

T. N. Teachers' Association

Vs

Association of The Heads of The Government (B Wing) High & Higher Secondary Schools and Others

Civil Appeals Nos. 5164-5166 of 1990

J. Varuvel Antony and Others

Vs

A. Ramakrishnan and Others

Civil Appeals Nos. 5167-5169 of 1990

State of T. N. and Another

Vs

A. Ramakrishnan and Others

Civil Appeals Nos. 5170-5172 of 1990

(A. P. Mishra, K. Venkataswami JJ)

28.04.1998

JUDGMENT

K. VENKATASWAMI, J. –

1. These appeals can be disposed of by a common judgment as the Tamil Nadu Administrative Tribunal disposed of the matters by a common order in view of the fact that the issues arising out of these cases are interrelated and, therefore, necessary to be disposed of by a common order.

2. This is the third round of litigation up to this Court between the two categories (A&B Wings) of teachers, who were later on integrated into one category and as a result of which litigations started concerning seniority and further promotions. The first round of litigation, which came up to this Court, was disposed of by this Court in T.N. Education Deptt. Ministerial and General Subordinate Services' Assn. v. State of T.N. ((1980) 3 SCC 97 : 1980 SCC (L&S) 294 : AIR 1980 SC 379) on 23-10-1979. The second round of litigation was disposed of by this Court in K. Subramanian v. Director of School Education at the admission stage itself by dismissing the SLPs (C) Nos. 14520, 14685-89 of 1987 on 15-12-1987 with a short, reasoned order. We are now disposing of the third round of litigation with the hope that this will give a quietus at least in the matter of seniority and promotions between the parties as one of the categories, which was merged with another category, is due to vanish by efflux of time. We propose to give only skeletal factors necessary to appreciate the rival submissions.

3. Consequent on the formation of the Panchayat Unions, as a first step, the Government abolished the District Boards in the year 1960-61. The administration of the erstwhile District Board Secondary Schools was brought under the control of the Special District Educational Officers in the year 1963. Later on, the Government by GOMs No. 539 dated 1-4-1966 directed to treat the erstwhile District Board Schools as Government Secondary Schools with effect from the said date. However, no decision was then taken regarding the staff of the District Board Schools in the said GO. By GOMs No. 761 dated 16-5-1970, the Government ordered the absorption of the teaching and non-teaching staff of the District Board Schools in government service w.e.f. 1-4-1970. On such absorption, the staff of the District Board Schools was governed by a separate service named as Tamil Nadu Educational Subordinate Service (B). We may mention that the regular staff in the Government Secondary Schools was governed by the Tamil Nadu Educational Subordinate Service. By GOMs No. 289 dated 20-2-1971, the staff of the regular Government Schools was treated as "A" Wing and the staff of the erstwhile District Board Schools, but later absorbed as government staff, was treated as "B" Wing. The Government also decided that any school to be opened on or after 1-4-1970 shall be only regular Government School. That means, there won't be any addition to the Government School under "B" Wing category after 1-4-1970. By another GOMs No. 1786 (Education) dated 17-10-1974, the Government expressed that the integration of "A" Wing and "B" Wing was administratively not feasible and, therefore, it was decided to reserve 30% of the posts of District Educational Officers (promotional post) for "B" Wing. By GOMs No. 1968 (Education) dated 2-11-1978, the Government directed, in partial modification of the earlier GOs, that the staff of "A" and "B" Wings be integrated with immediate effect. The Government also indicated the procedure for integration in the following manner :

"(i) State-wide seniority lists shall be drawn up and maintained by the Director of School Education for 'B' Wing staff similar to the Statewide list maintained all along for Gazetted Headmasters, Non-Gazetted Headmasters, B.T. Assistants, Language Pandits, Grade I and Physical Directors in 'A' Wing.

(ii) The date of regular appointment of a person in the post in 'B' Wing on 31-3-1970 should be the basis for drawing up the State-wide seniority lists for different categories in 'B' Wing.

(iii) For filling up substantive vacancies existing on the date of this order or that may arise thereafter the ratio between the two Wings for the different categories of posts shall be as follows :

(A) For filling up the posts by promotion :

1. From the Non-Gazetted Headmasters to Gazetted Headmasters.

2. From the B.T. Assistants to Non-Gazetted Headmasters.

3. From Secondary Grade Assistants and other specialist teachers to the cadre of B.T. Assistants.

The vacancies will be filled up between 'A' Wing and 'B' Wing in the ratio of 2 : 3. The cycle of 5 shall be followed as indicated below :

A - 1 B - 1 A - 1 B - 1 B - 1 ----- 5" -----##

4. "A" Wing staff, aggrieved by the integration as per GOMs No. 1968, challenged the same by filing a writ petition in this Court. The challenge to the said GO, in particular, was directed against fixing the ratio between the two Wings in the matter of promotion and fixing the principle for computation of service in determining common seniority. This Court, upholding the ratio fixed in the said GO between the two Wings in the matter of promotion and also the principle for computation of service in determining common seniority, dismissed the writ petition. The decision, upholding the validity of the said GO No. 1968, was given by this Court on 23-10-1979. Before that, the Government issued GOMs No. 1079 dated 2-7-1979 framing the rules under Article 309 of the Constitution, styled as Special Rules for the Tamil Nadu Educational Subordinate Service "B" Wing and made those rules as part of Vol. III of the Madras Services Manual, 1970 under Section 6-A, Part 'II-B. These rules were given retrospective effect from 1-4-1970. After the judgment of this Court, the Government issued another GOMs No. 1307 dated 12-7-1980 by adding Rule 2-A to the Tamil Nadu Educational Subordinate Service Rules, which related to "A" Wing. Rule 2-A, as introduced by the said GO, reads as follows :

"2-A. Mode of promotion to the post of teaching staff. - All substantive vacancies existing or that may arise on and from 2-11-1978 in all categories of teaching staff which are to be filled up by promotion shall be filled or reserved to be filled from among the holders of the specified posts both in 'A' and 'B' Wings of the School Education Department in the ratio of 2:3 (namely 40% of 'A' Wing and 60% for 'B' Wing) as per the seniority lists of 'A' and 'B' Wings drawn up as on 31-3-1970."

5. One important aspect that has to be borne in mind before proceeding further is that the Government on 22-7-1980 addressed a letter to the Director of School Education on the effect of the judgment of this Court dated 23-10-1979 upholding GOMs No. 1968. Paras 2 and 3 of that letter are relevant for our purpose, which read as follows :

"2. I am also to state that the Government have carefully examined the observation made in the concluding portion of the Supreme Court judgment about alternative policies and the Government consider that there is no better possible alternative solution to the problem than the integration order confirmed by the Supreme Court.

3. In the above circumstances, I am to request you to implement the integration order issued in the GO referred to at para 1 above. The associations concerned may also be informed accordingly."

6. After taking the above decision, the Government, presumably under pressure of "A" Wing staff, issued another GOMs No. 98 (Education) dated 21-1-1981 amending Rule 2-A, which was introduced just a few months earlier and the amended Rule 2-A reads as follows :

"2-A. Mode of promotion to the post of teaching staff. - All substantive vacancies existing or that may arise on and from 2-11-1978 in all categories of teaching staff which are to be filled up by promotion shall be filled or reserved to be filled from among the holders of the specified posts both in the 'A' and 'B' Wings of the Social Education Department as per the combined seniority lists of 'A' and 'B' Wings drawn up on 1-11-1978 in the ratio of 2:3 .

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

A Wing - 1 B Wing - 1 A Wing - 1 B Wing - 1 B Wing - 1 ----- 5" -----##

7. It will be noticed that as per the amended Rule 2-A, the combined seniority lists of "A" and "B" Wings will have to be drawn up on 1-11-1978 in the ratio of 2:3 instead of as on 31-3-1970 as per the original Rule 2-A. The effect of the amendment seriously prejudiced the staff in the "B" Wing because after 1-4-1970 there were no fresh appointments in the "B" Wing and all appointments were made only in the "A" Wing and all the schools with effect from 1-4-1970 had become Government Schools. The result was that even the teachers, who were not in employment prior to 31-3-1970, were placed in the seniority list over the staff, who were already in the "B" Wing, long before 31-3-1970. Therefore, "B" Wing staff challenged the amended Rule 2-A on the ground that if the amended Rule was given effect to, then persons, who entered service on or after 1-4-1970, are likely to be placed above the staff of "B" Wing, who were already in service on that date. The "B" Wing staff challenged the validity before the Madras High Court. The learned Single Judge, who initially heard the matter, was not inclined to accept the case put forward by the "B" Wing staff and consequently dismissed the writ petition. When the matter was taken up to the Division Bench, the learned Judges, by a detailed and elaborate judgment, after tracing the earlier history and after referring to the judgment of this Court upholding 1968 GO, held that the amended Rule 2-A violated Articles 14 and 16 of the Constitution and on that ground, allowed the writ appeals on 10-8-1987 and held as follows :

"We are therefore satisfied that there is a clear infirmity in the GO dated 21-1-1981 by which the old Rule 2-A was substituted by the present Rule 2-A. The said Rule is clearly violative of the guarantee of equality under Articles 14 and 16 of the Constitution. The said Rule is therefore liable to be quashed. The result is that these appeals are allowed, the order of the learned Judge is set aside and a writ of mandamus will issue to the State Government to redraw the seniority list as originally contemplated by GO No. 1968 dated 2-11-1978. There will however be no order as to costs in these appeals."

8. Against this judgment of the Division Bench of the Madras High Court, the staff of the "A" Wing filed SLP (C) No. 14520 of 1987, etc. and this Court dismissed the said SLPs by a reasoned order as noticed above.

9. In the meanwhile, the Government issued GOMs No. 37 dated 7-1-1982 amending Special Rules for the Tamil Nadu Educational Service. Rules 2-A and 2-B inter alia were introduced, which read as follows :

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

2-B. Mode of appointment to the posts of Headmasters and Headmistresses. - All substantive vacancies existing or that may arise on and from 2-11-1978, in the category of Headmasters and Headmistresses which are to be filled up by recruitment by transfer shall be filled or reserved to be filled from among the holders of the posts of Deputy Inspectors of Schools and Assistants and Career Masters both in the 'A' and 'B' Wings of the School Education Department as per the combined seniority list drawn up as on the 1-11-1978 in the ratio of 2:3.

Explanation. - For the purpose of preparation of combined seniority list of 'A' and 'B' Wings, the cycle of 5 (2:3) shall be followed as indicated below :

A Wing - 1 B Wing - 1 A Wing - 1 B Wing - 1 B Wing - 1 ----- 5" -----##

10. On the same date, namely, 7-1-1982, the Government also issued GO No. 38 (Education) amending the Tamil Nadu Educational Subordinate Service. By this amendment, inter alia, the posts of Headmasters and Headmistresses were taken away from the said Rules. Still later, by GOMs No. 753 dated 15-7-1985 issued under Article 309 of the Constitution, the Government brought into existence the Special Rules for the Tamil Nadu School Educational Subordinate Service in supersession of the earlier Special Rules for the same service. Again, the Government issued GOMs No. 603 dated 15-4-1987 to be effective from 1-3-1985. This government order provided for three separate sources including promotion from Class V (Headmasters and Headmistresses) to the post of DEOs and that while making the said appointments the proportion in service by direct recruitment (20 + 10 = 30%) and by promotion (70%) was to be ensured.

11. After the dismissal of the special leave petitions by this Court, as noticed above, the Government passed another GOMs No. 1583 dated 12-10-1988.

12. The said GO was passed purporting to give effect to the judgment of the Division Bench of the Madras High Court in Writ Appeals Nos. 633-636 of 1986 and the order of this Court in SLPs (C) Nos. 14520-14589 of 1997 dated 15-12-1987. On the same date, the Government passed another GOMs No. 1584 by amending Rule 4 of the Special Rules for Tamil Nadu School Educational Subordinate Service. The effect of the said two GOs was that the integration order under GOMs No. 1968 dated 2-11-1978 was given a go-by and separate seniority lists of "A" Wing and "B" Wing teachers were directed to be prepared for the purpose of promotions. These two GOs were followed by promotional orders given to "A" Wing teachers on 3-12-1988 and 5-12-1988.

13. Aggrieved by the GOMs Nos. 1583 and 1584 both dated 12-10-1988 and the promotional orders dated 3-12-1988 and 5-12-1988, certain individuals belonging to "B" Wing teachers, the association concerning "B" Wing teachers preferred OAs Nos. 46 of 1988, 847 and 885 of 1989 before the Tamil Nadu Administrative Tribunal.

14. The Tribunal after perusing the pleadings, hearing the counsel on both sides and after tracing the previous history relating to the earlier two rounds of litigation between the same parties, ultimately held that the GOs impugned before it had brought into existence a situation which was directed to be avoided by the Division Bench of the High Court and giving effect to the impugned GOs will result in perpetrating something which was struck down by the High Court and Supreme Court. Accordingly, the Tribunal quashed the GOs impugned before it and also the promotional orders given to "A" Wing teachers. Consequently the Tribunal directed the Government and the authorities concerned to prepare a combined seniority list (a) for B.T. Assistants, (b) Gazetted Headmasters and

(c) Administrative Staff as on 31-3-1970 by integrating both "A" Wing and "B" Wing in the proportion specified and by adding the persons recruited subsequent to 1-4-1970 to the respective lists. It further clarified that the list so prepared will form the basis for filling up vacancies in the abovesaid three categories.

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

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

The challenge that was made by the "B" Wing teachers before the Tribunal related to GOs amending Educational Subordinate Service which has nothing to do with the posts of Headmaster, District Educational Officer and Chief Educational Officer, etc., which are governed by the Educational Service. It was also the contention of the learned counsel appearing for the appellants that when the Division Bench of the Madras High Court had struck down GO No. 98 and issued a mandamus, it was a futile writ, so to say, as the Rule amended by the GO impugned before it was altogether removed from the statutory-book. However, that was not brought to the notice of the High Court or when the matter was further taken up to this Court. The further contention of the appellants was that before GOMs No. 1968 was passed in the year 1978 giving retrospective effect from 1-4-1970, numerous promotions had taken place in the "B" Wing in accordance with the then existing rule which cannot be set at naught by giving the date of integration as 1-4-1970 and that was the reason for fixing the date of integration as 2-11-1978. It was also contended that before the "B" Wing school teachers were taken over, there was no category of Gazetted Headmasters, Deputy Inspectors of Schools, Inspectors of Schools, etc., as was the case in the service of "A" Wing teachers. Likewise, there was difference in mode of appointment, qualification, etc. Two categories, therefore, cannot be considered similar and integrated from 1-4-1970. The "B" Wing teachers never challenged the relevant GOs prescribing the mode of promotion to the post of Headmaster and further promotion to the post of DEO and CEO, etc. The promotions given to "A" Wing teachers were in accordance with the rules of promotion for the post of Headmasters, DEO, etc. and in the absence of challenge to those Rules, the Tribunal was not justified in quashing their promotions. Though the difficulties in the integration of various posts in the Tamil Nadu Educational Subordinate Service was brought to the notice of the Tribunal, this has not been properly dealt with by the Tribunal. In any event, the matter of integration being a policy matter, the Tribunal ought not to have interfered with the various orders of the Government. It was also submitted that GO No. 1968, which was issued under Article 162 of the Constitution of India, cannot hold the field when the relevant rules governing the service were passed under Article 309 of the Constitution of India. The Tribunal failed to appreciate, according to the appellants, that if the Government were to give effect to the directions given by it, it would result in nullifying hundreds of appointments made and unsettling the service conditions of hundreds of teachers both in "A" Wing and "B" Wing. A proper reading of GO No. 1968, in particular, clause (4)(iii) will clearly show that the integration was to be given effect to on and from 2-11-1978 while filling up the vacancies existing or that might arise thereafter. It is impossible to read the said clause (4)(iii) as integrating both Wings as on 1-4-1970. To make it clear that there was no integration from 1-4-1970 under GO No. 1968, the

Government passed GOMs No. 1584 on 12-10-1988 by keeping both the Wings separate.

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

GO No. 1968 clearly and in unequivocal terms made the integration of both the Wings complete on and from 1-4-1970 and the said GO has not been rescinded or withdrawn by the State Government till date. Further, this Court and the Division Bench of the Madras High Court had already interpreted the scope of GO No. 1968, in particular, the date of integration as 1-4-1970, and the Government having accepted the judgment of this Court and the Division Bench judgment of the Madras High Court, which was also affirmed by this Court, it is no longer open to the Government to go back on that, especially after the rights of the "B" Wing teachers had become crystallised. The rights so crystallised cannot be taken away by resorting to the rule-making power of the State Government. In support of this, reliance was placed on a judgment of this Court in *Madan Mohan Pathak v. Union of India*. ((1978) 2 SCC 50 : 1978 SCC (L&S) 103 : (1978) 3 SCR 334). While that being the position, the Government by the GOs impugned before the Tribunal, namely, Nos. 1583 and 1584, attempted to disintegrate an integrated cadre contrary to the principles of integration contained in GO No. 1968 and as interpreted by this Court. The question of integration of two categories would arise only with respect to teachers, who were in government service as on 31-3-1970. No such question would arise with respect to fresh appointees after 1-4-1970 as the schools to be opened and recruitment of teachers after 1-4-1970 will all be under "A" Wing. Surprisingly, the Government, purporting to give effect to the mandamus issued by the Division Bench of the High Court, as affirmed by this Court, has disintegrated the two categories by passing the GOs impugned before the Tribunal. Therefore, the Tribunal was absolutely right in quashing the same and giving directions as contained in its order. The question of challenging GO No. 37 dated 7-1-1982 by "B" Wing teachers did not arise as it had no impact at all on the principles of integration contained in GO No. 1968. Therefore, the contention based on that was devoid of substance. In any event, GOMs No. 37 has to be read down to mean that the expression "combined seniority list drawn up as on 1-11-1978" means combined seniority list drawn up with reference to 31-1-1970, i.e., the date on which the "B" Wing teachers were absorbed in government service and made up-to-date as on 1-11-1978 by deleting the names of persons promoted, resigned or dead in the meanwhile, for operating the same for purposes of filling up the vacancies. Any other interpretation as suggested by the appellants would render the said Rules ultra vires Article 14 in the light of the pronouncements of this Court confirming the judgment of the High Court. The well-settled principle in the matter of interpretation is that if two interpretations are possible, the one which sustains the validity of the rule should be preferred. Likewise, the arguments that the Division Bench of the Madras High Court struck down a non-existent rule and, therefore, the mandamus issued based on such striking down cannot be enforced, is also devoid of substance. According to the respondents, the GO impugned, namely, GO No. 1584 dated 12-10-1988 having retrospective effect from 15-7-1985, itself was one intended to substitute GO No. 98 in the light of a judgment of this Court in *Koteswar Vittal Kamath v. K. Rangappa Baliga* ((1969) 1 SCC 255 : (1969) 3 SCR 40) in which it was laid down that the old rule once

substituted by the new rule ceases to exist and it does not automatically get revived when the new rule is held to be invalid. In other words, the respondents submit that as a result of the striking down of GO No. 1584, the old Rule 4 which, for the first time, came into existence on 15-7-1985 did not revive. Therefore, there was no old Rule 4 in the eyes of law which needs to be challenged separately. The further argument of the learned counsel for the respondents was that reliance placed by the appellants on GOMs No. 603 dated 15-4-1987 was misplaced as that did not affect the principles of integration initiated under GO No. 1968. On the other hand, in para 2 of the said GO (GO No. 603), the right of the "B" Wing Headmasters for promotion against 30% vacancies reserved for them till all the "B" Wing Gazetted Headmasters are exhausted, was reiterated. In terms of the mandamus issued by the Madras High Court, which was affirmed by this Court, and in the absence of combined seniority list on that basis, no reliance can be placed on the statement of the Director of School Education, issued prior to the judgment to the effect that all eligible "B" Wing Gazetted Headmasters had already been promoted. Viewed from this angle, no prejudice is caused to the "B" Wing Headmasters on account of GOMs No. 603 which has no bearing on the combined seniority list to be drawn up in terms of the mandamus issued by the Division Bench of the High Court and, therefore, there was no need for "B" Wing teachers to challenge the said GO No. 603. The Government has provided for the integration of the two categories of teachers under GO No. 1968 and the principles of integration had already been approved by this Court. It is unfortunate that the Government failed to implement the binding judicial decisions, but instead attempted to circumvent the same by resorting to amendments to the Rules. The Tribunal was right in striking down the impugned orders and giving consequential reliefs. On the basis of these submissions, the respondents prayed for dismissal of all the appeals.

18. After hearing Senior Counsel appearing on both sides, ably assisted by other counsel, we find that the crucial issue that arises for decision relates to the actual date of integration of two categories of teachers ("A" & "B" Wings). In other words, whether the integration of "A" & "B" Wing teachers took place on 1-4-1970 as contended by the "B" Wing teachers, or only on 2-11-1978 as contended by the "A" Wing teachers and also by the State of Tamil Nadu.

19. Before factually considering the rival submissions on the crucial issue as well as the subsidiary issues, it will be worthwhile to bear in mind certain background facts even though those facts have already been noticed elsewhere. It is relevant to note that the integration GO No. 1968 dated 2-11-1978 has not so far been rescinded or withdrawn by the Government. On the other hand, the Government by passing the GOs impugned before the Tribunal, have expressly stated that they are giving effect to the judgment of the Division Bench of the Madras High Court as affirmed by this Court. The next important aspect to be borne in mind is the observations of this Court in the TN. Education Deptt. Ministerial and General Subordinate Services Assn. case. ((1980) 3 SCC 97 : 1980 SCC (L&S) 294 : AIR 1980 SC 379). This Court in the said case while repelling the arguments advanced by "A" Wing teachers in challenging the validity of GOMs No. 1968 that "A" Wing teachers stand entirely on a different footing in the matter of qualification, appointment, service, etc., observed in para 14 as follows : (SCC pp. 101-02)

"14. The students who are coached for examinations, the syllabus for such courses and the nature of the teaching are virtually identical in the two sets of schools and the qualifications of the teachers also resemble. In this background, the State probably

assumed as inadmissible of contrary argument that the quality of the service, the nature of the qualifications for employment and other features were de facto identical and consequentially service in District Board Schools and service in Government Schools could be legitimately equated for purposes of reckoning seniority. In this imperfect world mathematical precision in equation is a vain chase."

20. The next aspect to be borne in mind is that this Court in the said case while dismissing the writ petition in para 19 observed as follows : (SCC p. 103)

"19. We see the force of the petitioners' grievance and realise that an alternative policy may well be fabricated. That is a matter for the State and not for the court."

21. The above observations of this Court were seriously taken note of by the Government and after deep consideration, the Government came to the conclusion [vide government letter dated 22-7-1980 (supra)] that there is no possible alternative solution to the problem except to implement the integration order in GOMs No. 1968 as affirmed by this Court. Accordingly, the Government decided to implement the integration order issued in the said GO and instructed the authorities concerned to inform the associations accordingly.

22. We have noticed that in the second round of litigation, the teachers belonging to "B" Wing challenged GOMs No. 98 dated 21-1-1981 and the Division Bench of the Madras High Court, while accepting the challenge, held in clear and categorical terms that the integration had taken place on 1-4-1970. The Madras High Court also gave reasons in support of its finding. It held as follows :

"But as long as the integration is given effect to as from 1-4-1970 it would not be possible for personnel of the 'B' Wing to complain of any unfair or unequal treatment and indeed no such grievance has been made before us. There was clearly a rationale behind the adoption of 1-4-1970 as the date with reference to which the 'A' Wing and the 'B' Wing personnel were to be integrated. The rationale was that all those who were in service as on 1-4-1970 as government servants were given equal treatment in the process of integrating the two Wings."

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

"21. Indeed, in the instant case, the Supreme Court had upheld the absorption and once the dichotomy between the two branches had come to an end, principle of equality demanded that in case the two branches had to be integrated they should be integrated with reference to 31-3-1970 alone. As a matter of fact, the communication issued by the Government to the Director of School Education clearly indicated that no other alternative policy was possible and the integration as confirmed by the Supreme Court should be given effect to. Once this was the stand taken by the Government unless a plausible explanation is given as to why it was thought necessary to change the date, the change of date to 1-11-1978 must be held to be wholly arbitrary and irrational. We have already indicated the irrational results which follow the determination of the combined seniority list on the basis of the date as 1-11-1978."

24. We have also noticed that the special leave petition filed against the said judgment of the Madras High Court was dismissed by this Court not in limine but by giving reasons.

25. From all this, one thing is clear and that is that the date of integration was 1-4-1970. Once that conclusion is reached on the basis of the facts gathered from records, the other minor/subsidiary issues will go to the background.

26. The Tribunal was also of the same view that the integration as per GO No. 1968 has taken place as early as on 1-4-1970. The Tribunal observed thus :

"... the history of the present case clearly indicates that the method of integration between the two Wings had been settled long ago and the same had been confirmed by the courts. The only thing that remained to be decided was whether the adoption of crucial date for the purpose of enforcing integration as 2-11-1978 instead of 1-4-1970 is justifiable. The finding of the court is otherwise. Hence, the Government cannot relay the steps relying on the observation of the Supreme Court in the case of B. K. Mohapatra v. State of Orissa. (1987 Supp SCC 553 : 1988 SCC (L&S) 234). The Government will have to follow the directions contained in WAs Nos. 733 to 736 of 1986 in enforcing GOMs No. 1968, Education dated 2-11-1978 and the combined seniority list of 'A' and 'B' Wings should be redrawn. There is no scope for preparing and keeping two separate lists of 'A' and 'B' Wings as contemplated in paras 10 and 11 of GOMs No. 1583 dated 12-10-1988. A combined seniority list will have to be prepared as per GOMs No. 1968, Education, dated 2-11-1978 and promotions will have to be made as per the combined seniority list. As per the judgment of the Division Bench the respondents are bound to redraw the combined seniority list of 'A' and 'B' Wings as on 1-4-1970.

In other words, the B.T. Assistants who were in service as on 31-3-1970 in both the Wings will have to be integrated in the ratio prescribed, and the 'A' Wing teachers recruited after 1-4-1970 will have to be added to the list so prepared to arrive at a combined seniority list."

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

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

28. Ultimately, the Tribunal came to the conclusion as follows :

"The respondents cannot be allowed to alter the provisions contained in GOMs No. 1968, Education, dated 2-11-1978 by means of impugned government orders in view of the fact the Bench had declared that in doing so it will amount to :

(1) Inequality of opportunity among the employees belonging to the same class.

(2) Employees of 'A' Wing who were not in service as on 1-4-1970 are likely to be placed above 'B' Wing teachers who were in service as on 1-4-1970.

If the impugned government orders are to be enforced after 1-4-1970 by adding subsequently recruited people of 'A' Wing then if the subsequent promotions are given effect to as per the ratio it will result in the same condition, viz., 'A' Wing teachers recruited subsequent to 1-4-1970 getting precedence over 'B' Wing teachers who were in service as on 1-4-1970. Hence, the passing of the impugned government orders will bring into existence the situation which was directed to be avoided by the Division Bench judgment. Enforcing the impugned government orders will result in perpetrating something which was struck down by the High Court and the Supreme Court."

29. We find that the Tribunal on the basis of the facts and records placed before it, has arrived at the correct conclusion. The contention of the learned counsel appearing for the appellants to support the change brought about in the date of integration from 1-4-1970 to 2-11-1978 and the reasons given therefor are either overruled already in the two rounds of litigation or they are too technical. The submission that the mandamus issued by the Madras High Court was a futile one as the Rule struck down by it was not there on the statutory-book when the judgment was rendered, cannot be taken note of as the Government, accepting the decision of the Madras High Court as upheld by this Court, had issued the GOs impugned in these cases. Further, the Madras High Court, apart from holding GO No. 98 as illegal and void, also settled other contentious issues like the date of integration between the parties. The High Court further commanded the State to redraw the seniority list as originally contemplated by GO No. 1968. That being the position, it is too late in the day to contend that the judgment of the Madras High Court, as upheld by this Court, has to be totally ignored. Mr. P. P. Rao, the learned Senior Counsel appearing for the respondents, was right in placing reliance on a judgment of this Court in *M. M. Pathak case* ((1969) 1 SCC 255 : (1969) 3 SCR 40) and in making the submission that the right to combine seniority list as well as the promotional opportunities provided in GO No. 1968 became crystallised in the said writ of mandamus issued by the Madras High Court as upheld by this Court and the same could not be taken away by resorting to the rule-making power of the State Government. At the risk of repetition, we point out that the Government after the judgment of this Court upholding GO No. 1968, expressed that there was no better possible alternative to the problem than the integration order affirmed by this Court. After all this, the Government again purporting to give effect to the writ of mandamus issued by the Madras High Court as upheld by this Court, issued GOs impugned in these cases, which had the effect of disintegrating an integrated cadre contrary to the principles contained in GO No. 1968. Therefore, the Tribunal was compelled to quash the GOs impugned before it. The technical objections taken by the learned counsel for the appellants that in the absence of challenge to GOMs Nos. 37 dated 7-1-1982 and 603 dated 15-4-1987 the respondent - "B" Wing teachers cannot get the fruits of the Tribunal's direction, is also not tenable. It was rightly pointed out by the learned Senior Counsel, Mr. P. P. Rao that GO No. 37 dated 7-1-1982 had no impact at all on the principles of integration contained in GO No. 1968 and it did not even touch the quotas prescribed for promotion from Gazetted Headmasters, post to that of DEO for "A" and "B" Wings. In the circumstances, the learned counsel was right in his submission that GO No. 37 must be read down to sustain its validity to mean that the combined seniority list should be drawn up with reference to 31-3-1970, i.e., the date on which "B" Wing teachers were absorbed in government service and made up-to-date as on 1-11-1978 by deleting the names of persons promoted, resigned or dead in the

meanwhile, for operating the same for purposes of filling up vacancies. Similarly, GO No. 603 dated 15-4-1987 has no effect on the integration process initiated under GOMs No. 1968 and, therefore, there was no need to challenge the same by "B" Wing teachers.

30. As pointed out earlier, once if we come to the conclusion that the date of integration was 1-4-1970 and not 2-11-1978, all other questions will go to the background and this was not seriously disputed by Mr. Selvaraj, learned counsel appearing for one of the appellants.

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