

HIGH COURT OF ORISSA: CUTTACK

**W.P.(C) Nos. 14979, 9154, 9153, 20566, 9635, 9639, 9693,
10242 and 21091 of 2010.**

W.P.(C) No. 14979 of 2010

In the matter of application under Articles 226 & 227 of the
Constitution of India.

State of Orissa & others Petitioners

-Versus-

All Orissa Lower Secondary Opp. Parties
Teachers' Association & others

For Petitioners : Mr. R.Behera, Sr. Standing
Counsel (S & ME)

For Opp. parties : M/s Sharat Kumar Dash,
Sr. Advocate,
N.N. Mohapatra, S.K. Mahanta,
O.N. Devdas, Advocates.
(For O.P. Nos. 1, 2, 3, 5, 6 & 7),
M/s. Sumanta Kumar Nayak,
S.K. Sahu, A.B. Parida, S.S. Ray,
B. Seth, R.K. Patnaik, A.K. Nayak,
D.K. Satpathy, B.K. Nayak,
B.N. Satpathy,
Mr. J. Mishra-2, S.K. Nayak-1
Debasmita Nayak, S.K. Sahoo,
M/s. D.R. Patnaik, S. Patnaik,
N.S. Panda, N. Biswal, B.R. Kar
and J.R. Kar,
Mr. Saroj Kumar Jee,
M/s. Samarendra Patnaik,
B.R. Kar, J. Kar & P. Panda
(for Intervenor),
M/s. S.N. Biswal, P. Bhutia
(for Intervenor),
M/s. A.K. Rath, A.K. Nath

W.P.(C) No. 9154 of 2010

Harihar Rath & others Petitioners

-Versus-

State of Orissa and others Opp. Parties

For Petitioners : Mr. B. Routray, Sr. Advocate
M/s.D.K.Mohapatra, S.Jena,
S.Das, S.K.Samal,

For Opp. parties : Mr. R.Behera, Sr. Standing
Counsel (S & ME),
Mr.J.K.Mishra-2
(for O.P.Nos.19 to 23),
M/s.N.N.Mohapatra, G.Acharya
S.K.Mohanta, O.N.Devdas
(for Caveator),
M/s. Sashi Bhusan Jena &
Associates (for O.P. No.15),
M/s.Sadasiva Patra &
Associates (for O.P.No.16),
M/s.Durgesh Narayan Rath
& S.N.Rath (for O.P.No.13)

W.P.(C) No. 9153 of 2010

Krushna Chandra Das Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : M/s Jagannath Patanaik,
Sr. Advocate.

M/s D.K.Mohapatra, B.B.Routray
S.Das, R.P.Dalari, S.K.Samal,
Advocates.

For Opp. parties : Mr. R.Behera, Sr. Standing
Counsel (S & ME)
(For O.P.Nos.1 to 3)

Mr.R.K. Rath, Sr.Advocate
(For O.P.Nos. 4 to 13)
Mr.J.K.Mishra-2, Advocate
(For O.P.Nos. 15 to 19)

W.P.(C) No. 20566 of 2010

Kanhu Charan Maharana Petitioners
and others

-Versus-

State of Orissa and others Opp. Parties

For Petitioners : M/s Sanjit Mohanty,
Sr.Advocate &
Associates.
M/s Mahendra Ku.Sahoo,
S.K. Rath, Advocates.

For Opp. parties : Mr. R.Behera,Sr.Standing
Counsel (S & ME)
(For O.P.Nos.1 to 4)
Mr.J.K. Mishra, D.Deo,
B.B.Routray, D.Routray,
S.Jena, S.K.Nayak-1 &
Associates.

W.P.(C) No. 9635 of 2010

Rabindranath Jena Petitioners
and others

-Versus-

State of Orissa and others Opp. Parties

For Petitioners : M/s J.K.Mishra-2 &
Associates.

For Opp. parties : Mr. R.Behera,Sr.Standing
Counsel (S & ME)

W.P.(C) No. 9639 of 2010

All Utkal Primary Teacher's Petitioners
Federation & others

-Versus-

State of Orissa and others Opp. Parties

For Petitioners : M/s J.K.Mishra-2 and Associates.

For Opp. parties : Mr. R.Behera,Sr.Standing Counsel (S & ME)

W.P.(C) No. 9693 of 2010

Rabindranath Jena Petitioners
and others

-Versus-

State of Orissa and others Opp. Parties

For Petitioners : M/s J.K.Mishra-2 and Associates.

For Opp. parties : Mr. R.Behera,Sr.Standing Counsel (S & ME)

W.P.(C) No. 10242 of 2010

Kailash Chandra Sahoo Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : M/s Durgesh N. Rath,
S.N.Rath, P.K.Rout.

For Opp. parties : Mr. R.Behera,Sr.Standing Counsel (S & ME)
(For O.P.Nos.1 to 3)
Mr.S.K.Das,N.N.Mohapatra,
S.K.Mahunta, O.N.Devdas,
Advocates.
(For O.P.Nos.4 to 8)

W.P.(C) No. 21091 of 2010

Kamala Kanta Das Petitioner

-Versus-

State of Orissa and others Opp. Parties

For Petitioner : M/s Shashi Bhusan Jena,
S.Behera, S.S.Mohapatra,
A. Mishra, S.Soren,Advocates.

For Opp. parties : Mr. R.Behera,Sr.Standing
Counsel (S & ME)

P R E S E N T:

**THE HON'BLE MR. JUSTICE B.P. DAS
AND
THE HON'BLE MR. JUSTICE B.K.MISRA**

Date of Judgment: 23.12.2011

B.K.MISRA, J

In this bunch of writ petitions the petitioners seek to challenge the common order of the learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. Nos. 2624(C), 2485(C), 2486(C) of 2009 and O.A. No.43(C) of 2010 dated 27.4.2010 wherein, direction has been issued to Opposite Parties to fix the inter se seniority of the teachers as per Annexure-2 i.e. Resolution issued by the Government in Education Department bearing No. 22044-VEM-18/92-E dated 12.5.1992. It was further directed by the learned Tribunal to complete the whole exercise within a period of six months from the date of receipt of copy of the order and follow up action be taken in accordance with the said gradation list prepared pursuant to such orders. It was also held by the learned Tribunal that the teachers who were declared as Government servants from 5.9.1989 vide Government Resolution in the erstwhile Education and Youth

Services Department dated 26th September, 1989 (Annexure-1) cannot be covered under the Orissa Elementary Education (M.R.C.S.T.O.) Rules, 1997 and thus cannot be treated as included in the Orissa Elementary Education Services Level-V cadre.

2. Primary Schools form the spring board to the future of the nation wherein the children are exposed to learning at the first instance. The object of such bodies is to rear up the children for the future of the nation and thus great responsibility is reposed on the teachers to ably shape the innocent children in the building of the nation. Challenges of the teachers are far and wide and should they fail to discharge the onerous responsibility reposed on them far and square the nation is threatened with abject illiteracy/delinquency which a nation hardly can afford to bear. Having in view the responsibility of building of a cohesive nation the State is obliged to look after the basic needs and attend to the genuine grievances of the teaching faculty so that the Country is assured of a healthy and prosperous future.

3. The conflicting decisions of the Government on 26th September, 1989 (Annexure-1), 12.5.1992 (Annexure-2), 6.11.2000 (Annexure-3), 14.11.2000 (Annexure-4) and 12.6.2002 (Annexure-5) and lastly the letter of the Government in the Department of the School & Mass Education Department vide their letter No. II-S.M.E./C-31/08-14523/S.M.E. dated 10.9.2009

(Annexure-7) generated a sense of insecurity and frustration with teachers about their seniority and other consequential service benefits which forced them to approach the corridors of power and later Courts of justice regardless of their essential obligation to bring up children and shaping their future.

4. Having been called upon in these writ applications to adjudicate upon the legality and constitutionality of the orders of the learned Tribunal, this Court is obliged to look into the background realities to the facts situation.

Bereft of unnecessary minute details the uncontroverted facts can be stated as follows:-

5. The State Government in the erstwhile Education and Youth Services Department vide Resolution dated 26.09.1989 (Annexure-1) declared all the Primary School Teachers of the Schools managed by Panchayat Samiti as well as Urban Local Bodies and all the schools directly administered by the District Inspector of Schools as well as the Assistant Teachers and Headmasters of upgraded M.E.Schools under the Education and Youth Services Department and Urban Local Bodies who are in regular service excepting those who are on adhoc appointments and who have been appointed against leave vacancies and who have been temporarily appointed for a certain specific period as Government Servants with effect from 5.9.1989. Further the Government in Education Department in their Resolution

No.22044-VEM-18/92-E dated 12.5.1992 (Annexure-2) decided to take over 4630 (3802 + 828) Upper Primary (M.E.) Schools along with their assets both movable and immovable and employees to the control of the Government with effect from 1.4.1991. While preparing the gradation list of teachers of Elementary Service Level-V, the District Inspector of Schools (for short the 'D.I. of Schools') entertained doubts as to whether the Teachers of non Government Primary Schools who are declared as Government servants with effect from 5.9.1989 would be shown as senior in the gradation list than that of those Teachers of the Upper Primary Schools whose management was taken over by the Government with effect from 1.4.1991 and also difficulties were experienced as to which would be the guiding factor for finalizing such gradation list within the meaning of Explanation-I of Rule-15 of the Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997 (hereinafter referred to as the 'Orissa Elementary Education, Rules, 1997'). Being cognisant of such piquant situation with regard to preparation of gradation list of Level-V services of the Orissa Elementary Education Rules, 1997 the Government issued instructions vide their letter no.29653/SME dated 6.11.2000 (Annexure-3) directing the Director, Elementary Education Orissa, Bhubaneswar to prepare the gradation list under 1997 Rules by taking into consideration the service seniority as length of service which would

be the criteria in respect of both categories of teachers. The aforesaid view of the Government in Education Department was taken with the concurrence of the Law Department vide U.O.R. No.1278/L dated 21.08.2008. But the Director, Elementary Education, Orissa in his letter no. 22634 dated 14.11.2000 informed all the District Inspector of Schools not to take any action on the basis of Annexure-3 till further clarification is received. Ultimately, the State Government issued instructions in their letter no.14523 dated 10.09.2009 to the Director, Elementary Education Orissa, Bhubaneswar (Annexure-7) to fix up inter se seniority of the teachers of Primary Schools with effect from the date of appointment as Government Primary and Upper Primary/M.E. School teachers as defined in Explanation-1 of Rule 15 of the Orissa Elementary Education, Service, 1997. Further, the State Government in Annexure-7 directed the Director, Elementary Education, Orissa to take immediate action for finalization of the gradation list of Level-V teachers on the basis of Annexure-7. Such decision of the Government was challenged by the Orissa Lower Secondary Teachers Association represented by its General Secretary Sri Prakash Chandra Jena and six others who are the opposite parties in Writ Petition No.14979 of 2010 filed by the State before the Orissa Administrative Tribunal, Cuttack Bench, Cuttack which was registered as O.A. No.2486(C) of 2009. The State Government entered appearance and filed their counter

before the learned State Administrative Tribunal. The learned Administrative Tribunal disposed of the O.A. No.2486 (C) of 2009 and the batch of similar cases filed by others and while allowing the prayer of the petitioners directed as follows:-

“xxx However, neither in Resolution at Annexure-1, nor in the Orissa Education Act, 1969 nor in the Education Code, these schools have been defined as Govt. Schools which is the ‘quintessential’ for being covered under Rule-3 of the Orissa Elementary Education (MRCSTO), Rules, 1997 and for inclusion of teachers declared as Govt. servants with effect from 5.9.89, as per Annexure-1, in the Orissa Elementary Education Service cadre as per the Orissa Elementary Education (MRCSTO) Rules, 1997. Hence, Assistant Teachers of Non-Govt. Primary Schools deemed Govt. Servants from 5.09.89 cannot be covered under the Orissa Elementary Education (MRCSTO) Rules, 1997 from the date of their being treated as Govt. servants from 5.9.89 as the schools in which they continued to serve after being declared Govt. servants from 5.9.89 were not specifically declared as Govt. Schools at any point of time, and such schools can at best only be classified as ‘public managed schools’ as per Rule-2 of the Education Code which is not inconsistent with the Orissa Education Act, 1969. Moreover, as Rule-3 of the Orissa Elementary Education (MRCSTO) Rules, 1997 and Explanation-1 below Rule-15 lay emphasis on the term Government Primary/Upper Primary Schools, clearly stressing the word Government, such teachers though declared as Govt. servants since 5.9.89 cannot be treated as included in the Orissa Elementary Education Service Level-V cadre.

For the reasons indicated above, we finally dispose of all these O.As. with a direction to the Respondents to fix the inter se seniority of the teachers as per Annexure-2 Resolution issued vide no. 22044-VEM-

18/92-E dtd. 12.5.1992. The whole exercise be completed within a period of six months from the date of receipt of copy of these orders and follow up action be taken in accordance with the said gradation list prepared in pursuance of these orders.”

6. Being aggrieved by the order of the learned State Administrative Tribunal not only the State but also some of the Primary School Teachers who have been declared as Government Servants under Annexures-1 and 2 filed separate writ petitions including many interveners. The State Government in Writ Petition No.14979 of 2010 while challenging the orders of the learned State Administrative Tribunal asserted that the findings of the Tribunal that though the teachers of Primary Schools declared to be Government Servants under Annexure-1 with effect from 5.9.1989 but they continued to work in schools managed by the Panchayat Samiti, Urban Local Bodies and Schools directly administered by the District Inspector of Schools which are not Government institutions and thus cannot be equated with teachers who have been declared as Government servants and the Management of those schools which have been taken over by the Government with effect from 2.1.1991 under Annexure-2, are unsustainable and erroneous. According to the State, the Tribunal has mis-interpreted the Explanation-1 of Rule-15 and the Tribunal should have given weightage to the decision of the Government under Annexure-7 in view of the clear and unequivocal provisions of Rule 19 of Orissa Elementary

Education Rules, 1997 which speaks that if doubt or dispute which would arise in respect of any of the rules framed under the Orissa Elementary Education Rules, 1997 the matter be referred to the Government for decision. It was very vociferously asserted by the State that when doubts were entertained about finalization of the gradation list in respect of Primary School Teachers who were declared as Government Servants under Annexures-1 and 2 the matter was referred to the Government and ultimately the Government in their wisdom issued instructions to the Director, Elementary Education Orissa under Annexure-7 and when that clinched the issue, the Tribunal was not justified in misinterpreting such settled position.

7. It is the case of the State that the Primary School Teachers managed by the Panchayat Samiti as well as Urban Local Bodies and all the schools directly administered by the District Inspector of Schools as well as Assistant Teachers and Headmasters/Headmistress of upgraded M.E. Schools under the Education and Youth Services Department and Urban Local Bodies who were in regular service except those who are on adhoc appointment or who are appointed on leave vacancy or temporarily appointed for a specific period were declared as Government Servants with effect from 5.9.1989 vide erstwhile Education and Youth Services Department Resolution dated 26.09.1989 vide Annexure-1. Similarly, vide Annexure-2, the

Government in Education Department Resolution dated 12.05.1992 decided to take over 4630 Upper Primary M.E. Schools whose management resolved to hand over the management of the schools along with their assets (movable and immovable) and employees to the control of the Government with effect from 1st April, 1991 and those employees would be treated as Government Servants with effect from 01.04.1991 only. In the meanwhile, the Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997 was enacted by the State Government. Rule 15 of the said Orissa Education Rule, 1997 deals with seniority and preparation of gradation list of those teachers and Explanation-1 of Rule-15 envisages that all persons working as Assistant Teachers of Government Primary and Upper Primary School shall be treated as Level-V from the date of commencement of said rule. The seniority of such persons shall be determined with reference to the date of appointment as such. Needless to mention here that Rule-3 of the Orissa Elementary Education Rule, 1997 speaks of five levels. The State Government under Annexure-3 dated 6.11.2000 directed the Director Elementary Education, Orissa to prepare the gradation list of teachers in respect of Level-V teachers services, seniority or length of service should be taken as the guiding factor. It was further specifically ordered that the private period of service shall not be treated as

Government service for any other purpose. But the Government in School and Mass Education Department on 14.11.2000 vide their letter under Annexure-4 instructed all the Inspector of Schools that they shall not take any action under Annexure-3 as further clarification in the matter was sought for from the Government. Ultimately, after examining the matter the Government under Annexure-7 directed that the inter se seniority of the teachers of the Primary School Teachers and Upper Primary (M.E. Schools) to be determined with effect from the date of taken over i.e. the date of appointment as Government Primary and Upper Primary (U.P. & M.E. School teachers) as defined in Explanation-1 of Rule-15 of Orissa Elementary Rules, 1997. Being aggrieved by the said letter of the Government under Annexure-7, the Lower Secondary Teachers Association represented through its General Secretary and other teachers working as Assistant Teachers and Head Masters in different U.P. Schools challenged the same before the Orissa Administrative Tribunal in O.A. No. 2486 (C) of 2009 on the ground that preparation of gradation list of Level-V teachers is contrary to Explanation-1 of Sub-Rule, 15. The findings of learned Tribunal in O.A. No. 2486 (C) of 2009 has been challenged in this writ petition by the State mainly on the ground that the Tribunal misinterpreted Explanation-1 of Rule-15. It is also the stand of the State that teachers of Non-Government Primary Schools of

the State when declared as Government servant with effect from 5.9.1989 under resolution at Annexure-1, were borne into the cadre on that day i.e. 5.9.1989 and when the teachers of aided Non-Government M.E. Schools were declared as Government employees on 1.4.1991 vide Annexure-2, there hardly remains any ambiguity regarding their date of appointment as the date of appointment means their appointment into the Government service. It is the further specific case of the State that after the Orissa Elementary Education Rules, 1997 came into force common gradation list was prepared consisting of Assistant Teachers of the old existing Government Primary Schools, who were declared as Government employees with effect from 5.9.1989 and 1.4.1991 and in that gradation list the position of the teachers of Ex. Government Primary Schools were placed at top and thereafter the teachers of the Ex. Non-Government U.P. Schools who were declared as Government Servant with effect from 1.4.1991 were placed below them. Such gradation list was prepared from time to time i.e. from 1999 till 2008 and on the basis of such gradation list promotions had been given from Level-V to Level-IV and those have never been challenged in any forum nor those appointments have been cancelled till date. But on the other hand they have been enjoying all promotional benefits in the promotional post as per rules. It is the further stand of the State that the applicants in O.A.No.2486 (C) of 2009

and others have never challenged the gradation list which is in existence from 1999 to 2008 or till filing of the said case and thus the five applicants in the said O.A. have acquiesced the long prevailing principle of determining seniority and are estopped to challenge the same after long lapse of two decades. Thus by the order of the learned Tribunal in the said O.A. No.2486 (C) of 2009 etc. the settled position is going to be unsettled and large number of teachers are to be affected which would cause a serious dent on the primary education and would also affect the promotions to the post of Headmaster Level-IV to Level-III and therefore the findings of the learned Tribunal are to be quashed.

8. The opposite party nos.1,2,3,5,6 & 7 in their counter affidavit while praying for dismissal of the writ petition inter alia pleaded that though admittedly under Annexure-1 the teachers of non-Government Primary Schools, Panchayat Samiti, Urban Local Bodies and school administered by the District Inspector of Schools as well as the Assistant Teachers and Headmasters in Upgraded M.E. Schools under the Education and Youth Services Department and Urban Local Bodies were declared as Government employees with effect from 5.9.1989, but those schools continued to be non-Government Primary Schools/Upgraded M.E. Schools and resultantly those teachers do not belong to Orissa Elementary Education Service in view of the stipulation contained in Rule 3(2)(i) of the Orissa Elementary

Service Rules, 1997. In contrast the Government in the Education Department in their Resolution under Annexure-2 took over 4630 aided non-Government Upper Primary (M.E.) Schools along with their assets and employees with effect from 1.4.1991. Pursuant to such resolution under Annexure-2 dated 12.5.1992 the opposite party nos.2 to 7 and members of Opposite Party no.1 Association became Government servants with effect from 1.4.1991. But erroneously the Government while considering finalization of the gradation list among the teachers who were declared as Government Servants with effect from 5.9.1989 and 1.4.1991, pursuant to the Resolution adopted under Annexures-1 and 2, issued the impugned letter on 10.9.2009 issued by Department of School & Mass Education No-11-SME/C-31/08-14523/SME dated 10.9.89 under "Annexure-9" and directed the Director of Elementary Education to fix up inter se seniority of the Primary School Teachers and Upper Primary (M.E. Schools) with effect from the date of taken over as they became the Government Servant i.e. the date of appointment as Government Primary and Upper Primary/M.E.School Teachers as defined in Explanation-1 of Rule 15 which resulted in filing of the Original Application No.2486 (C) of 2009 before the learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack. It is the specific case of the opposite party nos. 1, 2,3,5,6 & 7 that with the enactment of Orissa Education Act, 1969 and Rules framed

there under the definition of public and private management given in Rule-2 of Orissa Education Code stands repealed. The definition of Private Educational Institution has been given in Section-3(o) read with Section 27(4) of the Orissa Education Act, 1969. The State Government issued resolution and Office memorandum from time to time making clear distinction between the non-Government and Government Primary Schools (Annexures-C, D, E & F) respectively. The non- Government Primary Schools as referred to in the resolution dated 16.9.1989 are those schools which are managed by Panchayat Samiti and Urban Local Bodies and of the schools directly administered by the District Inspector of Schools etc. within the meaning of Section-3(o) of the Orissa Education Act, 1969. Thus, in view of the position of law under different acts and rules, the impugned order at Annexure-9 of the learned Orissa Administrative Tribunal can be held to be just and legal.

9. There are many interveners in W.P(C) No.14979 of 2010 and they have filed their counter affidavit in which they have supported the stand of the State Government while challenging the findings of the learned Tribunal.

10. Similarly, several writ petitions registered as W.P.(C) Nos.9635, 9639, 9693, 10242 & 21091 of 2010 have also been filed challenging the impugned order passed by the learned Orissa Administrative Tribunal in O.A.No.2486(C) of 2009 and

their stand in those writ petitions are also in the light of the writ petition filed by the State challenging the order of the learned Tribunal wherein those writ petitioners have prayed that they should be given promotion to the higher post according to their service seniority and all others service benefits.

11. W.P(C) No.20566 of 2010 was filed by Kahnu Charan Moharana and four others challenging the common judgment of the learned Tribunal in O.A.Nos.2486(C), 2485(C) as well as 2624 of 2009 wherein it is the case of the petitioners that the direction of the learned Tribunal for preparation of gradation list by taking into account the date of taken over i.e. 1.4.1991 to be the basis for counting their service towards inter se seniority instead of their date of appointment of the petitioners and similarly situated teachers of more than 5020 Government U.P.M.E. Schools whose management were taken over by the Government with effect from 1.4.1991 to be unconstitutional, arbitrary and unreasonable. According to the petitioners that the clarification issued by the State Government on 6.11.2000 with the approval of the Law Department was never withdrawn at any point of time. It is also their case that the present petitioners belong to the Government Upper Primary M.E.Schools which were taken over with effect from 1.4.1991 as well as non Government Primary Schools and non-Government U.G.M.E. Schools teachers were declared as Government Servants with effect from 5.9.1989 in the

event of preparation of gradation list under the Elementary Cadre Rules adhering to the date of declaration as Government servants of different groups of teachers, the teachers of 5020 Government Upper Primary (M.E.Schools) including the petitioners despite their having put in 25 years of service prior to taking over with effect from 1.4.1991 would be junior than the teachers who were declared as Government servants with effect from 5.9.1989 and 1.4.1991. It is their specific case that in terms of Rule-3 of Elementary Cadre Rules, the Assistant Teachers of Government U.P. Schools are construed to be Level-V teachers. Similarly, the Headmasters of Government Primary Schools are to be construed as Level-IV teachers and Headmasters of Government Upper Primary Schools are to be construed as Level-III teachers. Since the teachers working in non-Government Primary schools and non-Government U.G.M.E. Schools who were declared as Government servants with effect from 5.9.1989 by the Government, but since their schools neither were taken over nor declared as schools, such teachers are not eligible to come to the different level/cadres under the Elementary Cadre Rules. It is also their specific case that the letter of the Government in School and Mass Education Department No. 14523/SME dated 10.9.2009 being an executive instruction cannot override the provisions of the Elementary Cadre Rules. Thus, according to the present petitioners the learned Tribunal failed to appreciate the

case of the petitioners in its right prospective and misinterpreted the Government Circulars and provisions of law and concluded that the service rendered by the teacher prior to 1.4.1991 shall not be counted towards service seniority under the Elementary Cadre Rules.

12. The opposite party No.1 i.e. the State of Orissa filed their counter wherein the State has reiterated the stand which they have taken by filing the writ petition which has been registered as W.P. (C) No. 14979 of 2010 and challenged the legality and propriety of the order passed by the learned Tribunal in O.A.Nos.2486 (C), 2485(C) as well as 2624 of 2009. The opposite party Nos. 6 and 7 filed their separate counter affidavit. Similarly, there are also other interveners who support the stand of the State.

13. In W.P.(C) No.9153 of 2010, the petitioner has challenged the order of the learned Orissa Administrative Tribunal passed in O.A. No.2624(C) of 2009 on the ground that though the Original Application was filed by some teachers of Government Upper Primary Schools, with a prayer for a direction to the Government and Government Authorities to fix up the inter se seniority of the teachers of non Government Primary Schools who are declared as Government Servant as per 1989 Resolution and the regular teachers of the Government Upper Primary (M.E.) Schools as per Resolution dated 12.5.1992 on the

basis of the initial appointment and to fix up inter se seniority of both categories of teachers in Level-V of Elementary Education Service from the date of initial appointment as non Government Primary School Teachers in terms of Government letter dated 6.11.2000 but the learned Tribunal while disposing of the Original Application has made a third case by directing the Government and the Government Authorities to fix up inter se seniority of the teachers as per Resolution dated 12.5.1992 thereby the teachers like the present petitioner working in the Government Primary Schools will not be included in the gradation list and will not be treated as employees of Orissa Elementary Education Service Level-IV cadre. It is the case of the petitioner that if the impugned order passed by the learned Tribunal will be given effect to, the large number of Primary School Teachers who have been treated as Government Servants since 1989 will again be treated as the employees of Non Government Primary Schools thereby frustrating the decisions of the Government taken vide Resolution dated 26.9.1989. According to the petitioner, the issue before the learned Tribunal was only whether the seniority will be counted with effect from the date of taken over or with effect from the date of initial appointment and it was neither the case of the petitioner nor the opposite parties before the learned Tribunal that the petitioner's schools are not Government Schools and it would be also

fallacious to hold that Government teachers can work in private schools unless they are deputed there. Accordingly, the petitioner prays for quashing the order passed by the learned Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.2486(C) of 2009 under Annexure-11.

14. The opposite party nos.4 to 7 and 9 to 13 filed their counter affidavit in W.P.(C) No. 9153 of 2010 wherein it was their stand that the Primary Schools and U.G. & M.E. Schools not being established and managed by the Government of Orissa, the Union Government and by any other State are deemed to be non Government Educational Institutions within the meaning of Section-3 (o) of the Orissa Education Act, 1969. The Primary Schools and U.G.& M.E. Schools which are managed by the Panchayat Samiti, Local Bodies and Municipalities prior to enactment of the Education Act, 1969 were continuing as the non Government Schools and it is only by Government Resolution dated 26.9.1989 the Teachers, Headmasters of such non Government Primary Schools and U.G. & M.E. Schools became the Government Servants with effect from 5.9.1989, but their Schools were not declared as Government Schools. The Elementary Cadre Rule i.e. Rule-3 specifically provides that the teachers of Government Primary Schools and Government Upper Primary Schools constitute different cadres under the Elementary Cadre Rules at Level-V, IV and III and therefore, they formed a

separate cadre other than non Government Primary Schools and U.G.& M.E. Schools managed by Panchayat Samiti, Local Bodies or Municipality. It is also the case of the petitioner that when the Government letter dated 6.11.2000 issued for preparing the gradation list was kept on hold if promotions were given on the basis of the said gradation lists those were illegal and it is also their specific case that the findings of the learned Tribunal at Paragraphs-16 and 17 of the impugned order that the date of taken over is to be reckoned as the date of appointment is incorrect as the same is violative of the provisions of the Elementary Cadre Rules and no different meaning can be derived or interpretation be given to Explanation-1 of Rule-15 of the Elementary Cadre Rules, 1997 and therefore, the order of the Tribunal was challenged on the ground of non application of mind and contrary to the provisions of Rule.

15. The Opposite Party no.1, namely the State has filed its counter affidavit wherein challenging the impugned order of the learned Tribunal it is asserted that the teachers of the Upper Primary Schools managed by Panchayat Samiti, Urban Local Bodies and the schools directly administered by the District Inspector of Schools as well as the Assistant Teachers and Headmasters of Upgraded M.E. Schools under the erstwhile Education and Youth Services Department and Urban Local Bodies, who were in regular appointment except those who are

on adhoc appointment or who have been appointed on leave vacancy or who have been appointed for a specific period were declared as Government Servants with effect from 5.9.1989. Again vide Resolution dated 12.5.1992, the Government of Orissa in Education Department decided to take over 4630 Upper Primary (M.E.) Schools whose management resolved to handover the management of the schools along with their assets (movable and immovable) and the employees to the control of the Government and it was specifically stated that the taken over employees would be treated as Government Servants with effect from 1.4.1991. Thus, according to the said teachers of non Government Primary Schools of the State who are declared as Government Servants with effect from 5.9.1989 vide Resolution dated 26.9.1989 were born into the cadre on the said date i.e. 5.9.1989. After commencement of the Orissa Elementary Education Rules, 1997, the gradation lists were prepared consisting of Assistant Teachers who are declared as Government Employees with effect from 5.9.1989 as well as the teachers of the non Government U.P.(M.E.) Schools which were taken over by the Government with effect from 1.4.1991 wherein the position of the teachers of Ex. Non Government Primary Schools were placed at the top of the list. Basing upon such gradation list promotions were given to Level-V to Level-IV and such promotion was never challenged at any point of time. It is the specific case of the State

that the learned Tribunal failed to appreciate the fact in its right prospective for which the impugned order passed by the learned Tribunal is not sustainable in the eye of law.

16. In their counter affidavit Opposite Parties 4 to 7 and 9 to 13 have averred that the Primary School Teachers, who were declared as Government Servants vide Government Resolution dated 26.9.1989 cannot be equated with that of the teachers of the Schools whose managements were taken over by the Government vide Resolution dated 12.5.1992 and the teachers of those taken over Schools who were declared as Government Servants with effect from 1.4.1991. The teachers who are declared as Government Servants vide Resolution dated 26.9.1989 their schools not being taken over nor declared as Government Schools cannot be covered under the Elementary Cadre Rules, 1997 because the Elementary Cadre Rules only covers the teachers of Government Primary Schools and Government Upper Primary Schools.

17. In W.P(C) No.9154 of 2010, the petitioners while challenging the order of the learned Tribunal dated 27.4.2010 in O.A. No.2486 (C) of 2009 averred that though the Original Application was filed by some teachers of Government Upper Primary Schools, with a prayer for a direction to the Government and Government Authorities to fix up the inter se seniority of the teachers of non Government Primary Schools who are declared as

Government Servants as per 1989 Resolution and the regular teachers of the Government Upper Primary (M.E.) Schools as per Resolution dated 12.5.1992 on the basis of the initial appointment and also to fix up inter se seniority of both categories of teachers in Level-V of Elementary Education Service from the date of initial appointment as non Government Primary School Teachers in terms of Government letter dated 6.11.2000. But the learned Tribunal while disposing of the Original Application has made out a third case by directing the Government and the Government Authorities to fix up inter se seniority of the teachers as per Resolution dated 12.5.1992 thereby the teachers like the present petitioners working in the Government Primary Schools will not be included in the gradation list and will also not be treated as employees of Orissa Elementary Education Service Level-IV cadre. It is the further case of the petitioners that if the impugned order passed by the learned Tribunal will be given effect to, the large number of Primary School Teachers who have been treated as Government Servants since 1989 will again be treated as the employees of Non Government Primary Schools thereby frustrating the decisions of the Government taken vide Resolution dated 26.9.1989. The further case of the petitioners is that with the introduction of the Orissa Elementary Education Rules, 1997 all teachers working in the M.E. Schools and U.P. Schools entered

either into Level-V or Level-IV and in the meantime thousands of teachers of U.P. Schools have been transferred to M.E. Schools and vice versa and practically there is no distinction between the teachers who were declared as Government Servants in the year, 1989 and 1992 and if the impugned order would be given effect to there would be a chaotic condition and further more if the teachers who were declared as Government Servants in the year, 1989 will not be included in the cadre under 1997 Rules. 21,410 posts of Level-IV teachers cannot be filled up, as Level-IV posts are not available in M.E. Schools. Thus, the petitioners have prayed for quashing the impugned order of the learned Administrative Tribunal.

18. The opposite party no.1, namely the School and Mass Education Department in their counter affidavit have assailed the findings of the learned Tribunal in O.A. No.2486(C) of 2009 dated 27.4.2010 and in the counter affidavit the State has reiterated its stand which they have taken in W.P(C) No.14979 of 2010.

19. Learned Advocate General has made a forceful submission that after the teachers working in different Primary Schools managed by Panchayat Samiti, Urban Local Bodies, schools directly administered by the District Inspector of Schools as well as the Assistant Teachers and Headmasters of Upgraded M.E. Schools under the erstwhile Education and Youth Services

Department and Urban Local Bodies, who were in regular service were declared as Government Servants with effect 5.9.1989 vide Resolution No.41893 dated 26.9.1989 and the Government further took over management of 4630 Upper Primary (M.E.) Schools and employees of those schools came to the control of the Government with effect from 1.4.1991. A gradation list was prepared in respect of both categories of teachers who were declared as Government Servants with effect from 5.9.1989 and 1.4.1991 and such gradation list was revised from time to time from 1999 to 2008 and basing upon those gradation list, promotions were given and that was never challenged by any one and has not been challenged till date and therefore, the opposite parties not being vigilant of their rights acquiesces with the situation. The writ petition which has been filed by the Opposite Parties challenging the decision of the Government cannot be and should not be entertained on the ground of delay and latches. In support of such contention reliance was placed in a judgment of the Apex Court as reported in **(2006) 11 SCC 464 U.P. Jal Nigam and another -v- Jaswant Singh and another.**

20. The further stand of the Government is that prior to declaration of the Government to treat non-Government Primary School Teachers as Government Servants with effect from 5.9.1989 there were 21410 posts of Headmasters/Headmistress in non-Government Primary Schools of the State manned by non-

Government Primary School Teachers irrespective of the qualification i.e. Matric C.T. non-Matric E.T./Matric E.T. basing on their seniority and as per the orders of the Hon'ble Apex Court in the case of ***Paramananda Das -v- State of Orissa*** in C.A.No.7155 of 1993 and batch of cases decided on 21.8.1997 combined seniority list of Matric and non-Matric trained teachers was prepared with effect from 25.6.1988 for promotion to the post of Headmasters/Headmistress which existed till 11.8.1997 i.e. till commencement of the Orissa Elementary Education Rules, 1997 which came into force with effect from 12th August, 1997. After the 1997 Rules came into force, a common gradation list was prepared consisting of Assistant Teachers of the old Government Primary Schools who are declared as the Government Employees with effect from 5.9.1989 by virtue of Annexure-1 and the teachers of the non-Government Upper Primary M.E. Schools which were taken over by the Government with effect from 1.4.1991. In such gradation list, the teachers of former non-Government Primary Schools were placed at the top of the list i.e. the Primary School Teachers declared as Government Servants with effect from 5.9.1989 were placed above the teachers who were declared as Government Servants with effect from 1.4.1991. Such gradation lists which were prepared from time to time i.e. from 1999 till 2008 continued as such and promotions were given from the Level-V to Level-IV and

at no point of time those have been challenged including the gradation lists. It is further contended that in O.A.No.2486 (C) of 2009 the applicants had never challenged the gradation list and also the Annexures-4, 5 and 6. Thus, the applicants in O.A.No.2486 (C) of 2009 having acquiesced a long prevailing principle of the seniority are estopped to challenge the same after more than two decades. Thus, when the matter has been settled the impugned order cannot be allowed to stand to unsettle the issue and thereby debarring large number of teachers and thereby putting the Primary Education of the State into jeopardy.

21. In W.P. (C) No.14979 of 2010 the opposite party nos.1 to 3 and 5 to 7 who are the applicants in O.A. No.2486 (C) of 2009 filed their counter wherein they have averred that the State Government have issued Resolution and the Government memorandum from time to time have made clear distinction between the non-Government and Government Primary Schools and the Government Resolution and Government memorandum placed at Annexures-C, D, E & F respectively. The non-Government Primary School as referred in the Resolution dated 16.09.1989 are manned by the Panchayat Samiti/Urban Bodies and schools directly administered by the D.I. of Schools and those are not Government Primary Schools within the meaning of Section 3(o) of the Orissa Education Act, 1969

especially when definition of public and private management given in Rule-2 of the Orissa Education Code stood repealed.

22. We have heard the battery of learned counsel appearing for the parties at length. We have also examined the entire matter with reference to the various provisions of the rules and judicial precedents as to the computation of seniority.

23. Undisputedly, prior to coming into enactment of Orissa Education Act, 1969 (hereinafter referred to as “1969 Act”), the Orissa Education Code was prevalent. Provision-2 of Orissa Education Code deals with Public and Private Management Schools. According to the Orissa Education Code the institutions under the direct management of Government or of a local authority such as a District Board, a Municipality or a Gram Panchayat are said to be under public management. Institutions which are under the management of private persons or associations are termed to be under the private management.

24. Clause-‘J’ of Section-3 of the Orissa Education Act, 1969 deals with the definition of Upper Primary School. Clause-‘n’ of Section-3 of the Orissa Education Act, 1969 clarifies that the Primary School means any educational institutions imparting elementary standard of education in respect of Class-I to Class-V. Clause-‘o’ of Section-3 provides that Private Educational Institutions means any educational institution

which is not established and managed by the State Government, Union Government or Government of any other State.

25. Perusal of the records reveals that the State Government in the Education Department in its letter dated 14.12.1967 issued instructions to the Director, Public Instructions regarding the management and control of primary education were issued by the Government to the Director of Public Instructions on 4.8.61 and 14.12.67. The said instruction of the Government also was with regard to service conditions, appointing authority, selection of teachers etc.

26. By Resolution dated 26.9.1989, under Annexure-1, the Government declared Non-Government Primary School Teachers of the State Government Employees with effect from 05.09.1989 and by resolution under Annexure-2 dated 12.05.1992, the State Government took over the teachers/employees of 4630 Non-Government M.E. Schools and declared them as Government servant with effect from 01.04.1991. The Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997 came into effect from 12.08.1997. Sub-Rule (g) of Rule-2 provides that the primary schools are those schools having classes from Class-I to Class-V. Rule-3 of Orissa Elementary Education Rules, 1997 provides that service shall

compromise of Orissa Elementary Education Service Level-I to Level-V.

27. Rule-15 of the said rule deals with seniority and gradation list of the employees which empowers the District Inspector of Schools of the concerned education district for maintenance of gradation list separately for the post belonging to Level-V, Level-IV and Level-III of the service strictly in accordance to seniority. It further stipulates that such gradation list is to be updated by 15th July of every year. It would be worthwhile to quote Sub-Rule 5 of Rule-15 of the Orissa Elementary Education Rules (M.R.C.S.T.O.) Rules, 1997.

“15.5. Seniority in the cadre of Level-II shall be fixed on the following basis namely:-

- a) length of service in Level-III
- b) if length of service in Level-III is same, the seniority shall be determined on the basis of educational achievement i.e. marks obtained in the Matriculation, Intermediate, Graduation, Certificate Training Course (C.T.), Bachelor in Education (B.Ed.) etc.
- c) if educational achievement is same, the seniority shall be fixed on the basis of age i.e. person who is older in age shall be treated as senior.

Explanation-1- All persons now working as regular Asst. Teachers of Government Primary and Upper Primary Schools shall be treated as Members of Level-V of the service from the date of commencement of these rules. The seniority of such persons shall be determined with reference to the date of their appointment as such.

28. The Director, Elementary Education, Orissa issued instructions on 30.03.1998 with regard to the seniority/preparation of gradation list of different categories of service coming under the Elementary Cadre as per Rule-15 (1) of the Orissa Elementary Education Rules, 1997. On 06.11.2000, the Government also issued instructions with regard to the principle to be followed while preparing the gradation list of Level-V under the Orissa Elementary Education Rules, 1997 which shall consists of posts of Asst. Teachers of Primary Schools and Asst. Teachers of Government Upper Primary Schools. At the cost of repetition, it is to be mentioned here that the Asst. Teachers of Primary Schools were declared as Government Servants with effect from 05.09.1989 whereas the Asst. Teachers of Upper Primary School which were taken over by the Government were declared as Government servants with effect from 01.04.1991. If the date of taken over and the date of declaration are to be reckoned as guiding factor then the Asst. Teacher of Upper Primary M.E. Schools would be below the Asst.

Teachers of Primary Schools and thus putting the Upper Primary M.E. Schools in a disadvantage position. Rule-15 of the Orissa Elementary Education Rule, 1997 speaks that the gradation list shall be prepared strictly on the basis of seniority. Thus, if we strictly go by Rule-15 of the Orissa Elementary Education Rule, 1997, it is seen that the date of taken over the schools will not be a guiding factor for determining the seniority. The Government in the Department of School and Mass Education in their letter dated 06.11.2000 issued instruction to the Director, Elementary Education, Orissa, Bhubaneswar (Annexure-5) for determining the preparation of the gradation list. It would be just and proper to take the service seniority or length of service as criteria of both category of teachers i.e. Asst. Teachers of Primary Schools who are declared as Government servant with effect from 05.09.1989 and the Asst. Teachers or Upper Primary Schools which are taken over by the Government with effect from 01.04.1991.

29. Under the Orissa Elementary Education Rules, it was clarified that the private period of service shall not be treated as Government service for any other purpose. This letter of the Government was issued in concurrence with the Law Department vide U.O.R. No. 1278-1 dated 21.08.2006.

30. The aforesaid letter of the Government was issued on 6.11.2000, but immediately thereafter on 14.11.2000 the

Government in their letter no.22534 dtd. 14.11.2000 informed all District Inspector of Schools not to take any action on the earlier letter of the Government bearing no.25653/SME dated 6.11.2000. Further clarification in the matter was sought from the Government. On 12.6.2002 the Government in the Department of School and Mass Education in their letter no.13895/SME dated 12.6.2002 at Annexure-5 informed the Director, Elementary Education, Orissa, Bhubaneswar with regard to amendment of Orissa Elementary Education (Method of Recruitment and Condition of Service of Teachers and Officers) Rules, 1997 and to re-examine by the High Power Committee on the following matters, namely 1, 2, 3 & 4:

i) Any change of the Orissa Elementary Education Rules 1997 will affect some teachers or others and there will be cascade of Court case.

ii) There is no clear rational behind the age fixed to Matric C.T. and T.G. teachers. This question is bound to be raised in the Court.

iii) The date of appointment is the date of taking over by the Government because appointment means appointment by the Government, and

iv) The number of amendment should be minimum to minimum disruption in the cadre management and litigations.

31. Thereafter, on 10.9.2009 the Government in School and Mass Education Department issued a letter to the Director, Elementary Education, Orissa, Bhubaneswar (Annexure-7) vide their letter no.III-SME-C-31/08-14523/SME dtd. 10.9.2009 intimated the Director, Elementary Education, Orissa to fix up the inter se seniority of the teachers of the Primary School and Upper Primary School/ M.E. Schools with effect from the date of taken over when they became Government servant i.e. the date of appointment as Government Primary and Upper Primary Schools Teachers as defined in Explanation-1 of Rule 15 of the Orissa Elementary Education Rules, 1997 and further instruction was issued to take immediate action for finalization of the gradation list of Level-V teachers on the basis of the above decision of the Government. By such letter of the Government, teachers who were affected approached the Tribunal by filing case which was registered as O.A.No.2486(C) of 2009. The Tribunal reached the conclusion that the Assistant Teachers of non Government Primary Schools, who were declared as Government servant with effect from 5.9.1989 cannot be covered under Orissa Elementary Education, Rules, 1997 as the schools where they were working were never declared as Government Schools at any point of time and at best those schools can be termed as the Schools under public management which is inconsistent with the Orissa Education Act, 1969 as Rule-3 of the Orissa Elementary

Education, Orissa, Rules, 1997 and Explanation to Rule 15 of the aforesaid rules speaks about the Government Primary/Upper Primary Schools and accordingly, the Tribunal observed that those teachers who were declared as Government servant with effect from 5.9.1989 and working in public management schools cannot be included in Orissa Elementary Education Service Level-V cadres. The Tribunal accordingly, directed the Government to fix inter se seniority of the teachers as per Annexure-2 Resolution within six months from the date of receipt of this order.

32. On a thread bare scrutiny of the impugned order of the learned Tribunal, we are of the opinion that the learned Tribunal was not justified in reaching the conclusion that the teacher who were declared as Government servants on 5.9.1989 cannot be included in the Elementary Cadre Rules especially when Explanation-1 of Sub-Rule 5 of Rule 15 of the Orissa Elementary Education Rules, 1997 unequivocally speaks that all persons working as regular Assistant Teachers of Government Primary and Upper Primary Schools are treated as the members of Level-V of the service from the date of commencement of the Rules whose seniority shall be determined with reference to the date of their appointment as such. Nowhere it has been provided that the seniority is to be counted with reference to any particular date. The notification is also silent if the seniority of

the teachers would be counted from the date when they were treated as Government servant and it is something unimaginable that the teachers who were declared as Government servants have to forgo their past service for all purpose. The Government in their wisdom being alive to the plight of the teachers took a decision that seniority of the teachers of the taken over schools would be decided with reference to their initial date of respective appointment. The Apex Court in **(2002) 3 SCC 533 Padma Sundara Rao and others -V- State of Tamilnadu and others and in AIR 2004 S.C. 1039 State of Orissa and others -V- Joginder Patjoshi and another** have held that statutory enactments must ordinarily be construed according to its plain meaning and no words should be added, altered or modified unless it is necessary to do so to prevent the provision from being un-intelligible, absurd, unreasonable unworkable or totally irreconcilable with the rest of the statute.

33. It is also the trite law that seniority is not a fundamental right but it is a civil right. Seniority of employees in service is determined with reference to the date of his entry in service. Of course there may be circumstances which require a group of person can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority. But that again has to be decided on objective consideration and also on taking into account the relevant factors

which can stand the test of Articles 14 & 16 of the Constitution. Such classification should be under the normal practice would be by statutory rule or rules framed under Article 309 of the Constitution for promotional posts, generally the rule regarding merit and ability or seniority-cum-merit which is followed in almost all the services. Seniority of an employee is material and relevant to further his career which cannot be affected by factor which are held to be reasonable and rational.

The Apex Court in the case of **B.K. Mohapatra –V- State of Orissa** as reported in **AIR 1988 S.C. 24** has observed that:-

“There is also no rational basis for refusing to give the benefit of the service rendered by a teacher working in a ‘B’ type High School after January 26, 1950 either for purposes of seniority or for purposes of computing the retirement benefits. It may be open to the State Government while integrating the services of teachers working in different kinds of institutions to introduce a scheme of rationalization which may have the effect of modifying the conditions of service of different groups of Government servants. It cannot, however, by a stroke of pen deny the benefit of the entire past service rendered by one group of such Government servants. The effect of the Government scheme was that while for purposes of inter se seniority amongst the teachers of ‘B’ type High Schools, ex-District Board High Schools and ex-Anchal High Schools, that is, integrated High Schools the length of continuous service in their respective cadres in their old schools was to be counted, for

purposes of reckoning seniority vis-à-vis teachers in Government schools their service was to be counted, only from the date of conversion of those High Schools to Government Schools, i.e. from June 1, 1964. Consequently all teachers who had been in Government Schools immediately prior to June 1, 1964 became seniors to the teachers working in 'B' type High Schools, ex-District Board High Schools and ex-Anchal High Schools. The scheme put forward by the Government appears to us to be an irrational one. We may at this stage mention that when this case was heard earlier by a Bench of three learned Judges of this Court consisting of V.R. Krishna Iyer, R.S. Pathak (as he then was) and O. Chinnappa Reddy, JJ. it was observed by the learned Judges on January 31, 1980 thus:

We have been taken through the judgment of the High Court and the relevant facts by Shri Sikri and we are satisfied that the reasons given by the High Court are far from satisfactory. On the other hand, no serious consideration of the ground of discrimination in ignoring the past service of the teachers has been given by the High Court."

34. Further it is a just and wholesome principle, commonly applied to the persons coming from different sources and drafted to serve new service, to count their pre-existing length of service for determining their rank in the new service and in that context reliance can be placed in a decision of the Apex Court as reported in **AIR 1982 S.C. 101 R.S. Makashi and others -V- I.M. Menon and others.**

35. In the instant case when after the notification declaring the teachers working in the school as Government servant vide Annexures-1 & 2 were brought to one stream, in our humble view in the new stream their seniority is to be reckoned on the basis of their respective date(s) of joining in the school. We find that the learned Tribunal committed serious blunder in directing the Government for fixation of inter se seniority in terms of Resolution under Annexure-2 dated 12.5.1992 even though such resolution of Government at Annexure-2 nowhere speaks of the manner of fixation of inter se seniority. While taking a holistic view and the gamut of the facts situation we are unable to persuade ourselves to up-hold the findings of the learned Tribunal dated 27.4.2010 passed in O.A. Nos.2486(C), 2485(C), 2624(C) of the year 2009 and O.A. No. 43(C) of 2010.

36. Thus, while quashing the impugned order of the learned Tribunal dated 27.4.2010 in O.A. Nos 2624(C), 2485(C), 2486(C) of 2009 and O.A. No. 43(C) of 2010, we direct the Opposite Party no.1 i.e., the Government of Orissa to fix the inter se seniority of the teachers who were declared as Government servants on the strength of the two Resolutions i.e. Government of Orissa in Education and Youth Services Department No. 41893-VIE-CP-87/89-EYS dated 26.9.1989 (Annexures-1) and Government in Education Department No. 22044-VEM-18/92-E dated 12.5.1992 (Annexure-2) and also as per the criteria

prescribed by the Government vide their letter in School and Mass Education Department letter No. 29653 dated 6.11.2000 (Annexure-3). However, we make it clear that, if any promotion has been effected in the meanwhile basing on the seniority list so prepared as per the later instruction of the Government, the same shall be treated as nonest. Accordingly, the writ petitions stand disposed of but however in the circumstances there will be no order as to costs.

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B.K.Misra, J.

B.P. Das, J. I agree.

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B.P.Das, J.