

PETITIONER:

B. VENKATA REDDY AND OTHERS ETC.

Vs.

RESPONDENT:

STATE OF ANDHRA PRADESH AND OTHERS

DATE OF JUDGMENT 08/08/1983

BENCH:

VARADARAJAN, A. (J)

BENCH:

VARADARAJAN, A. (J)

CHANDRACHUD, Y.V. ((CJ)

SEN, AMARENDRA NATH (J)

CITATION:

1983 AIR 1108

1983 SCR (3) 545

1984 SCC (1) 645

1983 SCALE (2) 241

ACT:

(Andhra Pradesh) Adhoc Rules, 1973 framed in G.O.Ms. 939, Education dated 19-9-1973-Interpretation of-Rule 13(1)-Inartistically worded-must be read with Rule 3(1) & (2) otherwise this rule leads to disharmony.

(Andhra Pradesh) Adhoc Rules, 1974 framed In G.O.Ms. 502, Education dated 19-6-1974, Rule 6-Validity of. Andhra Pradesh State and Subordinate Services Rules-Rule 33(c)-Scope of.

HEADNOTE:

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, the Government decided in G.O.Ms. 1920, Education, dated 25.10.1968 that in the existing colleges the two years' intermediate course should be introduced and laid down in G.O.Ms. 2063, Education, dated 25.8.69 the staff pattern and pay scales of staff in Junior Colleges started for the two years' intermediate course. In G.O.Ms. 2186, Education, dated 17.9.1969 the Government issued instructions regarding the absorption of Post Graduate teachers in Junior Colleges on the basis of the Post-Graduate degree and the number of years of service rendered by them. 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 Lecturers pending framing of adhoc rules in due course. The Government ordered in G.O. Ms. 1147, Education, dated 4.6.1970 that in the common seniority list first rank should be given only to those who have secured first and second class Post Graduate degree. On 19.9.1973 the Government framed Adhoc Rules, 1973 with retrospective effect from 1.8.1969 for the temporary post of Junior Lecturers in Junior Colleges. Rule 13 of the Adhoc Rules, 1973 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. Rule 3 states that post-graduates with first or second class degrees are to be given preference over Post-Graduates holding third class degrees. On

19.6.1974 the Government framed Adhoc Rules, 1974 for the temporary posts of principals of Junior Colleges with retrospective effect from 1.8.1969. Rule 6 of the Adhoc Rules, 1974 prescribes first or second class Post-Graduate degree for promotion of Junior Lecturers to the posts of Principals of Junior Colleges. Rule 8 of the Adhoc Rules 1974 says that a person who held the post of Principal of a Junior College immediately before

546

the issue of these Rules shall be continued as Principal and given option either A to continue in the post of Principal or to revert to his original post.

The appellants in Civil Appeals 1652-1659 of 1978 who were working as Post-Graduate Assistants and were first or second class Post-Graduate degree holders were appointed as Junior Lecturers in 1969. Soon after the Adhoc Rules, 1973 were framed the second respondent, Joint Director of Higher Education, prepared a subjectwise seniority list in 1974 and on the basis of their seniority in that seniority list all the appellants except one were promoted as Principals of different Junior Colleges. The first respondent State, under the directions of the High Court in a separate proceeding to prepare the seniority list as per Rule 13(1) of the Adhoc Rules, 1973, prepared a revised seniority list in 1976 in which respondents 3 to 8, who were third class Post Graduate degree holders and were appointed as Junior Lecturers in 1970 and 1975 were placed as seniors to the appellants. The appellants as petitioners filed petitions in the Administrative Tribunal for quashing the revised seniority list of 1976 and restoring the earlier seniority list of 1974 or in the alternative for declaring that Rule 13(1) of the Adhoc Rules, 1973 is violative of Articles 14 and 16 of the Constitution. The petitioners contended that under the Adhoc Rules Post-Graduate Assistants with first and second class Post Graduate degrees should be treated as one group and as senior to Post Graduate Assistants with third class Post-Graduate degrees. The Tribunal held that the seniority list of 1976 framed as per Rule 13(1) of the Adhoc Rules, 1973 having precedence over the earlier executive instruction is valid and 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.

The appellants in Civil Appeal 415 of 1979 who were working as School Assistants in Higher Secondary Schools and were third class Post Graduates were appointed as Junior Lecturers in Junior Colleges in terms of Rule 3 of the Adhoc Rules, 1973. Pending the framing of Adhoc Rules for the temporary posts of Principals of Junior Colleges, the second respondent, Director of Public Instructions, issued proceedings dated 14.3.1974 promoting under Rule 10(a) (i) of the State and Subordinate Services Rules seven third class Post Graduate Junior Lecturers as Principals of Junior Colleges. The appellants as petitioners challenged in the Administrative Tribunal these Adhoc promotions. They also challenged the validity of Rule 6 of the Adhoc Rules, 1974 on the ground that it violates Articles 14 and 16 of the Constitution. The Tribunal held that Rule 6 does not contravene Articles 14 and 16 of the Constitution. The Tribunal found nothing objectionable in Rule 8 of the Adhoc Rules, 1974 which protects the right of third class Post Graduate degree holders who had been promoted under Rule 10(a) (i) of the State and Subordinate Services Rules pending framing of Adhoc Rules.

Allowing Civil Appeals 1652-59 and dismissing Civil

Appeal 415,
^

HELD: There is no need to quash Rule 13(1) of the Adhoc Rules, 1973 which has to be interpreted in the manner indicated in the Judgment and

547

seniority has to be fixed accordingly. The seniority list of 1976 is quashed and the seniority list of 1974 is restored. Rule 6 of the Adhoc Rules, 1974 is valid. [571 H, 572 A]

There is no reason to think that the Government intended by Rule 13(1) of the Adhoc Rules, 1973 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 4.6.1970 and even in Rule 3(1) and (2) of the Adhoc Rules, 1973. 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 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 Adhoc 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 Adhoc 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). 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 Graduate School Assistants. When Post-Graduates with not less than five years of service, working as Post Graduate School Assistants are appointed as Junior Lecturers their inter se seniority has to be fixed like wise under Rule 13(1) on the basis of the dates of their original appointment as Post-Graduate School Assistants. Similarly, when Post-Graduates with less than five years of service, working as Post Graduate 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-Graduate School Assistants. If Rule 13(1) is interpreted in this manner, no disharmony will result from applying all the adhoc rules. It is only by constructing Rule 13(1) in this manner the Government framed the seniority list of 1974. [569 D-H 570 A F]

The object of achieving excellence in educational institutions 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. Prescribing a first or second class Post Graduate 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, it is not possible to hold that Rule 6 of the

Adhoc Rules? 1974 is liable to be struck down as being discriminatory and illegal. [572 G-H, 573 A] 548

S. M. Pandit v. State of Gujarat, 1972 S.L.R. 79 not applicable.

The promotion of seven third class Post-Graduate Junior Lecturers as Principals 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 Graduate School Assistants. The irregularity has been sought to be overlooked by providing a saving clause by way of Rule 8 of the Adhoc Ruler, 1974. It is not possible to think that there could have been any valid necessity to continue those adhoc promotions made even after the Adhoc Rules, 1974 were framed within about three month of those promotions. 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 would voluntarily opt for reverting to his original post of Junior Lecturer. However, having regard to the long lapse of time it is not desirable to declare those appointments as illegal. [573 E-H, 574 A]

Rule 33(c) of the Andhra Pradesh State and Subordinate Services Rules 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 fact of the present case where Junior Lecturers have been appointed by election amongst Post Graduate School Assistants in the manner indicated in Rule 3(1) and (2) of the Adhoc Rules and there is no question of transfer of Post Graduate School Assistants as Junior Lecturers. [571 C-E]

Reserve Bank of India v. N. C. Paliwal, A.I.R. 1976 S.C. 2342 not applicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1652 to 1657 of 1978

Appeals by Special leave from the Judgment and order dated the 31st August, 1978 of the Andhra Pradesh Administrative Tribunal in Representation Petitions Nos. 595 and 985 of 1977 and 340, 289, 466 and 533 of 1978.

WITH

Civil Appeal Nos. 1658 and 1659 of 1978.

Appeals by Special leave from the Judgment and order dated the 8th September, 1978 of the Andhra Pradesh Administrative Tribunal in Representation Petitions Nos. 561 and 59 of 1978.

AND

Civil Appeal No. 415 of 1979.

Appeal from the Judgment and order dated the 31st August, 1978 of the Andhra Pradesh Administrative Tribunal in Transferred Writ Petition No. 941 of 1976.

549

M.N. Phadke, M. R. K Chaudhary, B. Kanta Rao and Miss Nalini, for the Appellants in CA. Nos. 1652-59/78.

S. N. Kacker and B. Parthasarathi, for the Appellants in CA 415.

T. S. Krishnamoorthy Iyer, K Ramkumar and Mrs. J. Ramachandran, for RR. 3, 5, 8 and 9 in CAS. 1652-59/78.

P. Ram Reddy, and G. Narayana Rao for RR. 1 and 2 in CA. 1652-59 and 415 of 1979.

The Judgment of the Court was delivered by VARADARAJAN J. These appeals by special leave are

directed against the Judgments of the Andhra Pradesh Administrative Tribunal, Hyderabad in Representation Petitions 595 of 1977 and batch and transferred Writ Petition 941 of 1976. C. As. Nos. 1652 to 1659 of 1978 have been filed against the common judgment dated 31.8.1978 in Representation Petition 595 of 1977 and batch in which common issues arose for consideration while C.A. No. 415 of 1979 has been filed against the separate judgment, dated 31.8.1978 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.

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 Nos 1 to 6 were working as Principals 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.

The seven petitioners in Representation Petition 595 of 1977 who were working as Post-Graduate Assistants or Headmasters in

550 the Zilla Parishad 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% marks and above and were fully eligible for appointment as Junior Lecturers. The petitioners' contention is that under the Adhoc Rules governing Junior Lecturers they being Post-Graduates who had passed in first or second class, should be placed in the seniority list above Post Graduate Assistants who hold only third class Post-Graduate degrees. The second respondent, joint Director of Higher Education, Andhra Pradesh, prepared a subject-wise 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 Lecturers upto the rank of 40 in that list were promoted as Principals of various junior Colleges. The 1st respondent State of Andhra Pradesh, prepared a revised seniority list as per the directions of the Andhra Pradesh High Court in Writ Petition No. 4358 of 1974 and Writ Appeal No. 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 Lecturers in 1969 itself and were regularised as early as in November 1969 and under the Adhoc Rules framed by the Government, Post-Graduate Assistants with first and second class Post-Graduate degrees should be treated as one 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 27.12.1976 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 Adhoc Rules, 1973 dealing with seniority of Junior Lecturers is violative of Articles 14 and 16 of the Constitution

Rule 13 (1) and (2) of the Adhoc 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

551

determined with reference to the date of his actual appointment as a Post-Graduate Assistant of the probable date on which he would have been appointed as Post Graduate Assistant but for his appointment or promotion to a higher post;

(ii) The seniority of any person appointed under clause (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 (I) of Rule 3 shall be senior to a person appointed under sub-clause (a) of that clause...."

Rule 3 of the Adhoc Rules, 1973 reads as follows: 4

"Rule 3 of 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 Sub-ordinate 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 a 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)-

552

(a) by recruitment from among the Headmasters and Post-Graduate Assistants in recognised Multipurpose 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 (I)(a):
- (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 Parishad High School or 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' service as a Post Graduate Assistant or Selection Grade Assistant in the Andhra Pradesh Educational Subordinate Service or as a Headmaster of a High School or Post Graduate Assistant in a School under the management of a Zila Parishad or a Municipality....."

553

The Andhra Pradesh Government decided in 1964 that the Secondary School Education should be of 10 years' duration instead . 4 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 25.10.1968 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 25.8.1969. In G.O.Ms. 2186, Education, dated 17.9.1969 the Government issued the following instructions regarding the absorption of Post-Graduate Teachers in Junior Colleges:

"In regard to the appointment of Post Graduates as Junior Lecturers in Junior Colleges, priority will be given to those who are in the scales 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 5 years of service, working as Post-Graduate Assistants:
- (c) Third class Post-Graduates with less than of 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.

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 Lecturers pending framing of adhoc rules in due course. The Government ordered in G.O.Ms. 1147, Education, dated 4.6.1970 that in the common seniority list first rank should be given only to those who have secured first and second

554

class Post-Graduate degree with 50 per cent marks and above. These G. Os. were all executive instructions.

There is no dispute that the petitioners are holders of first or second class Post-Graduate 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 only third class Post-Graduate degrees. The petitioners relied heavily I J on the above rule 3 of the Adhoc Rules, according to which persons with first or second class Post-Graduate 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.

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 Adhoc Rules under Article 309 of the Constitution ceased to operative once those adhoc rules were framed and that under Adhoc Rule 13 the seniority of Post-Graduate Assistants of former Higher Secondary Schools and Multipurpose 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 that the Education Department followed the judgment of the Andhra Pradesh High Court in W.P. No. 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 Adhoc Rules. Thus the Government opposed the Representation Petitions.

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 Adhoc Rules issued in G.O.Ms 939, Education, dated 19.9.1973. It was not disputed

555

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 Adhoc Rules were framed on 19.9.1973 and only some of the respondents 3 to 8 B were appointed in 1975 under Rule 3 (1) (i) of those Adhoc 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. The Tribunal noted the following further facts:-

(1) That Government had decided in G.O.Ms. 2063, Education, dated 25.8.1969 that first and second class Post-Graduates would be given a higher starting pay of Rs 260 in 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 4.6.1970 that in the common seniority list first rank should be given only to those who have secured first or second class Post-Graduate degrees 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 Adhoc Rules framed on 19.9.1973 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 persons with third class Post Graduate degrees.

But the Tribunal relied 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 Adhoc Rules, 1973 which have been given retrospective effect from 1.8.1969 and held that the impugned seniority list framed as per Rule 13(1) of the Adhoc 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 Adhoc Rule 13 (1) says that seniority of Post

566

Graduate Assistants appointed as Junior Lecturers shall be determined with reference to the dates of their actual appointment as Post Graduate Assistants or the probable 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 Adhoc 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 prerequisite for 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 (I) of the Adhoc 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 Adhoc Rules, that the relief prayed for by the four petitioners in that Writ Petition has already been given and that Writ Petition is disposed of accordingly. The Tribunal has ordered that Transferred Writ Petition 78 of 1976 also stands 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.

In Transferred W.P. 941 of 1976 out of which C.A. No. 415 of 1979 filed by 34 petitioners in that Petition has arisen, the reliefs prayed for were: (I) that a correct seniority list based on Rule 13 of the Adhoc Rules 1973 should be issued in respect of all the Junior Lecturers, (2) that Rule 6 of the adhoc Rules framed in G.O.Ms.

557

502, Education, dated 19.6.1974, 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 adhoc appointments of seven third class Post-Graduate Junior Lecturers as Principals of Junior Colleges made in the proceedings dated 14.3.1974 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.

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 Rule 3 of the Adhoc 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 of Category 2 of Class II in the Andhra Pradesh Educational Subordinate Service or Headmasters or High Schools and Post-Graduate Assistants in Zilla 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 Adhoc 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 appointed 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 subject-wise list. In the Adhoc Rules framed by the Government in G.O.Ms. 939, Education, dated 19.9.1973 there were no rules regarding promotion of Junior Lecturers to the posts of Principals of junior Colleges. Pending the framing of Adhoc Rules in that regard the second respondent, Director of Public Instruction, issued proceedings in R.C. No. 775-Cl/2/74 dated 14.3.1973 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. Subsequently, Adhoc Rules were framed by the Government in G.O.Ms. 502, Education, dated 19.6.1974 under the proviso to Rule 309 of the Constitution with retrospective effect from 1.8.1969

558

regarding promotion to the posts of Principals of Junior Colleges. Under these Rules Junior Lecturers holding 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 Adhoc 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".

The tribunal affirmed in its judgment in this Transferred Writ Petition its judgment in Representation Petition 595 of 1977 and observed 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) (1) of the Adhoc 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 they are first, second or third class degrees. The Tribunal held that subject to that provision regarding fixing of over all seniority subject-wise 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 Adhoc Rules should be followed.

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 no 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 degrees 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

559
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.

On a perusal of G.O.Ms. 939, Education, dated 19.9.1973 in which Adhoc 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 academic attainments has direct nexus with the object of achieving excellence in a teaching institution and that it does offend Articles 14 and 17 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.

The Tribunal found nothing objectionable in Rule 8 of

the Adhoc 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 Adhoc Rules which were actually framed subsequently on 19.6.1974.

On these findings the Tribunal dismissed Transferred Writ Petition No. 941 of 1976.

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 then existing PUC instead of the then prevailing Higher Secondary and Multi-purpose system, commencing from the academic years 1969-70 the Government decided in G.O.Ms. 1920, Education, dated 25.10.1968 that in the existing

560

colleges the two years' intermediate course should be introduced instead of the one year PUC, and laid down in G.O.Ms. 2063, Education, dated 25.8.1969 the staff pattern and pay scales of staff in junior Colleges started for the two years' intermediate course. In implementing this scheme Post-Graduates 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 other Representation Petitions 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 Petitions 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 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 School Assistants are all first or second class Post Graduate degree holders. Based on their superior academic qualification those first and second class Post-Graduate School Assistants were given priority and treated as 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 17 920 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 Adhoc Rules framed by the Government in G.O.Ms. 939, Education, dated 19.9.1973. Pursuant to that direction a revised seniority list of Junior Lecturers was issued by the Government on 27.12.1976. 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 promoted as Principals of various junior Colleges and the seventh petitioner in Representation Petition 595 of 1977 who 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

561

placed at Nos. 380, 54, 390, 392, 406, 368 and 374 respectively and the private respondents in that Representation Petition have all been 4 placed above them as their seniors. The seniority of the petitioners in the other Representation Petitions in the batch was also disturbed to 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 petitioners 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 Adhoc Rules, 1973 dealing with seniority of junior Lecturers is violative of Articles 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 1659 of 1978 have arisen is 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 Adhoc Rules, 1973 should be issued in respect of all Junior Lecturers; (2) that Rule 6 of the Adhoc Rules framed in G.O.Ms. 502, Education, dated 19.6.1974 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 adhoc appointments of seven third class Post-Graduate degree holders as Principals of Junior Colleges made in proceedings dated 14.3.1974 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 6 of the Adhoc Rules framed G.O.Ms. 502, Education, dated 19.6.1974 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 consider these two questions in this common judgment. We shall also consider briefly the third prayer made in Transferred Writ Petition 941 of 1976 which has been negatived by the Tribunal. We may state that the first prayer made in Transferred Writ Petition 941 of 1976 will be covered by our finding on the only point arising for consideration in Civil Appeals 165 to 1659 of 1978.

Mr. M.N. Phadke, Senior Advocate appearing for the appellants in Civil Appeals 1652 to 1659 of 1978 drew our attention to the

562

special provisions in various Government orders which are executive instructions issued before the Adhoc Rules were framed under the proviso to Article 309 of the Constitution on 19.9.1973 and to some special provisions made even in those adhoc rules showing preference and priority for Post-Graduate School Assistants holding first and second class Post-Graduate degrees 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 list of 1974 should be restored. But Mr. T.S. Krishna Moorthy Iyer Senior Advocate appearing for the contesting private respondents 3, 5, 8 and 9 in Civil Appeals 1652 to 1659 to 1978 argued that before their appointment as Junior Lecturers Post Graduate Assistants holding first, second and third class Post Graduate Degrees were doing the same work and drawing the same scale of pay. He submitted that though in G.O.Ms. 2063, Education, dated 25.8.1969 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 Adhoc Rules, 1973 about salary, and this would show that under the Adhoc Rules no new service was created but only the previous 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. Rama 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 563

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.

As stated above, in G.O.Ms. 2063, Education, dated 25.8.1969 Government ordered that first or second class Post-Graduates will be 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 will be allowed only the pay 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 17.9.1969 Government decided that all the existing Post-Graduate teachers who will be absorbed in Junior Colleges will be appointed temporarily as Junior Lecturers pending framing of adhoc 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.

In G.O.Ms. 1147, Education, dated 4.6.1970 Government reiterated the aforesaid decision taken in G.O.Ms. 2186, Education, dated 17.9.1969 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

564

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-Graduates 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.

The Adhoc Rules were framed under the proviso to Article 309 of the Constitution with retrospective effect from 1.8.1969 in G.O.Ms. 939, Education, dated 19.9.1973 for the temporary posts of Junior Lecturers in Government Degree and Junior Colleges in Andhra Pradesh. Rule 3 (1) and (2) of those rules reads as follows

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

- (i) firstly by appointment of Post Graduate Assistants in Category I-A of Clause II and Selection Grade Assistants in Grade I of Category 2 of Class II of The Andhra Pradesh Educational Subordinate Service, or Head Masters of High Schools and Post Graduate Assistants in Zilla 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 Head Masters and Post Graduate Assistants in recognised

565

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 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 (1) or sub-clause (a) of Clause (iii)
of sub-clause 1-

(a) Firstly to persons with First or Second class
P.G. 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 Head Master of a Zilla Parishad High School
or as a Post Graduate Assistant in a School
under the management of a Zilla Parishad or a
Municipality;

(c) Thirdly to person 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 Head Master of a High School or Post
Graduate Assistant in a school under the
management of a Zilla Parishad or of
Municipality.

.....".

It is not disputed before us that the petitioners in
Representation. Petition 595 of 1977 and batch (appellants
in Civil Appeals

566

1652 to 1659 of 1978) fall under the above preferred 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 second
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
17.9.1969 has been maintained even in the Adhoc Rules, 1973.

As submitted by Mr. T.S. Krishna Moorthy Iyer there is
nothing in the Adhoc Rules, 1973 regarding the salary of
first and second class Post Graduate Assistants on the one
hand and of third class Post Graduate School Assistants on
the other on their appointment as Junior Lecturers.
Therefore, G.O.Ms. 2063, Education, dated 25.8.1969 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.

Some time after the Adhoc Rules were framed on
19.9.1973, Government framed Adhoc Rules under the proviso
to Article 309 of the Constitution in G.O.Ms. 502,

Education, dated 19.6.1974 for the temporary posts of Principals of Junior Colleges in Andhra Pradesh with retrospective effect from 1.8.1969. 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 clause 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 he

567

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 is 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. Thus, 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.

Now Rule 13 dealing with seniority of junior Lecturers reads as follows:-

13. Seniority: (1) The seniority of a person appointed under clause (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) 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) 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".

568

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.

The main question for consideration is whether in spite of the aforesaid provisions in the executive instructions and adhoc rules providing for preferential treatment and position to holders of first and second class Post-Graduate Degrees 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 4.6.1970 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 third class Post Graduate Degree holders with less than five years of service, working as Post Graduate Assistants, should rank next, and (2) Rule 3(1) (i) and (2) of the Adhoc 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 Degrees, secondly to persons with third class Post Graduate Degrees with not less than five years of service as Post Graduate Assistants and thirdly to persons with third class Post Graduate Degrees with less than five years of service as Post Graduate Assistants, Rule 13(1) of the Adhoc 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 Graduate Assistants.

There is nothing on record to show that while framing Rule 13(1) of the Adhoc Rules Government intended to depart from the policy earlier enunciated in G.O.Ms. 1147, Education, dated 4.6.1970 as regards 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 Adhoc Rules, 1973 as regards preference of first and second class Post-Graduate School Assistants over third class Post-Graduate School Assistants. On the other hand, the fact that in the seniority list prepared in 1975 so soon after the Adhoc Rules were framed on 19.9.1973 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 Junior lecturers were Juniors to the third class Post-Graduate Junior

569
Lecturers when they were all-Post-Graduate School Assistants would indicate that the Government who framed the Adhoc 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 Adhoc Rules which follows the policy laid down in that regard in G.O.Ms. 1147, Education, dated 4.6.1970. 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 1659 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 Adhoc Rules, 1973 to depart from what they had decided in G.O.Ms. 1147, Education, dated 4.6.1970 about how seniority should be accorded. There is no reason to think that the Government intended by Rule 13(1) of the Adhoc Rules to take away from the 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 4.6.1970 and even in Rule 3(1) and (2) of the Adhoc Rules, 1973. As contended by the appellants in Civil Appeals 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 the 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 Adhoc 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 Adhoc Rules must be given its full, natural and legal effect. There is no doubt that Rule 13(1) is inartistically worded though when read Rule 3(1) and (2) it would be clear that the principal 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

570
second class Post Graduates, (2) third class Post-Graduates with not less than five years of service, working as Post Graduate School Assistants, and (3) third class Post Graduates with less than five years of service, working as Post-Graduate 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 Graduate, 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 Graduate School Assistants. When Post-Graduates with not less than five years of service working as Post Graduate 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 Assistants. Similarly, when Post Graduates with less than five years of service, working as Post Graduate 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-Graduate School Assistants. If Rule 13(1) is interpreted in this manner, no disharmony will result in the consequences of applying all the adhoc 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 Adhoc Rules, 1973 by according seniority to the first and second class Post Graduate Junior Lecturers over the third class Post-Graduate Junior Lecturers who were senior to them when all of them were working as Post Graduate School Assistants before they were appointed as Junior Lecturers,

As stated earlier, before the Tribunal it was argued for the private respondents 3 to 8 in Representation Petition 595 of 1977 that the prayer for quashing Rule 13 (1) of the Adhoc Rules has to be negatived in view of the High Court's 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 given 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 571

Representation Petition 595 of 1977 have contended that those judgments 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 1659 of 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.

Next it was contended before the Tribunal by the private respondents in Representation Petition 595 of 1977 that they were appointed earlier as Post Graduate School Assistants than 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 Graduate School Assistants in the manner indicated in Rule 3 (1) and (2) of the Adhoc Rules and there is no question of transfer of Post Graduate 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.

There is no question of this Court striking down Rule 13 (1) of the Adhoc 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(1) relied on for the private respondents 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 Adhoc Rules, 1973.

In these circumstances we hold that Rule 13(1) of the Adhoc Rules, 1973 has to be interpreted in the manner indicated above, and seniority has to be fixed accordingly and there is no need to 572

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 Graduate Junior Lecturers has to be rejected and it is accordingly rejected.

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 Adhoc Rules, 1974 prescribing a first or second class Post Graduate Degree for a Junior Lecturer's promotion as Principal of a Junior College, thereby excluding third class Post-Graduate Junior Lecturers from eligibility for promotion as Principals, we would like to state at the outset 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 16.1.1971 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 work 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-Graduate 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. 2068, Education, dated 25.8.1969 Principals of Junior Colleges will have the status of Senior Lecturers in Degree Colleges and their pay scale is Rs. 400-800 while the pay scale of Junior Lecturers is Rs. 200-15-320-20-500. The object of achieving excellence in educational institutions 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 this Court's decision in S. M. Pandit v. State of Gujarat(1) referred to above cannot be applied to the facts of the present case. Prescribing a first or second class Post-Graduate Degree for the head of an educational

573
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 Adhoc Rules, 1974 is liable to be struck down as being discriminatory and illegal.

Pending the framing of Adhoc Rules for the temporary posts of Principals of Junior Colleges, the Director of Public Instructions issued proceedings in Rc 775-C1/2/74 dated 14.3.1974 promoting under Rule 10(a) (i) of the State and Subordinate Service Rules seven third class Post Graduate 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 Adhoc Rules, 1974 framed subsequently in G.O.Ms. 502, Education, dated 19.6.1974 three years' service in the Andhra Pradesh Educational 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 Graduate Degree. It is not known whether when those promotions of seven 4 third class Post-Graduate Junior Lecturers as Principals were made first or second class Post-Graduate Junior Lecturers were not available for promotion or why after the Adhoc Rules, 1974 were framed within about three months thereafter those third class Post-Graduate 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-Graduate School Assistants. The irregularity has been sought to be overlooked by providing a saving clause by way of Rule 8 of the Adhoc Rules, 1974 where it is stated that notwithstanding anything contained in those rules a person who F held the post of Principal of a Junior College immediately before the issue of those rules 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 could have been any valid necessity to continue those adhoc promotions made even after the Adhoc 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

574

the long lapse of time we do not think it desirable to declare those appointments as illegal.

In the result Civil Appeals 1652 to 1659 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's fees one set. The parties shall bear their respective costs in Civil Appeal 415 of 1979.

H.S.K.

CA Nos. 1652-59 of 1978 allowed and

CA No. 415 of 1979 dismissed.

575