

B. Venkata Reddy and Others

Vs

State of Andhra Pradesh and Others

M. V. L. Narasimha Rao and Others

Vs

State of Andhra Pradesh and Others

Gorle Appala Naidu and Others

Vs

Government of Andhra Pradesh and Others

Civil Appeals Nos. 1652 to 1657

(CJI Y. V. Chandrachud, A. N. Sen, A. Varadarajan JJ)

08.08.1983

JUDGMENT

VARADARAJAN, J. -

1. These appeals by special leave are directed against the Judgments of the Andhra Pradesh administrative Tribunal, Hyderabad Writ Petition 941 of 1976. C.As. 1652 to 1659 of 1978 have been filed against the common judgment dated August 31, 1978 in Representation Petition 595 of 1977 and batch in which common issues arose for consideration while C.A. 415 of 1979 has been filed against the separate judgment, dated August 31, 1978 in Transferred Writ Petition 941 of 1976. All these appeals by the petitioners before the tribunal were heard together in this Court and will be disposed of by a common judgment.

2. The main judgment of the Tribunal in Representation petition 595 of 1977 and batch is in Representation petition 595 of 1977 in accordance with which the other representation petitions in the batch have been disposed of as stated elsewhere in this judgment. Representation Petition 595 of 1977 was filed by seven petitioners of whom petitioners 1 to 6 were working as principles of Junior Colleges at various places while the seventh petitioner was working as a junior lecturer in Government College, Srikakulam in Andhra Pradesh and claimed to be ripe for promotion as principal of Junior College on the basis of his original seniority among junior lecturers. We will refer to the parties in these appeals as arrayed before the Tribunal for the sake of convenience.

3. The seven petitioners in Representation Petition 595 of 1977 who were working as post-graduate assistants or headmasters in the Zila Perished Higher Secondary Schools at different places were appointed as junior lecturers in 1969 as they were all post-graduates who had passed in the first or second class with 50 per cent marks and above and were fully eligible for appointment as junior lecturers. The petitioners' contention is that under the Ad Hoc Rules governing junior lecturers the

being post-graduates who had passed in first or second class, should be placed in the seniority list above post-graduate assistants who hold third class post-graduate degrees. The second respondent, Joint Director of Higher Education, Andhra Pradesh, prepared a subjectwise seniority list in 1974 as per the rules, placing the seven petitioners in Representation Petition 595 of 1977 at Nos. 17, 15, 20, 21, 23, 40 and 41 respectively. On the basis of that seniority junior lectures up to the rank of 40 in that list were promoted as principles of various junior Colleges. The first respondent State of Andhra Pradesh, prepared a revised seniority list as per the directions of the Andhra Pradesh High Court in Writ petition 4358 of 1974 and Writ Appeal 920 of 1975. In that revised seniority list issued in 1976 the petitioners in Representation Petition 595 of 1977 have been placed at Nos. 380, 54, 390, 392, 406, 368 and 374 respectively. The petitioners' contention was that third class post-graduate degree holders who were appointed for the first time in 1970 and 1975 as junior lecturers were shown in the said revised seniority list as seniors to the petitioners though the petitioners had all been appointed as junior lectures in 1969 itself and were regularised as early as in November 1969 and under the Ad Hoc rules framed by the Government, post-graduate assistants with first and second class post-graduate degrees should be treated as another group and as senior to post-graduate assistants with third class post-graduate degrees, who should be treated as another group. The petitioners in Representation Petition 595 of 1977 prayed in these circumstances for quashing the revised seniority list issued by the first respondent State of Andhra Pradesh on December 27, 1976 so far as they are concerned and for restoration of their old seniority as per the earlier seniority list of 1974 or in the alternative for declaring that Rule 13(1) of the Ad Hoc Rules, 1973 dealing with seniority of junior lecturers is violative of Articles 14 and 16 of the Constitution.

4. Rule 13(1) and (2) of the Ad Hoc rules framed by the Government under Article 309 of the Constitution read as follows :

Rule 13(1). The seniority of a person appointed under clauses (i) and (ii) of sub-rule (1) of Rule 3 shall be determined with reference to the date of his actual appointment as a post-graduate or the probable date on which he would have been appointed as post-graduate assistant but for his appointment or promotion to a higher post;

(2) The seniority of any person appointed under clauses (iii) of sub-rule(1) of Rule 3 shall be determined with reference to the date of commencement of his probation :

Provided that no such person shall be senior to any person appointed under clause (i) or (ii) of sub-rule (1) of Rule 3 :

Provided further that no person appointed under sub-clause

(b), sub-clause (c) or clause (iii) of sub-rule (1) of Rule 3 shall be senior to a person appointed under sub-clause (a) of that clause

5. Rule 3 of the Ad Hoc Rules, 1973 reads as follows :

Rule 3. Appointment. - (1) Appointment to this class shall be made as follows :

(i) First by appointment of post-graduate assistants in Category I-A of Class II and selection grade assistants in Grade I of Category 2 of Class II in the Andhra Pradesh Educational Subordinate Service or headmasters of High Schools and post-graduate assistants in Zila Parishads High Schools and such of the Municipal Schools as are converted into Junior Colleges;

(ii) Secondly, if there are no suitable and qualified persons available for appointment under clause (i) then by appointment of trained graduates possessing post-graduate diploma in physical sciences in the scale of pay admissible to post-graduate assistants immediately before the commencement of these rules;

(iii) Thirdly, if there are no suitable and qualified persons available for appointment under sub-clause (i) or sub-clause (ii) -

(a) By recruitment from among the headmasters and post-graduate assistants in recognised Multi-purpose or Higher Secondary Schools under private management or under the management of the Municipality which are not converted into Junior Colleges; or

(b) By transfer from School assistants in Grade II or Category 2 in Class II and pandits (including Hindi pandits), Munshis Grade I in Category I of Class III of the Andhra Pradesh Educational Subordinate Service or by recruitment by transfer from any other service; or

(c) By direct recruitment.

(2) preference shall be given for appointment under clause (i) or sub-clause (a) of clause (iii) of sub-rule (1) -

(a) Firstly to persons with first or second class post-graduate degree;

(b) Secondly to persons with a third class post-graduate degree with not less than five years of service as a post-graduate assistant or selection grade assistant in the Andhra Pradesh Educational Subordinate Service or as a headmaster of a Zila perished High School or a post-graduate assistant in the school under the management of a Zila perished or a Municipality;

(c) Thirdly to persons with a third class post-graduate degree with less than five years' service as a post-graduate assistant or selection grade assistant in the Andhra Pradesh Educational Subordinate Service or as a headmaster of High School or post-graduate assistant in a school under the management of a Zila Parishad or a Municipality

6. The Andhra Pradesh Government decided in 1964 that the secondary school education should be of 10 years' duration instead of 11 years and that it should be followed by a two years' intermediate collegiate education in the place of the then existing higher secondary and multi-purpose system commencing from 1969-70, Accordingly, the Government decided in G.O.Ms. 1920, Education, dated October 25, 1968 that in the existing colleges two-year intermediate course should be introduced in the place of one-year P.U.C. The staff pattern and pay scales of staff in Junior Colleges started for the two-year intermediate course were laid down by the Government in G.O.Ms. 2063, Education, dated August 25, 1969. In G. O.Ms. 2186, Education, dated September 17, 1969 the Government issued the following instructions regarding the absorption of post-graduate teachers in Junior Colleges :

In regard to the appointment of post-graduate as junior lecturers in junior Colleges, priority will be given to those who are in the Scale of pay of Rs. 180-350 and who are suitable and willing to be absorbed as per seniority as indicated below;

(a) First or second class post-graduates working as post-graduate assistants;

(b) third class post-graduates with not less than five years of service, working as post-graduate assistants;

(c) Third class post-graduates with less than 5 years of service, working as post-graduate assistants; and

(d) Lastly trained graduates possessing post-graduate diploma in physical sciences, working in the post-graduate assistant's scale.

7. It was stated in that G.O. that all the existing post-graduates who will be absorbed as junior lecturers in Junior Colleges will be appointed temporarily as junior lectures pending framing of Ad Hoc Rules in due course. The Government ordered in G.O. Ms. 1147, Education, dated June 4, 1970 that in the common seniority lost first rank should be given only to those who have secured first and second class post-graduate degrees with 50 per cent marks and above. These G.Os. Were all executive instructions.

8. There is no dispute that the petitioners are holders of first or second class post-graduate degrees and that the private respondents 3 to 8 in Representation petition 595 of 1977 who have been placed as their seniors in the impugned seniority list of 1976 are holders of only third class post-graduate degrees. The petitioners relied heavily on the above Rule 3 of the Ad Hoc Rules, according to which persons with first or second class post-graduates degrees are to be given preference over post-graduates holding third class degrees and contended that they should, therefore, be given seniority over the third class post-graduate degree holders in determining the inter se seniority in the cadre of junior lecturers in Junior Colleges as was done in the seniority list prepared in 1974.

9. The contention of the first respondent, State of Andhra Pradesh, was that the executive instructions given in Government orders regarding appointments of junior lecturers pending the framing of Ad Hoc Rules under Article 309 of the Constitution ceased to be operative once those Ad Hoc Rules were framed and that under Ad hoc rule 13 the seniority of post-graduate assistants of former Higher Secondary Schools and Multi-purpose Schools with first, second and third class post-graduate degrees and post-graduate diploma shall have to be determined with reference to the actual date of appointment as post-graduate assistants. The Government denied that Rule 13(1) is violative of Articles 14 and 16 of the Constitution and contended in the counter-affidavit Pradesh High Court in W.P. 4358 of 1974 and Writ Appeal 920 of 1975 and cancelled the earlier seniority list of 1974 and framed the revised seniority list of 1976 according to Rule 13(1) of the Ad Hoc Rules. Thus the Government opposed the representation petitions.

10. The Tribunal has taken note in paragraph 9 of its judgment of the fact that the petitioners are first and second class post-graduate degree holders while respondents 3 to 8 are only third class post-graduate degree holders correctly, but it has wrongly observed that both the categories of post-graduate assistants have been appointed as junior lecturers under Rule 3(1)(i) of the Ad Hoc Rules issued in G.O.Ms. 939, Education dated September 19, 1973. it was not disputed before us that the petitioners being first and second class post-graduates with 50 per cent and more marks were appointed as junior lecturers in 1969 and that respondents 3 to 8 who are third class post-graduates were appointed as junior lecturers only in 1970 and 1975. Therefore, the petitioners and some of respondents 3 to 8 had been appointed in 1969 and 1970 before the Ad Hoc Rules were framed on September 19, 1973 and only some of the respondents 3 to 8 were appointed in 1975 under Rule 3(1)(i) of those Ad Hoc Rules. The fact that the petitioners were appointed as junior lecturers earlier than the respondents was conceded by Mr. Shiv Shankar before the Tribunal as seen from paragraph

8 of the Tribunal's judgment.

11. The Tribunal noted the following further facts :

(1) That Government had decided in G.O.Ms. 2063, Education, dated August 25, 1969 that first and second class post-graduates would be given a higher starting pay of Rs. 260 in the scale of Rs. 200-500 and that third class post-graduates would be allowed only the pay drawn by them before they were appointed as junior lecturers in the above scale;

(2) That the Government expressed the view in G.O.Ms. 1147, Education, dated June 4, 1970 that in the common seniority list first rank should be given only to those who have secured first or second class post-graduate degree with 50 per cent marks and above which is the qualification prescribed for direct recruitment of junior lecturers; and

(3) That in Rule 3(1)(i) of the Ad Hoc Rules framed on September 19, 1973 it is stipulated that at the time of appointment to the category of junior lecturers persons with first or second class post-graduate degrees would have preference over person with third class post-graduate degrees.

12. But the Tribunal railed heavily on the fact that the Andhra Pradesh High Court had directed in Writ Appeals 920 and 938 of 1975 that the seniority list should be prepared in accordance with Rule 13(1) of the Ad Hoc Rules, 1973 which have been given retrospective effect from August 1, 1969 and held that the impugned seniority list framed as per Rule 13(1) of the Ad Hoc Rules having precedence over the earlier executive instruction is valid and that as the petitioners and respondents 3 to 8 belonged to the same category of post-graduate assistants, there is no question of violation of Articles 14 and 16 of the Constitution as Ad Hoc Rule 13(1) says that seniority of post-graduate assistants appointed as junior lecturers shall be determined with reference to the dates of their actual appointment as post-graduate assistants or the probably dates on which they would have been appointed as post-graduate assistants but for their appointment or promotion to higher posts. The Tribunal has observed that if the intention of the Government was otherwise they would have specifically provided accordingly. In this view the Tribunal rejected the petitioners' prayer for restoring the old seniority list prepared in 1974 which in its opinion is contrary to Rule 13(1) of the Ad Hoc Rules. Accordingly the Tribunal dismissed Representation Petition 595 of 1977 and in view of its judgment in that petition either rejected or dismissed Representation petitions 985 of 1977 and 289, 340, 446 and 553 of 1978. In Representation petition 273 of 1978 the Tribunal observed that the plea of the petitioners that first and second class post-graduate degree holders should be given preference over third class post-graduate degree holders in the matter of seniority as junior lecturers is covered by its judgment in Representation Petition 595 of 1977 and that since the petitioners in Representation petition 273 of 1978 have already acquired B.Ed. qualification, which is a pre-requisite of regular appointment as post-graduate assistants, the question of those petitioners' regularisation in the posts of post-graduate assistants should be examined in accordance with the rules and their service should be regularised in that category and thereafter their seniority as junior lecturers should be determined in accordance with Rule 13(1) of the Ad Hoc Rules. In Transferred Writ petition 1246 of 1976 the Tribunal has stated in its judgment that in the judgment of the High Court in Writ Appeals 920 and 938 of 1975, the High Court has ordered that a fresh seniority list should be prepared in accordance with Rule 13(1) of the Ad Hoc Rules, that the relief prayed for by the four petitioners in that writ petition has already been given and that the writ petition is disposed

of accordingly. The Tribunal disposed of, presumably in the same manner as Transferred Writ petition 1246 of 1976 was disposed of, without specifically indicating how that writ petition is disposed of.

13. In Transferred W.P. 941 of 1976 out of which C.A. 415 of 1979 filed by 34 petitioners in that petition has arisen, the reliefs prayed for were (1) that a correct seniority list based on Rule 13 of the Ad Hoc Rules, 1973 should be issued in respect of all the junior lecturers, (2) that Rule 6 of Ad Hoc Rules framed in G.O.Ms. 502, Education, dated June 19, 1974, under which first or second class post-graduate degree has been prescribed as the qualification for promotion to the posts of principal of Junior Colleges should be struck down as illegal and (3) that ad hoc appointments of seven third class post-graduate junior lecturers as principals of Junior Colleges made in the proceedings dated March 14, 1974 by the second respondent Director of Public Instruction, Andhra Pradesh should be declared as illegal. here also we shall refer to the parties as arrayed before the Tribunal for the sake of convenience as stated earlier.

14. The 34 petitioners in this petition were working as school assistants in Higher Secondary Schools in Andhra Pradesh. They were subsequently appointed as junior lecturers in Junior Colleges in terms of Rules 3 of the Ad Hoc Rules which states that first preference for appointment as junior lecturers in Junior Colleges should be given to post-graduate assistants in Category I-A of Class II and selection grade assistants in Grade I Category 2 of Class II in the Andhra Pradesh Educational Subordinate Service or headmasters of High Schools and post-graduate assistants in Zila parishad High Schools and such of the Municipal Schools as are converted into Junior Colleges. The Rule also provides that preference should be given to persons with first or second class post-graduate degrees. Rule 13(1) of the Ad Hoc Rules provides that seniority is to be determined with reference to the date of their actual appointment as post-graduate assistants or the probable date on which they would have been appointment as post-graduate assistants but for their appointment or promotion to higher posts. The petitioners contended that seniority of junior lecturers, which is being maintained subjectwise, should be integrated and there should be a combined seniority list and not subjectwise list. In the Ad Hoc Rules framed by the Government in ? G.O.Ms. 939, Education, dated September 19, 1973 there were no rules regarding promotion of junior lecturers to the posts of principals of Junior Colleges. Pending the framing of Public instruction, issued proceedings in R.C. No. 775-C1/2/74 dated March 14, 1973 promoting under Rule 10(a)(i) of the State and Subordinate Service Rules, seven persons as principals of Junior Colleges though they did not hold first or second class post-graduate degrees. Subordinate Service Rules, seven persons as principals of Junior Colleges though they did not hold first or second class post-graduate degree. Subsequently Ad Hoc Rules were framed by the Government in G.O.Ms. 502, Education, dated June 19, 1974 under the proviso to rule 309 of the Constitution with retrospective effect from August 1, 1969 regarding promotion to the posts of principals of Junior Colleges. Under these Rules junior lectures hooding a first or second class post-graduate degrees who have put in a service of three years as junior lecturers in the Educational Subordinate Service are eligible for promotion as principals of Junior Colleges. But Rule 8 of the Ad Hoc Rules, 1974 which is a saving clause, reads as follows :

Notwithstanding anything contained in these Rules a person who held a post of a principal of Junior College immediately before the issue of these Rules shall be continued as principal and be given option either to continue in the post of a principal or to revert to his original post.

15. The Tribunal affirmed in its judgment in this transferred writ petition its judgment in Representation Petition 595 of 1977 and observed that that judgment would apply as regards the interpretation of Rule 13 in the matter of fixing inter se seniority among post-graduate school

assistants appointed as junior lecturers under Rule 3(1)(i) of the Ad Hoc Rules, 1973, and that seniority should be determined with reference to the date of appointment as post-graduate school assistants without reference to the nature of the post-graduate degrees, whether are first, second or third class degrees. The Tribunals held that subject to that provision regarding fixing of overall seniority subjectwise seniority can also be fixed and that for purposes of promotion to the posts of principals the overall seniority in the category of junior lecturers fixed in accordance with Rule 13 of the Ad Hoc Rules should be followed.

16. It was submitted before the Tribunal on behalf of the Government that considering the nature of the duties of principals there is a reasonable classification between first and second class post-graduate school assistants and such assistants holding only third class post-graduate degrees, and there is not contravention of Articles 14 and 16 of the Constitution in prescribing first and second class post-graduate degree for junior lecturers to be promoted as principals of Junior Colleges and that clear distinction has been maintained between holders of first and second class post-graduate degree and those holding only third class post-graduate degrees, and the former class of post-graduate degree holders have been given advance increments on their appointment as junior lecturers while the latter have been given only the pay they were drawing as post-graduate school assistants when they were appointed as junior lecturers. It was also submitted before the Tribunal that academic qualification is germane in the educational field and that classification made on the basis of qualification for the post of principal cannot be termed as discriminatory.

17. On a perusal of G.O.Ms. 939, Education, dated September 19, 1973 in which Ad Hoc Rules under the proviso to Article 309 of the Constitution have been framed by the Government the Tribunal found that weightage is to be given for first and second class post-graduate degree holders over third class post-graduate degree holders. The Tribunal accepted the contention of the Government that in academic institutions excellence in academic attainments is a relevant consideration and that any discrimination based on excellence in excellence in a teaching institution, and that it does not offend Articles 14 and 16 of the Constitution, more so when third class post-graduate degree holders are not permanently debarred from improving their standard of qualifications for becoming eligible to the posts of principals of Junior Colleges. The Tribunal thus rejected the second prayer of the petitioners that the prescription of first and second class post-graduate degree as qualification for eligibility for promotion to the posts of principals of Junior Colleges contravenes Articles 14 and 16 of the Constitution.

18. The Tribunal found nothing objectionable in Rule 8 of the Ad Hoc Rules, 1974 referred to above which protects the rights of third class post-graduate degree holders who had been promoted under Rule 10(a)(i) of the State and Subordinate Service Rules pending framing of Ad Hoc Rules which were actually framed subsequently on June 19, 1974.

19. On these findings the Tribunal dismissed Transferred Writ petition 941 of 1976.

20. Pursuant to the policy decision taken by the Andhra Pradesh Government in 1964 that the secondary school duration should be 10 years instead of 11 years and it should be followed by a two years' intermediate course in the place of the then existing P.U.C. instead of the then prevailing higher secondary and multi-purpose system, commencing from the academic year 1969-70 the Government decided in G.O.Ms. 1920, Education, dated October 25, 1968 that in the existing colleges the two years' intermediate course should be introduced instead of the one year P.U.C., and laid down in G.O.Ms. 2063, Education, dated August 25, 1969 the staff pattern and pay scales of staff in Junior Colleges started for the two years' intermediate course. In implementing this scheme

post-graduate assistants in certain categories of schools were appointed as junior lecturers in Junior Colleges. The petitioners in Representation petition 595 of 1977 and batch, out of which Civil Appeals 1652 to 1659 of 1978 have arisen and Transferred Writ petition 941 of 1976, out of which Civil Appeal 415 of 1979 has arisen and those in certain others Representation petition and Transferred Writ petitions 785 and 1246 of 1976 were appointed as junior lecturers. prior to their appointment as junior lecturers they were all post-graduate school assistants or headmasters in various schools. The private respondents in Representation Petition 595 of 1977 and batch and the petitioners in Transferred Writ petition 941 of 1976 were seniors as post-graduate school assistants to the petitioners in Representation petition 595 of 1977 and batch and the private respondents in Transferred Writ petition 941 of 1976. The said senior post-graduate assistants are all third class post graduate degree holders whereas the said junior post-graduate degree holders. based on their superior academic qualification those first and second class spot- graduate school assistants were given priority and treated seniors to the said third class post-graduate school assistants in the seniority list prepared in 1974 after they were appointed as junior lecturers. The petitioners in Representation petitions 595 of 1977 and batch and the petitioners in Transferred Writ Petition 941 of 1976 were appointed in 1969, 1970 and 1975 as junior lecturers. In Writ Appeals 920 and 938 of 1975 the Andhra Pradesh High Court gave directions to prepare a common seniority list of junior lecturers in accordance with Rule 13(1) of the Ad Hoc Rules framed by the Government in G.O.Ms. 939, Education, dated September 19, 1973. Pursuant to that direction a revised seniority list of junior lecturers was issued by the Government on December 27, 1976, In the seniority list of 1974 the petitioners in Representation Petition 595 of 1977 had been placed at Nos. 17, 15, 20, 21, 23, 40 and 41 respectively, and on the basis of that seniority junior lecturers up to the rank of 40 in that list had been placed at No. 41 in that list was awaiting his promotion as principal of Junior College. But in the revised seniority list of 1976 those petitioners have been placed at Nos. 380, 54, 390, 392, 406, 368 and 374 respectively and the private respondents in that representation petition have all been placed above them as their seniors. The seniority of the petitioners in the other representation petitions in the batch was also disturbed it their disadvantage in the revised seniority list of 1976. The representation petitions were therefore filed for quashing the revised seniority list issued by the first respondent State of Andhra Pradesh in 1976 so far as the petitions are concerned and for restoration of their old seniority as per the earlier seniority list of 1974 or in the alternative for declaring that Rule 13(1) of the Ad Hoc Rules, 1973 dealing with seniority of junior lecturers is violative of Article 14 and 16 of the Constitution, The only question arising for consideration in Representation petition 595 of 1977 and batch out of which Civil Appeals 1652 to 1959 of 1978 have arisen in the question of seniority of the petitioners in those petitions (appellants in Civil Appeals 1652 to 1659 of 1978). Though in Transferred Writ petition 941 of 1976 out of which Civil Appeal 415 of 1979 has arisen three reliefs were prayed for viz. (1) that an integrated seniority list based on Rule 13 of the Ad Hoc Rules, 1973 should be issued in respect of all junior lecturers; (2) that Rule 6 of the Ad Hoc Rules framed in G.O.Ms. 502, Education, dated June 19, 1974 by which first and second class post-graduate degree has been prescribed for promotion of junior lecturers as principals of Junior Colleges should be struck down as being illegal and (3) that ad hoc appointments of seven third class post-graduate degree holders as principals of Junior Colleges made in proceedings dated March 14, 1974 of the second respondent, Director of public Instructions should be declared illegal, Mr. S. N. Kacker, senior advocate appearing for the appellants in Civil Appeal 415 of 1979 confined his arguments to the second prayer alone viz. the attack on Rule 65 of the Ad Hoc Rules framed in G.O.Ms. 502, Education, dated June 19, 1974 which prescribes first or second class post-graduate degree for promotion of junior lecturers as principals of Junior Colleges, which has been dealt with by the Tribunal in paragraph 6 of its judgment in Transferred Writ petition 941 of 1976. We shall also consider these two question in this common judgment. We shall

also consider briefly the third prayer made in transferred Writ Petition 941 of 1976 which has been negated by the Tribunal. We may state that the first prayer made in Transferred Writ petition 941 of 1976 will be covered Appeals 1652 to 1659 of 1978.

21. Mr. M. N. Phadke, senior advocate appearing for the appellant in Civil Appeals 1652 to 1659 of 1978 drew out attention to the special provision in various Government Orders which are executive instructions issued before the Ad Hoc Rules were framed under the proviso to Article 309 of the Constitution on September 19, 1973 and to some special provisions made even in those ad hoc rules showing preference and priority for post-graduate school assistants holding first second class post-graduate degree over such assistants holding only third class post-graduate degrees in the matter of appointment as junior lecturers in junior Colleges and of promotion of junior lecturers as principals of Junior Colleges and submitted that fixing seniority of junior lecturers holding first and second class Post-graduate degrees, forming one group and of those holding third class post-graduate degrees, forming another group, on the basis of the dates of their original appointment as post-graduate school assistants is arbitrary and therefore the impugned seniority list of 1976 should be quashed and the seniority of the petitioners in the representation petitions (appellants in Civil Appeals 1652 to 1659 of 1978) fixed in the lit of 1974 should be restored. But Mr. T. S. Krishnamurthy Iyer, senior advocate appearing for the contesting private respondents 3, 5, and 9 in Civil Appeals 1652 to 1659 of 1978 argued that before their appointment as junior lecturers post-graduate assistants holding first, second and third class post-graduate degree were doing the same work and drawing the same scale of pay. He submitted that though in G.O.Ms. 2963, Education, dated August 25, 1969 it was stated that first or second class post-graduates will be given a higher start of Rs. 260 in the pay scale of Rs. 200-15-320-20-500 and third class post-graduates will be allowed only the pay drawn by them before their appointment as junior lecturers in the pay scale of Rs. 200-500 if their pay was more than the minimum of the new scale on their appointment as junior lecturers, nothing is mentioned in the Ad Hoc Rules no new service was created but only the provisions service created by the executive instructions was continued and that in all fairness and justice the private respondents in Civil Appeals 1652 to 1659 of 1978 who had been appointed as post-graduate school assistants prior to the appellants in those appeals should be regarded as their seniors as had been done in the impugned seniority list of 1976 prepared in accordance with the directions given by the Andhra Pradesh High Court in its judgment in Writ Appeals 920 and 938 of 1975. Mr. P. Ram Reddy, senior advocate appearing for the official respondents in all the civil appeals supported the impugned judgment of the Tribunal saying that the first, second and third class post-graduate assistants before they were appointed as junior lecturers belonged to the same class and were drawing the same pay and doing the same kind of work and that seniority after their appointment as junior lecturers should be fixed on the basis of the dates of their original appointment as post-graduate school assistants, as has been done in the impugned seniority list of 1976.

22. As stated above, in G.O.Ms. 2063, Education, dated August 25, 1969 Government ordered that first or second class post-graduates will be given higher start of Rs. 260 in the new junior lecturers' pay scale of Rs. 200-15-320-500 and third class post-graduates will be allowed only the drawn by them before their appointment as junior lecturers in the Scale of Rs. 200-500 if their pay was more than the minimum of the new scale of Rs. 200-15-320-20-500. In G.O.Ms. 2186, Education, dated September 17, 1969 government decided that all the existing post-graduate teacher who will be absorbed in Junior Colleges will be appointed temporarily as junior lecturers pending framing of ad hoc rules in due course and that in regard to appointment of post-graduates as junior lecturers in Junior Colleges priority will be given to those who are in the scale of pay of Rs. 180-350 and are suitable and willing to be absorbed as per seniority as indicated below :

- (a) First and second class post-graduates working as post-graduate assistants;
- (b) Third class post-graduates with not less than five years of service, working as post-graduate assistants;
- (c) Third class post-graduates with less than five years of service, working as post-graduate assistants;
- (d) Lastly, trained graduates possessing post-graduate diploma in physical sciences, working in the post-graduate assistants' scale.

23. In G.O.Ms. 1147, Education, dated June 4, 1970 Government reiterated the aforesaid decision taken in G.O.Ms. 2186, Education, dated September 17, 1969 regarding priority to be given to first and second class post-graduates over third class post-graduates, based on the recommendations of the Vice-Chancellors' Conference and stated that they consider that in the common seniority list first rank should be given only to those who have secured first or second class with 50% marks and above and third class post-graduates should be given rank with reference to their services viz, those with five years of service, working as post-graduate assistants, next to the first and second class post-graduates, working as post-graduate assistants and thereafter those with less than five years of service, working as post-graduate assistants. Government have observed in that G.O. that this manner of creating seniority is reasonable. These orders are all no doubt in the nature of executive instructions.

24. The Ad Hoc Rules were framed under the proviso to Article 309 of the Constitution with retrospective effect from August 1, 1969 in G.O.Ms. 939, Education, dated September 19, 1973 for the temporary posts of junior lecturers in Government Degree and Junior Colleges in Andhra Pradesh. Rule 3(1) and (2) of those rules read as follows :

3. Appointment. - (1) Appointment to this class shall be made as follows :

- (i) Firstly by appointment of post-graduate assistants in Category I-A of Class II and selection grade assistants in Grade I of Category 2 of Class II of the Andhra Pradesh Educational Subordinate service, or headmasters of High Schools and post-graduate assistants in Zila Parishad High Schools and such of the Municipal Schools as are converted into Junior Colleges;
- (ii) Secondly, if there are no suitable and qualified persons available for appointment under clause (i), then, by appointment of trained graduates possessing post-graduate diploma in physical sciences in the scale of pay admissible to post-graduate assistants immediately before the commencement of these rules;
- (iii) Thirdly, if there are no suitable and qualified persons available for appointment under sub-clause (i) or sub-clause (ii) -
 - (a) By recruitment from among the headmasters and post-graduate assistants in recognised multi-purpose or Higher Secondary Schools under private management or under the management of a Municipality which are not converted into junior Colleges; or
 - (b) By transfer from school assistants in Grade II of Category 2 in Class II and

pandits (including Hindi pandits), munshis Grade I in Category I of Class III of the Andhra Pradesh Educational Subordinate Service or by recruitment by transfer from any other service; or

(c) By direct recruitment.

(2) preference shall be given for appointment under clause (i) or sub-clause (a) of clause (iii) of sub-rule (1) -

(a) Firstly to persons with first or second class post-graduate degree;

(b) Secondly to persons with a third class post-graduate degree with not less than five years of service as post-graduate assistants or selection grade assistants in the Andhra Pradesh Educational Subordinate Service or as a headmaster of a Zila Parishad High School or as a post-graduate assistant in a school under the management of a Zila Parishad or a Municipality;

(c) Thirdly to persons with a third class post-graduate degree with less than five years of service as a post-graduate assistant or a selection grade assistant in the Andhra Pradesh Educational Subordinate Service or as a headmaster or a High School or post-graduate assistant in a school under the management of a Zila parishad or of a Municipality

25. It is not disputed before us that the petitioners in Representation petition 595 of 1977 and batch (appellants in Civil Appeals 1652 to 1659 of 1978) fall under the above referred clause (a) and that the contesting private respondents in those appeals and the appellants in Civil Appeal 415 of 1979 fall under the above clause (b) or clause (c) and they would have come up for consideration for appointment as junior lecturers only after those falling under the above clause (a). Thus, the preference given to first and second class post-graduate assistants in the matter of appointment as junior lecturers in G.O.Ms. 2186, Education, dated September 17, 1969 has been maintained even in the Ad Hoc Rules, 1973.

26. As submitted by Mr. T. S. Krishnamurthy Iyer there is nothing in the Ad Hoc Rules, 1973 regarding the salary of first and second graduate school assistants on the other on their appointment as junior lecturers. Therefore, G.O.Ms. 2063, Education, dated August 25, 1969 by which first and second class post-graduates are given a higher start of Rs. 260 in the new junior lecturers' pay scale of Rs. 200-15-320-20-500 and third class post-graduates are given only the pay drawn by them before their appointments as junior lecturers in the Scale of Rs. 200-500 if their pay was more than the minimum of the new scale of Rs. 200-15-320-20-500 continues to govern the matter of pay. This position is not disputed before us. Thus, in the matter of pay also first and second class post-graduate assistants who are appointed as junior lecturers are placed in a better and preferential position than third class post-graduate assistants who are appointed as junior lecturers.

27. Some time after the Ad Hoc Rules were framed on September 19, 1973, Government framed Ad Hoc Rules under the proviso to Article 309 of the Constitution in G.O.Ms. 502, Education, dated June 19, 1974 for the temporary posts of principals of Junior Colleges in Andhra Pradesh with retrospective effect from August 1, 1969. According to those rules the posts of principals of Junior Colleges form a separate class in the administrative section of the Andhra Pradesh Educational Service, and appointment to that class should be made : (a) by recruitment by transfer from junior

lecturers in the Andhra Pradesh Educational subordinate Service who have opted or are deemed to have opted to remain as junior lecturers, or (b) by recruitment by transfer of schools assistants in Grade I and deputy inspectors of schools GRADE I in Category 2 of Class II of the Andhra Pradesh Educational Subordinate Service. Rule 6 of Those Rules states that no person shall be eligible for appointment to this class unless the holds a first or second class post-graduate degree of M.A., M.Sc., M.Com., B.A. (Hons.), B.Sc. (Hons.), or B.Com. (Hons.) of a University in India established or incorporated by or under a Central Act or a provincial Act or a State Act or institutions recognised by the University Grants Commission. This rule which as impugned in Civil Appeal 415 of 1979 prescribes a first or second class post - graduate degree for promotion of junior lecturers to the posts of principals of Junior Colleges. Under this rule third class post-graduate junior lecturers are not eligible for promotion as principals of junior Colleges, even in the matter of promotion as principals of Junior Colleges, first and second class post-graduate junior lecturers have priority and preference over third class post-graduate junior lecturers who are not eligible at all for promotion as principals on account of the inferiority of their academic attainments so long as they remain only third class post-graduates.

28. Now, Rule 13 dealing with seniority of junior lecturers reads as follows :

13. Seniority. - (1) The seniority of a person appointment under clauses (i) and (ii) of sub-rule (1) of Rule 3 shall be determined with reference to the date of the Actual appointment as a post-graduate assistant or the probable date on which he would have been appointed as a post-graduate assistant but for his appointment or promotion to a higher post;

(2) The seniority of any person__ appointed under clause (ii) of sub-rule (1) Rule 3 shall be determined with ference to the date of commencement of his probation :

Provided that no such person be senior to any person appointment under clause (i) of (ii) of sub-rule (1) of Rule 3 :

Provided further that no person appointed under sub-clause (b) or sub-clause (c) of clause (iii) of sub-rule (1) of Rule 3 shall be senior to a person appointed under sub-clause (a) of that clause.

29. It was submitted before us that these two provisos to sub-rule (2) of Rule 13 have been struck down by the Andhra Pradesh Administrative Tribunal.

30. The main question for consideration is whether in spite of the aforesaid provisions in the executive instructions and Ad Hoc Rules providing for preferential treatment and position to holders of first and second class post-graduate degree in the matter of appointment as junior lecturers, their starting pay and subsequent promotion as principals of Junior Colleges, particularly (1) G.O.Ms. 1147, Education, dated June 4, 1970 in which Government considered and decided that in the common seniority list first rank should be given only to those who have secured first or second class post-graduate degree with 50 per cent marks and above and third class post-graduate degree holders with not less than five years of service, working as post-graduate assistants should be ranked next, and (2) Rule 3(1)(i) and (2) of the Ad Hoc Rules, 1973 according to which in the appointment of junior lecturers preference has to be given firstly to persons with first or second class post-graduate degree, secondly to persons with third class post-graduate degree with not less than five years service as post-graduate assistants and thirdly to persons with third class post-graduate degree with less than five years of service as post-graduate assistants, Rule 13(1) of the Ad Hoc Rules confers

seniority on third class post-graduate junior lecturers over first and second class post-graduate junior lecturers based on their earlier appointment as post-graduates assistants.

31. There is nothing on record to show that while framing Rule 13(1) of the Ad Hoc Rules Government intended to depart from the policy earlier enunciated in G.O.Ms. 1147, Education, dated June 4, 1970 as regard conferment of seniority on first and second class post-graduate school assistants appointed as junior lecturers and Rule 3(1)(i) and (2) of the Ad Hoc Rules, 1973 as regards preference of first and second class post-graduate schools assistants over third class post-graduate school assistants. On the other hand, the fact that in the seniority list prepared in 1974 so soon after the Ad Hoc Rules were framed on September 19, 1973 higher places were given to first and second class post-graduate junior lecturers over third class post-graduate junior lecturers although the first and second class lecturers were juniors to the third class post-graduate junior lecturers when they were all post-graduate school assistants would indicate that the Government who framed the Ad Hoc Rules themselves interpreted Rule 13(1) in the manner in which the appellants in Civil Appeals 1652 to 1659 of 1978 invite us to do, giving full effect to the priority laid down in Rule 3(1) and (2) of the Ad Hoc Rules which follows the policy laid down in that regard in G.O.Ms. 1147, Education, dated June 4, 1970. It is true that we cannot base our decision on this question on that fact alone especially having regard to the stand now taken before us and the Tribunal by the Government as regards the interpretation of Rule 13(1) which perhaps they are obliged to take in view of the direction given by the Andhra Pradesh High Court in Writ Appeals 920 to 938 of 1975 which is binding on them to prepare a fresh seniority list as has been done by them subsequently in 1976 which is impugned in Civil Appeals 1652 to 1959 of 1978. As stated earlier there is no material on record to show that the Government had any reason, policy or otherwise, when they framed the Ad Hoc Rules, 1973 to depart from what they had decided in G.O.Ms. 1147, Education, dated June 4, 1970 about how seniority should be accorded. There is no reason to think that the Government intended by Rule 3(1) of the Ad Hoc Rules to take away from first and second class post-graduate junior lecturers the preference shown to them over third class post-graduate junior lecturers in the executive instructions especially G.O.Ms. 1147, Education, dated June 4, 1970 about how seniority should be accorded. There is no reason to think that the Government intended by Rule 13(1) of the Ad Hoc Rules to take away from first and second class post-graduate junior lecturers the preference shown to them over third class post-graduate junior lecturers in the executive instructions especially G.O.Ms. 1147, Education, dated June 4, 1970 and even in Rule 3(1) and (2) of the Ad Hoc Rules, 1973. As contended by the appellants in Civil 1652 to 1659 of 1978 Rules 3(1) and (2) and 13(1) have to be read together. Only then there will be harmony between those rules. If Rule 13(1) is read without reference to Rule 3(1) and (2) the consequence will be disharmony and the first and second class post-graduate junior lecturers who were given preference over third class post-graduate junior lecturers by the other provisions mentioned above, will be placed in a less advantageous and inferior position as compared with third class post-graduate junior lecturers as regards seniority alone, which will not even help them in the matter of promotion as principals of Junior Colleges in view of Rule 6 of the Ad Hoc Rules, 1974 so long as they do not improve their academic attainment by obtaining a first or second class post-graduate degree. Every rule in the Ad Hoc Rules must be given its full, natural and legal effect. There is no doubt that Rule 13(1) is inartistically worded though when read with Rule 3(1) and (2) it would be clear that the principle laid down in it has to be applied separately to each of the three categories of junior lecturers mentioned in Rule 3(1) and (2) viz. (1) first and second class post-graduates, (2) third class post-graduates with not less than five years of service, working as post-graduates school assistants, and (3) third class post-graduates with less than five years of service, working as post-graduates school assistants according to the order in which they have to be selected

for appointment as junior lecturers. Each of these three categories forms a distinct and separate category. The first category consists of first and second class post-graduates and on their appointment as junior lecturers their inter se seniority has to be fixed under Rule 13(1) with reference to the dates of their original appointment as post-graduates school assistants. When post-graduates with not less than five years of service, working as post-graduates school assistants are appointed as junior lecturers their inter se seniority has to be fixed likewise under Rule 13(1) on the basis of the dates of their original appointment as post-graduates school assistant. Similarly, when post-graduates with less than five years of service, working as post-graduates school assistants are appointed as junior lecturers their inter se seniority has to be fixed on the basis of the dates of their original appointment as post-graduates school assistants. If Rule 13(1) is interpreted in their manner, no disharmony will result in the consequences of applying all the Ad Hoc Rules. We think that only by construing Rule 13(1) in this manner the Government framed the seniority list of 1974 soon after framing the Ad Hoc Rules, 1973 by according seniority to the first and second class post-graduates junior lecturers over the third class post-graduates junior lecturers who were senior to them when all of them were working as post-graduates school assistant before they were appointed as junior lecturers.

32. As stated earlier, before the Tribunal it was argued for the private respondents 23 to 8 in Representation Petition 595 of 1977 that the prayer for quashing Rule 13(1) of the Ad Hoc Rules has to be negated in view of the High Courts judgments in Writ Petition 4358 of 1974 and Writ Appeals 920 and 938 of 1975 and that it is not the contention of the petitioners in that petition that the impugned revised seniority list of 1976 is contrary to the directions give in those judgments. In the view we take regarding the interpretation of Rule 13(1) there is no need for quashing that Rule. It is true that the petitioners in Representation Petition 595 of 1977 have not contended that the impugned seniority list of 1976 is not in accordance with the directions given in the High Court's judgments in those writ petition and writ appeals. The petitioners in Representation Petition 595 of 1977 have contended that those judgment relate to the 1969 batch and that they belong to 1960 batch and would not be affected by them. Whatever this may mean it must be noted that it has not been contended by the respondents in Civil Appeals 1652 to 1959 to 1978 that the appellants in those appeals were parties to those judgments and they constitute res judicata and are binding on them. Therefore, there is no substance in this contention of the private respondents in Representation Petition 595 of 1977.

33. Next it was contended before the Tribunal by the private respondents in Representation Petition 595 of 1977 that they were appointed earlier as post-graduates school assistants that the petitioners in that petition and were qualified to be appointed as junior lecturers when the petitioners in that petition were appointed as such, but were not available for posting, and that under Rule 33(c) of the Andhra Pradesh State and Subordinate Service Rules they are entitled to seniority. That rule applies to persons who were transferred from one class or category of service to another class or category of the same service, and would not apply to the facts of the present case where junior lecturers have been appointed by selection amongst post-graduates school assistants as junior lecturers. Therefore, there is no merit even in the second contention put forward on behalf of the private respondents in Representation Petition 595 of 1977.

34. There is no question of their Court striking down Rule 13(1) of the Ad Hoc Rules on the ground that any other rule which in the opinion of the Court would have been better or more appropriate. Therefore, the decision in Reserve Bank of India v. N. C. Paliwal (AIR 1976 SC 2345 : (1976) 4 SCC 838 : 1977 SCC (L&S) 82 : (1977) 1 SCR 377 : 1976 Lab IC 1483) relied on for the private respondent 3 to 8 in Representation Petition 595 of 1977 before the Tribunal is not relevant. It is

only a question of interpretation of Rule 13(1) read with Rule 3(1) and (2) of the Ad Hoc Rules, 1973.

35. In these circumstances we hold that Rule 13(1) of the Ad Hoc Rule, 1973 has to be interpreted in the manner indicated above, and seniority has to be fixed accordingly and there is no need to quash that rule and that the impugned seniority list of 1976 has to be quashed and the seniority list of 1974 has to be restored. It would follow that the first prayer in Civil Appeal 415 of 1979 regarding fixing of seniority as prayed for by third class post-graduates junior lecturers has to be rejected and it is accordingly rejected.

36. Coming now to the only point argued by Mr. S. N. Kacker, senior advocate for the petitioners in Transferred Writ Petition 941 of 1976 (Civil Appeal 415 of 1979) that Rule 6 of the Ad Hoc Rules, 1974 prescribing a first or second class post-graduates degree for a junior lecturer's promotion as principal of a Junior College, thereby excluding third class post-graduates junior lecturers from legibility for promotion as principals, we would like to state at the out set that the contention put forward before the Tribunal that the posts of principals are administrative posts and no teaching experience is required is incorrect. The Director of Public Instructions has stated in his Proceedings Rc. No. 1068/IC-4/70 dated January 16, 1971 that principals of Junior Colleges must take at least six periods of work per week if not more. Therefore, principals of Junior Colleges have to take up teaching working in addition to their administrative duties. They are administrative heads of Junior Colleges where first, second and third class post-graduates work as junior lecturers. They have to exercise administrative control over first, second and third class post-graduates junior lecturers. It is therefore very desirable that the principals should be first or second class post-graduates. Post of principals of Junior Colleges are gazetted while those of junior lecturers of those colleges are not gazetted. According to G.O.Ms. 2086, Education, dated August 25, 1969 principals of Junior Colleges will have the status of senior lecturers in Degree Colleges and their pay scale in Rs. 400-800 while the pay scale of junior lecturers is Rs. 200-12-320-20-500. The object of achieving excellence in educational institution like Junior Colleges is a laudable one, and excellence in academic attainments of heads of such institutions is a relevant fact. Promotion of Junior Lecturers as principals is based only on merit judged by their academic distinction which cannot be said to be discriminatory. The ratio of their courts decision in *S. M. Pandit v. State of Gujarat* ((1972) 4 SCC 778) referred to above cannot be applied to the facts of the present case. Prescribing a first or second class post-graduates degree for the head of an educational institution has a direct nexus with the object of excellence sought to be achieved, and it cannot be said to be discriminatory. Therefore, we do not think that Rule 6 of the Ad Hoc Rules, 1974 is liable to be struck down as being discriminatory and illegal.

37. Pending the framing of Ad Hoc Rules for the temporary posts of principals of Junior Colleges, the Director of Public Instructions issued proceedings in Rc 775-C1/2-74 dated March 14, 1974 promoting under Rule 10(a)(i) of the State and Subordinate Service Rule seven third class post-graduates junior lecturers as principals of Junior Colleges. The third prayer in Transferred Writ Petition 7146 of 1976 is that those appointments should be declared as illegal. Under Rule 6(ii) of the Ad Hoc Rules, 1974 framed subsequently in G.O.Ms. 502, Education, dated June 19, 1974 three years' service in the Andhra Pradesh education Subordinate Service is prescribed as a qualification for promotion of Junior lecturers as principals of Junior Colleges in addition to a first or second class post-graduates degree. It is not known where when those promotions of seven third class post-graduates junior lecturers as principals were made first or second class post-graduates junior lecturers were not available for promotion or why after the Ad Hoc Rules, 1974 were framed within about three months thereafter those third class post-graduates junior lecturers were not reverted as

junior lecturers. Their promotions were irregular having regard to the fact that even for appointment as junior lecturers preference has to be given to first and second class post-graduates school assistants. The irregularity has been sought to be overlooked by providing a saving clause by way of Rule 8 of the Ad Hoc Rules, 1974 where it is stated that notwithstanding anything contained in those rules a person who held the post of principal of a Junior College immediately before the issue of those rule and who was not appointed in accordance with those rules, shall be continued as principal and he is given an option either to continue in the post of principal or to revert to his original post. We do not think that there would have been any valid necessity to continue those Ad Hoc Promotions made even after the Ad Hoc Rules, 1974 were framed within about three months of those promotions. We think that there is no meaning in providing for the option in that rule as it is not likely that a person who has been promoted as principal in the grade of Rs. 400-800 would voluntarily opt for reverting to his original post of junior lecturer in the grade of Rs. 200-15-320-20-500. However, having regard to the long lapse of time we do not think it desirable to declare those appointments as illegal.

38. In the result Civil Appeals 1652 to 1959 of 1978 are allowed as indicated above and Civil Appeal 415 of 1979 is dismissed. The contesting respondents in Civil Appeals 1652 to 1659 of 1978 shall pay the costs of the appellants in those appeals. Advocate fees one set. The parties shall bear their respective costs in Civil Appeals 415 of 1979.

</html