and the latter in 1956. The respondent teachers have been all freshly appointed between October 1, 1957, and February 13, 1961. They are all junior in service to the petitioners. It is not disputed that the respondent teachers are considered for promotion on the ground that they belong to the State cadre while the petitioners are not considered for promotion because they belong to the provincialized cadre. Similar is the position in the other Writ Petition (W.P. 657 of 1970). The four petitioners are Primary school teachers. They are all trained teachers and are all matriculates. Petitioner No. 1 was appointed in 1956, petitioner No. 2 in 1955, petitioner No. 3 in 1951 and petitioner No. 4, to whom reference had already been made, on September 14, 1957, i.e., only a few days before the provincialization. Respondents 37 to 96 are now recruits appointed on or after July 16, 1959. They have been promoted on the ground that they belong to the State cadre while the petitioners belong to the provincialized cadre. The case of Respondents 6 to 36 is slightly different. They were teachers in Gurgaon District. They were also absorbed in Government service on October 1, 1957, but their service is counted from October 1, 1957, and from that point of view they are said to belong to the State cadre. They and Respondents 37 to 96 are treated on the same footing as they are teachers deemed to have been appointed to the State cadre on October 1, 1957, and thereafter.

68. The promotion of the respondents, though junior to the petitioners in service, is supported on the ground that it was permissible under the 1961 rules referred to above and these rules have been already held to be valid by this Court in Joginder's case (supra). It is not disputed that the petitioners and the respondents working in the same or similar schools were equally qualified and transferable to the same schools. It is not also disputed that an earlier promotion of the respondents to the higher cadre may conceivably block the entry of the petitioners to the senior posts as Head teachers or Head Masters. Prima facie this may appear to be discriminatory but it is contended that there were valid reasons for the classification and since the classification has been upheld by this Court in Joginder's case (supra), the petitioners would not be entitled to any relief. In other words, the respondents, including the State Government of Haryana, support the grounds on which the majority in Joginder's case (supra), was pleased to uphold the 1961 Rules.

69. This bench of seven Judges was constituted to consider whether the majority decision requires to be reviewed.

70. As the facts in both the writ petitions are similar and the same questions are required to be

considered, we shall consider the points involved with special reference to the facts in Writ Petition No. 657 of 1970 in which the principal arguments were addressed to us.

71. Two points of substance were put before us by Mr. Tarkunde on behalf of the petitioners. The first point was that the Government of Punjab had throughout : (a) sought to treat and treated both sections of teachers (provincialised cadre and State cadre teachers) as equal; (b) that it desired to integrate the two into one unit of service and (c) that by the rules of 1961 it created two cadres with retrospective effect from October 1, 1957, with the sole object of securing the same opportunities of promotion for members of these two cadres. In the actual operation of the rules a situation arose, not visualized at the time, which denied equal opportunities of promotion to the teachers. And since the very *raison-de-etre* for the classification was frustrated, the classification became otiose and devoid of any substance. The second point was that, in any event, it was impermissible to effect a classification amongst equals by fictionally deeming members of the same service as belonging to two services. In this respect it was emphasised that all the new appointments made after October 1, 1957, were appointments made in the posts which had been vacated by the members of the provincialised service by death, retirement, promotion, etc., and the respondents having held those provincialised posts till 1961 could never be regarded as different from those who were already holding the provincialised posts. As a result of the rules the vacant posts in the provincialised service were deemed to have been transferred to the State service from October 1, 1957. But neither the rules nor any other rule or circular had transferred the fresh incumbents of these vacant posts to the State cadre. By a fiction, they are also to be regarded as having been transferred to the State cadre along with the vacant posts. It is contended that such a manipulation in one service, whether by rules or otherwise, which leads to the result, though not anticipated at the time, of giving undue advantage to one to the cost of another would be discriminatory and unjust.

72. It appears to me that both these points are correct and the petitions must succeed.

73. The Rules of 1961, namely, the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961, notified on February 13, 1961, have been already referred to in Joginder Singh's case (*supra*) and it is not necessary to reproduce the same. Two things must be noted about these Rules. This so-called provincialised cadre has been created for the first time by these Rules. Till then there was only the State cadre that is to say "the Punjab Educational Service Class III (School Cadre)". The second point to be noted is that this creation of the provincialised cadre in 1961 has been given retrospective effect from October 1, 1957, as if this provincialised cadre had come into existence on October 1, 1957. All the vacancies which took place between October 1, 1957 and February 13, 1961, in the posts created by the Governor's Order, dated September 27, 1957, were deemed to have been transferred to the State cadre.

74. It would, in the first instance, be necessary to appreciate in what way the State Government was looking at these local bodies teachers and the institutions in which they were working. I have come to the conclusion that although it has now suited the State Government of Haryana, as it did the State Government of Punjab in Joginder Singh's case (*supra*), to support the classification made by the Rules, the Punjab Government always considered the provincialised teachers and their counterparts in the State cadre as equal and as belonging to the same class. Preliminary to the take-over of the local bodies schools on October 1, 1957, several decisions had been taken by the Government. One of the very first decisions taken by the Council of Ministers was on July 17, 1957. The Primary teachers appointed in the State cadre were borne on the Divisional List, that is to say, those teachers were transferable within the two or three Districts which made up the Division. The local bodies schools were limited to the territorial area of a District Board or a Municipality and the

members of the staff were transferable within that area. The Council of Ministers, therefore, took a decision that all non-graduate teachers, i.e., to say, teachers, including the Primary school teachers, should be placed in the District cadre and further recruitment should be made at the District level. It was accepted by the Government "that the creation of District cadres will not only expedite administration but also solve the problem of fixing the inter se seniority of the teachers from different Districts. The problem of fixing the inter se seniority between these teachers and the teachers already in Government employ will become simpler". This is the first indication of the intention of the Government to put all the Primary school teachers in one District cadre so that the fixation of inter se seniority between teachers in the Government cadre and the local bodies cadre would become simpler. The very fact that they wanted to have an inter se seniority between the two sets of teachers would show that they wanted to integrate the two sets of teachers.

75. Effective action was taken to take over the schools of the local bodies by the memo, dated September 27, 1957, in which the sanction of the Governor to the provincialisation of all local bodies schools was conveyed. New posts were created in Government service for the absorption of the teachers in the local bodies schools. Thus the teachers of the local bodies schools became Government servants on October 1, 1957. This memo is important in several ways. The pay scales prescribed for these teachers was declared to be the same as was prescribed for the teachers in the State cadre. Even, before this memo, by virtue of orders passed in 1954 and 1956 the scales of pay of teachers in the State cadre and teachers in the local bodies schools had been brought on par. But what is more important is that by this memo, out of the posts given to the Primary school teachers, 15% were placed in the higher grade of Rs. 120 - 5 - 175. There was no higher grade in the local bodies schools and the only scale was Rs. 60 - 120. That was also the scale for Primary school teachers in the Government cadre. But a decision had been taken by the Government on July 23, 1957, that in Government schools also 15% of the teachers should be put in the higher or selection grade and the remaining 85% should be placed in the lower grade. Although this decision was taken by the Government with regard to their schools on July 23, 1957, that was not given effect to till October 1, 1957. In other words, the benefit of the selection grade was given to the State cadre teachers and the local bodies teachers from the same day, i.e. on October 1, 1957, and in the same ratio.

76. Then we have the important statement made by the Minister of Education on September 30, 1957, on the eve of the take-over. The Statement is on record as Annexure A. I. to the rejoinder affidavit filed on behalf of the petitioners. It shows that the Government had decided that with a view to ameliorate the conditions of service of teachers working in the local body schools the status of those teachers was to be brought at par with those working in the Government schools. Since there was always a time lag between the revision of pay of Government cadres and the revision of pay of local bodies cadre it was decided "that the question of local bodies teachers should be settled once for all and the only feasible proposition was to provincialize them". Along with the statement, details of various aspects of provincialisation were attached and the statement went on to say, "Not only are the teachers being brought under Government control but their scales of pay are being simultaneously revised to be brought in line with those working in Government schools". In the details of provincialisation given in the statement it was stated that the teachers will be given the grades of pay as were applicable in the case of those already in Government employ and that their pay will be fixed according to rules. Care would be further taken that there would be no drop in the present emoluments of the local bodies teachers. As regards the question of pension and provident fund, etc., that was under examination and a decision would be given in due course. Finally, on the question of seniority list this is what was stated. "Joint seniority lists of District Board and Municipal Board teachers will be drawn up in accordance with the rules. The principles which will

govern their integration with their counterparts already in Government employ are being formulated". This statement of the Minister in charge of Education on the eve of provincialisation leaves no doubt whatsoever that the teachers in the State cadre and the teachers in the local bodies cadre should be treated as equals and integration principles were being formulated.

77. After October 1, 1957, when the schools of the teachers of the local bodies were taken over and the schools became Government schools and the teachers became Government teachers, rules governing the Government Department were apparently applied to them. It is not the case that the old conditions of service or the rules of the local bodies continued to be operative in respect of these schools or teachers. When vacancies occurred in the posts allotted to these provincialised schools, new entrants had to be appointed. Respondents 37 to 96 were accordingly appointed in 1959 in the provincialized schools of Gurgaon District. Annexure XIX with the petition is an Order of appointment relating to respondent No. 62 which says "that he was appointed as a teacher in the Government Primary school (Provincialised)". Similarly Annexure XX is a letter of appointment as late as September 7, 1960. A new recruit named Maha Singh was appointed to a post in the provincialised school. Promotions were also made in the meantime and the notification, dated March 4, 1960, Annexure XVIII read along with the uncontroverted allegations made in Para 33 of the petition shows that the Director of Public Instruction had been pleased to promote a number of provincialised teachers to the selection grade, and what is more important is that the notification showed them as belonging to the P.E.S. Class III, i.e., the Punjab Education Service, Class III (School cadre) which is now described as the State cadre. All this evidence only goes to show that till the decisions of January, 1960, are implemented and the rules were made in 1961, no distinction was made between members of the State cadre and the local bodies teachers. New appointments were made by the State in vacancies which occurred in the provincialised posts and when promotions were made to the higher grade these provincialised teachers were described as belonging to the Punjab Education Service Class III.

78. With their absorption on October 1, 1957, more than 20,000 Primary school teachers of the local bodies became as much Government servants as the 107 teachers in the State cadre and were governed by the same departmental rules. All of them came under the control and supervision of the same heads of department. In the fixation of their pay, their previous service under the local bodies was counted. Not only the same scale of pay but even the same higher grade was given to them simultaneously with the State cadre. All of them were brought to the District level and made to work interchangeably in the same schools. I should think that there could hardly be anything more decisive of the Government's intention to treat all the teachers as equal.

79. Nor was there a substantial difference in the manner of recruitment of these teachers which could have weighed with the Government to think that there was a real difference between the employees in the State cadre and the employees of the local bodies schools. Under Article 48 of the Punjab Education Code questions relating to the appointment, promotion, leave, dismissal, transfer etc. of teachers employed in schools maintained by local bodies had to be disposed of by the divisional Inspector in the case of Secondary and Middle schools and by the District Inspector in the Primary Schools. Of course this was to be done in consultation with the President or Chairman of the local bodies. In the case of teachers in the State cadre, they were appointed by Officers in the Education Department. In 1953 the Subordinate Services Selection Board was constituted and to this Board was entrusted the recruitment of teachers whose starting pay in the scale was Rs. 50/- and above. For a long time the starting pay of Primary school teachers was Rs. 47-8 annas. But it appears that in or about 1954 the starting pay was raised to Rs. 50/- if the candidate was a matriculate and basic trained. If the candidate was not a matriculate and basic trained, the

appointment was not made by the Board. But it appears more and more matriculates were available after 1953 and Government might have decided that if matriculates were available, they should be given preference and thus the appointments were made by the Board. But there was no statutory rule with regard to the minimum qualification for Primary school teachers till 1957. The State Government made rules called the Punjab Education Service Class III (School Cadre) Rules, 1955 and these rules prescribed that the Primary school teachers should be a basic trained teacher, namely, a matriculate with training in basic education. These rules, however, came into effect on May 30, 1957 and therefore the minimum qualification prescribed under the rules applied only after May 30, 1957. In any case out of 107 Primary school teachers who were on the State cadre list on October 1, 1957, there could not have been many who were appointed by the Board. In fact, it is known that out of 107, there are at least 22 who were non-matriculates. Under the rules which applied to all local bodies in the matter of education, the Punjab Education Code applied to the local bodies schools and the minimum qualifications for recruitment were the same as in State schools. As already state education upto the secondary stage was principally the charge of the local bodies and Primary school teachers had been appointed by the local bodies on the advice of the District Inspector for several decades. When education was not widespread, it was unlikely that matriculates would have applied for jobs of Primary school teachers when the initial salary was Rs. 47-8 annas per month or even less. Therefore, in the earlier years the Primary schools under the local bodies must have been predominantly manned by trained non-matriculates. As education spread and avenues of employment became limited matriculates must have turned even to these low paid jobs and that is why we find that during the last 20/25 years even matriculates applied for the jobs and were appointed as Primary school teachers. In fact on the date of provincialisation, out of 20,709 local bodies teachers, there were 10,495 matriculates. It is seen from the joint seniority list provincialised teachers of Gurgaon District issued by the Director of schools as it stood on September 13, 1957, that till about 1952 more non-matriculates were appointed than matriculates. But after 1952 matriculates had a predominant share. For example between 1952 - 1954 out of every 200 teachers 153 were matriculates and only 47 non-matriculates. In later years the non-matriculates were less than 10 out of Every 200. This only goes to show that matriculates turned to these jobs in more recent years, while in olden days the cadre of Primary school teachers consisted of trained non-matriculates and middle school standard teachers. The minimum qualifications both for the State school cadre and the local bodies schools was the same till May, 1957. The rules did not require till then any minimum qualification. But as matriculates became available in course of time, matriculates were appointed both in the State cadre and the local bodies school cadre. In these circumstances it is no wonder that Government should have decided in 1957 to treat the State cadre teachers and the local bodies teachers as equal. Non-matriculates who were in the service for years and had greater practical experience of teaching and handling little children may not necessarily be considered inferior to raw 18 to 20 years old matriculates joining the service after 1957.

80. After all the State Government was dealing, so far as the Primary school teachers are concerned, with a body of very low-paid servants. They had just 107 Primary school teachers in the State cadre and more than 20,000 Primary school teachers from the local bodies. Since all these teachers were intended to work in the same schools interchangeably, it is unimaginable that a responsible Government would keep these two bodies of teachers separate with a view to give the small body of 107 teachers or those who would be appointed thereafter more advantageous chances of promotion. The Government could not have been unaware of the fact that when these teachers are working in the same schools it would be destructive of morale and discipline to promote a junior teacher into the higher grade and block the prospects of the senior teachers. It is grotesque to think that Government will seek to cut up this low-paid and yet socially useful service into two classes with

the object of giving better opportunities of promotion to one of them, not on the ground of higher qualifications or efficiency, but solely on the ground that the two services had separate origin.

81. The various features of the scheme to which I have already made reference clearly go to show that till 1960-61 it was never the intention of the Government to treat these teachers as unequal. Even in 1960-61 when they treated the two cadres that was not with a view to preserve the independent identity of the State cadre teachers, but expressly for the purpose of not only to integrate the two services into one unit but also to secure the same chances of promotion to both the cadres. I have already referred to the statement of the Minister of Education which indicated that all teachers should be integrated in one service and only the principles for the fixation of interse seniority had to be formulated and that would take sometime. That was done in January, 1960. The decisions of the Government in this respect are contained in the letter written by the Government to the Director of Public Instructions on January 27, 1960. That letter is produced by the petitioner in the rejoinder affidavit as Ext. A.X. Joginder Singh had filed his writ petition after the contents of this letter were known. It may be state here that the decisions taken in 1960 were formulated in the form of Rules and they are the Rules of 1961 to which reference had already been made. The Rules merely reflect the decisions referred to in this letter Ext. A.X. Decision No. (ii) is important and it will be reproduced here :

"11. 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 is felt that there will be no chance of any friction or inefficiency; rather the staff on both of these cadres will work smoothly and harmoniously as their mutual interests will not be jeopardised."

82. This decision clearly goes to show that whereas the Government was very keen to integrate the services as are unit, they were maintaining two cadres merely for the purpose of future promotions. Integration of two parallel services generally consists in absorbing posts in the two services in one unit and appointing the incumbents of the original posts to suitable posts in the new service. There may be several ways in which such integration may be effected. The basic idea of integration is that there should be only one unit of service. It is clear from the decision referred to above that Government had decided that ultimately there should be only one service namely the State cadre. The purpose could have been achieved by absorbing all the provincialised posts at once in the State service. But that was found inexpedient. Government thought that by introducing gradual integration and keeping the two services separate only for the purpose of promotion, there would be no friction at all between the members of the two services. Gradual integration was sought to be achieved by making the provincialised cadre a vanishing cadre, that is to say, all the posts which fell vacant on account of death, retirement, resignation or promotion were to be transferred to the State

cadre and appointments made therein after October 1, 1957, should be 'deemed' to have been made in the State cadre. A certain formula was suggested as to how the transfer of vacant posts was to take place. Out of every 13 posts which fell vacant, two posts should be deemed to have fallen vacant in the higher grade and eleven in the lower grade and these posts were to stand transferred. By this process, two things were sought to be achieved : (1) to increase the number of posts in the State cadre so that the provincialised cadre vanishes in course of time leaving the State cadre alone in the field. By this method, posts in the provincialised cadre are absorbed in the State cadre, not at once, but gradually so that in course of some years there is one unified service. That is a process of integration; (2) The other object which was sought to be achieved was to keep the incumbents of the posts into two separate sections with the sole object of ensuring equal chances of promotion. It was thought that by transferring posts inclusive of two higher grade posts from the provincialised section to the State section the chances in both sections of future promotions would be the same. That is why it was emphasised in the letter "that the two cadre would be separate only for the purpose of future promotions". It was further felt by the Government that on account of this scheme by which gradual integration was achieved, there will be no chances of any friction or inefficiency. In fact it was felt that the staff of both these cadres will work smoothly and harmoniously as their mutual interests will not be jeopardised. It is obvious that the decision of the Government was inspired by the desire to integrate the two services in due course and the classification into two cadres was a temporary expedient devised with the sole object of ensuring equal chances of promotion. The elaborate method incorporated in Rule 3 of the Rules of 1961 was intended to serve this object.

83. The point was further emphasised by the Government at the time of making the Rules on February 13, 1961. It must be remembered that at this stage Joginder Singh had filed his Writ Petition in the Punjab High Court and these rules were made to obviate one of the objections taken by Joginder Singh that the decisions contained in the letter, dated January 27, 1960, referred to above were not statutory. Along with the Rules, Government published a detailed explanatory note and it is Annexure XXIII to the petition. The very first sentence of this note or memorandum shows that the Rules had been devised only with a view to determine inter-se-seniority. It says "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". It was then stated that three alternatives were considered. The alternatives are classified as (a), (b) and (c), but what is important to remember is that these three alternatives had been considered "with regard to the integration of the two services". Of the alternatives (a), (b) and (c), (a) and (b) were rejected in favour of (c) and then reasons are given why the alternatives (a) and (b) were rejected and the alternative (c) was accepted. The problem to which the Government had to address itself was how to fix the seniority between teachers of the local bodies, schools and the State teachers. The Government had already taken a decision that the local bodies teachers must be allowed to count their service in the local bodies schools. The memo says "it was considered that the service under the local body was as much a service rendered to the society as service rendered by the teachers of erstwhile Government schools and giving any advantage to those who were lucky enough to get into Government service over those who joined the service of local bodies would not be fair and equitable". Having adopted this equality principle, the Government was faced with one other difficulty. It had happened in the years gone by that when Government advertised for Primary school teachers, some teachers of local bodies had applied for those posts and they had been selected and appointed in the State cadre. However, when they were so appointed, they were not permitted to count their previous service in the local bodies and were deemed to have been appointed in the State service from the date they took charge of the posts in the State service. Therefore, the difficulty now arose between local bodies teachers who had already come into the

State service prior to October 1, 1957 and the local bodies teachers who were absorbed in the State service on October 1, 1957. If the whole of the service in the local bodies was to be counted, that advantage would go only to those absorbed on October 1, 1957, but not to those who had been already appointed in the State service. That would have been unfair to the latter and this was the main difficulty in the way of determining inter-se-seniority. In order to get over this difficulty, the alternative (a) and (b) were rejected and alternative (c) was adopted as that was believed to be just and fair. The Memo says "in order to ensure the same chances of promotion to the staff of erstwhile Government schools as existed before the provincialisation of local bodies schools and to give the benefit of promotion against a large number of posts created directly as a result of provincialisation of local bodies schools it was decided to adopt alternative (c) and to create two separate cadres - one for the provincialised staff to be known as 'provincialised cadre' and the other for erstwhile Government staff to be known as "State cadre". (The word 'same' is underlined by me). What follows is very important. "As it was never the intention to set up any separate section of teachers within the Department for all time to come, it was decided that all staff which will be recruited after the date of provincialisation, whether for the old Government schools, provincialised, upgraded or newly opened schools will be borne on the 'State cadre'. Although the provincialised staff will be kept on a separate cadre, yet in order to remove any chances of friction or inefficiency and in order to achieve emotional and integral unity, it was decided that a teacher could be transferred/posted to any school, whether provincialised or erstwhile Government irrespective of the fact that the belonged to the provincialised cadre or the State cadre". Nothing can be clearer than this. Government has been throughout very anxious to achieve emotional and integral unity of the service of the Primary school teachers and the separation into the State cadre and provincialised cadre was devised with no other object but to secure the same chances of promotion in both the cadres. Throughout, the Government wanted to be fair and just. It never wanted to treat one class of teachers as inferior to the other class of teachers. Owing to the exigencies of appointments in the State cadre prior to October 1, 1957, it had not become possible to integrate all the posts at once. Indeed, the object was to integrate. But integration was to be gradual so as not to cause any upset in the promotional chances in both cadres. Government believed that the method suggested in the Rules would succeed in removing all chances of friction and inefficiency and achieve emotional and integral unity, the teachers being available for appointment interchangeably in all the State and provincialised schools. Thus the cadres were created not with a view to keep them separate but with a view to integrate them into one Government body of teachers, teaching in the same schools as one emotionally integrated unit. That the idea was to integrate and not to divide is also clear in Para 8 of the Memo. It was realized that as the State cadre teachers were not entitled to be promoted to the higher grade for five years after their appointment and in the meantime a large number of vacancies from the higher grade in the provincialised cadre was likely to be transferred to the higher grade of the State cadre, there would be a gap, i.e., to say a large number of posts in the higher grade of the State cadre would remain unfilled. In the minority judgment of Joginder Singh's case (supra) this situation is described as a 'breakdown'. (See page 202 of the report). The majority judgment, on the other hand, held that these unfilled vacant posts in the higher grade of the State service would be liable to be filled in part by teachers belonging to the provincialised service. (See page 194 of the report). What was, however, lost sight of, with the greatest respect, is that if that is the true effect of the Government decisions, that would put an end to the whole pleas of the State that there was no integration. If provincialised teachers of the lower grade can fill posts permanently in the higher grade of the State cadre whenever candidates were not available from the State cadre, no better evidence of integration of the two services is necessary.

84. It is not necessary for me to go so far. I would be content with the conclusion that the State

Government throughout considered the teachers as equal in all respects, giving them the same scales of pay, made them work in the same schools and endeavoured to ensure the same chances of promotion to all. The Government thought that the best way of ensuring equal chances of promotion was to keep the cadres separate for sometime and effect promotions separately in the two cadres by a formula which ensured 15% higher posts at any given time to the provincialised cadre and 15% to the State cadre. In this way the State believed that it had effected emotional integration of both the sections of teachers.

85. I have not the least doubt that the State Government had devised these rules with a view to be fair to every body. The Government, however, failed to visualize that by reason of the wide disparity of posts in the two cadres (107 in the State cadre and 20,700 in the provincialised cadre) the number of higher grade posts in the State cadre would swell by the transfer of a disproportionately large number of posts which fell vacant in the provincialised service and that juniors in Government service would, after completing five years of qualifying service, become eligible to be appointed to all those higher posts in the State cadre much earlier than their seniors who were borne on the provincialised list. The majority judgment, with respect, does not appear to have been aware of the future impact of the Rules. The minority judgment, however, shows in detail how the Rules would result in the above situation. (See pages 200 to 202 of the report). In fact the judgment shows that the learned Solicitor-General who appeared on behalf of the State of Punjab, admitted that the Rules would lead to such a result. That it has actually resulted in such a situation is clear from the present petitions. The petitioners in both the petitions had joined service long before October 1, 1957. Most of the respondents had entered service much after October 1, 1957. By reasons of the operation of the Rules, they have been selected for appointment and in the case of the Primary school teachers, the appointments have also been made. There is, therefore, no doubt that if the Rules are given effect to, seniors in the provincialised service will have to remain in the lower grade while the juniors in the State cadre will go into the higher grade. Once they go into the higher grade, they will become seniors for all purposes and will block the entry of a member of the provincialised service to higher posts of Head teachers in the case of Primary schools and Head Masters in the case of Secondary schools.

86. That was not the result that the State Government had desired. This is clear from the Government's conduct after the decision in Joginder Singh's case (supra). The Punjab Government did not enforce the Rules. It may have been appalled by the situation projected in the minority judgment at pages 200 to 202 of the report; or it may have been unhappy with the view of the majority that the impugned rules enabled vacancies in the selection grade of the State cadre to be filled in part by the teachers belonging to the provincialised service - a view based on Para 8 of the Explanatory Memo accompanying the rules but not reflected in the Rules themselves. However that might be, it is a fact that in spite of the majority view being in favour of the contention raised by the Government, the State of Punjab did not give effect to the Rules. On the other hand, on March 25, 1965, the two grades of Rs. 60 - 120 and Rs. 120 - 175 were unified by the Order of the Government of Punjab and thenceforward there was only one grade of pay Rs. 60 - 175 with effect from April 1, 1965. With the unification the two grades one ordinary and the other promotional disappeared and the teachers whether they belonged to the State cadre or the provincialised cadre continued in one grade - each one drawing his salary in accordance with the years in the service. All the trouble to which the rules had given rise ended. This further establishes that the State Government had always considered the two sections of teachers as equals.

87. The State of Haryana came into existence on November 1, 1966 and the unified grade continued to all these teachers after the creation of the Haryana State. Only in January, 1968 the Haryana State

resurrected the Rules of 1961 and gave effect to them. In doing so the complaint of the petitioners is that the State Government has accepted the interpretation of the rules as given in the minority judgment and not implemented the view of the majority that the impugned Rules enabled vacancies in the selection grade in the State cadre to be filled in part by teachers belonging to the provincialised service by the devise of the block system which, according to the majority judgment, improved their position. It is submitted by Mr. Tarkunde that if the view of the majority judgment had been implemented by the State of Haryana, he would not have pressed his petition at all.

88. Having regard to the facts discussed above, I respectfully agree with the view expressed in the minority judgment, that after the District Board and Municipal Board school teachers were taken over by the Government of Punjab an amalgamated Educational Service was evolved (p. 206) and that the Government by giving the same terms of employment had in fact constituted a single grade of teachers - State and Provincialised (p. 207). After doing that, as shown in the same judgment, it was not open to the Government in 1961 to seek to provide a differential treatment between the two sections constituting one unit by retrospective provision (p. 208). On the Government's own showing, the teachers were divided into two cadres namely the State cadre and the provincialised cadre in 1961 solely to give equal chances of promotion to both sections of teachers. The plan, however, miscarried owing to circumstances not clearly visualized at the time and resulted in frustrating the object of securing equality in the matter of promotion. With that the *raison-de-tre* for the classification disappeared and the question of linking it with the object did not survive.

89. With the greatest respect the majority judgment proceeded on certain assumptions made almost at the commencement of the judgment. (See p. 174). The learned Judges thought 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-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. I have endeavoured to show from the material on record that was not the true position. The true position, as I have explained, was to evolve one service out of two parallel services, the members of the two services being regarded as equal in all substantial respects. What the State Government desired was their integration and the Government accepted gradualism in the integration only with a view to secure same chances of promotion to both the sections. It was thought desirable to keep the two sections in two compartments only to provide for equal chances of promotion to them.

90. In any event it is very difficult to see how those teachers who were appointed for the first time after October 1, 1957, in the vacancies of the provincialised service can be permitted to steal a march over their seniors in the matter of promotion. There were very few posts in the State cadre on October 1, 1957. The total number of these teachers in the whole State was just 107. On the other hand, there were nearly 20,700 Primary school teachers in the so-called provincialised cadre and each one of them was given a post - the posts being specifically created for them by the Government on November 27, 1957. There were already many vacancies in the local bodies schools, because by a directive in July, 1957, the local bodies were debarred from filling those vacancies except on emergent or temporary basis. Then there were further vacancies after October 1, 1957, in the provincialised posts by retirement, promotion, death and the like. A large number of new teachers had to be appointed in these vacancies and in one District of Gurgaon only Respondents 37 to 96 were appointed on or after July 16, 1959. It is true that they were appointed on the recommendation of the Selection Board but it was the only recommending authority at that time for appointments to be made by the Government. Indeed, they had all the minimum qualifications, viz., basic trained

matriculates. It is also not disputed that when they were appointed they are appointed in provincialised schools where the vacancies occurred and other provincialised teachers senior to them both in age and experience were working. The complaint of the petitioners is that they and hundreds of others of provincialised teachers in the State equally qualified at the time of the appointment have been by virtue of the Rules asked to wait for their chance in the provincialised cadre for promotion in the higher grade, while the respondents, who are very much junior to them in age and experience have been promoted to the higher grade. This has been done by the device incorporated in the Rules of 1961 by which the vacancies which had occurred in the provincialised cadre till 1961 were fictionally deemed to have occurred in the State cadre. There is a double fiction. The first is that vacancies which occurred in the provincial service are deemed to have been transferred to the State service and on such transfer the vacancies are deemed to have taken place in the State cadre. Unfortunately we are not referred to any circular or rule by which though the vacancies have been transferred to the State cadre those who had been appointed in the vacancies were similarly transferred to the State cadre. It seems to have been assumed that with the transfer of the vacancies the appointees in the vacancies would get automatic transfer. That is another fiction which has been introduced. The effect of all these fictions is only to transfer a part of the provincialised service to the State cadre. If by doing this the State introduces an artificial distinction between person holding provincialised posts on October 1, 1957 and those holding the same posts after October 1, 1957 and the effect of this distinction is to give the latter an earlier chance of promotion, the device, however well-intended, would create discrimination violating Articles 14 and 16 of the Constitution. Though it may be theoretically possible to regard the employees in the State cadre prior to October 1, 1957, as members of a distinct class, it is impossible to do so with regard to those who have been appointed in the vacancies in the provincialised school after October 1, 1957. Being appointed in the posts of the provincialised service, they being to the same class as the other members of the provincialised service and it is not possible by any artificial device to give more advantageous chances of promotion to the new recruits. What I have said here with regard to the Primary school teachers is equally true with regard to the teachers appointed in the High schools after October 1, 1957 and in respect of whom the first of the two writ petitions has been filed. In my view even if the classification is accepted as a reasonable classification in respect of the members of the State cadre who were in existence on October 1, 1957, the Rules in so far as they discriminate between the petitioners and the teachers who have been appointed after October 1, 1957, in the vacancies of provincialised posts would be bad under Articles 14 and 16 of the Constitution.

91. It was suggested in the course of arguments that many provincialised teachers got straightaway into the selection grade posts on October 1, 1957, without having to wait for five years like the members of the State cadre. That can hardly be a consolation to teachers like the petitioners. The petitioners were not profited by the 15% of selection posts because they were low down in the provincialised list. There must have been thousands and thousands above them. It is true that since the selection posts in the provincialised service are diminishing only in proportion to the vacancies in that cadre, there will be sufficient vacancies in the selection posts which will be availed of sometime in the future by the petitioners. But the rub lies in the fact that by the transfer of vacant posts along with the new incumbents to the State cadre the State is unwillingly affording an advantage to juniors enabling them to step into the senior grade earlier. All of them are working in the same schools where petitioners were considered seniors at the time the respondents were newly appointed. Now by their promotion to the senior scale by virtue of the device incorporated in the rules and not on the ground of seniority-cum-merit the petitioners would be condemned to remain juniors and the posts of Head teachers and Head Masters will be automatically denied to the petitioners and others like them in the provincialised service. As already pointed out neither the

qualifications nor the method of recruitment was so substantially different that one could say that one cadre is definitely inferior in character. The State Government never thought so and we would not be entitled to do it. Both in the State cadre as also in the provincialised service there were both matriculates and non-matriculates. As on October 1, 1957, there are more than 10,000 trained matriculates in the provincialised cadre. Not all of them have been accommodated with selection posts before Respondents 37 to 96 were considered. Articles 14 and 16 of the Constitution are not merely concerned to see whether broad justice is done en-masse. They are also concerned with the right of an individual not to be discriminated against. At Annexure V a list of provincialised teachers of Gurgaon District has been given. Two of them, viz. Giraj Sharma and Kishan Chand at serial Nos. 376 and 418 appear to be B.A., B.Ts. The former was appointed in 1947 and the latter in 1948. It is alleged in Para 52 of the petition, without contradiction, that the teachers serial Nos. 333 to 423 in the list, including the two specifically referred to above, have still to wait for their promotion into the higher grade while the respondent matriculates appointed nearly ten or eleven years later in 1959 are promoted to the higher grade.

92. The majority decision does not appear to have considered the question with regard to juniors appointed after October 1, 1957, stealing a march over those who were absorbed on that date. The minority judgment did consider the question and point out how unequally the rules will operate in future. I am referring to this position because Mr. Tarkunde has put forward this as one of the grounds for a review of Joginder Singh's case (supra). In *Keshav Mills Co. Ltd. v. Commissioner of Income-tax* ((1955) 2 SCR 908 : AIR 1965 SC 1636 : (1965) 2 SCJ 75 : (1956) 56 ITR 365.), general principles have been formulated when this court may review its earlier decision. Mr. Tarkunde has given several other reasons for the same. Firstly he contends that the Haryana Government has not implemented the decision of the majority in Joginder Singh's case (supra) by proceeding to reserve posts in the higher grade of the State cadre for members of the provincialised service. That according to Mr. Tarkunde was an integral part of the majority judgment which, though in his favour, he cannot, in all honesty, support on the basis of the actual rules. Secondly the majority judgment did not consider whether the rules were discriminatory as between the teachers who were appointed in provincialised schools prior to October 1, 1957 and those who were appointed subsequently. Thirdly, as already pointed out the majority judgment proceeded on certain assumptions made at the very beginning of the judgment and those assumptions are not justified on the material placed before the court now. Fourthly at the time when Joginder Singh's case (supra) was decided the rules had not been actually put into operation but now that the rules have been implemented by the Haryana State Government it is found that they have resulted in gross discrimination. I think that in view of these substantial considerations and to promote harmonious relations amongst all teachers the decision in Joginder Singh's case (supra) requires to be reviewed.

93. Some argument was advanced on the ground of delay. It was argued that the rules were of 1961 and the present petition has been filed a long time after the rules were notified. I do not see any force in this contention. Even before the rules were framed, Joginder Singh had filed his Writ Petition and though it was finally disposed of in 1962 the Punjab Government did not think it fit to enforce the rules. By unifying the two scales in 1965 the State Government practically buried the rules. It was only in 1968 that the new State of Haryana resurrected them, whereupon the teachers concerned made a representation. When the representation was unsuccessful they reported to this court. There is, therefore, no undue delay.

94. It was further pointed out that a review of the decision in Joginder Singh's case (supra) may affect a very large body of teachers not merely in the State of Haryana but also in the State of Punjab and the State of Himachal Pradesh. It is said that after the reorganisation of Punjab some

portions are in Punjab - others in Haryana and certain others in Himachal Pradesh. The teachers have been distributed over all these States and since all those teachers who would be affected are not made parties a decision binding them all cannot be made. I do not think that there is much substance in this also. The State of Punjab, which was made a party, has not put in an appearance. It is not clear from the record what areas have gone to Himachal Pradesh. The State of Punjab possibly does not want to contest the petitions because the unified scale of pay is still prevalent in the Punjab region. In the petitions before us the Primary teachers are from District Gurgaon and their appointments are at the District level. Therefore, they have made parties only those teachers who have now been promoted inspite of their protest. In the other case, the two High school teachers have made parties those whose cases are being considered for promotion disregarding the petitioners claim. They number more than 200. In my view all interests are largely represented. I do not think, therefore, that on the ground of want of all parties the petitions are liable to fail.

95. In the result I would allow the petitions quashing the impugned Rules of 1961 as violative of the petitioners' fundamental right under Articles 14 and 16 of the Constitution.

Beg, J. [In W.P. Nos. 97 of 1970 and 657 of 1970] (Dissenting). - I regret very much my inability to concur with the view of the majority of my learned brethren that no case of injustice or denial of the protections conferred by Articles 14 and 16 of the Constitution could be made out in the two cases before us. The facts of each of these two cases have been dealt with so extensively in the judgments of my learned brethren that I need not repeat any of them. Moreover, I share so completely the views expressed by my learned brother Palekar that I do not consider it necessary for me to say anything beyond that I wholly and respectfully adopt the judgment of my learned brother. I will, however, add a few observations to indicate my special difficulties in accepting the opinion of the majority of my learned Brethren for which I have the greatest respect.

97. It seems to me that it is not enough to hold that there is, in fact, a classification of the teachers before us into two cadres by finding that "the two services started dissimilarly and continued dissimilarly" in any respect, or that members of either of the two cadres were, for purely historical reasons, differently treated in any matter whatsoever in the past. These differences may be very relevant for some purposes. In the cases before us these largely accidental dissimilarities, which have almost evaporated and disappeared, were put forward before us only to justify a difference made in the promotional chances of the two cadres. If such is the object of differences shown between the two classes, I think we are entitled to ask : Are any number of differences at all material except those which affect the competence and qualifications of a teacher as a teacher as compared with others discharging a highly responsible duty or trust ?

98. It appears to me that even the qualifications of two groups of teachers, considered "in bulk" or as groups, will not be very material. As is evident from admitted facts, there are non-matriculantes in both the cadres. It is the competence and qualifications of particular teachers which really matters. If a teacher is highly qualified, either due to his practical experience or due to his knowledge, as evidenced by the degree he possesses, but he happens, by mere accidents of life, to be placed in the provincialised cadre, I am unable to see why this fact alone should diminish his promotional chances. We must be held to have been unfairly treated when we find that another, with far less experience and educational qualifications, can or does get preference over him due to equally fortuitous reasons which placed him in the State cadre. Rules which have such an effect would, I think, be struck by Articles 14 and 16 of the Constitution.

99. I may here refer to the letter, dated January 27, 1960, from Shri G. D. Kapur, Secretary to the

Government of Punjab, Education Department (Annexure A-X to the Rajinder Affidavit of Zabar Singh) which was repeatedly relied upon on behalf of the petitioners. It declares, as follows the sole object of separation under the impugned rules of 1961 "There would be no administrative difficulty with regard to the transfers of both the cadres from one school to the other irrespective of the fact whether it is a Provincial School or a Government School, inasmuch as the two cadres would be separate only for the purpose of future promotions". If this is a frank declaration of the only purpose of a choice of two cadres instead of a single cadre, it would certainly seem that this classification is retained only for the purpose of making a difference in promotional chances and that there is no other reason for it. In other words, the classification, which ought to be the justification for differential treatment, would become a mere device or pretence for according differential treatment. The matter, however, does not rest with a mere declaration of this kind. My learned brother Palekar, has given a whole host of reasons which irresistibly lead to the conclusion that the Government of Punjab had rightly concluded that a separate classification and treatment of the two cadres, each with a heterogeneous composition, is not really justifiable.

100. It seems to me that, whatever may be the view of any Government on the subject, if it appears to this Court, on an examination of all relevant facts that two groups of Government employees, doing exactly the same type of work, possessing the same kind of qualifications and competence and experience, ought to be placed in one category, having regard to the object which the classification must serve, we would be justified in holding that, for that particular purpose, they do form one class. The purpose and the basis of the classification must be justly and reasonably correlated.

101. It appears to me that a division of teachers into two cadres for promotional prospects only is highly artificial, unreal, and unjustifiable. The only rational classification for such a purpose appears to me to be one which could be based on merit-cum-seniority. If some means were devised, as it can be quite easily, for making a rational and intelligible classification for the purpose of promotional chances, the result may well be that, while the better qualified and more competent, whatever may be the source or cadre from which they come, are promoted, the others are completely shut out. Such a result would be eminently just and reasonable and above criticism. As I understand the position taken up on behalf of the petitioners, they do not object to the introduction of any such obviously just and proper criteria for selection to a higher grade. But, what they do object to is the imposition of artificial quotas between the two classes made for such a purpose. Such a device is unrelated to individual merits. If, as I venture respectfully to suggest, merit and competence are the only relevant considerations for the purpose of the particular object sought, other differences are not material for justifying the difference made in promotional chances.

102. I am also unable to see how the block system can serve as anything more than a stumbling block in the way of achieving the just and rational object of giving preference to the most meritorious and competent over others assuming, as we should, that this must really be the object behind rules affecting promotional chances. Indeed, in the earlier case of *State of Punjab v. Joginder Singh* (1963 (2) Supp SCR 169 : AIR 1963 SC 913 : (1964) 1 SCJ 227.), the majority view of this Court was based, inter-alia upon the conclusion that the "block system" seemed to operate more favourably to the provincialised cadre than to the State cadre. I confess that I was not at all clear in my mind how the block system has operated or is still operating more to the advantage of the provincialised cadre than that of the State cadre. I am, however, after going through the judgment of my learned brother Palekar, convinced that the rules of 1961 affect the interests of petitioners before us so detrimentally and result in such patent injustice to them that I feel bound to hold that the petitioners' complaints of violations of Article 16 of the Constitution, are justified.

103. I cannot, speaking for myself, refrain from hoping that the State of Haryana will follow in the footsteps of Punjab and suitably revise its rules so that there is no dissatisfaction amongst an extremely valuable, though poorly paid, section of public servants due to palpable injustice.

104. I concur with the judgment and the order proposed by my learned brother Palekar.

105. Order. - As per the decisions of the majority, these writ petitions are dismissed. There will be no order as to costs.

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