

MOHD. SHAHBUDDIN &amp; ORS.

v.

UNION OF INDIA &amp; ORS.

January 22, 1975

[P. JAGANMOHAN REDDY, P. N. BHAGWATI AND P. K. GOSWAMI, JJ.]

*States Reorganisation Act 1956—Equation of posts how far can court interfere—Whether decisions taken at the Chief Ministers' conference must be complied with—If equation can be based on irrelevant and irrational considerations or erroneous assumptions.*

The validity of the equation of posts of graduate teachers allotted to the new State of Mysore constituted under the States Reorganisation Act, 1956, was challenged. The new State of Mysore was formed comprising the territories of the existing States of Mysore, Coorg, and parts of existing States of Hyderabad, Madras and Bombay. The graduate teachers in each of the 5 integrating areas were divided into two grades a lower grade and a higher grade as given below :

Integrating area	Lower Grade	Higher Grade
Mysore	Rs. 60-150	Rs. 130-200
Coorg	Rs. 80-220	Rs. 100-300
Bombay	Rs. 70-200	Rs. 210-300
Madras	Rs. 85-175	Rs. 165-245
Hyderabad	Rs. 130-190	Rs. 154-275

On the constitution of the various new States the question of equation of posts, absorption of service personnel in the equated posts and the determination of inter se seniority cropped up. A meeting of the Chief Secretaries of these States was held at Delhi in May, 1956, at the invitation of the Central Government. The following decisions were taken at that meeting :

It was agreed that in determining the equation of posts, the following factors should be borne in mind :—

- (i) the nature and duties of a post;
- (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;
- (iii) the minimum qualifications, if any, prescribed for recruitment to the post;
- (iv) the salary of the post.

It was agreed that in determining relative seniority as between two persons holding posts declared equivalent to each other, and drawn from different States the following points should be taken into account :—

- (i) length of continuous service, whether temporary or permanent, in a particular grade; this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement;

- A (ii) age of the person; other factors being equal for instance, seniority may be determined on the basis of age.

It was also agreed that as far as possible, the *inter se* seniority of officers drawn from the same State should not be disturbed.

- B In February, 1958, the provisional inter-State list of teachers in the graduate tutorial cadre for new Mysore State was prepared. This list was prepared on the basis that the posts of ex-Hyderabad teachers in the grade of Rs. 154—275 were equated with those of ex-Mysore teachers in the grade of Rs. 130—200, while the posts of ex-Coorg teachers in the grade of Rs. 100—300 were equated with those of ex-Mysore teachers in the grade of Rs. 60—150. The Coorg teachers in the grade of Rs. 100—300 were dissatisfied with the equation of their posts with those of ex-Mysore teachers in the grade of Rs. 60—150. They, therefore, filed a Writ Petition in the High Court of Mysore.

- C One of the contentions of the petitioners was upheld by the High Court in the year 1964 and the State Government was directed to prepare a provisional inter-State seniority list of teachers in the graduate tutorial cadre. Pursuant to the said direction the State Government prepared a provisional Inter-State seniority list in July, 1964. Thereafter a final inter-State seniority list of teachers in the graduate tutorial cadre was prepared in December, 1966, which was different from provisional list prepared in 1964. In the final seniority list the equation of posts was different from the one proposed in the provisional inter-State seniority list. The ex-Hyderabad and Coorg teachers filed a petition in the High Court of Mysore for quashing and setting aside the equation of posts on which the final inter-State seniority was based. D The High Court by its judgment delivered in 1969 allowed the writ petition on the ground that the seniority list was prepared without giving any opportunity to ex-Hyderabad teachers, and that vitiated the equation of posts. After considering the representations filed by all the teachers concerned a provisional inter-State seniority list was published in November, 1969. Though the claim of the ex-Hyderabad teachers was not accepted in toto, they were satisfied with the decision of the Central Government contained in the provisional list published in 1970. E The ex-Coorg teachers were dissatisfied and, therefore, they made representations complaining against the decision of the Central Government. In December, 1971, the final Inter-State seniority list was published. The final list varied the equation to the disadvantage of the ex-Hyderabad teachers as compared to the provisional list. The ex-Hyderabad teachers and ex-Coorg teachers therefore, filed the present petition in this Court.

It was contended before this Court by the ex-Hyderabad teachers :

- F (1) Equation of posts in the final list different from the provisional list made by the Central Government was without giving any opportunity to the Hyderabad teachers to make a proper representation and was in violation of the principles of natural justice.
- (2) The Central Government failed to take into account the 4 factors decided upon at the Chief Secretaries Conference.
- G (3) The equation of posts made by the Central Government was based on erroneous assumptions and irrelevant considerations and disclosed non-application of mind to the material and relevant facts.

- H HELD : The power to determine equation of posts belongs to the Central Government under section 115(5) of the States Reorganisation Act and this power must be exercised by the Central Government after giving an opportunity to the allocated Government servant to make representations in regard to this matter. The Central Government is bound to have regard to the 4 factors decided upon at the Conference of the Chief Secretaries held in May, 1956 in determining equation of posts. It is not open to the court to consider whether the equation of posts made by the Central Government is right or wrong if those 4 factors have been properly taken into account. What the court can scrutinise is only whether the 4 factors agreed upon at the Chief Secretaries Conference have been properly taken into account. If the court finds that one

or more of these 4 factors have been ignored the court can strike down the equation of posts made by the Central Government. The Court can also interfere if it finds that the decision of the Central Government in regard to the equation of posts is mala fide or without application of mind. The Court may also intervene if it comes to the conclusion that the decision of the Central Government is based on irrelevant considerations or wrong assumptions or that it is so irrational or perverse that no reasonable person properly instructed and taking into account relevant factors could possibly arrive at it. [316H—317E]

**HELD FURTHER :** The ex-Hyderabad teachers, did make representation after the judgment of the High Court delivered in 1969 and the Government took those representations into consideration before making the final list. It is not possible to say that the decision was taken by the Central Government without giving an opportunity to the ex-Hyderabad teachers to make a proper representation or that there was any violation of the principles of natural justice. [319D—G]

**HELD FURTHER :—**The final seniority list does not give the reasons which weighed with the Central Government in making the equation of posts. However, in the counter-affidavit filed in this Court on behalf of the Government reasons have been disclosed why the equation of posts was done in the manner given in the final list. The Central Government in determining equation of posts omitted to take into account the relevant considerations and failed to apply the criteria of the first and second factors decided at the Chief Secretaries meeting. The Central Govt. did not compare the post of ex-Hyderabad teachers in the grade of Rs. 154—275 and the ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grades on the basis of the criteria of the first and second factors. The Central Government also ignored altogether the fourth factor, namely, the salary of the post. The equation had to be done by reference to the four criteria laid down in the Conference of the Chief Secretaries. It was immaterial whether the grades which were sought to be equated were initial recruitment grades or promotional grades. There was no requirement either of law or of principle that one initial recruitment grade could be equated only with another initial recruitment grade or that one promotional grade could be equated with only another promotional grade. Even factually the Central Government was not right in saying that the ex-Hyderabad grade of Rs. 154—275 was not a promotional grade but an initial recruitment grade for trained graduates. [319H—320B; 321H; 323F—G; 324 E—G; 326C—G]

**HELD FURTHER :** The Central Government failed to take into account an important and relevant consideration, namely, that of the qualifications required for recruitment to the posts sought to be equated. At any given point of time, there was always a large number of untrained graduates in the ex-Mysore grade of Rs. 60—150 whereas in ex-Hyderabad all teachers in the grade of Rs. 150—275 were trained graduates. [329 E—F]

**HELD FURTHER :** The equation of posts made by the Central Government is illegal and invalid in so far as it relates to the posts of ex-Hyderabad teachers in the grade of Rs. 154—275. The final seniority list is also set aside to the extent it relates to the posts of ex-Hyderabad teachers in the grade of Rs. 154—275 and the Central Government is directed to make fresh equation of posts after taking into account all relevant facts having material bearing on the question and in the light of the observations contained in the judgment. [329H—330E]

**HELD FURTHER :** The case of ex-Coorg teachers stands on the same footing as that of ex-Hyderabad teachers in some material respects. The Central Government failed to take into account the four criteria laid down in the Chief Secretaries Conference. The Central Government also proceeded on an erroneous basis. These infirmities vitiated the equation of posts. The equation of posts as also final seniority list are based upon it, in so far as they relate to the posts of ex-Coorg teachers in the grade of Rs. 100—300 are therefore quashed and set aside the Central Government is directed to make fresh equation of posts and after taking into account all relevant facts having material bearing on the question and in the light of the observations contained in the judgment. [330C—D; 332A—B]

**A** ORIGINAL APPELLATE JURISDICTION : Writ Petition Nos. 12 & 149 of 1972.

Petitions Under Article 32 of the Constitution.

*D. V. Patel* and *K. N. Bhatt*, for the petitioners (in WP. No. 12/72).

**B** *H. B., P. P. Bhopanna* and *Narayan Nettar*, for the petitioner (In WP. No. 149/72).

*S. N. Prasad* and *R. N. Sachthey*, for respondent No. 1 (In WP. No. 12/72).

**C** *K. S. Puttaswamy Govt. Advocate for Karnataka* and *M. Veerappa*, for respondents Nos. 2 & 3 (In WP. No. 12/72).

*S. S. Jayali* and *B. P. Singh*, for respondents Nos. 4—9, 10—12 & 14 (In WP. No. 12/72) and respondent Nos. 4—9 (In WP. No. 149/72).

*Narayan Nettar*, for respondent No. 13 (In WP. No. 12/72).

**D** *S. N. Prasad* and *R. N. Sachthey*, for respondent No. 1 (In WP. No. 149/72).

*M. Veerappa*, for Respondents Nos. 2 & 3 (In WP. No. 149/72).

The Judgment of the Court was delivered by

**E** BHAGWATI, J.—The short question that arises for consideration in these petitions is as to the validity of the equation of posts of graduate teachers allotted to the new State of Mysore constituted under the States Reorganisation Act, 1956. This Act re-drew the boundaries of the different States in India with effect from 1st November, 1956 and *inter alia* a new State of Mysore was formed comprising the territories of the existing States of Mysore and Coorg, four districts in the existing State of Bombay, three districts in the existing State of Hyderabad and one district in the existing State of Madras. Prior to the reorganisation, each of these five integrating areas, which went to make up the new State of Mysore, had a different set up of school administration. The schools in the Mysore and Coorg areas were classified into Primary schools, Middle schools and High schools. In the Bombay and Madras areas, the schools were classified into Primary schools and Secondary schools and in the Hyderabad area the classification was into Primary schools, Middle schools and composite schools. The Secondary schools in the Bombay and Madras areas and the composite schools in the Hyderabad area comprised the same classes as the Middle schools and High Schools in the Mysore and Coorg areas. The posts of teachers in these schools were inter-changeable with the posts in the Inspectorate Branch in the Education Department and the Training Institutions and they belonged to common cadres. We shall, for the sake of convenience, refer to the persons occupying the posts of teachers in these schools as also the persons occupying cor-

responding posts in the Inspectorate Branch and the Training Institution as "graduate teachers". These petitions are concerned only with graduate teachers so described and, therefore, we shall confine our discussion to them alone.

The graduate teachers in each of the five integrating areas were divided into two grades, a lower grade and a higher grade and the pay scales of these two grades differed from one integrating area to the other as shown by the following particulars :

Integrating area	Lower Grade	Higher Grade
Mysore . . . . .	Rs. 60-150	Rs. 130-200
Coorg . . . . .	Rs. 80-220	Rs. 100-300
Bombay . . . . .	Rs. 70-200	Rs. 210-300
Madras . . . . .	Rs. 85-175	Rs. 165-245
Hyderabad . . . . .	Rs. 130-190	Rs. 154-275

There was also one post of Principal, Janatha College in the Coorg area prior to the reorganisation which carried a pay scale of Rs. 200—300. This was a college started on an experimental basis under the Five Year Plan and the post of Principal was created as a temporary post under a Government Order dated 7th March, 1955.

On the constitution of the new State of Mysore by coming together of these five integrating areas, a question arose as to how the graduate teachers allotted to the new State of Mysore from these five integrating areas should be adjusted so as to form an integrated service in the new State of Mysore and it was, therefore, necessary to decide where and at what place they should be adjusted in the constitution of the new service. This process necessarily involved equation of posts, absorption of service personnel in the equated posts and the determination of *inter se* seniority. Now, this was not a problem confined to one service or one State alone and principles had, therefore, to be evolved which would be uniformly applicable in relation to integration of services in all the States which were going to be affected by the reorganisation. A meeting of the Chief Secretaries of these States was accordingly held at Delhi on 18th and 19th May, 1956 at the invitation of the Central Government. Certain decisions were taken at this meeting as to the general principles that should be observed with regard to the work of integration of the services. The Government of India, by their letter dated 3rd April, 1957, informed the State

- A Governments that they had decided that the work of integration of services should be dealt with by the State Governments in the light of general principles already decided at the meeting of the Chief Secretaries. The State Governments were also informed that the Central Government was constituting Advisory Committees for assisting them in dealing with the representations by the officers affected by the re-organisation. The principles for determining equation of posts and *inter se* seniority of allocated Government servants reached at the conference of the Chief Secretaries were as follows :

“It was agreed that in determining the equation of posts, the following factors should be borne in mind :—

- C (i) the nature and duties of a post;
- (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged;
- (iii) the minimum qualifications, if any, prescribed for recruitment to the post;
- D (iv) the salary of the post;

It was agreed that in determining relative seniority as between two persons holding post a declared equivalent to each other, and drawn from different States, the following points should be taken into account :—

- E (i) Length of continuous service, whether temporary or permanent, in a particular grade; this should exclude periods for which an appointment is held in a purely stop-gap or fortuitous arrangement;
- (ii) age of the person; other factors being equal, for instance, seniority may be determined on the basis of age.
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Note : It was also agreed that as far as possible, the *inter se* seniority of officers drawn from the same State should not be disturbed.

- G Though these principles were laid down as far back as 18th and 19th May, 1956, long prior to the reorganisation, neither the Central Government nor the State Government took any steps for the purpose of determining the equation of posts of graduate teachers and their *inter se* seniority. On 3rd February, 1958, the Director of Public Instruction circulated a Provisional Inter State List of teachers in the graduate tutorial cadre and this list was prepared on the basis that the posts of ex-Hyderabad teachers in the grade of Rs. 154—275 were equated with those of ex-Mysore teachers in the grade of Rs. 130—200, while the posts of ex-Coorg teachers in the grade of Rs. 100—300 were equated with those of ex-Mysore teachers in the grade of Rs. 60—150. Presumably, on the assumption that this list would
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be finalised at an early date by the Central Government, the State Government made temporary promotions to Class II Gazetted posts on the basis of this list and some of the ex-Hyderabad teachers in the grade of Rs. 154—275 were consequently promoted to Class II Gazetted posts and out of them a few were even promoted to Class I posts in an officiating capacity. So far as the Coorg teachers in the grade of Rs. 100—300 were concerned, they were dissatisfied with the equation of their posts with those of ex-Mysore teachers in the grade of Rs. 60—150 and they accordingly challenged this list by filing Writ Petition No. 603 of 1961 in the High Court of Mysore. One of the contentions raised by them was that this list circulated by the Director of Public Instruction had no validity, since the power to determine equation of posts and *inter se* seniority of allocated teachers in the graduate tutorial cadre was vested in the State and the State Government should, therefore, be directed to prepare a provisional Inter State Seniority List in accordance with the requirements of the Act. This contention was upheld by a Division Bench of the High Court by a judgment dated 12th June, 1964 and the State Government was directed to prepare a provisional Inter State seniority list of teachers in the graduate tutorial cadre. Pursuant to this direction of the High Court the State Government prepared a Provisional Inter State Seniority List and published it under a notification dated 2nd July, 1964. This Provisional Inter State Seniority List was based on equation of posts set out in Annexure II to the List. The posts of ex-Hyderabad teachers in the grade of Rs. 154—275 and the posts of ex-Coorg teachers in the grade of Rs. 100—300 as also the post of Principal, Janatha College in the grade of Rs. 200—300 were equated with the posts of ex-Bombay teachers in the grade of Rs. 210—300, the posts of ex-Madras teachers in the grade of Rs. 165—245 and the posts of ex-Mysore teachers in the grade of Rs. 130—200, while the posts of ex-Hyderabad teachers in the grade of Rs. 130—190 and the posts of ex-Coorg teachers in the grade of Rs. 80—220 were equated with the posts of ex-Bombay teachers in the grade of Rs. 70—200, the posts of ex-Madras teachers in the grade of Rs. 85—175 and the posts of ex-Mysore teachers in the grade of Rs. 60—150. It was on the basis of this equation of posts that the seniority of teachers in the graduate tutorial cadre was determined under the Provisional Inter State Seniority List published by the State Government.

The petitioners in Writ Petition No. 12 of 1972 (hereafter referred to as the ex-Hyderabad petitioners) are all graduates of recognised universities and they also hold the degree of B.T. or B.Ed. and are accordingly trained graduate teachers. The ex-Hyderabad petitioners were originally appointed in the erstwhile State of Hyderabad in posts in the grade of Rs. 130—190 and subsequently in course of time they were promoted strictly in accordance with the principle of seniority-cum-merit to the grade of Rs. 154—275 on various dates before 1st November, 1956. The ex-Hyderabad petitioners were thus in the grade of Rs. 154—275 at the time of the reorganisation when they were allocated to the new State of Mysore from the ex-Hyderabad area. Since the posts held by the ex-Hyderabad petitioners were equated with those of ex-Mysore teachers in the grade of Rs.

- A 130—200 under Annexure II to the Provisional Inter State Seniority List and their seniority *vis-a-vis* the other allocated teachers was determined on the basis of such equation of posts, they did not have any grievance with the Provisional Inter State Seniority List and they accordingly did not make any representation to the State or Central Government against it.
- B The petitioners in Writ Petition No. 149 of 1972 (hereinafter referred to as the ex-Coorg petitioners) are also graduates of recognised universities and hold the degree of B.T. or B.Ed. and are trained graduate teachers. Out of them, petitioners Nos. 1 to 3 were originally appointed in the grade of Rs. 80—220 but on obtaining the degree of B.T. they were promoted to the grade Rs. 100—300. Petitioners Nos. 4 to 15 were trained graduates directly appointed in the grade of Rs. 100—300. Petitioners Nos. 16 to 27 were originally appointed in the grade of Rs. 80—200, but they subsequently obtained the degree of B.T. and were accordingly promoted to the grade of Rs. 100—300. And similarly, petitioner's Nos. 28 to 33 were originally appointed in the grade of Rs. 80—220 as untrained graduates but on obtaining the degree of B.T. they were promoted in the grade of Rs. 100—300. The ex-Coorg petitioners were thus all in the grade of Rs. 100—300 at the time of reorganisation when they were allocated to the new State of Mysore from the ex-Coorg area. They also did not make any representation against the Inter State Provisional List published by the State Government as the posts held by them were equated with those of ex-Mysore teachers in the grade of Rs. 130—200 and they were satisfied with that equation and the *inter se* seniority based upon it.
- D The State Government thereafter by a notification dated 27th December, 1965 published the final Inter-State Seniority List of teachers in the graduate tutorial cadre in exercise of the powers conferred by the proviso to Article 309 of the Constitution and in accordance with the decision of the Government of India under the provision of section 115 (S) of the Act. The ex-Hyderabad and the ex-Coorg petitioners were surprised to find that this Final Inter State Seniority List was based on an equation of posts which was different from the one proposed in the Provisional Inter State Seniority List. The final Inter State Seniority List classified the posts of teachers into three cadres, the first being promotional cadre, the second being intermediate cadre and the third being initial recruitment cadre. The posts of ex-Bombay teachers in the grade of Rs. 210—300, the posts of ex-Madras teachers in the grade of Rs. 165—245, the posts of ex-Mysore teachers in the grade of Rs. 130—200 and the post of Principal, Janatha College in the grade of Rs. 200—300 were equated and placed in promotional cadre, while the posts of ex-Hyderabad teachers in the grade of Rs. 150—275 as well as the grade of Rs. 130—190 and the posts of ex-Coorg teachers in the grades of Rs. 110—300 as well as the grade of Rs. 60—200 were equated with the posts of ex-Bombay teachers in the grade of Rs. 70—200, the posts of ex-Madras teachers in the grade of Rs. 85—175 and the posts of ex-Mysore teachers in the grade of Rs. 60—150 and placed in the initial recruitment cadre. The result of this equation of posts was that the ex-Hyderabad petitioners who were in the grade of Rs. 154—275 and



the ex-Coorg petitioners who were in the grade of Rs. 100—300 were pushed down in seniority by hundred of places and their future prospects of promotions were seriously prejudiced.

The ex-Hyderabad petitioners along with some other ex-Hyderabad teachers thereupon filed a petition in the High Court of Mysore for quashing and setting aside the equation of posts on which the final Inter State Seniority List was based. There were several grounds on which the validity of the equation of the posts was challenged but one ground which appealed to the High Court was that since the equation of posts made in the Provisional Inter State Seniority List was not disadvantageous to the ex-Hyderabad teachers and they were satisfied with it, they did not make any representation placing all the relevant facts in regard to their case before the Central Government and the change in equation of posts in the Final Inter State Seniority List—which was disadvantageous to the ex-Hyderabad teachers—was thus without any opportunity to them to have their say in the matter and that vitated the equation of posts. The High Court on this view, by an order dated 8th January, 1969, set aside the equation of posts on the basis of which the Final Inter State Seniority List was prepared and directed that “that part of the Final Inter State Seniority List which referred to the ex-Hyderabad teachers should be made again by the Central Government after consideration of all the relevant facts and circumstances and the ex-Hyderabad petitioners and all others who were likely to be affected by the determination to be made by the Central Government should submit their representations in regard to this matter within a month from the date of the order of the High Court.

The ex-Coorg teachers also filed similar petitions in the High Court of Mysore challenging the validity of equation of posts made in the Final Inter State Seniority List since the posts held by them were equated with those of ex-Mysore teachers in the grade of Rs. 60—150 and that was done by the Central Government without giving any opportunity to them to make a representation. The High Court, by an order dated 24th February, 1969, set aside the equation of the posts of ex-Coorg teachers in the grade of Rs. 100—300 with those of ex-Mysore teachers in the grade of Rs. 60—150 on the ground that the Central Government had departed from the equation of posts made in the Provisional Inter State Seniority List without giving any opportunity to the ex-Coorg teachers to make representations against such departure and directed that the Central Government should make a proper equation of posts after giving to the ex-Coorg teachers an opportunity to make representations in regard to the matter.

Pursuant to the orders of the High Court dated 8th January, 1969 and 24th February, 1969 the ex-Hyderabad teachers in the grade of Rs. 154—275 and the ex-Coorg teachers in the grade of Rs. 100—300 made representations to the Central Government contending that the posts held by them should be equated with those of ex-Mysore teachers in the grade of Rs. 130—300 and placed in promotional cadre. The

- A Central Government after considering these representations as also representations received from other allocated teachers arrived at a tentative decision in regard to the equation of posts and on the basis of such tentative decision a Provisional Inter State Seniority List was published by the State Government by a notification dated 20th November, 1970. The equation of posts on the basis of which this Provisional Inter State Seniority List was prepared was set out in
- B Annexure I to the List. The posts of ex-Coorg teachers in the grade of Rs. 100—300 were equated with those of ex-Mysore teachers in the grade of Rs. 60—150 and placed in category II which corresponded to the initial recruitment cadre. However, so far as the posts of ex-Hyderabad teachers in the grade of Rs. 154—275 were concerned, they were treated as a special class and it was decided that “it is not necessary to equate this post in Category II, but for purposes of promotion to the next higher Category, the teachers who were in the scale of Rs. 154—275 may be placed “en-bloc” immediately above the first teachers from Hyderabad in the scale of Rs. 130—190 who finds place in Category II, thus maintaining the parent State Seniority of the teachers coming from the former State of Hyderabad.” *Vide* note at the foot of Annexure I to the Provisional Inter State Seniority List.
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- D Though the claim of the ex-Hyderabad teachers to equation of their posts with those of ex-Mysore teachers in the grade of Rs. 130—200 in Category I, which corresponded to the promotional grade, was not accepted by the Central Government, they were satisfied with the decision of the Central Government to place the en-bloc immediately above the first ex-Hyderabad teacher in the grade of Rs. 130—190 and they accordingly did not make any representation to the Central
- E Government contending that the posts held by them should be equated with those of ex-Mysore teachers in the grade of Rs. 130—200 and placed in Category I. The ex-Coorg teachers were, however, dissatisfied with the decision of the Central Government equating the posts held by them with those of ex-Mysore teachers in the grade of Rs. 60—150 in Category II and, therefore, they made representations complaining against the decision of the Central Government and submitting
- F that the posts held by them should be equated with those of ex-Mysore teachers in the grade of Rs. 130—200 and placed in Category I. It appears that the ex-Mysore teachers in the grade of Rs. 60—150 also made representations to the Central Government since the effect of placing the ex-Hyderabad teachers in the grade of Rs. 154—275 en-bloc immediately above the first teacher from the ex-Hyderabad in the grade of Rs. 130—190 was to push them back in seniority below
- G the ex-Hyderabad teachers in the grade of Rs. 154—275. The Central Government after considering all these representations received from different classes of allocated teachers as also the representations submitted by the ex-Hyderabad and the ex-Coorg teachers pursuant to the directions contained in the orders of the High Court dated 8th January, 1969 and 24th February, 1969 determined the equation of posts and in accordance with this determination the State Government
- H by a notification dated 9th December, 1971 published the Final Inter State Seniority List. This Final Inter State Seniority List also, like the earlier one, classified the posts into Promotional cadre, Intermediate

cadre and Initial Recruitment cadre. The posts of ex-Hyderabad teachers in the grade of Rs. 154—275 as well as the posts of ex-Coorg teachers in the grade of Rs. 100—300 were equated with the posts of ex-Bombay teachers in the grade of Rs. 70—200, the posts of the ex-Madras teachers in the grade of Rs. 85—175 and the posts of ex-Mysore teachers in the grade of Rs. 60—150 and placed in the Initial Recruitment cadre, while the post of Principal, Janatha College in the grade of Rs. 200—300, the posts of ex-Bombay teachers in the grade of Rs. 210—300, the posts of ex-Madras teachers in the grade of Rs. 165—245 and the posts of ex-Mysore teachers in the grade of Rs. 130—200 were equated and placed in the promotional cadre. The result was that though prior to the reorganisation the ex-Hyderabad teachers in the grade of Rs. 154—275 and the ex-Coorg teachers in the grade of Rs. 100—300 were eligible for being considered for promotion to the post of Head Master which was a Class II Gazetted post they could now hope to reach the post of Head Master only after being first promoted to the Promotional cadre, which would mean that they would have to await their turn until after all the teachers in the Promotional cadre were either promoted or rejected and moreover their seniority was seriously prejudiced and their future emoluments considerably affected.

The ex-Hyderabad petitioners being aggrieved by the equation of posts made in the Final Inter State Seniority List perferred Writ Petition No. 12 of 1972 in this Court challenging the validity of the equation in so far as the posts held by ex-Hyderabad teachers in the grade of Rs. 154—275 were equated with those of ex-Mysore teachers in the grade of Rs. 60—150 and classified under the Category of Initial Recruitment cadre. The contention of the ex-Hyderabad petitioners was that the posts held by the ex-Hyderabad teachers in the grade of Rs. 154—275 should have been equated with those of ex-Mysore teachers in the grade of Rs. 130—200 and placed in the Promotional cadre. Similarly, the ex-Coorg teachers also filed Writ Petition No. 149 of 1972 in this Court challenging the validity of the equation made in the Final Inter State Seniority List in so far as the posts held by the ex-Coorg teachers in the grade of Rs. 100—300 were equated with those of ex-Mysore teachers in the grade of Rs. 60—150 and placed in the Initial Recruitment cadre. They also contended that the posts of ex-Coorg teachers in the grade of Rs. 100—300 should have been equated with those of ex-Mysore teachers in the the grade of Rs. 130—200 and treated as belonging to the Promotional cadre. The question we are called upon to consider in these two writ petitions is whether the claim made by the ex-Hyderabad petitioners and the ex-Coorg petitioners can be sustained.

Before we proceed to examine the merits of the claim of the ex-Hyderabad and the ex-Coorg petitioners, it would be convenient first to consider the ground on which an equation of posts made by the Central Government may be challenged. It is now well settled that the power to determine equation of posts belongs to the Central Government under section 115(5) of the Act and this power must be exercised by the Central Government after giving an opportunity to the

- A allocated Government servants to make representations in regard to this matter. This Court pointed out in *Union of India v. P. K. Roy*<sup>(1)</sup> that a decision taken by the Central Government without giving an opportunity to the officers affected to make representations would be invalid and that was affirmed by this Court in the subsequent decision in *Union of India v. G. R. Prabhavalkar*<sup>(2)</sup>. This Court also laid down in *L. Rajiah Raj v. Union of India*<sup>(3)</sup> and *Union of India v. G. R. Prabhavalkar*<sup>(2)</sup> that the Central Government is bound to have regard to the four factors decided upon at the conference of the Chief Secretaries held on 18th and 19th May, 1956 in determining equation of posts and if these four factors have been properly taken into account, the decision of the Central Government cannot be assailed. It is not open to the Court to consider whether the equation of posts made by the Central Government is right or wrong. That is a matter exclusively within the province of the Central Government. What the Court can scrutinise is only whether the four factors agreed upon at the Chief Secretaries' conference have been properly taken into account. If the Court finds that one or more of these four factors have been ignored, the Court can strike down the equation of posts made by the Central Government. The Court can also interfere if it finds that the decision of the Central Government in regard to the equation of posts is *mala fide* or without application of mind. The Court may also in a proper case intervene if it comes to the conclusion that the decision of the Central Government is based on irrelevant considerations or wrong assumptions or that it is so irrational or perverse that no reasonable person properly instructed and taking into account relevant factors could possibly arrive at it. This is the narrow and limited field within which the supervisory jurisdiction of the Court can operate.
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*Writ Petition No. 12 of 1972*

- The first ground on which the ex-Hyderabad petitioners sought to challenge the equation of posts, in so far as the posts held by them in the grade of Rs. 154—275 were equated with the posts of ex-Mysore teachers in the grade of Rs. 60—150 and placed in the Initial Recruitment Cadre, was that the equation of posts was made by the Central Government without giving any opportunity to the ex-Hyderabad petitioners to make a proper representation. The argument of the ex-Hyderabad petitioners was that the Provisional Inter State Seniority List published on 20th November, 1970 gave them a special position on equation of posts and placed them en-bloc immediately above the first teacher from Hyderabad in the grade of Rs. 130—190 in the initial Recruitment Cadre and since they were satisfied with this equation they did not make any representation to the Central Government, but the Central Government altered this equation to their prejudice in the Final Inter State Seniority List without giving any opportunity to them to make a representation showing why they should not be equated with ex-Mysore teachers in the grade of Rs. 60—150 in the Initial Recruitment Cadre but should be equated with ex-Mysore teachers in the grade of Rs. 130—200 in the Promotional Cadre. The equation of posts in
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(1). [1968] 2 S. C. R. 186.

(2) [1973] 4 S. C. C. 183.

(3) [1973] 1 S. C. C. 61.

the Final Inter State Seniority List, in so far as it related to the ex-Hyderabad teachers in the grade of Rs. 154—275, was, therefore, contended the ex-Hyderabad petitioners, in violation of the principles of natural justice and was on that account liable to be quashed and set aside. Now, it is true that the ex-Hyderabad petitioners were prepared to accept the equation of posts made in the Provisional Inter State Seniority List though it did not go as far as to satisfy the full extent of their claim and they accordingly did not make any representation complaining against such equation of posts and claiming that the posts held by them in the grade of Rs. 154—275 should be equated with those of ex-Mysore teachers in the grade of Rs. 130—200 and placed in the Promotional cadre. The only representation made by the ex-Hyderabad petitioners to the Central Government was the one produced by the learned counsel appearing on behalf of the State Government pursuant to the directions given by us and that representation showed that though the ex-Hyderabad petitioners felt that the equation of posts made in the Provisional Inter State Seniority List was not correct and it placed them in a slightly disadvantageous position, they were, “in the interest of common good and amicable settlement”, prepared to accept it and they accordingly requested the Central Government to treat the Provisional Inter State Seniority List as final and irrevocable and to publish it as the Final Inter State Seniority List. The Central Government, however, changed the equation of posts proposed in the Provisional Inter State Seniority List to the detriment of the ex-Hyderabad petitioners by pulling them down and equating them with ex-Mysore teachers in the grade of Rs. 60—150 in the Initial Recruitment cadre. Obviously, this could not be done without giving an opportunity to the ex-Hyderabad petitioners to make a proper representation. That was the barest minimum requirement of the principles of natural justice. This requirement was clearly satisfied. Though the ex-Hyderabad petitioners did not make any representation to the Central Government in regard to their claim to equation of posts subsequent to the publication of the Provisional Inter State Seniority List, there were representations made by them earlier in pursuance of the directions given by the High Court in its judgment dated 8th January, 1969. The ex-Hyderabad petitioners admitted in paragraph 3(11) of the petition that they had made representations to the Central Government subsequent to the judgment of the High Court dated 8th January, 1969 and the equation of posts was tentatively decided by the Central Government “after hearing the representations from all”, which would include their representations as well. So also in paragraph 5 of the petition the ex-Hyderabad teachers referred to the representations made by them to the Central Government subsequent to the judgment of the High Court dated 8th January, 1969 and stated that in these representations, they had placed all relevant facts and materials before the Central Government with a view to substantiating their claim to equation of the

posts held by them with those of ex-Mysore teachers in the grade of Rs. 130-299 in the Promotional cadre. The Central Government also affirmed in paragraph 3 of the affidavit in reply filed by A. R. Ailawadi, Under Secretary to the Government of India, Cabinet Secretariat that representations had been made by the ex-Hyderabad teachers pursuant to the directions given by the High Court in its judgment dated 8th January, 1969. It was after considering all these representations received pursuant to the directions contained in the judgment of the High Court dated 8th January, 1969 "the recommendations of the SAC on those representations as also the representations received against the revised provisional ISS list of the graduate tutorial cadre published in November 1970 and the recommendations of the SAC on those representations, by the application of the relevant factors and in particular, the four criteria for determination of equation of posts" that the Central Government decided the equation of posts forming the basis of the Final Inter State Seniority List. This is clear from the preamble to the notification dated 9th December, 1971 publishing the Final Inter State Seniority List as also from paragraph 3 of the affidavit in reply filed by A. R. Ailawadi on behalf of the Central Government. The Central Government, therefore, had before it the representations of the ex-Hyderabad teachers claiming equation of the posts held by them in the grade of Rs. 154-275 with those of ex-Mysore teachers in the grade of Rs. 130-200 in the Promotional cadre and it was after considering these representation that the Central Government decided that the posts held by the ex-Hyderabad teachers in the grade of Rs. 154-275 should be equated not with the posts of ex-Mysore teachers in the grade of Rs. 130-200 in the Promotional cadre as claimed by them, but with the posts of ex-Mysore teachers in the grade of Rs. 60-150 in the initial Recruitment cadre. It is in these circumstances not possible to say that the decision in regard to equation of posts in the Final Inter Seniority List was taken by the Central Government without giving an opportunity to the ex-Hyderabad petitioners to make a proper representation or that there was any violation of the principles of natural justice in reaching such decision.

That takes us to the next ground of challenge against the validity of the equation of posts in so far as the ex-Hyderabad teachers in the grade of Rs. 154-275 are concerned. The ex-Hyderabad petitioners contended that in determining the equation of posts the Central Government had failed to take into account the four factors decided upon at the Chief Secretaries Conference and that in any event the equation of posts made by the Central Government was based on erroneous assumptions and irrelevant considerations and disclosed non-application of mind to the material and relevant facts. Now the notification dated 9th December, 1971, setting out the equation of posts, does not give the reasons which

weighed with the Central Government in making the equation of posts and in the absence of reasons. It might have been difficult for the ex-Hyderabad petitioners to substantiate this ground of challenge, but fortunately the Central Government has, in the affidavit in reply filed on its behalf by A. R. Ailawadi, disclosed the reasons why it made the equation of posts in the manner it did. We must, therefore, proceed to examine these reasons and see how far they introduce any infirmity in the equation of posts.

The decision of the Central Government giving its reasons for the equation of posts may be set out in the words of the Central Government itself as re-produced in paragraph 15 of the affidavit in reply made by A.R. Ailawadi :

"The main points raised in the representations received against the revised provisional list of 1970 are that the posts of Teachers in the grades of Rs. 130-190 and Rs. 80-220 from Hyderabad and Coorg respectively should be put in a separate lower category and that the posts of Teachers from Hyderabad in the scale of Rs. 154-275 should be equated with the posts of teachers from other integrating areas without any special treatment. The Coorg Teachers in the scale of pay Rs. 180-300 have claimed higher equation whereas the Hyderabad Teachers have, by and large, supported the tentative equation of posts suggested by the Central Government.

On the basis of all the material available with the Central Government it is observed that in the case of none of these seven posts are all the four criteria admittedly higher or lower than the others. If, therefore, 3 of the 4 criteria are by and large, similar, the posts would have to be equated. Broadly speaking, the teachers in all these grades were either teaching High School and Middle School classes, or doing inspection work. It is seen that the duties, etc. of the Hyderabad Inspectorate in the grade of Rs. 154-275 were somewhat inferior to those of their counter-parts in Mysore, Bombay, Madras and Coorg. In respect of minimum qualifications prescribed for recruitment to the posts, the Hyderabad and Coorg teachers in the grades of Rs. 130-190 and Rs. 80-220 respectively, were less qualified than the other teachers. Regarding scales of pay, the Hyderabad and Coorg teachers in the grade of Rs. 154-275 and Rs. 100-300 respectively were in a better scale than the other teachers, but

- A the scales of pay of the Hyderabad and Coorg teachers in the grade of Rs. 130-190 and 80-200 were better than those of the Mysore, Bombay and Madras teachers in the grade of Rs. 60-150, 70-200 and Rs. 85-175 respectively. It is thus seen that, by and large, in three out of the four criteria for determining the equation of posts, the several posts included in the Initial Recruitment Cadre are quite comparable.
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- C After careful consideration of all the relevant factors, and in particular, the four criteria for determination of the equation of posts, the Central Government have decided that the equation of posts adopted for drawing up the ISS List published in 1965 referred to in paragraph 2 supra is the most reasonable one for drawing up the final ISS List of the Graduate Tutorial Cadre as on 1st November, 1956. The State Government may, therefore, adopt that equation for the preparation of the final ISS List of the Graduate Tutorial Cadre as on 1-11-1956."
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- E It would be seen that the Central Government took the view that if the posts were found similar on an application of three out of the four factors settled at the Chief Secretaries' Conference, they should be equated. The Central Government then proceeded to apply these factors for the purpose of determining the equation of posts. So far as the first factor, namely, the nature and duties of posts and the second factor, namely, the responsibilities and powers appertaining to the posts, are concerned, the Central Government pointed out that "the teachers in all these grades were either teaching High School and Middle School classes, or doing inspection work" and then observed that "the duties, etc. of the Hyderabad Inspectors in the grade of Rs. 154-275 were some what inferior to those of their counter-parts in Mysore, Bombay, Madras and Coorg". Now, the ex-Hyderabad Inspectors in the grade of Rs. 154-275 constituted but a fraction of the ex-Hyderabad teachers in that grade and the majority of the ex-Hyderabad teachers in that grade were teachers teaching in the composite schools corresponding to the Middle and High Schools of the erstwhile State of Mysore. No comparison of the nature and duties or responsibilities of the posts was, however, made between the ex-Hyderabad teachers in the grade of Rs. 154-275 on the one hand and the ex-Bombay teachers in the grade of Rs. 210-300, ex-Madras teachers in the grade of Rs. 165-245 and ex-Mysore teachers in the grade of Rs. 130-200 on the other. The criteria of the first and the second factors were not applied *qua* ex-Hyderabad teachers teaching
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in the composite schools who constituted a large bulk of ex-Hyderabad teachers in the grade of Rs. 154- 275 and it was not said by the Central Government that either the nature or the duties or responsibilities of their posts were inferior to those of the posts of ex-Bombay teachers in the grade of Rs. 210-300, ex-Madras teachers in the grade of Rs. 164-245 and ex-Mysore teachers in the grade of Rs. 130-200. The Central Government did not take up this position even in the affidavit in reply made by A.R. Ailawadi on its behalf. The only assertion which the Central Government made in this affidavit was that "the nature of duties and responsibilities etc. attached to the posts of teachers in Hyderabad in the scale of Rs. 154-275 were similar to those of teachers of Mysore in the scale of Rs. 60-150, of Bombay in the scale of Rs. 70-200 and of Coorg in the scale of Rs. 100-300". Vide paragraph 21. We do not think this *ex-post facto* statement made in the affidavit can be relied upon the justification of the equation of posts because what we have to consider is what were the factors actually taken into account in determining the equation of posts and whether any of them were relevant or irrelevant and whether any relevant factors were omitted from consideration. There is nothing in the decision of the Central Government to show that this factor relating to comparison of the nature, duties and responsibilities of the posts between ex-Hyderabad teachers in the grade of Rs. 154-275 —apart from ex-Hyderabad Inspectors and other allocated teachers —was at any time taken into account by the Central Government. Even if we accept the statement made in the affidavit at its face value, it cannot carry the matter any further, because it merely speaks of similarity of the duties and responsibilities of the posts of ex-Hyderabad teachers in the grade of Rs. 154-275 with those of the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the lower grade and does not seek to compare the nature, duties and responsibilities of the posts of ex-Hyderabad teachers in the grade of Rs. 154-275 with those of the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade. It may be argued that the duties and responsibilities of the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade were superior to those of ex-Bombay, ex-Madras and ex-mysore teachers in the lower grade, and therefore, when the Central Government found that the duties and responsibilities of the posts of ex-Hyderabad teachers in the grade of Rs. 154-275 were similar to those of ex-Bombay, ex-Madras and ex-Mysore teachers in the lower grade, it must follow a *fortiori* that they were inferior to those of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade and hence the former posts could not be equated with the latter. But this argument cannot be sustained because the premise on which

- A it is based is non-existent. It does not appear from the decision of the Central Government, nor is there anything in the affidavit of A.R. Ailawadi to show that the duties and responsibilities of the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade were superior to those of the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the lower grade. In fact, the Central Government
- B stated in paragraph 16 of the affidavit of A. R. Ailawadi in reference to the posts in the higher grade : "In the States of Mysore, Madras and Bombay certain percentage of posts of graduate tutorial cadre were treated as selection grade posts, the percentage in Mysore being 20%, in Bombay 3% and in Madras 33-1/3%, and *these posts were not attached to any particular Institution or office.* Persons in the
- C initial recruitment category were given this selection grade on the basis of seniority-cum-merit". If this is true, it would mean that the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade were in the nature of selection grade posts and the teachers in the lower grade were, on the principle of seniority-cum-merit, given the
- D higher grade, but they remained in the same posts discharging the same duties and responsibilities. It would seem that the posts in the higher grade were thus not promotional posts, distinct and separate from the posts in the lower grade. The posts were the same and the duties and responsibilities were the same, but the teachers who were in the lower grade given the higher grade on the principle of seniority-cum-merit. This would be evident from the order of the Government of Mysore dated 21st September, 1947 set out in paragraph 8 of the affidavit in reply filed by respondent No. 8, Appendix 9 to the Bombay Educational Manual referred to in paragraph 9 of that affidavit and the position in regard to the Education Service in the erstwhile State of Madras as set out in paragraph 10 of that affidavit. It is
- E obvious that the Central Government, in determining the equation of posts, omitted to take into account these relevant considerations and failed to apply the criteria of the first and second factors in the light of the material facts placed before it.

- G The Central Government in its decision then proceeded to consider the criterion relating to the third factor, namely, the minimum qualifications prescribed for recruitment to the posts and observed that "the Hyderabad and Coorg teachers in the grades of Rs. 130-190 and Rs. 80-220 respectively were less qualified than the other teachers". It is difficult to see the logic or relevance of this observation.
- H What the Central Government was concerned to inquire was as to what were the posts of ex-Bombay, ex-Madras and ex-Mysore teachers to which the posts of ex-Hyderabad teachers in the grade of Rs. 154-275 could be regarded as similar from the point of view minimum

qualifications prescribed for recruitment to the posts. It may be that the ex-Hyderabad teachers in the grade of Rs. 130-190 were less qualified than the ex-Bombay, ex-Madras and ex-Mysore teachers in the lower grade, but that could have no bearing on the question as to whether ex-Hyderabad teachers in the grade of Rs. 154-275 were superior or inferior to the ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade from the point of view of qualifications. The Central Government ought to have considered whether there was any comparison between the posts of ex-Hyderabad teachers in the grade of Rs. 154-275 and the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade on the criterion of minimum qualifications required for recruitment to the posts. This, unfortunately, as the decision of the Central Government shows, it failed to do. There is nothing in the decision of the Central Government which would indicate even remotely that the Central Government applied its mind to the criterion of minimum qualifications and compared the posts of ex-Hyderabad teachers in the grade of Rs. 154-275 with those of other allocated teachers in the higher grade from the point of view of this criterion.

So far as the criterion relating to the fourth factor, namely, the salary of the posts is concerned, the Central Government was constrained to admit that the posts of ex-Hyderabad teachers in the grade of Rs. 154—275 carried a higher pay scale than those of ex-Bombay, ex-Madras and ex-Mysore teachers in the lower grade and even the posts of ex-Hyderabad teachers in the grade of Rs. 130—190 enjoyed a better pay scale than those of ex-Bombay, ex-Madras and ex-Mysore teachers in the lower grade. Judged by this criterion, therefore, the posts of ex-Hyderabad teachers in the grade of Rs. 154—275 could not possibly have been equated with those of ex-Bombay, ex-Madras and ex-Mysore teachers in the lower grade but the Central Government ignored this criterion altogether and pinned its decision only on the other three criteria which also, as pointed out by us above, were either not applied at all or improperly applied.

There can, therefore, be no doubt that if we test the validity of the equation of posts by reference only to the reasons given by the Central Government in its decision as reproduced in paragraph 15 of the affidavit of A.R. Ailawadi, the equation of posts made by the Central Government cannot stand in so far as ex-Hyderabad teachers in the grade of Rs. 154—275 are concerned. But the Central Government in the affidavit of A.R. Ailawadi gave certain further reasons justifying the equation of posts made by it and though the decision of the Central

- A Government does not show that these reasons actually weighed with the Central Government, we would proceed to examine their correctness.

- B The contention of the Central Government, as set out in the affidavit of A.R. Ailawadi, was that the posts of ex-Hyderabad teachers in the grade of Rs. 154—275 did not belong to the promotional cadre but were meant only for the initial recruitment of trained graduates and hence they were rightly classified under the Initial Recruitment cadre. The strongest reliance in support of this contention was placed on the Cadre and Recruitment Rules of the Hyderabad Educational Service made by the Rajpramukh on 29th October, 1953. It was pointed out by the Central Government that according to the Hyderabad Cadre and Recruitment Rules, the highest grade in the subordinate services was that of teachers in the grade of Rs. 280—345 and that was to be filled by promotion of teachers in the grade of Rs. 154—275 and the next lower grades were those of teachers in the grades of
- D Rs. 154—275 and Rs. 130—190 and these were “to be filled ordinarily by direct recruitment by selection by a select committee” and so far as the minimum qualifications for recruitment to these grades were concerned, a candidate had to be a trained graduate for recruitment to the grade of Rs. 154—275 while for recruitment to the grade of Rs. 130—190 it was enough if he was merely a graduate or a
- E trained intermediate. The Central Government submitted on the basis of these provisions in the Hyderabad Cadre and Recruitment Rules that the grade of Rs. 154—275 was not a promotional grade but it was as much an initial recruitment grade as the grade of Rs. 130—190, the only difference being that the minimum qualification for recruitment in the former was that the candidate should be a trained
- F graduate while in the later, he could be an untrained graduate or a trained intermediate. The only promotional grade, according to the Hyderabad Cadre and Recruitment Rules was that of teachers in the grade of Rs. 280—345. That was the reason why, contended the Central Government, the posts of ex-Hyderabad teachers in the grade
- G of Rs. 280—345 were equated with the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade—which were in the Promotional cadre, while the posts of ex-Hyderabad teachers in the grades of Rs. 154—275 and Rs. 130—190 were equated with the posts or ex-Bombay, ex-Madras and ex-Mysore teachers in the lower grade which constituted Initial Recruitment cadre. This contention, plausible though it may seem, is, in our opinion, fallacious, inasmuch as it is based on misconception of the true nature of the equation of posts and disregard of the actual and historical facts obtaining in regard to
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the ex-Hyderabad grade of Rs. 154—275 and the ex-Mysore grades of Rs. 60—150 and Rs. 130—200.

It is clear that what the Central Government was required to do for the purpose of bringing about the integration of the services was to determine the equation of posts of allocated Government servants coming from different integrating areas. The equation that was to be made by the Central Government was of posts and since posts would be in different grades, the equation of posts would necessarily involve the equation of grades. This equation had to be done by reference to the four criteria laid down at the conference of the Chief Secretaries. It was immaterial whether the grades which were sought to be equated were initial recruitment grades or promotional grades. There was no requirement either of law or of principle that one initial recruitment grade could be equated only with another initial recruitment grade, or that one promotional grade could be equated only with another promotional grade. The four criteria which were to be applied for the purpose of determining the equation were those laid down at the Conference of the Chief Secretaries and if these four criteria were satisfied, then in a given case an initial recruitment grade could be equated to a promotional grade and *vice-versa*. We do not, therefore, think that the Central Government was right in taking the view that the ex-Hyderabad grade of Rs. 154—275 could not be equated with the ex-Bombay grade of Rs. 210—300, ex-Madras grade of Rs. 165—245 and ex-Mysore grade of Rs. 130—200 because the former was an initial recruitment grade while the latter were promotional grades. That was not a correct test to be applied in determining the equation of posts.

But apart from this objection as a matter of law, we do not think the Central Government was right in saying that the ex-Hyderabad grade of Rs. 154—275 was not a promotional grade but an initial recruitment grade for trained graduates. We will first consider the position prior to the making of the Hyderabad Cadre and Recruitment Rules of 29th May, 1953. There are several orders commencing from 17th October, 1951 and ending with 12th December, 1954, Annexures F1 to F4 to the petition, which clearly show that ex-Hyderabad teachers in the grade of Rs. 130—190 were promoted to the grade of Rs. 154—275. All the forty-three ex-Hyderabad petitioners were originally appointed in the grade of Rs. 130—190 and subsequently on obtaining B.T. or B.Ed. degrees, they were promoted to the grade of Rs. 154—275 in accordance with the principle of seniority-cum-merit and this is borne out by the orders of promotion passed in the case of each of them. In fact, as pointed out by the ex-Hyderabad petitioners in paragraph 4(2) of the petition, all the ex-Hyderabad teachers in the grade of Rs. 154—275, except two, were promotees from the grade of Rs. 130—190. The proceedings relating

- A to the order of the Government of Mysore dated 11th March, 1960 Annexure G-1 to the petition, also showed that, in the ex-Hyderabad area, trained graduates in the grade of Rs. 130—190 were *promoted* to the grade of Rs. 154—275. So also the letter dated 22nd December, 1962 addressed by the Director of Public Instruction, Andhra Pradesh to the Secretary to the Hyderabad Karnataka Teachers Union
- B Annexure G2 to the petition pointed out that generally, in the ex-Hyderabad area, trained graduates were not appointed directly in the grade of Rs. 154—275 and “only untrained graduates were appointed in the scale of Rs. 130—190 and thereafter they were selected for B.Ed. training as per seniority and after they had completed B.Ed. training, they were promoted to the trained graduates scale of Rs. 154—275 as per seniority”. Similarly, the letter dated 21st January, 1966
- C of the Deputy Secretary to Government of Andhra Pradesh to the Accountant General, Andhra Pradesh, Annexure G3 to the petition, also asserted that the ex-Hyderabad teachers who were in the grade of Rs. 130—190 prior to the reorganisation were “eligible for promotion to the next higher scale of Rs. 154—275 in case of their first promotion after 1st November, 1956”. Then there is also an order of the Government of Mysore dated 28th August, 1961, Annexure G4 to the
- D petition, which said that Shri Vasant Rao Patil was *promoted* from the grade of Rs. 130—190 to Rs. 154—275 along with eleven other teachers. And, lastly, the letter dated 30th December, 1954 addressed by the Director of Public Instruction, Andhra Pradesh to the Secretary, Hyderabad Karnataka Teachers Union, Annexure G8 to the petition, affirmed in terms clear and explicit that the duties of the posts of teachers were the same in the grade of Rs. 154—275 as in the grade
- E of Rs. 130—190 and the grade of Rs. 154—275 merely constituted a “higher category to which trained graduates in the grade of Rs. 130—190” were eligible for promotion. It would, therefore, be seen that right upto the time of the making of the Hyderabad Cadre and Recruitment Rules and even thereafter, the ex-Hyderabad grade of Rs. 154—275 was a promotional grade and save in two exceptional cases, no direct recruitment was ever made to this grade. The entry in the
- F grade of Rs. 154—275 was always by way of promotion of trained graduates from the grade of Rs. 130—190. It is true that the Hyderabad Cadre and Recruitment Rules provided that the posts of teachers in the grade of Rs. 154—275 shall be filled ordinarily by direct recruitment but in fact no direct recruitment was ever made to this grade. The word ‘ordinarily’ left it open to the Government to appoint a teacher to the grade of Rs. 154—275 otherwise than by direct recruitment
- G and in fact, as the various documents to which we have just referred show, appointments to the grade of Rs. 154—275 were made by promotion of trained graduates from the grade of Rs. 130—190 even after the making of the Hyderabad Cadre and Recruitment Rules. The position which prevailed at the time of the reorganisation therefore, was that the ex-Hyderabad grade of Rs. 154—275 was in fact and in reality a promotional grade consisting wholly of promotees from
- H the grade of Rs. 130—190 save in two exceptional cases. We fail to see how the Central Government could have ignored the stark reality of this situation and proceeded on a purely theoretical basis wholly unrelated to the facts and concluded that the ex-Hyderabad grade of

Rs. 154—275 was an initial recruitment grade for trained graduates as distinct from a promotional grade. A

We find from the equation of posts made in the Final Inter State Seniority List as also from the affidavit of A.R. Ailawadi that, according to the Central Government, the ex-Hyderabad grade of Rs. 280—345 was a promotional grade for ex-Hyderabad teachers in the grade of Rs. 154—275 and “the teachers in the grade of Rs. 154—275 had to pass normally through the selection grade of Rs. 280—345 before entering the Class II Gazetted cadre” and the posts in the ex-Hyderabad grade of Rs. 280—345 were, therefore, rightly equated with those of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade. This stand of the Central Government is clearly untenable. It is clear from the letter dated 21st October 1954, addressed by the Secretary to the Government of Hyderabad Education Department to the Director of Public Instruction, Annexure G-6 to the petition, that the ex-Hyderabad grade of Rs. 280—345 was a selection grade : it was “not a separate grade by itself but only an extension of existing grade” of Rs. 154—275 in which it was necessary to reach the maximum before aspiring to the next ladder. The same position was reiterated by the Government of Andhra Pradesh in its order dated 12th March, 1959, Annexure G-7 to the petition where it was stated that the ex-Hyderabad grade of Rs. 280—345 was not a separate cadre by itself but only a continuance of the grade of Rs. 154—275 “a little over the maximum of the time scale of the grade”. The letter dated 23rd January, 1950 addressed by the Director of Public Instruction, Hyderabad to the Principals and Head Masters, Annexure G-5 to the petition, also pointed out that for the purpose of promotion to Class II Gazetted cadre the date of entry into the grade of Rs. 154—275 would be on the basis of seniority of teachers “irrespective of the grades in which they have worked, though they might be working either in the grade of Rs. 154—275 or Rs. 280—345”. So also, the letter dated 8th February, 1964 addressed by the Director of Public Instruction, Bangalore, Annexure G-7 to the petition, reiterated that the grade of Rs. 280—345 was only a side grade intended for officials who have reached the maximum in the grade of Rs. 154—275 and they would have no preference over their seniors working in the grade of Rs. 154—275 and seniority in the grade of Rs. 154—275 would be the only criterion for Class II Gazetted promotion and one need not be promoted to the side grade to get eligibility for Class II Gazetted promotion. It would be seen from these documents that the ex-Hyderabad grade of Rs. 280—345 was merely a selection grade and not a promotional grade and the next higher grade of promotion from the grade of Rs. 154—275 was Class II Gazetted grade and promotion to that higher grade was not from the selection grade of Rs. 280—345 but from the grade of Rs. 154—275 on the basis of seniority. The Central Government was, therefore, clearly in error in taking the view that the ex-Hyderabad grade of Rs. 280—345 was a promotional grade in between the grade of Rs. 154—275 and Class II Gazetted grade. If the next higher grade above the grade of Rs. 154—275 was Class II Gazetted grade, it would be a serious matter for consideration whether the grade of Rs. 154—

- A 275 should not be equated with the ex-Bombay, ex-Madras and ex-Mysore higher grades which were immediately below Class II Gazetted grade in those respective States.

- B Lastly, it may be pointed out that there is one rather important and relevant consideration which the Central Government seems to have failed to take into account and that relates to the qualifications required for recruitment to the posts sought to be equated. There was no dispute that for recruitment, whether by promotion or otherwise, to the ex-Hyderabad grade of Rs. 154—275 it was essential that a teacher should be a trained graduate and in practice all teachers promoted to that grade and even the two exceptional direct recruits were trained graduates. But so far as the ex-Mysore grade of Rs. 60—150 is concerned, even an untrained graduate could be appointed under Note.
- C A to the order of the State Government dated 21st September, 1947 set out in paragraph 8 of the affidavit in reply of respondent No. 8 and in fact a large number of untrained graduates were appointed in this grade. The practice followed was to appoint untrained graduates since trained graduates were not available and then to depute them for training in B.T. course at Government costs. The result was that at any given point of time there was always a large number of untrained graduates in the ex-Mysore grade of Rs. 60—150. It is highly revealing to note that out of about 700 ex-Mysore teachers in the grade of Rs. 60—150 allocated to the State of Mysore, there were admittedly as many as 343 who were untrained graduates and 20 more were also untrained but they were undergoing training on deputation. It is difficult to see how, apart from the disparity in the pay scales, the ex-
- E Hyderabad grade of Rs. 154—275, where the minimum qualification of trained graduate was always insisted on and followed, could be equated with the ex-Mysore grade of Rs. 60—150 where the minimum qualification of trained graduate was not a *sine qua non* for recruitment and in fact more than half the number of teachers were untrained graduates. It may be noted that untrained graduates in the grade of Rs. 60—150 were not only entitled to their usual increments but they
- F could also be promoted to the next higher grade of Rs. 130—200. There were admittedly at the time of reorganisation 26 out of 167 ex-Mysore teachers in the grade of Rs. 130—200, who were untrained graduates. Similarly, in the erstwhile Bombay State also, minimum qualification of trained graduate was not necessary for recruitment to the grade of Rs. 70—200. If a candidate was a trained graduate, he was given an advance increment, but even without being trained, he could gain admittance in the grade. *Vide* Appendix 9 to the Bombay Education Manual and Rule 131 in Section VIII of the Bombay Civil Services Classification and Recruitment Rules set out in paragraph 9 of the affidavit in reply filed by respondent No. 8. How then could be ex-Hyderabad grade of Rs. 154—275 be equated with the ex-Bombay grade of Rs. 70—200, when the minimum qualification for recruitment in the former was that the candidate should be a trained graduate while in the latter, he could just be an ordinary graduate?
- H

We are, therefore, of the view that the equation of posts made by the Central Government was illegal and invalid in so far as it related



to the posts of ex-Hyderabad teachers in the grade of Rs. 154—275. We accordingly set aside the equation of posts as also the Final Inter State Seniority List based upon it to the extent that it relates to the posts of ex-Hyderabad teachers in the grade of Rs. 154—257 and direct the Central Government to make fresh equation of posts after taking into account all relevant facts having material bearing on the question and in the light of the observations contained in this judgment.

*Writ Petition No. 149 of 1972*

The case of the ex-Coorg petitioners stands on the same footing as that of the ex-Hyderabad petitioners in some material respects. In the first place, it does not appear from the decision of the Central Government that for the purpose of determining the proper equation of the posts of ex-Coorg teachers in the grade of Rs. 100—300, the Central Government applied the criteria of the first and the second factors by making a comparison of the nature, duties and responsibilities of the posts. In fact, the statement of the Central Government in its decision that “the duties etc. of the Hyderabad Inspectors in the grade of Rs. 154—275 were somewhat inferior to those of their counterparts in Mysore, Bombay, Madras and Coorg” proceeded on the hypothesis that the duties and responsibilities of the posts of ex-Coorg teachers in the grade of Rs. 100—300 were similar to those of the posts of ex-Bombay, ex-Madras and ex-Mysore teachers in the higher grade. Secondly, the criterion of the third factor, namely, the minimum qualifications required for recruitment to the posts was also not applied by the Central Government for the purpose of determining the equation of the posts of ex-Coorg teachers in the grade of Rs. 100—300. All that was stated by the Central Government in its decision was that the ex-Coorg teachers in the grade of Rs. 80—220 were less qualified than the other teachers. But that had no bearing on the question of qualifications for the posts of ex-Coorg teachers in the grade of Rs. 100—300. It was common ground between the parties that the minimum qualification required for recruitment to the posts of ex-Coorg teachers in the grade of Rs. 100—300 was that the candidate should be a trained graduate. However, so far as the posts of ex-Mysore teachers in the grade of Rs. 60—150 and ex-Bombay teachers in the grade of Rs. 70—200 were concerned, it was not a minimum qualification that the candidate should be a trained graduate but it was enough if he was an untrained graduate. *Vide* the relevant discussion in Writ Petition No. 12 of 1972. It would thus seem that there was no equivalence between the posts of ex-Coorg teachers in the grade of Rs. 100—300 and those of ex-Mysore teachers in the grade of Rs. 60—150 and ex-Bombay teachers in the grade of Rs. 70—200 from the point of view of the criterion of minimum qualifications required for recruitments to the posts. This important consideration, however, seemed to have been omitted to be taken into account by the Central Government. So also the Central Government failed to take into account the criterion of the fourth factor, namely, the salary attached to the posts, for the posts of

- A ex-Coorg teachers in the grade of Rs. 100—300 undeniably carried a higher pay scale than the posts of ex-Mysore teachers in the grade of Rs. 60—150, ex-Bombay teachers in the grade of Rs. 70—200 and ex-Madras teachers in the grade of Rs. 85—175. In fact, the pay scale of the posts of ex-Coorg teachers in the grade of Rs. 100—300 was in some respects even better than that of ex-Mysore teachers in the grade of Rs. 130—200. It appears from the affidavit in reply
- B filed by S. Kannan, Deputy Secretary to the Government of India, Cabinet Secretariat on behalf of the Central Government, that the main consideration which prevailed with the Central Government in equating the posts of ex-Coorg teachers in the grade of Rs. 100—300 with those of ex-Bombay teachers in the grade of Rs. 70—200, ex-Madras teachers in the grade of Rs. 85—175 and ex-Mysore teachers in the grade of Rs. 60—150 was that these were all initial recruitment
- C grades, and the posts of ex-Coorg teachers in the grade of Rs. 100—300 could not be equated with those of ex-Bombay teachers in the grade of Rs. 210—300, ex-Madras teachers in the grade of Rs. 165—245 and ex-Mysore teachers in the grade of Rs. 130—200 because the former belonged to the initial recruitment grade, while the latter, to promotional grades. But as pointed out by us above, this was not
- D a valid consideration which should have guided the Central Government in determining the equation of posts. The Central Government ought to have taken into account the four criteria laid down at the conference of the Chief Secretaries and determined the equation of posts by reference to those criteria. It may also be pointed out that the next higher grade above the ex-Coorg grade of Rs. 100—300 was Class II Gazetted grade and not the grade of Rs. 200—300, which was a special grade for the Principal, Janatha College started
- E as an experimental measure for a period of one year. Promotion to Class II Gazetted grade was from the grade of Rs. 100—300 and it was not necessary for a teacher in the grade of Rs. 100—300 to be appointed Principal, Janatha College in the grade of Rs. 200—300 in order to aspire for promotion to Class II Gazetted grade. That is obvious from the order of the Government of Coorg, dated 27th
- F June, 1956, Annexure 8 to the petition, promoting B. Suryanarain Rao and S. S. Krishna Rao from the grade of Rs. 100—300 to Class II Gazetted post of Head Master. The grade of Rs. 200—300 attached to the post of Principal, Janatha College was, therefore, not a promotional grade but a special grade which did not give its incumbent any preference over the teachers in the grade of Rs. 100—300. The Central Government was clearly in error in proceeding on the basis that “in between the posts of trained graduates, Assistants and
- G Sub-Divisional Inspectors on the one hand (in grade Rs. 100—300) and the posts of Head Masters of Government High Schools and the Principal of Basic Training College, Kadige on the other) in the grade of Rs. 250—10—350), the intermediate promotional post was that of Superintendent, Janatha College, Kudige in grade Rs. 200—10—300” and on that basis equating only the post of Principal, Janatha College in the grade of Rs. 200—300 with the posts of ex-
- H Bombay, ex-Madras and ex-Mysore teachers in the higher grade. These infirmities vitiated the equation of posts made by the Central Government.

We, therefore, set aside the equation of posts as also the Final Inter State Seniority List based upon it in so far as they relate to the posts of ex-Coorg teachers in the grade of Rs. 100—300 and direct the Central Government to make fresh equation of posts after taking into account all relevant facts having material bearing on the question and in the light of the observations contained in this judgment.

The first respondent will pay the costs of the petitioners in each of these two writ petitions.

P.H.P.

*Petitions allowed*