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TAMIL NADU EDUCATION DEPARTMENT MINISTERIAL & GENERAL SUBORDINATE SERVICE ASSOCIATION

v.

STATE OF TAMIL NADU & ANR.

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October 23, 1979

[V. R. KRISHNA IYER AND R. S. PATHAK, JJ.]

Civil Service—Integration of two services—Government revising policy—G.O. issued integrating staff of 'A' and 'B' Wings of service, fixing ratio for promotion & principle of computation of service in determining common seniority—Whether permissible and valid.

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The State of Tamil Nadu had schools at various levels, primary, middle and high which were run by the public sector consisting of Panchayats, District Boards and the Government. Progressively, Panchayat schools were absorbed by District Boards and eventually those managed by the latter were taken over by the Government. In 1970, the State Government took a major policy-decisions that all District Board schools be taken over with effect from 1st April. 1970. By G.O.M.S. No. 761 dated 16th May, 1970 the teaching and non-teaching personnel were absorbed as a separate service in the Education Department named the Tamil Nadu Educational Subordinate Service. The ministerial service, which related to the non-teaching staff, also was kept seperate. The direct consequence of the maintenance of two separate services was that while promotional prospects were available to Government employees, they were not open to the former District Board servants on their absorption into Government service. This led to agitation and representation.

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Government considered afresh the question, and by G.O. 1786 dated October 17, 1974 reorganised the service, to provide that all Government Schools' servants be called the 'A' Wing and the staff of the former District Board Schools be referred to as 'B' Wing and decided that as complete integration of the Wings was administratively difficult, they be kept separate as two Wings of the Tamil Nadu Educational Subordinate Service and the Tamil Nadu Educational Service. The personnel of the 'B' Wing represented to the Government that ever since their absorption as Governmnt servants with effect from April 1, 1970 they were not having enough promotional avenues. Government again examined the matter, decided to re-integrate these Wings and for this purpose passed G.O. No. 1968 dated November 2, 1978 which provided for fixing the ratio between the two Wings in the matter of promotion and also the principle for computation of service in determining the common seniority.

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In the writ petitions to this Court, the petitioners contended that there was no rational formula for integration of the two separate Wings; the methods of recruitment, qualification and seniority provided for the two wings being different, their integration into a common service cadre and equalisation of their service conditions was violative of Articles 14 and 16. The 'B' Wing personnel having been absorbed into Government service with effect from April 1, 1970

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it was not permissible to grant seniority from a date anterior to their eligibility as Government servants. A

The State Government however contended that the decision for integration of the two wings was taken after examining the matter in great detail and taking into account the number of personnel of different categories in both the wings and their promotional opportunities.

Dismissing the petitions, B

HELD : 1. The students who are coached for examinations, the syllabus for such courses and the nature of the teaching are virtually identical in the two sets of schools and the qualifications of the teachers also resemble. In this background, the State probably assumed as inadmissible of contrary argument that the quality of the service, the nature of the qualifications for employment and other features were *de facto* identical and consequentially service in District Board Schools and service in Government Schools could be legitimately equated for purposes of reckoning seniority. Mathematical precision in equation is a vain chase. [1034 B-C] C

2. In Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the Executive, not to the Court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right. Under Art. 32, this Court is the constitutional sentinel, not the national ombudsman. [1031 A-B] D

In the instant case even if the quota rule is an administrative device to inject justice into the integrating process, the ratio cannot be arbitrary nor based on extraneous factors. **[1031-D]** E

3. The ratio of 5:3 and 3:2 respectively were prescribed for the ministerial staff and teaching staff, taking a realistic note of the total numbers of the two equivalent groups viz. quondom District Board servants and relative Government School staff. This is not an irrational criterion when coalescence of two streams springing from two sources occurs. [1030 H] F

4. Having regard to the strength of the District Board staff to be inducted, the ratio is rational. A better formula could be evolved, but the court cannot substitute its wisdom for Government's, save to see that unreasonable perversity, *mala fide* manipulation, indefensible arbitrariness and like infirmities do not defile the equation for integration. [1031 F] G

5. All the schools having been taken over by the State directly the personnel had to be woven into the basic fabric. Some relevant formula had to be furnished for this purpose so that the homogenisation did not unfairly injure one group or the other. In 1970 Government chose not to integrate but to keep apart. Later, this policy was given up. The court cannot quarrel if administrative policy is revised, nor strike down the order because Government have responded to the question hour or re-examined the decision at the instance of a sensitive minister. [1031H—1032C] H

A 6. In the area of equation, an overall view, and not a meticulous dissection, matters. [1033C]

7. Policy is not static but is dynamic and what weighed with the Government when panchayat institutions were amalgamated with the District Board institutions might have been given up in the light of experience or changed circumstances. What was regarded as administratively impractical might, on later thought B and activist reconsideration, turn out to be feasible and fair. The court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. What is important is to know whether *mala fides* vitiates or irrational and extraneous factor fouls. [1034G-H, 1035A]

8. Once the principle is found to be rational the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. However unhappy it is to see the seniors of yesterday be- C coming the juniors of today, this is an area where, absent arbitrariness and irrationality, the court has to adopt a hands-off policy. [1035C-D]

ORIGINAL JURISDICTION : Writ Petition Nos. 272 and 399 of 1979. (Under Article 32 of the Constitution)

S. V. Gupte (399/79), *S. Govind Swaminathan* (272/79), *K. R.* D *Choudhary* and *N. S. Sivam,* for the Petitioners.

K. K. Venugopal, Addl. Sol. Genl., *A. V. Rangam,* for Respondent No. 1.

Y. S. Chitale, A. K. Sen, P. N. Ramalingam, R. Mohan and *A. T. M. Sampath,* for Respondents Nos 3-4.

E The Judgment of the Court was delivered by

KRISHNA IYER, J.—These two writ petitions under Art. 32 of the constitution involve identical, though familiar, constitutional questions based on Arts. 14 and 16 covered by rulings of this Court. The setting too is familiar as also the submissions. For these reasons, a brief F narration of the facts, a terse enunciation of the law and a common judgment for both will suffice.

The Tamil Nadu State had schools at the various levels, primary, middle and high, run by the public sector consisting of Panchayats, District Boards and Government. Progressively, Panchayat Schools G were absorbed by District Boards and, eventually, those managed by the latter were taken over by Government.

We are not concerned with the teaching and non-teaching staff under the Panchayats and their service fortunes when fused into District Board service, except to notice, that in integration, the *date of entry* H *into District Board service* not the service under the Panchayat, was regarded as relevant for purposes of reckoning seniority. The next operation i.e. District Board staff, teaching and non-teaching being

sewn into Government service is what now falls for consideration by the court. A few skeletal facts to unfold the basic legal contentions alone need be recounted. A

All District Board Schools were taken over with effect from 1-4-70 and, inevitably, the issue of merger of the staff confronted Government. B

At the time of issuance of G.O. No. 761 dated 16th May 1970, which organised the absorption of the teaching and non-teaching staff into Government service from the District Board service, Government decided to keep the personnel so absorbed as a separate service in the Education Department named the Tamil Nadu Educational Subordinate Service. The ministerial service, which related to the non-teaching staff, also was kept separate. Of course, all schools to be opened after 1-4-70 were to be Government Schools and so the dichotomy between and staff of erstwhile District Board Schools and of Government Schools no longer persisted. The direct consequence of this immiscible maintenance of the two separate services was that the promotional prospects then available for Government employees were not open to the former District Board servants on their re-incarnation as Government servants. This, naturally, gave rise to heart-burning and its manifestation in a democratic set-up, agitation, representation and interpellations in the Legislature. C D E

The next development in the fortunes of the former District Board Schools' employees came when G. O. No. 1786 of October 17, 1974 was issued. Here Government recapitulated the position after 1-4-70 and considered afresh the question of integration of the two services, the Government Schools' servants being called the 'A' Wing and the staff of the former District Board Schools being referred to as 'B' Wing. In the considered view of the Government, complete integration of 'A' and 'B' Wings was administratively difficult and so they were kept separate as two wings of the Tamil Nadu Educational Subordinate Service and the Tamil Nadu Educational Service. Certain amelioratory measures were taken in opening up better prospects and avenues of promotion for the new arrivals from the District Board Schools. Presumably, this half-way house arrangement was hardly a sufficient appeasement, and Government was again agitated over the question. The pressure of social justice brought to bear on Government through many channels including the houses of the legislature, persuaded the State to overhaul the entire pattern of integration and F G H

A fitment of the two wings in a common seniority list. Government ratiocinated on the question thus :

> "Ever since taking over the 'B' wing personnel as full fledged Government servants from 1-4-70 it was being repeatedly represented to Government that it would not be
B equitable to deny them for ever the advantages available to their counterparts in the 'A' Wing *when persons of both the wings are doing identical work* and that the Government should consider merging both the wings *on some rational basis.* In both the Houses of the State Legislature also many honourable members have been repeatedly urging the Gov-
C ernment to take quick and pragmatic decision on this long pending issue. After examining the matter in great detail taking into account the number of personnel of different categories in both the wings and the promotional opportunities for them, the Government have proposed to adopt a formula to integrate the two wings and attempt to equalise
D their service conditions to the extent possible. *The Tamil Nadu Public Service Commission has given its consent to these proposals.*
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> The Government accordingly now direct, in partial modification of the orders in the G.O. Ms. referred to above, that
E the staff of 'A' and 'B' Wings be integrated with immediate effect following the procedure indicated below :"
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> (emphasis added)

Then followed two important decisions settling the *kismat* of the
F two Wings at the teaching and the non-teaching staff levels. These decisions are castigated in the writ petitions as capricious, arbitrary and traumatic by the 'A' Wing, i.e. the teaching and non-teaching staff of the Government Schools. These two decisions are, briefly, (1) fixing the ratio between the two wings in the matter of promotion, and (2) fixing the principle for computation of service in determining com-
G mon seniority. We are concerned only with non-gazetted officers of secondary schools in these writ petitions. With regard to them, different proportions for promotional consideration have been fixed in this G.O. No. 1968. The ratio of 5:3 and 3:2 respectively were prescribed for the ministerial staff and teaching staff, taking realistic note of the total numbers in the two equivalent groups viz. quondom
H District Board servants and relative Government School staff. This is not an irrational criterion when coalescence of two streams springing from two sources occurs.

In Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbing, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the Executive, not to the Court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right. Under Art. 32, this Court is the constitutional sentinel, not the national ombudsman. We need an ombudsman but the court cannot make-do.

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The feeble criticism that the promotional proportion between the two wings, in the process of interlacing and integration, is unsupported by any rational guideline is pointless. The State's case is that when two sources merge it is not uncommon to resort to the quota rule for promotion, although after getting into the common pool further 'apartheid' shall be interdicted save in a limited class with which we are not concerned here. Of course, even if the quota rule is an administrative device to inject justice into the integrating process, the ratio cannot be arbitrary nor based on extraneous factors. None such is averred nor established. The onus is on the challenger and, here, the ratio is moderately related to the numbers on both sides and we see nothing going 'berserk', nothing bizarre, nothing which makes you rub your eyes to query what strange thing is this Government doing? Counsel for the respondents explain that when equated groups from different sources are brought together quota-rota expedients are practical devices familiar in the field. Bearing in mind the strength of the District Board staff to be inducted, the ratio is rational. Maybe, a better formula could be evolved, but the court cannot substitute its wisdom for Government's save to see that unreasonable perversity, *mala fide* manipulation, indefensible arbitrariness and like infirmities do not defile the equation for integration. We decline to demolish the order on this ground. Curial therapeutics can heal only the pathology of unconstitutionality, not every injury.

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The more serious charge is that length of service for fixing seniority has inflicted manifest injustice on the 'A' Wing i.e. regular Government staff, being born in arbitrariness and fed on *mala fides*. It is fair to state the generalities and then proceed to particularities. Here we must realise that all the schools having been taken over by the State directly the personnel had to be woven into the basic fabric. Some

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A relevant formula had to be furnished for this purpose so that the homogenisation did not unfairly injure one group or the other. In 1970 Government chose not to integrate but to keep apart. Later, this policy was given up. We cannot, as court, quarrel if administrative policy is revised. The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and *vice versa*. Nor can we predicate *mala fides* or ulterior motive merely because Assembly interpellations have ignited re-thinking or, as hinted by Counsel, that the Education Minister's sensitivity is due to his having been once District Board teacher. Democratic processes—both these are part of such process—are not anathema to judges and we cannot knock down the order because Government have responded to the Question Hour or re-examined the decision at the instance of a sensitive minister.

The central issue is whether the engraftment of the long service under the District Board in favour of the transplanted staff, rational or capricious, equity-oriented or obnoxious. The impugned G.O. No. 1968 which is the cynosure of attack in these two writ petitions sets out the background history, current realities and the need to throw open promotional opportunities to the District Board sources stunted for long since 1970. There is reference to consultation with and consent of the Public Service Commission which is usually the expert body on service matters. The experience of 8 years is available with the Government at the time it promulgated this G.O. It enunciates a policy of integration of 'A' and 'B' Wings with immediate effect and outlines the basis on which such fusion is to be achieved. A State-wise seniority list is decided upon, a desideratum which is inescapable if integration is to be accomplished.

Government decisions are recorded in this impugned G.O. regarding the manner of filling existing substantive vacancies and promotion posts with respect to teaching posts. Of course, correspondingly similar decisions were taken for filling up vacancies by promotion to non-teaching posts. 2 : 3 in a cycle of 5 in regard to teaching posts and 5 : 3 in a cycle of 8 in regard to non-teaching posts is the quota-rota decision of Government after appraising itself of the current lot of the 'transplants', the missed past opportunities and the burgeoning future promotions.

There is a direction that a combined State-wide seniority list shall be prepared in accordance with the ratios mentioned and all promotions thereafter were to be made out of such combined lists. Some ameliorative provision regarding passing of tests necessary for promotion has been made in regard to those who have crossed the 45 years

age mark. This last limb was relied on by Sri Swaminathan to suggest that there was no total integration between the two services. But we do not read any decisive indication of such a conclusion from this feeble circumstance. The crux of the matter is what is implicit but not explicit in the order, that in the process of integration and drawing up of combined seniority lists the services of the quondom District Board employees *vis-a-vis* the Government School employees District Board service has been reckoned. Can this be done by a prudent person or is it outrageous to equate District Board service with Government service? That is the question an answer to which disposes of these writ petitions.

We need not delve into details because, in the area of equation, an overall view, and not a meticulous dissection, matters. The petitioners have argued that the selection of Government servants as teachers or non-teachers is done by the Public Service Commission, which means screening and processing by experts. On the other hand, District Board employees are appointed on the chance choice of Presidents *pro tempore*. The obvious suggestion is that the professional equipment in the two cases is substantially different. Even on qualifications it is contended that there is superiority for Government servants *vis-a-vis* District Board employees in schools. A few other less consequential circumstances of difference are relied on in the writ petitions. On the contrary, the plea of the respondents is that there is substantial similarity in the quality of service and absence of disparity in the selection process : "Like the Service Commission, the District Board also selected the candidates. As already submitted, the language test prescribed for the 'A' Wing people is not a peculiar feature for them. The narration of the prescribed test and the syllabus therefore for the 'B' Wing people would definitely show that 'B' Wing people had to face onerous nature of examinations. As regards the educational qualifications for the teachers are concerned, there are absolutely no differences. In A-Wing even without a degree in teachers training, a candidate can be appointed and subsequently he can qualify in B.Ed. But whereas for the B Wing teachers, the rules, framed under the District Board Act stipulates that for the post of School Assistant in a Secondary School, a candidate must possess the qualifications laid down under the Madras Educational Rules (the rule relating to the appointment of Teachers in schools maintained by local bodies). Under the Madras Educational Rules one must possess a degree in B.A. or B.Sc., with B.T. or B.Ed., as in the case of ministerial service, the teachers also have to undergo a period of probation for a period of 2 years. Only after the satisfactory completion of probation for a period of 2 years, they were regularised. Their

A increment is sanctioned only after such regularisation. In 'B' Wing schools a Headmaster or Headmistress must pass the following tests. If a candidate who has been promoted as a Headmaster or Headmistress fails in this subject, he or she will have to face reversion."

The students who are coached for examinations, the syllabus for
B such courses and the nature of the teaching are virtually identical in the two sets of schools and the qualigcations of the teachers also resemble. In this background, the State probably assumed as inadmissible of contrary argument that the quality of the service, the nature of the qualifications for employment and other features were *de facto* identical and consequentially service in District Board Schools
C and service in Government Schools could be legitimately equated for purposes of reckoning seniority. In this imperfect world mathematical precision in equation is a vain chase.

Decisions were cited before us by counsel for the respondents to show that this was not an exercise in novelty and even private college
D experience has been considered relevant when Government has taken over such colleges. On the contrary, counsel for the petitioners pressed before us that when Panchayat schools were dovetailed into the Education Department of the District Boards the teachers and the non-teaching staff thereunder were given no credit for panchayat service and seniority was reckoned only from the date of entry into
E District Board service. Why should a different rule be adopted when District Board teachers and non-teaching staff are brought into Government service? Even the 'Fundamental Rules' were cited to show that ordinarily service prior to entry into Government service is discarded. Then why violate this norm to please the numbers? This
F is the question put to Government for faulting the G.O. No. 1968.

Aware of our jurisdictional limitation we do not agree that the court can analyse such minutiae to fault the policy and quash the order of Government, i.e. G.O. No. 1968. For argument's sake, let us assume that there is a *volte face* on the part of the Government in shifting
G its stand in the matter of computation of seniority with reference to length of service. Surely, policy is not static but is dynamic and what weighed with the Government when panchayat institutions were amalgamated with the District Board institutions might have been given up in the light of experience or changed circumstances. What was regarded as administratively impractical might, on later thought and
H activist reconsideration, turn out to be feasible and fair. The court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes a contradiction and even

consistency is not always a virtue. What is important is to know whether *mala fides* vitiates or irrational and extraneous factor fouls. It is impossible to maintain that the length of service as District Board employees is *irrational* as a criterion. Let us assume for argument's sake that the mode of selection by the District Boards is not as good as by the Public Service Commission. Even so it is difficult to dislodge the Government's position that the teachers with mostly the same qualifications, discharging similar functions and training similar students for similar examinations cannot be equated from a pragmatic angle without being condemned as guilty of arbitrariness.

Sri Govind Swaminathan drove home the point that in some cases even a few hundred 'A' wing members have been passed over by some one in the 'B' wing far junior to them. Once the principle is found to be rational the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however unhappy we be to see the seniors of yesterday becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the court has to adopt a hands-off policy.

The 'B' wing members complain that they have really suffered by being denied what is due to them on account of length of service all these years after 1970. The boot is in the other leg, they lament. Probably, the injustice of the past, when suddenly set right by the equity of the present, puts on a molested mien and the beneficiaries of the *status quo* cry for help against injustice to them. The law, as an instrument of social justice, takes a longer look to neutralise the sins of history. Be that as it may, judicial power cannot rush in where even administrative feats fear to tread.

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

We hold that the impugned G.O. cannot be voided as violative of Articles 14 and 16, and, therefore, dismiss the petitions. The parties will bear their respective costs.

N.V.K. *Petitions dismissed.*