

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 327 of 2020

Date of Decision: 08.02.2023

Smti. Wa-I-Sa Sumer & Anr.

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. Philemon Nongbri, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Ms. Z. E. Nongkynrih, GA (For R 1-4)
Mr. S. Sen, Adv. (For R 5-9).

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER

1. This writ petition has been filed for recall of impugned notification dated 11-12-2012 whereby under the Meghalaya School Education Service

Rules, 2012, the State-respondents have prescribed the proportion for filling up of vacancies under Junior Grade-II service from amongst the categories of Vice-Principal/Assistant Headmaster/Assistant DAEs at 75 per cent and from Assistant Lecturer at 25 per cent.

2. The writ petitioners herein, are all direct recruits to the post of Assistant Lecturer and their services are governed by the Meghalaya School Service Rules, 2012. Under these Rules the service comprises of 'Senior School Service' and 'Junior School Service'. For the purposes of this case what is relevant, is the Senior School Service, which comprises of Grade-I and Grade-II. The petitioners belong to Senior Grade-I category along with the Vice-Principal/Assistant Headmaster etc. and having served for a number of years are eligible for promotion to the next higher post in Junior Grade-II under the Meghalaya School Education Service Rules, 2012.

3. The writ petitioners' main grievance is with the classification of the Senior Grade-I into two groups for the purposes of appointment/promotion, and by the prescription of percentage or quota, of persons to be promoted from amongst these two categories which they contend is violative of Articles 14 and 16 of the Constitution of India.

4. Mr. Philemon Nongbri, learned counsel for the petitioners submits that the petitioners (Assistant Lecturers) fall under the same cadre as Vice-Principal/Assistant Headmaster/Headmistress etc. in the Grade-I service as provided under Rule-4 of the Meghalaya School Service Rules, 2012 and, as such, form a single class. He further submits that the source of entry into the cadre is irrelevant and that seniority is always based on the date of entry into a cadre, and by this estimate the petitioners are senior to the private-respondents in service. The action of the State-respondents, he contends, in issuing the impugned notification creating two categories of posts, by classifying the Vice-Principal/Assistant Headmaster/Headmistress repeatedly and providing 75 percent reservation in promotion for them, and the remaining 25 percent for Assistant Lecturers is unsustainable in law and violative of Article 14 of the Constitution of India.

5. The learned Counsel submits that this classification of reservation of 75 percent for Vice-Principal/ Assistant Headmaster/Headmistress, as opposed to 25 percent for Assistant Lecturers, is totally unreasonable, inasmuch as, the State-respondents have taken into account all the other grades i.e. Grade-I and Grade-II, in computing the strength of service of the Vice-Principal/Assistant Headmaster/Headmistress etc., instead of considering only the actual strength of Grade-I who are in service. He further submits that the strength of Assistant Lecturers in Grade-I service as on 2012,

was 147 whereas, the strength of Vice-Principal/Assistant Headmaster/Headmistress etc., in Grade-I service was 28. In this scenario, he contends the provision for reservation by the impugned notification is disproportionate, unreasonable and has resulted in the deprivation of the petitioners from being considered for promotion inspite of having served long years.

6. Learned counsel for the petitioner in support of his arguments has placed reliance on the following cases:-

- i) ***State of Bihar and Ors. Vs. Bihar State 'Plus-2' Lecturers Associations and Ors. (2008) 7 SCC 231.***
- ii) ***Confederation of Ex-Servicemen Associations & Ors. Vs. Union of India (2006) 8 SCC 399.***
- iii) ***State of Jammu & Kashmir Vs. Shri. Triloki Nath Khosa & Ors. (1974) 1 SCC 19.***
- iv) ***State of Mysore & Anr. Vs. P. Narasinga Rao AIR 1968 SC 349.***
- v) ***K.S. Puttaswamy (Retired) & Anr. Vs. Union of India & Anr. (2019) 1 SCC 1.***
- vi) ***Modern Dental College and Research Centre & Ors. Vs. State of Madhya Pradesh & Ors. (2016) 7 SCC 353.***

7. Mr. B. Bhattacharjee, learned AAG assisted by Ms. Z. E. Nongkynrih, learned GA for the State-respondent Nos. 1-4 in reply, has submitted that Rule-4 read with Schedule-II of the Meghalaya School Service Rules, 2012

provides for the composition and strength of the service, and Rule-4 (1) (b) further provides that each of the categories of post shall form an independent cadre. A bare reading of the above Rule along with the Schedule, he submits, makes it crystal clear that though the post of Vice-Principal/Assistant Headmaster/Headmistress etc. and that of Assistant Lecturers are placed in the same grade, they form separate cadres and this classification is evident from the entry level itself.

8. The learned counsel then refers to Rule-6 of the said Rules of 2012 and submits that sub Rule (1) thereof, provides for the method of appointment to the post of Vice-Principal/Assistant Headmaster/Headmistress etc., and that the appointment to the post of Assistant Lecturers is specifically given in Sub-Rule (2). This he contends in the method of recruitment itself; a classification has been introduced as there is a clear distinction in the posts, which is apparent right from the entry level. To further substantiate this point, the learned counsel submits that Rule 6 (1) affirms that appointment to the posts of Vice-Principal/Assistant Headmaster/Headmistress etc. in Grade-I, shall be made by promotion from amongst members holding the next lower posts in the Grade, except for those posts indicated in the proviso to Rule 6 (2). Rule 6 (2) he submits, which provides for the method of appointment to the posts of Assistant Lecturers, affirms that 25 percent is to be filled up by

promotion from amongst Assistant Teachers, while 75 percent was to be by direct recruitment based on the recommendation made by the Meghalaya Public Service Commission. He also submits that the Assistant Lecturers and Vice-Principal/Assistant Headmaster/Headmistress etc. fall in different categories even when it comes to educational qualification and qualifying service.

9. In the preparation of gradation list as per Rule-19 of the Meghalaya School Service Rules, 2012, learned counsel submits that the seniority list is prepared separately, as the different posts in Grade-I under the senior school service form separate cadres. The next higher post which is Junior Grade-II which is governed by the Meghalaya School Education Service Rules, 2012, at Rule-6 (5), he submits, provides for appointment to Junior Grade-II from amongst the member of Grade-I of the Meghalaya School Service, and that in this Rule itself, it has been further laid down that the proportion of vacancies to be filled up in a year shall be prescribed by the Government. These Rules he argues, authorise the State-respondent to determine the proportion of vacancies to be filled up under the cadre of Junior Grade-II, and the writ petitioners having not challenged the validity of these Rules cannot be entitled to the reliefs prayed for in this writ petition.

10. The learned counsel then submits that there is a distinction in the nature of functions and duties with regard to the posts of Vice-Principal/Assistant Headmaster/Headmistress etc. and Assistant Lecturers, which is reflected in the report and recommendation of the 5th Meghalaya State Pay Commission, wherein higher pay level has been recommended for the post of Vice-Principal. The learned counsel has also drawn the attention of this Court to the executive instructions which were prevalent prior to the framing of the Meghalaya School Service Rules, 2012 to highlight the distinction between the post of Vice-Principal and Assistant Lecturer, and submits that although presently the scale of pay has now been made equivalent, it does not mean that the posts are merged into one cadre. With regard to the chart appended at Annexure-7 to the writ petition, he submits that the same only reflects the channel of promotion of each cadre and is a proposal for fixing the proportion as provided in Rule 6(5), and that the fixation of proportion has been done taking into consideration the avenues of promotions for the entire lower cadre of services also.

11. In concluding his submission, the learned AAG submits that the post of Assistant Lecturers and Vice-Principal have not been classified as one category of posts, at any point of time and even the inclusion of both the posts in Grade-I service, cannot imply that they are in the same category. Such

classification he contends is not impermissible in law and has cited the decision in the case of Manish Kumar Vs. Union of India reported in (2021) 5 SCC 1 to fortify this submission.

12. Mr. S. Sen, learned counsel for respondent Nos. 5 – 9, apart from endorsing the submissions made by the learned AAG, submits that the allocation for promotion has been based on reasonable grounds as reflected in the chart dated 19-11-2012 (Annexure-7). He submits that, though the cadre strength of Vice-Principal and other posts belonging to common cadre of Grade-I is only 28, in consideration of the large strength of the feeder cadre, 75 percent was, therefore, allocated to this branch. It is further submitted that it is an admitted position that when the petitioners entered in service, they were not at par with the post of Vice-Principal, but it was only after the Rules of 2012 that they have been granted equivalent pay and placed in the same grade.

13. It has lastly been submitted that the impugned notification has been made in exercise of the powers conferred under Rules 6 (5) (i) of the Meghalaya School Education Service Rules, 2012 which is not under challenge, as such, on this ground alone the writ petition is not maintainable and no interference is called for by this Court.

14. I have heard learned counsel for the parties. Before coming to the claims and counter-claims of the parties herein, it would be necessary to first examine the rules under which the petitioners and respondents are governed by. It is to be noted that that two sets of rules i.e. ‘The Meghalaya School Service Rules, 2012’, (hereinafter referred to as “Rules I) and ‘The Meghalaya School Education Service Rules, 2012’, (hereinafter referred to as “Rules II) are in play, inasmuch as, on reaching Senior School Service Grade-I under Rules I, the teachers on promotion will then be governed by the provisions of Rules II, at the entry level of Junior Grade-II. Under Rules I, it is important to note that under the heading ‘Composition and Strength of Service’, as given in Rule-4, the service comprises of Senior School Service and Junior School Service, with the Senior School Service comprising of Grade-I and Grade-II, with Grade-II being the feeder post for promotion to Grade-I. Grade-I consists of Vice-Principal, Assistant Headmaster/Headmistress, Assistant Lecturer (HSS) Assistant D.I. Schools (redesignated as Additional SDSEO) and Assistant DAEO/Assistant DASEO. Rule-6 (1) & (2) with regard to the ‘method of recruitment’, provides as follows;

Method of recruitment:

(1) Appointment to any post in Grade I of the Senior School Service shall be made by promotion from amongst the members of the

Service holding the next lower posts in the grade, except for those posts indicated in proviso to para 6 (2) below; and those belonging to Grade II as specified in the Schedule-I and Schedule-II and in the select list approved under sub-rules (d) and (e) of Rule 8.

(2) Appointment to the post of Assistant Lecturer (HSS) in Senior School Service, Grade I shall to the extent of 25 per cent of vacancies shall be made by promotion from amongst the Assistant Teachers of HSS/SS having the requisite qualification of Post Grade Degree (in the required streams/subjects) with 5 (five) years of continuous and satisfactory service, as such.

Provided 75 per cent of the posts of Assistant Lecturers (HSS) shall be filled by direct recruitment based on the recommendations of the Meghalaya Public Service Commission.

The Proviso quoted above it can be seen provides for 75 percent of the post of Assistant Lecturer to be filled up by direct recruitment based on recommendation of the Meghalaya Public Service Commission.

15. The Schedule-II to Rule-1, made under Rule- 4 (1) with regard to the cadre/post shows that for promotion of Vice-Principal, Assistant Headmaster/Headmistress, Assistant Lecturer (HSS) Assistant D.I. Schools (redesignated as Additional SDSEO) and Assistant DAEO/Assistant DASEO, the same is to be made from the Assistant Teachers etc. having a degree with B.Ed and 8 years of continuous and satisfactory service, and there

is no provision for direct recruitment. However, to the post of Assistant Lecturer as provided by the proviso to Rule 6 (2), the same is to be made 25 per cent by promotion from amongst Assistant Teachers having P.G. Degree with 3 years of continuous and satisfactory service and 75 percent by direct recruitment from candidates having P.G Degree.

16. The proportion as to the percentage reserved for the Vice-Principal, Assistant Headmaster/Headmistress, etc., *vis-à-vis* Assistant Lecturers, is therefore to be examined as to whether, the same will amount to a reasonable classification, notwithstanding the fact that, both are in the same cadre. On a perusal of the method of recruitment to the post of Vice-Principal, Assistant Headmaster/Headmistress, as opposed to the post of Assistant Lecturers, what strikes this Court first is that, there is a clear distinction, inasmuch as, the same is strictly by promotion with the next lower grade of Assistant Teachers etc., constituting the feeder grade. However, in the case of Assistant Lecturers, only 25 percent of the vacancies is by promotion, whereas, 75 percent is by direct recruitment. Thus, at this level itself, which constitutes the Senior School Service Grade – I, the mode of placement or recruitment are not similar. Furthermore, the eligibility to be promoted or recruited, differs between the Vice-Principal, Assistant Headmaster/Headmistress etc., and Assistant Lecturers, inasmuch as, the educational qualifications and qualifying service for promotion are also not similar. It is therefore apparently

clear that, the proportion allotted to two different streams, though in the same grade, was based on intelligible differentia.

17. Another feature that supports the case of the respondents is that, while determining the proportion, the feeder cadre was also taken into consideration to arrive at the total cadre strength as the post of Vice-Principal, Assistant Headmaster/Headmistress, etc., is strictly a promotional post, which is not the case of the Assistant Lecturers, wherein, 75 percent of the total cadre strength, were occupying Senior School Service Grade – I posts, by coming in by way of direct recruitment. This classification taking into account, the distinction between Vice-Principal, Assistant Headmaster/Headmistress, etc., and Assistant Lecturers, which is at the entry level itself as provided by Rule 6(1) and the proviso to Rule 6(2) therefore, cannot be said to be unreasonable or arbitrary.

18. An added factor which also cannot be ignored is that, the validity of the Rules, particularly the authority of the government to determine the proportion of vacancies to be filled up by promotion, has not been challenged by the writ petitioners. Rule 6(5) of Rules II, empowers the government with the discretion to determine the proportion of vacancies and it reads as follows;

“6. Method of Recruitment

(5) Appointment to Junior Grade II of the Service shall be made by the following methods:

(i) By promotion from amongst the members of Grade I of the Meghalaya School Service. The proportion of vacancies to be filled up in any year shall be as prescribed by the Government.”

The government therefore, in determining the proportion has acted in accordance with the powers granted by Rule 6(5), and as such, the contention that, the prescription of the proportion is illegal, cannot be sustained.

19. Article 14 does not forbid reasonable classification of persons, by legislature or rules thereof, for the purpose of achieving specific ends, but this classification must not be artificial, arbitrary and must be based upon a substantial distinction, which has a just and reasonable nexus with the object sought to be achieved by the Act or Rules. In the instant case, in the considered view of this Court, the classification arrived at, fulfills the conditions necessary such as, ‘Intelligible differentia’ and that the differentia, has a rational relation to the object sought to be achieved by the Rules. As is well settled, ‘Intelligible differentia’ means the difference which can be discerned and understood, that is, the factor that distinguishes one class from another, as is well apparent in the instant case.

20. In this backdrop, the judgment as cited by the learned AAG on behalf of the respondents, that is the case of ***Manish Kumar vs. Union of India*** reported in (2021) 5 SCC 1, supports the view of this Court, on the point of the permissibility of a reasonable classification within the same class which

will not offend Article 14 of the Constitution. Para – 225 of the judgment, while placing reliance on the judgment of *State of Kerala vs. N.M. Thomas* and other related judgments had observed as follows;

“225. In State of Kerala v. N.M. Thomas, this Court was dealing with the challenge to the judgment of the High Court by which it had upheld the challenge by the respondent to a rule which granted power to the appellant State to grant further exemption to the members of Scheduled Castes and Scheduled Tribes to pass the departmental test necessary for being considered for promotion. The learned ASG drew support from the following statement in the judgment by K.K. Mathew, J.: (SCC p. 348, para 83)

“83. A classification is reasonable if it includes all persons who are similarly situated with respect to the purpose of the law. In other words, the classification must be founded on some reasonable ground which distinguishes persons who are grouped together and the ground of distinction must have rational relation to the object sought to be achieved by the rule or even the rules in question. It is a mistake to assume a priori that there can be no classification within a class, say, the lower division clerks. If there are intelligible differentia which separates a group within that class from the rest and that differentia have nexus with the object of classification, I see no objection to a further classification within the class. It is no doubt a paradox that though in one sense classification brings about inequality, it is promotive of equality if its object is to bring those who share a common characteristic under a class for differential treatment for sufficient and justifiable reasons. In this view, I have no doubt that the principle laid down in All India Station Masters’ & Asstt. Station Masters’ Assn. v. Central Railway; S.G. Jaisinghani v. Union of India and State of J&K v. Triloki Nath Khosa has no application here.”

21. The judgment of *State of J&K vs. Triloki Nath Khosa* reported in (1974) 1 SCC 19, which has also been discussed in *Manish Kumar (supra)* at paras 30-32, had also held as follows;

“30. Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another.

31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rulemaking authority on the need to classify or the desirability of achieving a particular object.”

22. The judgments placed by the petitioners counsel on the point of reasonableness and proportionality, will be of no assistance in the present case, considering the facts and situation as discussed above.

23. In the totality of the circumstances therefore, the classification and the prescription for percentage of promotion having met the test of reasonableness, and further the provision itself allowing for the same, not having been challenged, this writ petition fails and is accordingly dismissed.

24. No order as to costs.



Judge

Meghalaya
08.02.2023
"Biswarup-PS"