

GAHC020002202022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/12/2022

1. MR. ARENSEN AIER,
GRADUATE TEACHER (MATHS), G.H.S,
BURMA CAMP, DIMAPUR, NAGALAND.
2. SMTI. PIKATOLI H. SHOHE,
GRADUATE TEACHER (SCIENCE), G.H.S DAROGAPATHAR,
DIMAPUR, NAGALAND.
3. SMTI. TSUKDINUNLA IMCHEN,
GRADUATE TEACHER (SCIENCE), G.M.S, SEMATILA,
DIMAPUR, NAGALAND.
4. SMTI. SORENEI ODYUO,
GRADUATE TEACHER (MATHS), G.H.S DIPHUPAR,
DIMAPUR, NAGALAND
5. SHRI. WETSSHOLO LOMI,
GRADUATE TEACHER (MATHS), G.M.S RUZAPHEMA,
DIMAPUR, NAGALAND.
6. SMTI. NUNGSHISANGLA JAMIR,
GRADUATE TEACHER (SCIENCE), G.M.S HOMELAND,
NIULAND, DIMAPUR, NAGALAND.
7. SMTI. MOLUNGSANGLA LONGCHAR,
GRADUATE TEACHER (SCIENCE), G.H.S, NAHARBARI,
DIMAPUR, NAGALAND.
8. SMTI. AKUMNARO AO,
GRADUATE TEACHER (SCIENCE), G.M.S, RAZAPHE,
DIMAPUR, NAGALAND.
9. SMTI. I. CHUBAMENLA LONGKUMER,

GRADUATE TEACHER (SCIENCE), G.H.S, DIPHUPAR B,
DIMAPUR, NAGALAND.

10. SMTI. ALEMSOLA PONGENER,
GRADUATE TEACHER (SCIENCE), G.M.S, NEW SOCHUNOMA,
DIMAPUR, NAGALAND.

11. SMTI. IMTISENLA IMCHEN
GRADUATE TEACHER (MATHS), G.H.S, SARBURA,
DIMAPUR, NAGALAND.

12. SMTI. GHUSHELI SWU,
GRADUATE TEACHER (SCIENCE), G.H.S, KUHOOTO,
DIMAPUR, NAGALAND.

13. SHRI. VANPHYO LOTH, A,
GRADUATE TEACHER (MATHS), G.M.S. DOYAPUR,
DIMAPUR, NAGALAND.

14. SMTI. MOAJUNGLA A. LONGCHAR,
GRADUATE TEACHER (MATHS), G.M.S. AOYIMTI,
DIMAPUR, NAGALAND.

15. SHRI. NEHKHOMANG HANGSING,
GRADUATE TEACHER (MATHS), G.H.S.S, MEDZIPHEMA,
DIMAPUR, NAGALAND.

16. SMTI. JIMY MECH,
GRADUATE TEACHER (MATHS), G.M.S. SEMATILA,
DIMAPUR, NAGALAND.

17. SMTI. MERENIENLA LONGKUMER,
GRADUATE TEACHER (MATHS), PHERIMA,
DIMAPUR, NAGALAND.

18. SMTI. LONGSHIBENI ESTHER,
GRADUATE TEACHER (MATHS), G.M.S,
RANGAPAHAR CROSSING, DIMAPUR, NAGALAND.

19. SHRI. HUTOI V AOMI,
GRADUATE TEACHER (MATHS), G.M.S, ZAKA,
NIULAND, DIMAPUR, NAGALAND.

20. SHRI. MADEMSHIBA,
GRADUATE TEACHER (MATHS), G.M.S, SHOZUKHU,

DIMAPUR, NAGALAND.

21. SHRI. MUGHALU H. YEPTHO,
GRADUATE TEACHER (MATHS), G.M.S, HOMELAND,
DIMAPUR, NAGALAND.

22. SHRI. DONWIBO NEWMAI,
GRADUATE TEACHER (MATHS), G.H.S, NIHOTO,
DIMAPUR, NAGALAND.

23. SHRI. TAKOSUNEP WALLING,
GRADUATE TEACHER (MATHS), G.M.S, ATOKHIJI,
AGHUNATO, ZUNHEBOTO, NAGALAND.

24. SHRI. HITLO KATH,
GRADUATE TEACHER (SCIENCE), G.M.S TSOSINYU,
TSEMINYU, KOHIMA, NAGALAND.

25. SMTI. NEICHUVOLIE SHUNYU,
GRADUATE TEACHER (MATHS), G.M.S, TSOSINYU,
TSEMINYU, KOHIMA, NAGALAND.

26. SMTI. KEDUOKHRIENUO CHALIEU,
GRADUATE TEACHER (SCIENCE), G.H.S, KIRUPHEMA,
KOHIMA, NAGALAND.

27. SMTI. SANINO NAKHRO,
GRADUATE TEACHER (SCIENCE), G.M.S, ZIEZOU,
CHIEPHOBOZOU, KOHIMA, NAGALAND.

28. SHRI. PURLEMZUNG,
GRADUATE TEACHER (MATHS), G.M.S, TSEMINYU,
KOHIMA, NAGALAND.

29. SHRI. NIPUSA CHUCHA,
GRADUATE TEACHER (MATHS), G.M.S, ZIEZUO,
CHIEPHOBOZOU, KOHIMA, NAGALAND.

30. SMTI. ASIKHO KISO,
GRADUATE TEACHER (SCIENCE), G.H.S, KIGWEMA,
KOHIMA, NAGALAND.

31. SHRI. VIKEDO ZUTSO,
GRADUATE TEACHER (MATHS), G.H.S.S, KIGWEMA,
KOHIMA, NAGALAND.

32. SMTI. KHRIEZOVONUO CHALE,
GRADUATE TEACHER (MATHS), G.M.S, L. KHEL,
KOHIMA, NAGALAND.

33. SMTI. LEANG P. PHOM,
GRADUATE TEACHER (SCIENCE), G.H.S, TAMLU,
LONGLENG, NAGALAND.

34. SMTI. KUNDANGLILA CHANG,
GRADUATE TEACHER (SCIENCE),G.M.S, SAKSHI,
LONGLENG, NAGALAND.

35. SMTI. M. SANGMEI CHILA,
GRADUATE TEACHER (SCIENCE), G.M.S, ANAKI P,
LONGLENG, NAGALAND.

36. SMTI. CHAANGLEMLA,
GRADUATE TEACHER (SCIENCE), G.M.S, AUCHING,
LONGLENG, NAGALAND.

37. SMTI. TIASOLA SANGTAM,
GRADUATE TEACHER (SCIENCE), G.M.S PUPEI,
LONGLENG, NAGALAND.

38. SMTI. KEBUNARO CHANG,
GRADUATE TEACHER (SCIENCE), G.M.S, YANGCHING,
LONGLENG, NAGALAND.

39. SHRI. MONGLONG N. ANGH,
GRADUATE TEACHER (MATHS), G.M.S, YANGCHING,
LONGLENG, NAGALAND.

40. SMTI. KAOMEI MUKHO,
GRADUATE TEACHER (MATHS), G.M.S, TAMLU,
LONGLENG, NAGALAND.

41. SMTI. MEILING,
GRADUATE TEACHER, (MATHS), G.M.S, B/NAMSANG,
LONGLENG, NAGALAND.

42. SHRI. S. HAMLEN PHOM,
GRADUATE TEACHER (MATHS), G.M.S, PUPEI,
LONGLENG, NAGALAND.

43. SHRI. CHONGSHEN MONGBA,
GRADUATE TEACHER (MATHS), G.M.S, AUCHING,
LONGLENG, NAGALAND.
44. SHRI. KEJONGSINGBA,
GRADUATE TEACHER (MATHS), G.M.S, AUCHING,
LONGLENG, NAGALAND.
45. SMTI. IMSUTILA CHANG,
GRADUATE TEACHER (MATHS), G.M.S, ANAKI P,
LONGLENG, NAGALAND.
46. SHRI. KEKHRIESATUO AKASHE ZABU YHOME,
GRADUATE TEACHER (SCIENCE), G.M.S, NEW BEISUMPUI,
PEREN, NAGALAND.
47. SMTI. KHRIEVINO RINO,
GRADUATE TEACHER (SCIENCE), G.M.S, OLD JALUKIE,
PEREN, NAGALAND.
48. SHRI. KEYISIELUNGBE,
GRADUATE TEACHER (MATHS), G.H.S, JALUKIE,
PEREN, NAGALAND.
49. SMTI. LAMNEINEM,
GRADUATE TEACHER (SCIENCE),G.M.S GAILI,
PEREN, NAGALAND.
50. SHRI. LALPOUNG CHANGSAN,
GRADUATE TEACHER (MATHS), G.M.S, ATHIBUNG,
PEREN, NAGALAND.
51. SHRI. WEKHEM ZELIANG,
GRADUATE TEACHER (SCIENCE),G.M.S, MPAI,
PEREN, NAGALAND.
52. SHRI. P. WANMAI KONYAK,
GRADUATE TEACHER (MATHS), G.M.S, LONGWA,
MON, NAGALAND.
53. SHRI. P. SHANGKAM KONYAK,
GRADUATE TEACHER (MATHS), G.M.S, CHAOHA CHINGNYU,
MON, NAGALAND.
54. SMTI. DSONGDILA,

GRADUATE TEACHER (MATHS), G.H.S.S, TIZIT,
MON, NAGALAND.

55. SHRI. SOMBA O CHANG,
GRADUATE TEACHER (MATHS), G.M.S, ZANGKHAM,
MON, NAGALAND.

56. SHRI. MUILIBA SANGTAM,
GRADUATE TEACHER (MATHS), G.M.S, YUCHING,
MON, NAGALAND.

57. SHRI. TSUNGILI SANGTAM,
GRADUATE TEACHER (MATHS), G.M.S, S/TANGTEN,
MON, NAGALAND.

58. SHRI. YANGTHRILI L. SANGTAM,
GRADUATE TEACHER (MATHS),G.M.S, S/CHINGNYU,
MON, NAGALAND.

59. SHRI. CHINGSHOM N. KONYAK,
GRADUATE TEACHER (MATHS), G.M.S CHINGLONG, ABOI,
MON, NAGALAND.

60. SMTI. M. YANNYU NEANGMAI,
GRADUATE TEACHER (MATHS), G.H.S, LONGCHING, ABOI,
MON, NAGALAND.

61. SHRI. S. NAHLEM KONYAK,
GRADUATE TEACHER (MATHS), G.M.S, CHENLOISHO,
ABOI,MON, NAGALAND.

62. SHRI. S. TOWANG KON
YAK,
GRADUATE TEACHER (SCIENCE), G.M.S, S/CHINGNYU,
MON, NAGALAND.

63. SMTI. KHANGPILA SANGTAM,
GRADUATE TEACHER (SCIENCE), G.M.S, SOWA, ABOI,
MON, NAGALAND.

64. SMTI. YINSANGCHIPENLA,
GRADUATE TEACHER (SCIENCE), G.M.S, WANCHING,
MON, NAGALAND.

65. SHRI. NYAMPHA,

GRADUATE TEACHER (SCIENCE), G.H.S.S, TIZIT,
MON, NAGALAND.

66. SMTI. H. NGIPAI KONYAK,
GRADUATE TEACHER (SCIENCE), G.M.S, HONGPHOI,
MON, NAGALAND.

67. SHRI. ANGKI M. KONYAK,
GRADUATE TEACHER (SCIENCE), G.M.S, PESSAO, TOBU,
MON, NAGALAND.

68. SMTI. CHEMRILA M,
GRADUATE TEACHER (SCIENCE), G.M.S, CHINGPHOI,
MON, NAGALAND.

69. SMTI. C. RACHEL SANGTAM,
GRADUATE TEACHER (SCIENCE), G.M.S, TAMKOANG, TOBU,
MON, NAGALAND.

70. SHRI. PANGWAN M. KONYAK,
GRADUATE TEACHER (MATHS), G.M.S TAMKOANG, TOBU,
MON, NAGALAND.

71. SHRI. AMAJASU CHANG,
GRADUATE TEACHER (MATHS), G.M.S, TUENSANG, NAGALAND.

72. SHRI. B. YEMLONG CHINGMAK CHANG,
GRADUATE TEACHER (MATHS), G.M.S SANGCHEN, TUENSANG,
NAGALAND.

73. SHRI. I. HIMLLEN CHINGMAK CHANG,
GRADUATE TEACHER (MATHS), G.M.S, NOKSEN,
TUENSANG, NAGALAND.

74. SHRI. NYOUM THAI,
GRADUATE TEACHER (MATHS), G.M.S, DAN, NOKLAK,
TUENSANG, NAGALAND.

75. SHRI. P.P. CHUBA SHIU,
GRADUATE TEACHER (MATHS), G.H.S, KUTHUR,
TUENSANG, NAGALAND.

76. SHRI. SANGMOU KHIAMNIUNGAN,
GRADUATE TEACHER (MATHS), G.H.S, THONOKNYU,
TUENSANG, NAGALAND.

77. SHRI. S.T. NGANLONG,
GRADUATE TEACHER (MATHS), G.M.S, PURRUR,
KIPHIRE, NAGALAND.

78. SMTI. THONGKOI H,
GRADUATE TEACHER (MATHS), G.M.S, NOKHU, NOKLAK,
TUENSANG, NAGALAND.

79. SHRI. BITHSALI SANGTAM,
GRADUATE TEACHER (SC
IENCE), G.H.S, CHIMONGER,
TUENSANG, NAGALAND

80. SMTI. HONGMAO KHIAMNIUNGAN,
GRADUATE TEACHER (SCIENCE), G.M.S PURRUR,
KIPHIRE, NAGALAND.

81. SHRI. MULAI L
GRADUATE TEACHER (SCIENCE), G.M.S NOKHU, NOKLAK,
TUENSANG, NAGALAND.

82. SMTI. S. TAANG,
GRADUATE TEACHER (SCIENCE), G.M.S DAN, NOKLAK,
TUENSANG, NAGALAND.

83. SMTI. TSUWING KHIAMNIUNGAN,
GRADUATE TEACHER (SCIENCE), G.M.S, CHINGMEI,
NOKLAK, TUENSANG, NAGALAND.

84. SMTI. IMKONGCHILA B. JAMIR,
GRADUATE TEACHER (SCIENCE), G.M.S, KUBZA,
MOKOKCHUNG, NAGALAND.

85. SMTI. SANEMNARO NINGTANGRI,
GRADUATE TEACHER (SCIENCE), G.M.S, CHAKBA SALUKONG,
MOKOKCHUNG, NAGALAND.

86. SMTI. SUNGJEMPLILA KICHU,
GRADUATE TEACHER (SCIENCE), G.M.S, LONGKONG,
MOKOKCHUNG, NAGALAND.

87. SMTI. MOARENLA JAMIR,
GRADUATE TEACHER (SCIENCE), G.M.S, MONGKOLEMBA,

MOKOKCHUNG, NAGALAND.

88. SHRI. LEPTEN WALLING,
GRADUATE TEACHER(SCIENCE), G.M.S YIMJENKIMONG,
MONGKOLEMBA, MOKOKCHUNG, NAGALAND.

89. SMTI. IMNANUNGLA PONGEN,
GRADUATE TEACHER (MATHS), G.M.S YIMJENKIMONG,
MONGKOLEMBA, MOKOKCHUNG, NAGALAND.

90. SHRI. LANUWAPANG IMSONG,
GRADUATE TEACHER (MATHS), G.H.S CHUCHUYIMLANG,
MOKOKCHUNG, NAGALAND.

91. SMTI. IMLIRENLA LONGKUMER,
GRADUATE TEACHER (MATHS), G.M.S, ARKONG WARD,
MOKOKCHUNG, NAGALAND.

92. SHRI. BEJONGWATI JAMIR,
GRADUATE TEACHER (MATHS), G.M.S, LONGKONG,
MOKOKCHUNG, NAGALAND.

93. SHRI. TALIWAPANG PONGEN,
GRADUATE TEACHER (MATHS), G.M.S, MONGCHEN,
MANGKOLEMBA, MOKOKCHUNG, NAGALAND.

94. SMTI. TEMJENNARO JAMIR,
GRADUATE TEACHER (MATHS), G.M.S, MOAYIMTI,
MANGKOLEMBA, MOKOKCHUNG, NAGALAND.

95. SMTI. SASHICHUNGLA J. AIER,
GRADUATE TEACHER (MATHS), G.H.S, KOBULONG,
MOKOKCHUNG, NAGALAND.

96. SMTI. MEYIJUNGLA JAMIR,
GRADUATE TEACHER (MATHS), G.M.S, KHENSA,
MOKOKCHUNG, NAGALAND.

97. SHRI. LIMAMEREN S. LONGKUMER,
GRADUATE TEACHER (MATHS), G.M.S, PONGENTOLA,
MOKOKCHUNG, NAGALAND.

98. SMTI. NYANBENI ODYUO,
GRADUATE TEACHER (MATHS), G.M.S, AKULUTO,
ZUNHEBOTO, NAGALAND.

99. SMTI. T. ESTHER LOTH, A,
GRADUATE TEACHER (MATHS), G.H.S, PUGHOBOTO,
ZUNHEBOTO, NAGALAND.

100. SHRI. IMTIMONGBA,
GRADUATE TEACHER (MATHS),G.M.S, NATSUMI,
PUGHOBOTO, ZUNHEBOTO, NAGALAND.

101. SHRI. LIMACHAWA,
GRADUATE TEACHER (SCIENCE), G.M.S, TICHIPAMI,
ZUNHEBOTO, NAGALAND.

102. SHRI. MAYANGMEREN,
GRADUATE TEACHER (MATHS), G.M.S, ROTOMI,
ZUNHEBOTO, NAGALAND.

103. SHRI. MOASUNEP,
GRADUATE TEACHER (MATHS), G.M.S, LITTAMI,
ZUNHEBOTO, NAGALAND.

104. SHRI. ATHONBU SEMP,
GRADUATE TEACHER (SCIENCE), G.M.S, LIZUQA,
ZUNHEBOTO, NAGALAND.

105. SMTI. TEMJENMENLA IMCHEN,
GRADUATE TEACHER (SCIENCE), G.M.S, TISHI VALLEY,
ZUNHEBOTO, NAGALAND.

106. SMTI. AKUMYALA JAMIR,
GRADUATE TEACHER (SCIENCE), G.M.S, THENYIZU,
CHOZUBA, PHEK, NAGALAND.

107. SHRI. BESUPA THELUO,
GRADUATE TEACHER (SCIENCE), G.M.S, SAKRABA TOWN,
PFUTSERO, PHEK, NAGALAND.

108. SHRI. KHRIEVIZO SELEITSU,
GRADUATE TEACHER (SCIENCE), G.M.S, CHEPOKETA,
PHEK, NAGALAND.

109. SMTI. LUCY NYEKHA,
GRADUATE TEACHER (SCIENCE), G.M.S, PHUGI, CHOZUBA,
PHEK, NAGALAND.

110. SHRI. ALEKHO KENNA-O,
GRADUATE TEACHER (MATHS), G.M.S, PHUGI, CHOZUBA,
PHEK, NAGALAND.

111. SMTI. IMLIENLA,
GRADUATE TEACHER (MATHS), G.H.S, SAKRABA TOWN,
PFUTSERO, PHEK, NAGALAND.

112. SHRI. LANUAKUM WALLING,
GRADUATE TEACHER (MATHS), G.H.S, LOSAMI,
PHEK, NAGALAND.

113. SMTI. MUTSILU KEZO,
GRADUATE TEACHER (MATHS), G.H.S, KIKRUMA,
PFUTSERO, PHEK, NAGALAND.

114. SHRI. PUKHATO ZHIMO,
GRADUATE TEACHER (MATHS), G.H.S, DZULHAMI,
PHEK, NAGALAND.

115. SMTI. SEZOLU NIENU,
GRADUATE TEACHER (MATHS), G.H.S, RUNGUZU OLD,
CHOZUBA, PHEK, NAGALAND.

116. SHRI. WEPETO KAPFO,
GRADUATE TEACHER (MATHS), G.M.S, PFUTSEROMI,
PFUTSERO, PHEK, NAGALAND.

117. SHRI. YANBOTHUNG P. KITHAN,
GRADUATE TEACHER (MATHS), G.H.S, PHEK VILLAGE,
PHEK, NAGALAND.

118. SHRI. THUNYUSU JOROR,
GRADUATE TEACHER (SCIENCE), G.M.S, MATIKHRU,
MELURI, PHEK, NAGALAND.

119. SHRI. TSIPICHUM SANGTAM,
GRADUATE TEACHER (MATHS), G.M.S, SANPHURE,
KIPHIRE, NAGALAND.

120. SHRI. KHUMLISE ANAR,
GRADUATE TEACHER (SCIENCE), G.M.S, ZANGER,
KIPHIRE, NAGALAND.

121. SHRI. BUCHE KHIAMNIUNGAN,

GRADUATE TEACHER (MATHS), G.M.S, ZHIMKIUR,
KIPHIRE, NAGALAND.

VERSUS

1. THE STATE OF NAGALAND REPRESENTED BY
THE CHIEF SECRETARY, TO THE GOVERNMENT OF NAGALAND,
KOHIMA, NAGALAND.

2. THE PRINCIPAL SECRETARY, TO THE GOVERNMENT OF NAGALAND,
DEPARTMENT OF SCHOOL EDUCATION, NAGALAND, KOHIMA.

3. THE DIRECTOR,
DIRECTORATE OF SCHOOL EDUCATION, NAGALAND, KOHIMA.

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR
HON'BLE MR. JUSTICE KAKHETO SEMA

JUDGMENT & ODER (CAV)

Date : 21-08-2023
(K. Sema, J)

Heard Mr. Joshua Sheqi, learned counsel for the appellants and Ms. V. Suokhrie, learned Addl. Advocate General, Nagaland, appearing for the State respondents.

2. This appeal is directed against the judgment & order dated 25/03/2022 passed by the learned Single Judge in W.P.(C) No. 8/2019, whereby the claim of the appellants/petitioners for payment of the pay scale as prescribed in the advertisement was dismissed.

3. Brief facts essential for disposal of the writ appeal is that, pursuant to the advertisement dated 28/08/2017 and 20/10/2017 issued by the Directorate of School Education, Nagaland, Kohima, inviting applications for filling up the post of Graduate Teachers (GT) Mathematics and Science, the appellants applied for the post and

appeared for the examination conducted on 25/09/2017 and 11/11/2017 respectively. The appellants came out successful in the exam and were appointed as Graduate Teachers (Mathematics & Science) vide the appointment order dated 18/09/2018. In the case of the appellants that though in the advertisement dated 28/08/2017, the pay scale of Graduate Teacher (Mathematics & Science) was prescribed as P.B=Rs. 9300-34,800. G.P Rs. 4200/, in the appointment orders of the appellants their pay was reduced to Pay Matrix Level 9 (i.e. P.B Rs. 5200-20200/- G.P. Rs. 3400/-) by giving effect to the Nagaland School Education Service Rules, 2017 (hereinafter referred to as NSES Rules, 2017) which was notified in the Official Gazette on 29/11/2017. Against the reduction of their pay, the appellants submitted representation to the authorities however, the same did not evoke any response and as such, the appellants approached the Court by filing the W.P.(C) No. 8/2019. The said writ petition was dismissed by the learned Single Judge by the judgment & order dated 25/03/2022 inter-alia holding that since the pay scale given to the appellants in their appointment order was as per the NSES Rules, 2017 which came into force while the recruitment process was going on, the respondents authorities did not commit any illegality in giving the pay scale to the appellants as prescribed in the rules.

4. Mr. Joshua Sheqi, the learned counsel for the appellants submitted that in the advertisement dated 28/08/2017 and 20/10/2017 inviting application for the post of Graduate Teachers (GT) Mathematics and Science, in which the appellants appeared and came out successful, the scale of pay was mentioned as P.B Rs. 9300-34800/- G.P. Rs. 4200/-, which it is submitted is in the Pay Matrix Level 10 of the Nagaland Service (Revision of Pay) Rules, 2017. However, when the appointment order dated 18/09/2018 was issued to the appellants by the department, the appellants were appointed in the reduced Pay Matrix Level 9 (i.e. P.B Rs. 5200-20200/- G.P. Rs. 3400/-). Mr. Joshua submits that the reduced pay was in view of the coming in force of the NSES Rules, 2017 which was published on 29/11/2017 in which the pay of the Graduate Teacher was prescribed as P.B Rs. 5200-20200/- G.P. Rs. 3400/-. Mr. Sheqi has further taken this Court to the notification dated 07/12/2017, issued by the Government of Nagaland, department of School Education, wherein it has been inter-

alia provided that *“All the teachers who were appointed prior to the issue of the Gazette notification of the Nagaland School Education Service Rules, 2017 on 29/11/2017 shall continue to enjoy their respective pay band and grade pay. Only those teachers who are appointed after publication of the revised services rules shall be given the revised pay bands and grade pay of their respective cadre.”* Mr. Sheqi however, submits that the NSES Rules, 2017 and the notification dated 07/12/2017 cannot be enforced to determine the pay of the appellants as both these rules and notification were introduced only subsequent to the advertisement dated 28/08/2017 and 20/10/2017 and only after the appellants had appeared for the interview on 25/09/2017 and 11/11/2017. Mr. Sheqi accordingly submits that the appellants are lawfully entitled to the scale of pay as notified in the advertisement dated 28/08/2017 and not otherwise.

5. Mr. Sheqi further submits that the relevant conditions of service as notified in the advertisement cannot be changed after the process of recruitment has started as per the advertisement as it would tantamount to changing the rules of the game after it has started which is impermissible in law. It is also submitted that the post advertised has to be filled up as per the conditions prescribed in the advertisement and the NSES Rules, 2017 cannot be invoked to regulate the pay of the appellants. The learned Single Judge however, by placing reliance on the statutory nature of the rules has wrongly held that the Court has no jurisdiction to interfere with the rules. The learned counsel for the appellants further submits that the grievance of the appellants is not against the new NSES Rules, 2017 but for non-payment of the pay structure as notified in the advertisement dated 28/08/2017 and therefore the necessity of challenging the NSES Rules, 2017 does not arise. Mr. Sheqi also submits that it is a settled law that unless the advertisement dated 28/08/2017 and 20/10/2017 is recalled and a fresh advertisement is issued in terms of the new rules, the selection process and the appointment of the successful candidates shall be governed by the old rules i.e. under the terms and conditions of the advertisement. It is further submitted that the action of the State respondents in appointing the appellants in the Pay Matrix Level-9 and granting Pay Matrix Level 10 to similar circumstanced employees who

were appointed before the coming into force of NSES Rules, 2017 amounts to discrimination. Mr. Sheqi, accordingly submits that the impugned judgment & order passed by the learned Single Judge is liable to be set aside with a direction to the State respondents to pay to the appellants/petitioners the scale of pay P.B. Rs. 9300-3480/- G.P. Rs. 4200/- as notified in the advertisement dated 28/08/2017 with arrears w.e.f. the date of appointment i.e. 18/09/2018 along with all other consequential benefits.

In support of his submission, the learned counsel for the appellants has relied in the case of; (i) **N.T. Devin Katti & Others -versus- Karnataka Public Service Commission**, reported in **(1990) 3 SCC 157**, (ii) **National Buildings Construction Corporation -versus- S. Raghunathan & Others**, reported in **(1998) 7 SCC 66**, (iii) **Jitendra Kumar and Others -versus- State of Haryana and Another**, reported in **(2008) 2 SCC 161**, (iv) **Madan Mohan Sharma & Another -versus- State of Rajasthan & Others**, reported in **(2008) 3 SCC 724**, (v) **State of Haryana & Others -versus- Mahabir Vegetable Oils Pvt. Ltd.**, reported in **(2011) 3 SCC 778**, (vi) **Monnet Ispat and Energy Limited -versus- Union of India & Others**, reported in **(2012) 11 SCC 1**, and (vii) **Purbanchal Cables and Conductors Private Limited -versus- Assam State Electricity Board & Another**, reported in **(2012) 7 SCC 462**.

6. Ms. V. Suokhrie, the learned Addl. Advocate General, on the other hand, submits that subsequent to the publication of the NSES Rules, 2017 on 29/11/2017, the notification dated 07/12/2017 was issued by the department inter-alia providing that the Graduate Teachers who were appointed after the publication of the rules shall be given the revised pay bands and grade pay of their respective grade. The result of the interview which was held consequent to the advertisement dated 28/08/2017 was declared only on 22/12/2017 and 20/02/2018 and the appellants were appointed in service much later only on 18/09/2018. The learned Addl. Advocate General accordingly submits that as the appellants were appointed in service at a much later date after the coming in force of the NSES Rules, 2017 and the consequent

notification, no illegality has been committed by the Government in giving the new revised pay to the appellants as prescribed in the service rules for Graduate Teacher. It is also submitted that, the appellants, without first impugning the Schedule-1 of the NSES Rules, 2017 and the consequent notification dated 07/12/2017, have no right in law to claim the scale pay as prescribed in the advertisement dated 28/08/2017 nor agitate against the pay. The learned Addl. Advocate General further submits that the terms and conditions of service of the appellants are governed by the service rules and therefore, the appellants, has no right to stick to their claim that they should be given the pay structure as stipulated in the advertisement and not as provided by the rules. Lastly, it is submitted that as the appellants after fully understanding the terms and conditions of their appointment have accepted the appointment order dated 18/09/2018, they cannot turn around and agitate only against their pay without impugning the appointment order. In support of her submission, the learned Addl. Advocate General has relied in the case of **Suman Devi & Others** -versus- **State of Uttarakhand & Others**, reported in **(2021) 6 SCC 163**.

7. We have given our due consideration to the submissions made by the learned counsel for the parties. We have also perused the pleadings exchange between the parties and the impugned judgment & order passed by the learned Single Judge. The pertinent issue which we are called upon to decide is whether the appellants are entitled to the pay as notified in the advertisement dated 28/08/2017 or the pay as specified in the Schedule-1 of the NSES Rules, 2017.

8. The learned Single Judge while dismissing the petition filed by the appellants and upholding the State's action of granting the pay as stipulated in the Schedule-1 of the NSES Rules, 2017 has held that the service conditions of the government servant are determined by the statutory rules framed under Article 309 of the Constitution of India and the rules can also be given retrospective effect in their implementation. The learned Single Judge has also held that as the NSES Rules, 2017 was published prior in point of time before the appointment of the appellants on 18/09/2018, the State respondents did not committed any illegality in issuing the appointment order dated

18/09/2018 with the pay prescribed for Graduate Teachers as provided in the NSES Rules, 2017.

9. The admitted fact is that the advertisement inviting application for appointment to the post of Graduate Teacher (Mathematics and Science) was published on 28/08/2017 and 20/10/2017. The interview for the advertisement dated 28/08/2017 was held on 25/09/2017 and for the advertisement dated 20/10/2017 on 11/11/2017. In the advertisement dated 28/08/2017, the scale of pay for Graduate Teacher was prescribed as P.B. Rs. 9300-34800/- G.P.Rs. 4200/-. In the interregnum, before the result of the interview was declared, the NSES Rules, 2017 was notified on 29/11/2017 for regulating recruitment and conditions of service of persons appointed to the Nagaland School Educations Service. Schedule-1 of the rules inter-alia provided that the pay of Senior Graduate Teacher shall be P.B-2 9300-3480 G.P-4200 and the pay of graduate teacher shall be P.B-1 5200-20,200 G.P 3400. The publication of the rules was immediately followed by the Notification No. DSE/GEN/12-34/2014/1611, dated 07/12/2017, issued by the Government of Nagaland, department of School Education, on re-structuring of the department of School Education at the Directorate, District and Sub-Divisional Level and conveying that the categories and the number of posts as well as various categories of teachers along with pay band and grade pay with the number of post both temporary and permanent shall be as indicated in Schedule-1 of the NSES Rules, 2017. Clause-13 of the said notification then provided that all the teachers who are appointed prior to the issuance of the Gazette notification of NSES Rules, 2017 on 29/11/2017 shall continue to enjoy their respective pay bands and grade pay and only those teachers who are appointed after the publication of the revised service rules shall be given the revised pay bands and grade pay of their respective cadre. The result of the interview was declared on 22/12/2017 and 28/02/2018 and the appellants being successful in the interview were issued the appointment order dated 18/09/2018 in which the pay prescribed in Schedule-1 of the NSES Rules, 2017, for graduate teacher, was mentioned.

10. The notification dated 07/12/2017 having clearly spelt that the pay as

prescribed in the NSES Rules, 2017 shall be paid to those teachers who were appointed after the publication of the Rules, 2017, implied that the NSES Rules, 2017, would operate retrospectively for those who had appeared the interview consequent to the advertisement dated 28/08/2017 and 20/10/2017 but appointed in service only after the coming into force of the NSES Rules, 2017. In our considered opinion, no illegality was therefore committed by the State in extending the pay of graduate teachers to the appellants as prescribed in the NSES Rules, 2017. The law is well settled that the service conditions of a government employee can be unilaterally changed by the statutory or constitutional authorities by introducing changes in the relevant statute or rules and this power to alter the conditions of service undoubtedly includes the power to alter the conditions of service with retrospective effect, subject however to the well recognized principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect since there is no power to make such a rule under the proviso to Article 309 of the Constitution of India which adversely affects or impairs vested rights. The present case is not one where the appellants were first issued with the appointment orders granting the pay scale as advertised but thereafter deprived of the same with the promulgation of the NSES Rules, 2017. The pay prescribed for the graduate teachers in the rules which was notified much prior to the declaration of the result of the interview and the appointments of the appellants, was paid to the appellants in the appointment order dated 18/09/2018. Moreover, the pay band of Rs. 9300-34800/- and Grade Pay Rs. 4200/-, was prescribed for the Senior Graduate Teachers and not Graduate Teachers. It is therefore clear that no vested or accrued rights of the appellants were impaired or taken away retrospectively by the NSES Rules, 2017 and the notification dated 07/12/2017.

11. In the case of **M.I. Kunjukunju & Others -versus- State of Kerala & Others**, reported in **(2015) 11 SCC 440**, the Hon'ble Supreme Court while dealing with the case where pursuant to the notification dated 25/05/1992, the process of selection proceeded in terms of the order dated 23/08/1962 and when the matter relating to the interview was pending, the State of Kerala in exercise of the powers

conferred by Sub-section (1) of Section 2 of the 1968 Act and in supercession of all the existing rules and orders on recruitment for the Kerala Industries Sub-ordinate Service, made Special Rules known as "*The Special Rules for the Kerala Industries Sub-ordinate Service, 2001*". It was given effect from 01/07/1983. The rules provided that the said rules shall not affect the appointment already made till 30/06/1983. The 2001 Special Rules relates to different class and categories of services including Industries Extension Officer, a Class-I service. In view of the Special Rules, the process of selection which was initiated pursuant to the notification dated 25/05/1992 was taken up for consideration as per the Special Rules. The case of the appellants therein who were the petitioners before the High Court is that since the selection process had commence on 25/05/1922 when the commission invited application and prescribed the method of appointment and qualification for the post of Industries Extension Officer, the appellants had the right to be considered for selection with the method and qualification prescribed and such a right could not be taken away by the Special Rules retrospectively. In short, the case of the appellants was that the right of the appellants to be considered as per the old G.O cannot be taken away by a Special Rules and therefore, the Special Rules are invalid and unconstitutional.

12. The Hon'ble Supreme Court in the course of adjudicating M.I. Kunjukunju (supra) has held as follows;

"19. Therefore, it is clear that a candidate on making application for the post pursuant to an advertisement does not acquire any vested right for selection. If he is eligible and is otherwise qualified in accordance with the relevant rules, he does acquire right for being considered for selection as per existing Rules.

20. In N.T. Devin Katti⁵ the Court made clear that if the recruitment Rules are amended with retrospective effect during the pendency of the selection, in that event the selection must be held in accordance with the amended Rules.

21. Alteration in Rules regarding conditions of service was considered in T.R. Kapoor. In the said case while dealing with the right of a person to be considered for promotion and the effect of an amendment of the Rule on the said right, this Court held as follows: (SCC p.595,

para16)

“16. It is well-settled that the power to frame rules to regulate the conditions of service under the proviso to [Art.309](#) of the Constitution carries with it the power to amend or alter the rules with a retrospective effect ([B.S. Vadera v. Union of India](#)⁹, [Raj Kumar v. Union of India](#)¹⁰, [K. Nagaraj v. State of A.P](#)¹¹ and [State of J & K v. Triloki Nath Khosa](#)¹²). It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to [Art.309](#) which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16(1) of the Constitution.”

That was a case where the Rule was framed and were given retrospective effect by the Governor of the State under proviso to [Article 309](#) of the Constitution of India. As a consequence of the amendment of the rules with the retrospective effect the promotions already made were rendered invalid. In said case, the Court held that there is no power to make such rules under the proviso to [Article 309](#), the employees who had already been promoted, their promotions cannot be invalidated.

22. In the present case, the rules have not been framed under proviso to [Article 309](#) of the Constitution of India. The legislature has framed the 1968 Act in exercise of power conferred under [Article 309](#) of the Constitution of India. Under the 1968 Act, the State Government was empowered to make rules either prospectively or retrospectively to regulate the recruitment and condition of service of persons appointed to public services and posts in question with the Department of Industry and Commerce of the State of Kerala.

23. *In view of such delegation of power of the Legislature to the State under the 1968 Act, the Special Rules framed by the State Government giving retrospective effect from 1-7-1983 cannot be held to be illegal or invalid.*

24. *The power under Article 309 to make laws with retrospective effect was considered by this Court in Tushar Ranjan Mohanty⁷, therein the Court held: (SCC p.458, para-14)*

“14. The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.”

As noticed, the legislature under Article 309 of the Constitution of India has the power to frame laws relating to condition of service and hence the State is empowered to frame rules with retrospective effect and therefore, it cannot be held that the authority was not empowered to frame such rules from retrospective date.

26. *In the present case, we find that the appellants have not derived any benefit out of the old Government Order which was in force at the time of advertisement. We, therefore, hold that no vested right or benefit accrued to the appellants have been taken away by sub-rule (2) of Rule 1 of the Special Rules.”*

13. In the case of **Chairman, Railway Board & Others -versus- C.R Rangadhamaih & Others**, reported in **(1997) 6 SCC 623**, the Hon'ble Supreme Court held as follows;

“19. In Triloki Nath Khosa¹⁰ rules had been framed altering the criterion of eligibility for promotion from the post of Assistant Engineer to the post of Executive Engineer and the same were challenged on the ground of retrospectivity by the Assistant Engineers who were in service on the date of making of these rules. Rejecting the said contention, this Court said : (SCC pp.28-29, para16)

"16.....It is wrong to characterise the operation of a

service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in service. The impugned rules do not recall a promotion already made or reduce a pay scale already granted. They provide for a classification by prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective."

20. It can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an

amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon³, B.S. Vadera⁴ and Raman Lal Keshav Lal Soni⁵.”

14. In the case of **High Court of Delhi & Another -versus- A.K. Mahajan & Others**, reported in **(2009) 12 SCC 62**, the Hon'ble Supreme Court held as follows;

“20. We must observe that the said para 24 of Rangdhamaiah case² is being interpreted in an erroneous way. Its clear language suggests that where the amendment, having retrospective operation, which has the effect of taking away a benefit already available to the employee, then such a provision is arbitrary, discriminatory and violative of the rights guaranteed under [Article 14](#) and [16](#) of the Constitution of India.

21. Now, we find no discussion in the whole judgment of the High Court as to what was the benefit which was available to the said employee. The High Court has observed that the benefit of consideration, which was available to the Writ Petitioner 8 prior to the retrospective amendment of the rules, was not available to him after the amendment of the rules. In our opinion, this is an incorrect notion. There can be no benefit of consideration. To be considered is a right of employee but merely being considered, in itself, is not a benefit as it may or may not result in the selection or promotion of an employee and hence it is in the nature of a chance. A mere chance of promotion being affected by amendment is in our opinion inconsequential.

23.....This is apart from the fact that the concept of consideration is an uncertain concept. One can understand a pension amount which is already decided or the promotion which is already granted or the seniority which is already conferred upon or the substantive appointment which is already made. If the amendment has the effect of denying this crystallized promotion, seniority or substantive appointment, then certainly the amendment could be held as arbitrary. But that has not happened in the present case. Here, no promotion was already granted or seniority already fixed, or any substantive appointment already

made which were affected by the retrospective amendment. The observations in the above para 24 of Rangdhamaiah case² have to be understood in that sense."

15. In the case of **Kirbalomi and Another -versus- State of Arunachal Pradesh and Others**, reported in **2012 (5) GLT 524**, the Division Bench of this Court has held as follows;

"14. From a close reading of the law laid down in Tushar Ranjan Mohanty (supra), it becomes evident that the power to frame rules to regulate conditions of service under the provisions of Article 309 carries with it the power to amend or alter the rule with retrospective effect. This rule is, however, subject to well recognized principle that the benefit, acquired under the existing rule or a right vested in a Government employee under the existing rules, cannot be taken away by amending the rules with retrospective effect, for, there is no power under the proviso to Article 309 enabling the Government to make rule in a manner so as to take away or impair an accrued or vested right.

15. That the conditions of service can be amended even with the retrospective effect is too well settled to be doubted. In the case of K. Nagraj and Ors. Vs. State of Andhra Pradesh : AIR 1985 SC 551, the Supreme Court has made it clear that such a power flows to the Government under the proviso to Article 309 read with Article 313 of the Constitution and the power, so conferred on the Government, is legislative in character and is to be distinguished from an ordinary rule-making power. I may, for the sake of brevity, refer to some observations made, in this regard, in K. Nagraj (supra), which read thus:

". . . it is well settled that the service rules can be as much amended, as they can be made, under the proviso to Article 309 and that the power to amend these rules carried with it the power to amend them retrospectively. The power conferred by the proviso to Article 309 is of a legislative character and is to be distinguished from an ordinary rule making power. The power to legislate is of a plenary nature within the field demarcated by the Constitution and it includes the power to legislate retrospectively. Therefore, the amendment made to the Fundamental rules in the exercise of power conferred by Article 309, by which the proviso to Rule 2 was deleted retrospectively, was a valid exercise of legislative power. The rules and amendments made under the proviso to Article 309 can be altered or repealed by the Legislature but until that is done, the exercise of the power cannot be challenged as lacking in authority. (See B. S. Vedera v Union of India (1968) 3 SCR 575 at pp. 582-585 : (AIR 1969 SC 118 at pp. 123-124); Raj Kumar vs. Union of India (1975) 3 SCR 963, 965: (AIR 1975 SC 1116 at p. 1118). "

(Emphasis supplied)

16. What logically follows from the above discussion is that unlike an employee in a private sector, a Government employee's terms and conditions of service are governed by the relevant statutes, rules and provisions of the Constitution. Such conditions of service can be changed by the constitutional or statutory authority concerned unilaterally. Such a change can even be made with retrospective effect; but benefits acquired or a right, which has accrued or comes to be vested in a Government employee by virtue of the existing rules, cannot be impaired, far less, taken away by amending the conditions of service with retrospective effect. Whether an amendment, with retrospective effect, has taken away an accrued or vested right is, however, essentially a mixed question of fact and law and can be determined on the basis of the facts of a given case."

16. In the case of **Gayatri Buragohain and Others -versus- State of Assam and Others**, reported in **(2013) 6 GLR 660**, the Division Bench of this Court has held that;

"15. As a policy decision, when the Government, for functional, operational or administrative improvement, makes any change in the service conditions of its employees, the change, so introduced, cannot be interfered with unless the change is found to be unconstitutional. The unconstitutionality will obviously include a policy, which is arbitrary, irrational, unreasonable or mala fide.

*16. We need, at this stage, to remind ourselves that though the employment of a Government employee and the employment of a person in a private sector is, originally, contractual in nature, what distinguishes a Government employee from others is that a Government employee acquires, on his appointment to a Government office, a status. As a result of this status, which he acquires, his service conditions are determined on the basis of the relevant provisions of the Constitution and the statute. In consequence thereof, a Government servant's rights and obligations can be determined by the statutory or the constitutional authority concerned and for such exercise of powers, the authority concerned does not, unlike the case of a private employee, require consent from the Government employee concerned. In other words, Government can alter terms and conditions of its employees unilaterally, though, in practice, such alteration may face protest from the employees concerned. This does not, however, mean, we must hasten to add, that the consent of the Government employee is a condition precedent for changing the terms and conditions of his service by the statutory or constitutional authority in terms of the provisions of the relevant statutes and/or the Constitution. A reference may be made, in this regard, to the case of *State of J&K v. T. N. Khosa*, (AIR 1974 SC 1), wherein the*

Supreme Court has held thus:

"It is well settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding. " (emphasis supplied)

17. What surfaces from the above is that the service conditions of a Government employee can be changed by making changes in the relevant statutes or rules by the statutory or constitutional authority concerned in terms of the statute and/or the Constitution.

18. What logically follows from the above discussion is that unlike an employee in a private sector, a Government employee's terms and conditions of service are governed by the relevant statutes, rules and provisions of the Constitution. Such conditions of service can be changed by the constitutional or statutory authority concerned unilaterally. Such a change can even be made with retrospective effect; but benefits acquired or a right, which has accrued or comes to be vested in a Government employee by virtue of the existing rules, cannot be impaired, far less, taken away by amending the conditions of service with retrospective effect. Whether an amendment, with retrospective effect, has taken away an accrued or vested right is, however, essentially a mixed question of fact and law and can be determined on the basis of the facts of a given case."

17. The learned counsel for the appellants while further submitting that the NSES Rules, 2017, and the notification dated 07/12/2017 cannot have retrospective effect on the terms and conditions of the advertisement dated 28/08/2017 has relied in the case of N.T. Devin Katti (supra) in which the Hon'ble Supreme Court has referred to the case of Y.V. Rangaiah v. J. Sreenivasa Rao where it has been held that the vacancies occurring prior to the amended rules will be governed by the old rules and not by the amended rules. This proposition of law has been canvassed by the appellants in support of the contention that the posts advertised should be filled up as per the terms and conditions stipulated in the advertisement dated 28/08/2017 and 20/10/2017 and not in terms of the NSES Rules, 2017, and the notification dated 07/12/2017. The proposition of law relied upon by the appellants that vacancies

occurring prior to the amended rules would be governed by the old rules and not new/amended rules has however been overruled in the recent case of **State of Himachal Pradesh and Others -versus- Raj Kumar and Others**, reported in **(2023) 3 SCC 773**, where the Hon'ble Supreme Court has held that;

“3. After examining the principle in the context of the constitutional position of services under the State, and having reviewed the decisions that have followed or distinguished Rangaiah² in that perspective, we have formulated the legal principles that should govern services under the State. Applying the said principles, we have held that the broad proposition formulated in Rangaiah² does not reflect the correct constitutional position. We have thus allowed the appeals following the principles that we have laid down.

27. The principle laid down in Roshan Lal Tandon's case²² is followed in a number of decisions of this Court.²³ The following are the propositions emanating from the principles laid down in these precedents:

27.1.....

27.2. The Union and the States are empowered to make laws and rules under Articles 309, 310 and 311 to regulate the recruitment, conditions of service, tenure and termination. The rights and obligations are no longer determined by consent of the parties but by the legal relationship of rights and duties imposed by statute or the rules. The services, thus, attain a status.

27.3. The hallmark of status is in the legal rights and obligations imposed by laws that may be framed and altered unilaterally by the Government without the consent of the employee.

27.4. In view of the dominance of rules that govern the relationship between the Government and its employee, all matters concerning employment, conditions of service including termination are governed by the rules. There are no rights outside the provision of the rules.

27.5. In a recruitment by State, there is no right to be appointed but only a right to be considered fairly. The process of recruitment will be governed by the rules framed for the said purpose.

27.6. Conditions of service of a public servant, including matters of promotion and seniority are governed by the extant

rules. There are no vested rights independent of the rules governing the service.²⁴

27.7. With the enactment of laws and issuance of rules governing the services, Governments are equally bound by the mandate of the rule. There is no power or discretion outside the provision of the rules governing the services and the actions of the State are subject to judicial review.²⁵

28. In view of the above principles, flowing from the constitutional status of a person in employment with the State, we have no hesitation in holding that the observations in *Rangaiah*² that posts which fell vacant prior to the amendment of rules would be governed by old rules and not by new rules do not reflect the correct position of law. We have already explained that the status of a Government employee involves a relationship governed exclusively by rules and that there are no rights outside these rules that govern the services.....”

82. A review of the fifteen cases that have distinguished *Rangaiah*² would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in *Rangaiah*². The findings in these judgments, that have a direct bearing on the proposition formulated by *Rangaiah*² are as under:

82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, *Rangaiah* case² must be understood in the context of the rules involved therein.⁶²

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existing rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.⁶²

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government.⁶³ There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit.⁴⁹ The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of [Article](#)

14.⁶⁴

82.4.

82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.⁵

83. The above-referred observations made in the fifteen decisions that have distinguished *Rangaiah*² demonstrate that the wide principle enunciated therein is substantially watered-down. Almost all the decisions that distinguished *Rangaiah*² hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in *Rangaiah*² is confined to the facts of that case.

84. The decision in *Deepak Agarwal*⁵ is a complete departure from the principle in *Rangaiah*², in as much as the Court has held that a candidate has a right to be considered in the light of the existing rule. That is the rule in force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India v. Krishna Kumar*⁶. In fact, in *Krishna Kumar*⁶ Court held that there is only a "right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place."

85. The consistent findings in these fifteen decisions that *Rangaiah*² case must be seen in the context of its own facts, coupled with the declarations therein that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of rules which existed on the date which they arose, compels us to conclude that the decision in *Rangaiah*² is impliedly overruled. However, as there is no declaration of law to this effect, it continues to be cited as a precedent and this Court has been distinguishing it on some ground or the other, as we have indicated hereinabove. For clarity and certainty, it is, therefore, necessary for us to hold;

85.1. The statement in *Y.V. Rangaiah v. J. Sreenivasa Rao*² that, "the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules", does not reflect the correct proposition of law governing services under the Union and the States under Part XIV of the Constitution. It is hereby overruled.

85.2. The rights and obligations of persons serving the Union and the States are to be sourced from the rules governing the services."

18. Further in the said N.T. Devin Katti (supra), relied by the appellants, the Hon'ble Supreme Court has also held that;

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing Rules or Government Orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and Government Orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selections in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystalises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended rules. Whether the rules have retrospective effect or not, primarily depends upon the language of the rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.”

19. The Hon'ble Supreme Court in N.T. Devin Katti (supra) has therefore made it

clear that if the recruitment rules are amended with retrospective effect during the pendency of the selection, in that event, the selection must be held in accordance with the amended rules. N.T. Devin Katti (supra) therefore, in our considered opinion does not support the case of the appellants.

20. Another important point to be adjudicated in the present case is the non challenge to the Schedule-1 of the NSES Rules, 2017, where inter-alia it is provided that the pay of the Graduate Teachers shall be in P.B Rs. 5200-20200/- G.P. Rs. 3400/-. By the order dated 18/09/2018, the appellants were appointed as Graduate Teachers and extended the pay benefits as specified in Schedule-1 of the rules by giving effect to the Notification dated 07/12/2017 and not the scale pay as advertised i.e. P.B Rs. 9300-34800/- G.P. Rs. 4200/-. The pay of the Graduate Teachers which was extended to the appellants in the appointment order dated 18/09/2018 was purely consequential on the NSES Rules, 2017 and the notification dated 17/12/2017. Therefore, if the appellants were aggrieved by the fact that they were given the pay of the Graduate Teachers as prescribed in the Schedule-1 NSES Rules, 2017 and not the pay, for the said post, as mentioned in the advertisement dated 28/07/2017, it was imperative for the appellants to have impugned the Schedule-1 of the NSES Rules, 2017 prescribing the pay of the Graduate Teachers, as without challenging the Schedule-1 of the said rules, the appellants could not have claimed the pay as mentioned in the advertisement. The learned counsel for the appellants has contended that the grievances of the appellants is not against the NSES Rules, 2017 but for non payment of the pay band and grade pay as notified in the advertisement. This submission sounds attractive at the first glance, but it cannot be accepted for the very reason that since the pay mentioned in the appointment order dated 18/09/2018 is consequential on the NSES Rules, 2017 and the notification dated 07/12/2017, it is incumbent for the appellants to first challenged the pay prescribed for Graduate Teachers in Schedule-1 of the NSES Rules, 2017 and the consequent notification dated 07/12/2017, before they can lay a claim to the pay mentioned in the advertisement..

21. In the case of **Kalyan Singh -versus- State of Uttar Pradesh and Others**, reported in **AIR 1962 SC 1183 (V 49 C 168)**, the Hon'ble Supreme Court while

considering the correctness of the order which was consequential on the scheme framed by the Government but was not challenged, has held that;

“15. Grounds 3 and 4 of the appellant that the Regional Transport Authority acted illegally in curtailing the period of renewal and that, in any event, it did not apply its mind in dealing with the renewal application but mechanically followed the provisions of the scheme may now be considered.

16. The Regional Transport Authority was by the terms of the scheme left no discretion in the matter. It was by the scheme that the right of the appellant was restricted and if the scheme became final and binding the Regional Transport Authority had no authority to permit the appellant to ply his vehicles. The order passed by the Regional Transport Authority was purely consequential on the scheme, and if the scheme is not open to challenge, orders consequential thereon will not also be open to challenge. We are supported in this view by the observation of this Court in Abdul Gafoor v. State of Mysore, AIR 1981 SC 1556, that :

"It appears to us that when deciding what action to take under S. 68F(2) the authority is tied down by the terms and conditions of the approved scheme and his duty is merely to do what is necessary to give effect to the provisions of the schemes. The refusal to entertain applications for renewal of permits or cancellation of permits or modification of terms of existing permits really flow from the scheme. The duty is therefore merely mechanical; and it will be incorrect to say that there is in these matters any lis between the existing operators and the State Transport Authority. There is no justification therefore for saying that when taking action under S. 68F(2) the Regional Transport Authority is exercising a quasi-judicial function. Apart from this it has to be pointed out that action under S. 68F(2) is really independent of the issue of the permits under S. 68F(1). Once the scheme has been approved, action under S. 68F(1) flows from it and at the same time action under S. 68F(2) flows from the same scheme. We are bound by the decision."

So also in the case of **Government of Maharashtra and Others** -versus- **Deokar's Distillery**, reported in **(2003) 5 SCC 669**, the Hon'ble Supreme has also held as follows;

“38. This apart, the High Court was also not right in rejecting the writ petition of the respondents at the threshold. The High Court has failed to notice another important factor that the statutory provision under

Article 309, namely, the Notification dated 10-12-1998 and the consequential administrative instructions/orders issued for carrying out the executive function under section 58-A of the Prohibition Act and Article 162 namely, the circular letter dated 30-07-1999 had not been challenged by the respondents herein and therefore, they were not entitled to challenge the demand notice which was merely a consequential communication. The High Court, therefore, is not right in quashing the demand notice issued by Appellant 4, namely, the Sub-Inspector of State Excise, in charge of the manufactory of the respondent, without examining the validity of or quashing the Rules of 1988 and the consequential circular letter dated 30-07-1999 issued by Appellant 2, namely, the Commissioner, since the demand notice was merely a consequential communication issued in furtherance of the Rules of 1998 and the circular letter dated 30-07-1999.”

22. The learned counsel for the appellants has cited the decision of the Hon'ble Supreme Court in the case of National Buildings Construction Corporation (supra) and the case of Jitendra Kumar (supra), to support the contention that the appellants have a legitimate expectation in law to receive the pay band and the grade pay as mentioned in the advertisement dated 28/08/2017 but which was denied to them. The learned counsel has also relied in the case of State of Haryana & Others -versus- Mahabir Vegetable Oils Pvt. Ltd., (supra) and in the case of Monnet Ispat and Energy Limited (supra), in support of the contention that since the appellants has applied for the post of Graduate Teachers as per the advertisement published, the Government is estopped from denying the pay band and the grade pay to the appellants as mentioned in the advertisement dated 28/08/2017. We are in respectful agreement with the law laid down by the Hon'ble Supreme Court in the above referred cases which is cited by the learned counsel for the appellants, we however feel that it may not be necessary for us to dwell on this issues at this stage when the validity of the NSES Rules, 2017 and the consequent notification dated 07/12/2017 has not been gone into.

23. Another question which needs to be adjudicated is whether without laying a challenge to the appointment order dated 18/09/2018, the appellants can have grievance only in respect of the pay provided in their appointment order. The appellants were appointed as Graduate Teachers by the order dated 18/09/2018. The appellants had accepted their appointment orders and have also been serving the

department by receiving the pay as mentioned in their appointment orders. Therefore, the appellants, in our considered opinion have no right in law to raise a grievance only against their pay while accepting the appointment order. If the appellants are aggrieved with the pay mentioned in the appointment order they must challenge the appointment order as a whole, but they cannot be allowed to take a stand accepting the appointment order but not the pay as mentioned in the order. The law is well settled that a person cannot at the same time accept and reject the same order/instrument. The case of the appellants, in our opinion, must also fall on this count.

In the case of **Shyam Telelink Ltd. -versus- Union of India**, reported in **(2010) 10 SCC 165**, the Hon'ble Supreme has held as follows;

“23. The maxim qui approbat non reprobat (one who approbates cannot reprobate) is firmly embodied in English Common Law and often applied by Courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument.”

24. In the light of the discussions made above and taking into consideration all attending facts and circumstances, we find no infirmity with the judgment & order dated 25/03/2022 passed by the learned Single Judge in W.P.(C) No. 8/2019.

25. We accordingly dismiss the appeal. No cost.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant