



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

Case No. : WP(C)/261/2021

- 1) ER. K WATI AND 6 ORS
Address - JOINT DIRECTOR, DIRECTORATE
OF EMPLOYMENT, SKILL DEVELOPMENT AND
ENTREPRENEURSHIP,
NAGALAND, KOHIMA
Advocate- TONGPOK PONGENER, S REOPI,M.
ATHAI,TONGPANG JAMIR,LAKNYEI PHOM,JENDEMO
TSANGLAO,AKUM JAMIR
- 2) ER. H. ALONGSE SANGTAM
DEPUTY DIRECTOR, DIRECTORATE OF EMPLOYMENT,
SKILL DEVELOPMENT AND ENTREPRENEURSHIP,
NAGALAND, KOHIMA
- 3) ER. IMCHEN AO
PRINCIPAL, GOVERNMENT, GOVERNMENT ITI,
DIMAPUR, NAGALAND
- 4) ER. ENCHIBA LONGKUMER
PRINCIPAL, GOVERNMENT, ITI, WOKHA
- 5) ER. T. IMLISUNUP AO
PRINCIPAL, GOVERNMENT ITI, MOKOKCHUNG AND
I/C MON, NAGALAND
- 6) ER. NYAKSHAM PHOM
PRINCIPAL GOVERNMENT ITI, PHEK, NAGALAND
- 7) ER. NETENBA AJEM
VICE-PRINCIPAL, GOVERNMENT ITI, TUENSANG
AND I/C ZUNHEBOTO
VERSUS

THE STATE OF NAGALAND AND 15 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT

OF NAGALAND, KOHIMA

2) THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF NAGALAND

LABOUR AND EMPLOYMENT, SKILL DEVELOPMENT AND ENTREPRENEURSHIP, NAGALAND KOHIMA

3) THE PRINCIPAL SECRETARY

P AND AR DEPARTMENT, NAGALAND KOHIMA

4) THE DIRECTOR

EMPLOYMENT , SKILL DEVELOPMENT AND ENTREPRENEURSHIP, NAGALAND KOHIMA

5) SHRI. SAVIO VISA

JOINT DIRECTOR, EMPLOYMENT, SKILL DEVELOPMENT AND ENTREPRENEURSHIP, NAGALAND KOHIMA

Advocate-A. ZHO

,AKIN RISOM

TAKA KICHU

B. SOTO

A. ZHO

6) SHRI. ZUBEMO LOTHAS TSANGLAO

REGIONAL EMPLOYMENT OFFICER (REO), REGIONAL EMPLOYMENT OFFICE, KOHIMA, NAGALAND

7) SMTI. T ZUTHONGLO EZUNG

DISTRICT EMPLOYMENT OFFICER (DEO) WOKHA-797111, NAGALAND

8) SHRI. AVIKA ACHUMI

DISTRICT EMPLOYMENT OFFICER (DEO), ZUNHEBOTO -798620, NAGALAND

9) SHRI. ATSIE KENNETH

DISTRICT EMPLOYMENT OFFICER (DEO), MOKOKCHUNG NAGALAND

10) SHRI. VIREN KECHU

DISTRICT EMPLOYMENT OFFICER (DEO), MON-NAGALAND

11) SHRI, IMLIKHUMZUK

DISTRICT EMPLOYMENT OFFICER (DEO), TUENSANG, NAGALAND

12) SHRI. GIDEON L. SUMI

DISTRICT EMPLOYMENT OFFICER (DEO) DIMAPUR NAGALAND

13) SHRI. TSASEMONG SANGTAM

ASSISTANT DIRECTOR, EMPLOYMENT, SKILL DEVELOPMENT AND ENTREPRENEURSHIP, KOHIMA NAGALAND

14) SHRI. KULO KEZO

ASSISTANT DIRECTOR, EMPLOYMENT, SKILL DEVELOPMENT AND ENTREPRENEURSHIP, KOHIMA NAGALAND

15) SHRI. LIPONGSE SANGTAM
EMPLOYMENT OFFICER (EO), OFFICE OF THE DISTRICT
EMPLOYMENT OFFICER, ZUNHEBOTO, NAGALAND

16) SHRI. EKONTHUNG EZUNG
EMPLOYMENT OFFICER (EO), OFFICE OF THE DISTRICT
EMPLOYMENT OFFICER, KOHIMA NAGALAND

Advocate for the Petitioner : TONGPOK PONGENER

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA
HONBLE MR JUSTICE KARDAK ETE

ORDER

Date : 20-09-2023

(Kardak Ete, J)

Heard Mr. Tongpok Pongener, learned counsel for the petitioners and Ms. V. Suokhrie, learned Additional AG for the State respondents and also heard Mr. A. Zho, learned counsel for the respondent nos. 5 to 16.

2. By filing this writ petition the petitioners have challenged the constitutional validity of that part of the Nagaland Employment & Craftsmen Training Service and Nagaland Subordinate Employment & Craftsmen Training Service Rules, 1998 (herein after referred to as Service Rules, 1998) particularly Schedule-I(A), Schedule-I(B) and Schedule –II (A) Serial No. 1 wherein it prescribes one post of Joint Director and 3 (three) posts of Deputy Director in respect of Employment Wing, at I(B) it prescribes no post of Joint Director but only one post of Deputy Director in respect of Craftsmen Training Wing and at Schedule II (A) serial No.1 prescribes for promotion to

the post of Director, the post shall be filled up by selection from among confirmed officers under Rule 3 (A) (1) (a) i.e., the Joint Director of Employment Wing on the ground that it contravenes Article 13 (2), 14, 16(1) and 21 of the Constitution of India and is arbitrary and discriminatory which prefers Employment Wing over the Craftsmen Training Wing in the distribution of posts of Deputy Director and Joint Director. The petitioners prays for quashing of Schedule II (A) Sl. No. 1 and for a direction to amend the Schedule I (A) and Schedule I (B) and Schedule II (A) Sl. No. 1 by incorporating the provisions for giving equal opportunity of promotion to the post of Director from the Joint Directors of both the Employment Wing and Craftsmen Training Wing and also for amending the Service Rules, 1998 by incorporating the appropriate provisions governing the post of Additional Director including the provisions for promotion to the said post providing equal avenues of promotion to both the wings.

3. The brief facts of the case of the petitioners is that they are all officers in the Craftsmen Training Wing of the Directorate of Employment, Skill Development & Entrepreneurship, Nagaland (in short Directorate). The Directorate is composed of two co-equal wings namely- Employment Wing and Craftsmen Training Wing. The two wings were amalgamated by an order dated 20.09.1986. The Craftsmen Training Wing, which was called 'Industrial Training Institute' (in short ITI) was initially under the Directorate of School Education and was transferred to the Department of Labour and Employment and subsequently, by the order dated 20.09.1986 brought under the Directorate of Employment Exchange and the

Directorate of Employment Exchange was re-designated as the 'Directorate of Employment and Craftsmen Training'. At the time of the amalgamation, the Directorate of Employment Exchange was governed by the Nagaland Employment Service Rules, 1984 and up till then, the highest ranked post available to the service was 1 (one) sanctioned post of Deputy Director (Class-I) Gazetted and although provisions were made in the said rules for higher posts of Joint Director and Director, there being no sanctioned posts for the same, the post of Director was held ex-officio by Officers of the Nagaland Civil Services.

4. Thereafter, Government by letter dated 24.10.1986, conveyed approval to the creation of 1 (one) post of Deputy Director (Class-I) Gazetted for Craftsmen Training Wing. According to the petitioners, by creating the said post of Deputy Director, the Craftsmen Training Wing was brought to parity with the Employment Wing. Despite the creation of the post of Deputy Director for the Craftsmen Training Wing, promotion to the post was not granted to any officer of the Craftsmen Training Wing, all along steady promotions in all grades were maintained in the Employment Wing so much so that all the posts from Deputy Director to the post of Director were continuously held by officers of the Employment Wing and in respect of Craftsmen Training Wing, the wing continued to remain stagnant at the grade of Principal/Deputy Director even after the coming in effect of the Service Rules, 1998, until, finally, promotion to the post of Sr. Principal/ Deputy Director was granted to one officer from the Craftsmen Training Wing w.e.f. 24.01.2004 and his promotion was regularized as Deputy Director in 2006. Subsequently, the said

officer went on deputation to the Transport Department in 2006 and was absorbed in that Department. However, again, an officer from the Employment Wing was promoted against the vacancy w.e.f 03.08.2006, thus, again, from 2006 onward till 2018, not a single promotion to Deputy Director was granted to the Craftsmen Training Wing and all posts from Deputy Director and upwards were again continuously filled up by officers from the Employment Wing.

5. By notification dated 22.10.1998, the Nagaland Employment Service Rules, 1984, was replaced by the Service Rules, 1998 (Nagaland Employment & Craftsmen Training Service and Nagaland Subordinate Employment & Craftsmen Training Service Rules, 1998).

6. The petitioners have challenges the vires of the part of the above Service Rules, 1998 particularly Schedule 1 (A), Schedule 1(B) and Schedule II (A) Sl. No. 1. According to the petitioners the unconstitutionality being that Rule 3 clearly recognized the co-equality of the two wings, the aforesaid impugned schedules not only contradicts Rule 3 but also discriminates against the Craftsmen Training Wing and unreasonably favours the Employment Wing in terms of allocation of post from the Deputy Director and in terms of promotion to the post of Director, the impugned Schedule I(A) provides one (1) post of Joint Director and three (3) posts of Deputy Director for the Employment Wing while the impugned Schedule I(B) provides one (1) post of Deputy Director but no post of Joint Director for the Craftsmen Training Wing, despite the fact that the Schedule-II(B) Sl. No. 1 reflects the availability of a post of Joint Director for the Craftsmen Training Wing. Further, the impugned

Schedule-II(A) Sl. No. 1 provides that only a Joint Director of the Employment Wing is eligible for promotion to the post of Director. By notification dated 29.03.2005, one post of Additional Director was created by up-gradation of a post of Joint Director. The provision for the post of Additional Director is yet to be incorporated in the Service Rules, 1998.

7. According to the petitioners, the order dated 18.10.2019, the petitioner No. 1 from the Training Wing (who, subsequently, was permitted to withdraw from the petition owing to his availing voluntary retirement vide order dated 09.11.2022 in IA(Civil)/188/2022) was promoted to Deputy Director w.e.f. 25.06.2018. Again by order dated 18.10.2019, he was granted officiating promotion to Joint Director. Thereafter, by order dated 16.09.2021, his officiating promotion to Joint Director was regularized w.e.f. 18.10.2019 in pursuance of the NPSC recommendation dated 15.09.2021. By the aforesaid order dated 16.09.2021, the respondent no. 5 from Employment Wing was also regularized as Joint Director. With the above promotions, the petitioner No. 2 (who presently is the petitioner No. 1) was promoted to Deputy Director w.e.f. 04.06.2020 and the Seniority List as on 31.07.2021 reflects that among all the Deputy Directors of the two wings, he is the senior-most Deputy Director.

8. Mr. Tongpok Pongener, learned counsel for the petitioners submits that in view of the anomalies in the Service Rules, 1998, the petitioners have submitted a representation dated 07.07.2021 proposing partial amendment of the Service Rules, 1998 for

promotion to the post of Additional Director and to amend the Schedule I(A), Schedule- I(B) and Schedule-II (A) Sl. No. 1. Accordingly, by forwarding letter dated 08.07.2021, the Director, while forwarding the representation of the petitioners, also proposed partial amendment of the Service Rules, 1998 to the Government. In the meantime, the Chief Minister, Nagaland by Memo dated 06.08.2021 instructed the Department to ensure that DPCs are not stopped and permissible promotions are allowed to take place without considering any amendment of Service rules.

9. By letter dated 13.09.2021, the Government conveyed to the Director of Directorate, the P&AR examination that the proposed amendment cannot be considered and that the department may examine the feasibility of bifurcating the two wings given the fact that the two wings are distinct from each other.

10. Mr. Tongpok Pongener, learned counsel for the petitioners submits that in view of the inherent unconstitutionality and anomalies in the impugned rules and the fact that no provision is made in the impugned rules for promotion for giving promotional avenues in the Service Rules, 1998, it is arbitrary, discriminatory and unconstitutional and, accordingly, he submits that the impugned Schedule I(A), Schedule I(B) and Schedule II (A) Sl. No. 1 be set aside being unconstitutional and a direction may be given to the respondent authorities to amend the impugned Schedules of Service Rules, 1998.

11. Mr. Tongpok Pongener, learned counsel submits that it is apparent that on the basis of the P&AR Department examination,

the concerned Department forwarded the letter dated 13.09.2021 as a consequence of the memo dated 06.08.2021, issued by the Hon'ble Chief Minister, Nagaland and a blind compliance of the same. As a responsible nodal department, it was incumbent upon the P&AR Department to determine the proposal in its entirety and to render reasoned decision independent of any influence from any quarter. According to him, no cogent reason as to why the proposed amendment is denied has been rendered by the P& AR Department apart from the terse sentence that the proposed amendment could not be considered. The decision, is, therefore, not sustainable being devoid of application of mind. Further, the second part of the examination advising the Directorate/Department to examine the feasibility of bifurcating the Training wing from the Employment Wing, given the fact that the two wings are distinct from each other, is a non sequitur and merely an excuse to avoid the responsibility entrusted upon the Department and as such, the examination of P&AR Department is designed to perpetrate the injustice.

12. Mr. Tongpok Pongener, learned counsel for the petitioners further submits that the impugned schedule I (A), Schedule I(B) and the impugned Schedule II (A) Sl. No. 1 are utterly arbitrary, discriminatory and unreasonable in that, without any cogent and justifiable reason, they favour the Employment Wing in terms of availability of posts and availability of promotional avenues over the corresponding co-equal Craftsmen Training Wing. As such, the impugned schedules are in utter contravention of Articles 13(2), 14, 16(1) and 21 of the Constitution of India and, therefore, liable to be declared void to the extent of contravention.

13. Mr. Tongpok Pongener, learned counsel submits that the impugned schedules are not only arbitrary and unconstitutional, but also contrary to Rule 3 and Schedule II(B) in that , while Rule 3 clearly provides that the service consists of two co-equal wings headed by the Director and specifies the post from Joint Director downwards for both the wings and Schedule II (B) Sl. No. 1 also shows the availability of the post of Joint Director in respect of the Craftsmen Training Wing, on the one hand, the impugned Schedule I(A) shows availability of one post of Joint Director and 3 posts of Deputy Director in respect of the Employment Wing, while impugned Schedule-I(B) shows non-availability of the post of Joint Director and the availability of only one post of Deputy Director in respect of the Craftsmen Training Wing, and on the other hand, the impugned Schedule-II (A) Sl. No. 1 makes it possible only for the Joint Director of the Employment Wing to avail promotion to Director.

14. Mr. Tongpok Pongener, learned counsel for the petitioners submits that the impugned schedules cannot stand the test of reasonable classification permissible under Article 14 of the Constitution of India. Equality before the law postulates that equals must be treated equally. In the instant case, the Employment Wing and the Craftsmen Training Wing are two separate but co-equal wings and the Service Rules, 1998 also clearly recognizes the very aspect at Rule 3, but the impugned schedules treats the two wings differently by giving undue preference and advantage to the Employment Wing without any justifiable reason and as such, prays for quashing of the same by declaring the impugned schedules void

being ultra vires Articles 14 and 16(1) of the Constitution of India and to direct the respondent authorities to amend the impugned schedules by inserting appropriate provisions reflecting equal distribution of posts of Joint Director and Deputy Director for the Employment Wing and the Craftsmen Training Wing and for incorporating provision affording equal opportunity to the Joint Director of the two co-equal wings to avail promotion to the post of Director.

15. In support of his submissions, the learned counsel for petitioners has placed reliance on the following judgments of the Hon'ble Supreme Court:

(i) E.P. Royappa Vs. State of Tamil Nadu reported in **AIR 1974 SC 555.**

(ii) The State of Jammu & Kashmir Vs. Shri Triloki Nath Khosa reported in **(1974) 1 SCC 19**

(iii) P. Savita Vs. Union of India reported in **(1985) Supp SCC 94**

(iv) Union of India & Ors Vs. N. S. Rathnam & Sons reported in **(2015) 10 SCC 681**

(v) Rashmi Metaliks Ltd Vs. Kolkatas Metropolitan Development Authority reported in **(2013) 10 SCC 95**

16. Per contra, Ms. V. Suokhrie, learned Additional AG for respondent Nos. 1 to 4 while referring to the Training Manual for

Industrial Training Institutes and Norms for Staffing Pattern at Directorates of States/ UTs for Implementation of Craftsmen Training Skill as well as the National Employment Service Manual and Employment Exchange and Procedure submits that both the wings i.e., the Employment Wing and the Craftsmen Training Wing are distinct from each other as it is evident from their duties and responsibilities as well as staffing pattern.

17. She submits that nowhere in the Service Rules, 1998, it is stated that the two wings i.e., the Employment Wing and the Craftsmen Training Wing are two co-equal. Till date, no common Seniority List is maintained in the Department. Whereas, Rule 3 of the Service Rules, 1998 provides for constitution of services, Schedule II (A) regulates the promotion of the Employment Wing and Schedule II (B) regulates promotion of Craftsmen Training Wing. In fact, considering that the two Wings are distinct from each other, the P&AR Department has suggested for bifurcation of the two wings as reflected in the letter dated 13.09.2021 of the Additional Secretary to the Government of Nagaland, Labour and Employment Skill Development and Entrepreneurship.

18. She further submits that Rule 3 and Rule 5 of the Service Rules, 1998 read with Schedule I (A), I (B) and Schedule II (A) and II(B) provides for the constitution of service, strength of service and mode of recruitment of both the two wings but it cannot be said that equals have been treated unequally since both the wings have separate promotion avenues as well as separate Seniority List. Therefore, she submits that the part of the Service

Rules, 1998 requires no interference as there is no unconstitutionality, discriminatory or arbitrary in the Service Rules of 1998.

19. Mr. A. Zho, learned counsel for the respondent Nos. 5 to 16, in the first opportune raises preliminary objection on the maintainability of the writ petition and submits that the petitioners having entered in the services of the Craftsmen and Training wing of the Directorate comprising of the two wings namely, Employment Wing and Craftsmen Training Wing as per the provisions of relevant rules they cannot now resile back from that position being barred by the principles of waiver, estoppel and acquiescence. He further submits that the petitioners have misinterpreted the facts in stating that the two wings have been merged. As clarified in the counter affidavit, there is no merger of the two wings. In fact, the ITI was placed under the Administrative Control of the Directorate of Employment Exchange by an order dated 20.05.1986 and thus to that extent, there being misrepresentation of facts, the writ petition is liable to be dismissed on that ground alone. Learned counsel submits that the instant writ petition was initially filed by 7 petitioners including Er. K. Wati who was petitioner No. 1 and also sworn the affidavit verifying the facts of the case. During the pendency of the writ petition, petitioner No. 1 Er. K. Wati filed IA(C)/188/2022 to strike off his name from the case. Accordingly, WP(C) No. 261/2021 was listed along with IA(C) 188/2022 on 09-11-2022. On the prayer of the applicant through learned counsel, this Hon'ble Court was pleased to strike off the name of Er. K. Wati from the array of the petitioners in WP(C) No. 261/2021. Since Er. K.

Wati had already withdrawn from the case, the affidavit sworn by him accompanying the writ petition is also deemed to be withdrawn. Hence, the present writ petition is not accompanied by a sworn affidavit as required under the Gauhati High Court Rules, and on this count alone, the present writ petition is liable to be dismissed.

20. Mr. A. Zho, learned counsel on merits submits that the Government vide notification No. L&E-2/43.80(pt) dated 22.10.1998 amended the Nagaland Employment Service Rules of 1984 and had brought out a new Service Rules, 1998 to regulate the recruitment and conditions of service of persons appointed to the Nagaland Employment and Craftsmen Training Services. The intention of the Government was to introduce the aforesaid Rules which is based on two principles. Firstly, the Employment Wing of the Department would be in charge of the administrative function of the entire department. The Craftsmen Training Wing would discharge its duties and responsibilities towards the institute to give vocational training to the Trainees for different trades under the Directorate. Secondly, to create two separate entities of both the wings as per the requirements under the law. Additionally, for the two different wings, two separate seniority lists are being maintained.

21. He submits that both Employment Wing and Training Wing falls under the concurrent list. Therefore, all the states and union territories make rules in consonance with the guidelines given by the Central Government for staffing pattern. Thus, rule 3 which makes provisions for method of recruitment and promotion of Training Wing can only be done by following the guidelines of the norms for

staffing pattern at the Directorate of the States and Union Territories for implementation of craftsmen training Scheme. Rule 3 cannot be read in isolation but read together with Rule 4 and 5 which shall clearly indicate the intention of the law makers on the question of recruitment and promotion. As per the craftsmen training norms laid down by the Central government, the post can be created as follows: 1. Additional Director of Training: One post for 5000-10000 seats of seating capacity. 2. Joint Director: One post for 3000-7000 seats. 3. Deputy Director of Training: One post for 2000-4000 seats.

22. Mr. A. Zho, learned counsel submits that in the State of Nagaland, the total available seat for the trainees under ITI is 1292 only. However, during 2020-2021, there were 639 trainees only against 1292 available seats. Till today, the number of trainees never reached 1292 seats. Therefore, though rule 3 makes provisions for future promotion for the Training Wing like Employment Wing, the State government has not created the post of Joint Director and above for training wing due to non-fulfilment of the norms for staffing pattern laid down by the Central Government. The existing Staffing pattern of ITIs in various States/Union Territories clearly shows that no State/Union Territories has created post beyond the Deputy Director or Principal.

23. He submits that the Rule 3 of the Service Rules, 1998, which makes provisions for constitution of service clearly provides that the service shall consist of two separate wings with different nomenclatures. Further, the Rule 3 also provides that both wings will be headed by the Director and both the wings will be under his

command.

24. The learned counsel submits that it is well settled law that it is open to the Government to constitute different cadres or wings in any particular service or department as it may choose according to its administrative convenience and expediency. The Office of the Director under Rule 3 is the Apex office to control and observe the functioning of the subordinate offices and the Wings (Craftsmen Wing and Employment Wing), that are under his control and to maintain the implementation of the Government Employment and Craftsmen Training Programme. The necessity to maintain separate wings for Employment and Craftsmen Training under the Directorate is primarily an executive duty and therefore, the Government is in the best position to decide whether it requires separate wings under the Directorate or not. Each wing has its separate administrative service or is a part of a service sanctioned for different administrative expediency. Therefore, each Wing is a separate unit and the posts allocated to the Wings are different from each other. Though, the Office of the Directorate controls both the wings, that does not signify that the Employment Wing and Craftsmen Training Wing are treated under the Rule as one unit. He point out that after the appointments are made and the candidates join in the posts, consideration for promotion is guided by the Rules that occupy the field and therefore, the petitioners after joining the service and working in the Craftsmen Training Wing cannot now say that there is disparity in service.

25. He submits that in the instant case, the petitioners have

miserably failed to bring out any unconstitutionality to the part of Service Rule, 1998 particularly impugned Schedules of the Rules. The expression used by the petitioners 'that Rule 3' which makes provision for Constitution of service, clearly provides that the service shall consist of two equal wings, Employment Wing and Craftsmen Wing, is again a misrepresentation of fact. As will be evident from Rule 3, there will be two separate wings with different nomenclature. In this connection, he refers to rule 4 of the Rules and submits that it clearly indicate separate entity of both the wings. Rule 5 (a) (b) also makes the position clear. While Schedule II (A) vide Rule 5 deals with the Employment Wing, Schedule II (B) deals with Training Wing. While under Schedule II (A) of the Employment Wing, the entry level post is Employment Officer (Class-II Gazette) with the qualification of degree in arts/science/commerce etc. from any recognized university; under Schedule II(B) of the Training Wing, the entry level post is that of a Vice Principal (Class-II Gazette) with BE Mech/Elect/Civil/Electronic or its equivalent from any recognized University. Under Schedule II (A) (Employment Wing), the entry level post for Class-III (Non-Gazette) is that of a Technical Assistant with the qualification of degree in arts/science/commerce etc. Whereas under Schedule II(B) (Training Wing), the entry level post for Class-III(Non-Gazette) is that of a Trade Instructor with the qualification of matriculation or its equivalent and above. This will clearly establish that no parity can be brought in as has been claimed by the petitioners. By no stretch of imagination, it is a case of equals being treated unequally, rather it is a case of maintaining standard norms for two separate Wings.

26. Mr. A. Zho, learned counsel submits that under rule 5 , Schedule II(A) belongs to the Employment Wing and Schedule II(B) belongs to the Craftsmen Wing. Therefore, the aforesaid Schedule will apply for the respective wing. The Rule itself made a distinction between the person appointed in the Employment and Training Wing by creating separate cadres and separate entry level post for both the wings. Therefore, the petitioners cannot be considered to be equally placed and for treating them at par with the Employment Wing employees. There is a reasonable nexus to differentiate the two wings. Therefore, the classification cannot be said to be arbitrary and violative of Article 14 and 16 of the Constitution of India. In a system governed by rule of law, discretion must be with clearly defined limits. The aforesaid rule 5 of Service Rule, 1998 provides the guidance for exercise of the discretion in making appointment in both the wings by maintaining separate selection list, seniority list, gradation list for both the wings which are being prepared and maintained from long before.

27. He submits that a rule can only be said to be arbitrary, if the discretion is exercised without any principle or without any law. A discretion which is guided by law or governed by known principles of Rules cannot be said to be arbitrary and violative of Article 14 and 16 of the Constitution of India. In the instant case, the discretion stated in rule 5 is a sound discretion guided by Law and principles of Rule of Law, and therefore, it is legally valid.

28. The learned counsel submits that the petitioner Nos.1 to 7 belong to the Craftsmen Training Wing and private respondent

nos. 5 to 16 belong to Employment Wing. While the Employment Wing is in charge of the Administration of Directorate, the Craftsmen Training Wing is in charge of separate duties and responsibilities of the institution to teach the vocational trainees for different trades like knitting, cutting & sewing, plumber, welder, carpenter, Mechanic diesel, Electrician, etc. Thus, there is no question of bringing in any parity as is sought to be done by the petitioners in the instant case. It is a cardinal principle of law that the Statute or Rule or Regulation must be held to be constitutionally valid until and unless it is established that they violate any specific provisions of the Constitution of India. Further, it is the duty of the Court to harmoniously construe different provisions of any Act or Rule or Regulation, if possible and to sustain the same rather than strike down the provisions outright. The Rule 5 of the Service Rules, 1998, provides for two separate wings, therefore the question of equal wings does not arise. The benefits conferred in the Rule 5 are given to both the wings.

29. He further submits that in view of the above, when the rule 5 separates both the wings with regard to entry to the post, qualification, pay scale, duties and responsibility, the question of parity between both the wings does not arise. Under the facts and circumstances as stated above, it can be seen that the Service Rules 1998 is at par with the different Acts and Rules in other States and thus the question of illegality and violation of Constitution of India does not arise.

30. Mr. A. Zho, learned counsel submits that the concept of

equality under Article 14 of the Constitution of India can have no existence except with reference to the matters which are common as between individuals between whom equality is predicated. Equality of opportunity in matters of employment can only be predicated between persons who are either seeking the same employment or have obtained the same employment. It is therefore clear that the matters of promotions and matters relating to employment are within the meaning of Article 16(1). Such equality of opportunity in matter of promotion must mean equality between member of the same class of employees and not equality between members of separate independent wings.

31. He submits that in the instant case, the employees of Employment Wing and the employees of Craftsmen Training Wing are recruited separately, trained separately and have separate avenues of promotions and as such, the finding is irresistible that they form two distinct and separate class as between whom scope of predicated equality or inequality of promotion does not arise. What constitutes inequality under Article 14 depends upon the facts of each and every case. The context provided under Article 14 of the Constitution of India is that in every Statute or Rules, where intelligible differentia exists, there is grouping of the employees based on that intelligible differentia and leaving out those employees who do not share the intelligible differentia. Further, the intelligible differentia must also have rational nexus that is sought to be achieved. And the requirements of intelligible differentia should be made within the law or rules and it should not interdict within a class of employees.

32. Mr. A. Zho, learned counsel submits that in the instant case, the existence of intelligible differentia is clearly there between the employees of Employment Wing and Craftsmen Training Wing. The rule 5 of the aforementioned rules stipulates the intelligible differentia between the wings by having different Schedules for the different wings. The Employment Wing is in-charge of the administrative function, while the other wing i.e., the Craftsmen Training Wing is in charge of training and craftsmanship involving completely separate duties and responsibilities. He further submits that in the instant case, the Government of Nagaland by following the Employment and Craftsmen Training Service Norms had made two separate wings under one Directorate. The duties and functions of both the wings are different from each other, the nature of service, payroll, seniority list, gradation list are also different. Therefore, the Service Rules, 1998 requires no interference as the legislature has all the rights to create difference between two classes of employees of different nature.

33. The learned counsel submits that the two services of the Wings started as independent services. The qualifications prescribed for entry into each wing were different; the method of recruitment and the machinery for the same were also different. The general qualification possessed by the members of each class is also different, it started as two distinct classes and they are two distinct services, and there is no inter se seniority between the two services or wings nor any comparison can be made between the two services or wings in the matter of promotion for making or founding an argument based upon the principles of Article 14 and 16(1) of the

Constitution of India. Both the wings started dissimilarly and they continued dissimilarly and any dissimilarity would not be a denial of equal opportunity. Moreover, the policy decision of the Government of Nagaland to create and run two distinct and separate wings under one Directorate cannot be called in question, the same being founded on reasonable criteria and service conditions. The petitioners have miserably failed to bring in the principles relating to holding a service rule unconstitutional as there is no violation of any of the constitutional provisions.

34. The learned counsel finally submits that in the instant case, the Government decided to bring the employees of the Craftsmen Training Wing under the Administrative control of Directorate. And, thereafter, by amending the Nagaland Employment Service Rules, 1984, the Government of Nagaland regulated the service of employees appointed under Nagaland Employment and Craftsmen Training Service by bringing in Service Rule, 1998. Rule 5 clearly distinguishes the two wings of the Directorate. The discretion or the distinction in rule 5 is reasonable, fair, and not arbitrary. Therefore, the parity of services, the petitioners have sought to bring in, in the instant case, if allowed, will lead to disparity leading to violation of exceptions provided to equality clause in the Constitution of India.

35. Mr. A. Zho, learned counsel has placed reliance on the following judgments of the Hon'ble Supreme Court:

(i) Ameerunisa Begum and Ors Vs. Mahboob Begum and Ors reported in **AIR (1953) SC 91**

(ii) State of West Bengal Vs. Anwar Ali Sarkar reported in **AIR (1952) SC 75**

(iii) E.P. Royappa Vs. State of Tamil Nadu and Anr reported in **1974 2 SCR 348**

(iv) Mrs. Maneka Gandhi Vs. Union of India and Anr reported in **(1978) 1 SCC 248.**

(v) Ramana Dayaram Shetty Vs. International Airport Authority of India and Ors reported in **(1979) 3 SCC 489.**

(vi) D.S. Nakara and Ors Vs. Union of India reported in **(1983) 1 SCC 305.**

(vii) All India Station Masters and Assistant Station Masters' Association & Ors Vs. General Manager, Central Railways & Ors reported in **AIR (1960) SC 34.**

(viii) Kishori Mohanlal Pakshi Vs. Union of India reported in **AIR 1962 SC 1139**

(ix) Unikat Sankunni Menon Vs. The State of Rajasthan reported in **AIR (1968) SC 81**

(x) State of Punjab Vs. Joginder Singh reported in **AIR (1963) SC 913**

(xi) General Manager Southern Rly Vs. Rangachari reported in **AIR (1962) SC 36**

(xii) Madras Bar Association Vs. Union of India (UOI) and Ors reported in MANU/SC/0429/2021.

36. We have considered the submissions advanced by the learned counsel for the parties and also perused the materials available on record.

37. The petitioners are the officers of the Craftsmen Training Wing and the respondent Nos. 5 to 16 are the Officers of the Employment Wing serving in the Directorate. It transpires that the Craftsmen Training Wing which was called ITI was initially under the Directorate of School Education and thereafter transferred to the Department of Labour and Employment and subsequently brought under the Directorate of Employment Exchange and the Directorate of Employment Exchange was re-designated as the Directorate of Employment and Craftsmen Training and ultimately both the wings are under the Directorate of Employment, Skill Development and Entrepreneurship, Nagaland (referred to as Directorate hereinabove and hereinafter) .

38. The Directorate consists of two wings, namely, Employment Wing and Craftsmen Training Wing. Initially, the Craftsmen Training Wing, back then called the ITI was under the Education Department. Going further back in time, up to 1972, the ITI was called Polytechnic School. As per the record available, in 1971, the then Director of School Education, by letter No. ED/DEV/VI-25/71-72 dated 27.08.1971, wrote to the Government requesting issuance of orders for converting

the Polytechnic School to Industrial Training Institute, and the proposal to convert the Polytechnic School to ITI having been submitted to the Government of India, the Government of India by letter No. 1(20)/-TC dated 26.09.1971 gave its consent to the proposal. Subsequently, the ITI was placed under the Labour and Employment Department and thereafter, by Order no, L&E-1/61/81 dated 20.05.1986, the ITI was transferred from the Labour and Employment Department and placed under the administrative control of the Directorate of Employment Exchange and the Directorate of Employment Exchange was re-designated as the Directorate of Employment and Craftsmen Training. At the time of the bringing the ITI under the Employment Exchange, there were only two ITIs in the State, one at Kohima and another at Dimapur. Subsequently ITIs were established in all other districts of the State viz., Mon, Zunheboto, Wokha, Mokokchung, Tuensang, Phek and Kiphire, respectively.

39. At the time the ITI was placed under the administrative control of the Directorate of Employment Exchange, the Directorate was governed by the Nagaland Employment Service Rules, 1984 and at the relevant time, the highest post available to the Nagaland Employment service was one (1) sanctioned post of Deputy Director (Class-I) Gazetted and although provisions were made in the said rules for higher posts of Joint Director and Director, there being no sanctioned posts for the same, the post of Director was held ex-officio by Officers of the Nagaland Civil Services.

40. Vide notification No. L & E-2/43.80(pt) dated 22.10.1998, the Service Rules, 1998 was brought into effect as an amendment to the 1984 Rules. We deem it apposite to refer to the relevant rules and the impugned Schedules of the Service Rules, 1998 which is reproduced herein under;

“Rule 3. Constitution of Service: The Service shall consist of the following Wings headed by Director and under the Wing of the following categories of posts shall be consisted.

DIRECTOR

(Class-I) Selection Grade

	(A) EMPLOYMENT WING:	(B) CRAFTSMEN TRAINING WING:
1. Nagaland Employment Service (Class-I)		1. Nagaland Craftsmen Training Service (Class-I)
(a) Senior Grade-I: Joint Director		(a) Senior Grade-I: Joint Director
(b) Senior Grade-II: Deputy Director/Regional Employment Officer		(b) Senior Grade-II: Deputy Director/Principal Senior Grade
(c) Junior Grade: Assistant Director/District Employment Officer.		(c) Junior Grade: Assistant Director/Principal
I. Nagaland Employment Service (Class-II)		II. Nagaland Craftsmen Training Service(Class-II): Vice-Principal

(a) Employment Officer	
II. Nagaland Subordinate Employment Service (Class-III Non Gazette) Technical Assistant	III. Nagaland Craftsmen Training Subordinate Service (Class-III Non Gazette) (a) Foreman/Mill Wright Foremen/Related Instructor/Group Instructor. (b) Senior Instructor (c) Trade Instructor

SCHEDULE-I(A)

(Vide Rules-4)

Sl. No.	Name of post	Status	Scale of pay	Number of posts as on 1-1-98 PermanentTemporary		Total	Remarks
1	2	3	4	5	6	7	8
			<u>Nagaland Employment & Craftsmen Training Service (Class-I)</u>				
(a) 1.	<u>Selection Grade</u> DIRECTOR	CL-I(G)	Rs. 4500-150-5850-175-6200/-	1	-	1	
				•			

(b) 2.	<u>Senior Grade-I</u> JOINT DIRECTOR	CL-I(G)	<u>Nagaland Employment Service(Class- 1)</u> Rs. 3500-125- 4250-140-5650/-	• - 1	1
(c) 3.	<u>Senior Grade-II</u> DEPUTY DIRECTOR	CL-I(G)	Rs. 2900-100- 3900-125-4900/-	• 1 2	3
4.	REGIONAL EMPLOYMENT OFFICER	CL-I(G)	-do-	1 -	1
(d) 5.	<u>Junior Grade</u> ASSTT. DIRECTOR	CL-I(G)	Rs. 2350-90- 3250-100-4450/-	• 2	2
6.	DISTRICT EMPLOYMENT OFFICER	CL-I(G)	-do-	8 -	8

7.	EMPLOYMENT OFFICER	CL-II(G)	<u>Nagaland Subordinate Services (Class-II)</u>	5	5	10
8.	TECHNICAL ASSISTANT	CL-III(NG)	<u>Nagaland Subordinate Services (Class-III)</u> Rs.1800-60-2400-70-3100-75-3700/- Rs. 1450-40-1610-45-2015-55-2840/-	5	5	10

SCHEDULE-I(B)
(Vide Rules-4)

Sl. No.	Name of post	Status	Scale of pay	Number of posts as on 1-1-95		Total	Remarks
				Permanent	Temporary		
1	2	3	4	5	6	7	8
			<u>Nagaland</u>				

			<u>Craftsmen Training Service (Class-I)</u>			
(a)	<u>Senior Grade-II</u>					
1.	DEPUTY DIRECTOR	CL-I(G)	Rs. 2900-100-3900-125-4900/-	-	1	1
2.	PRINCIPAL SENIOR GRADE	-do-	-do-	-	1	1
(b)	<u>JUNIOR GRADE</u>					
1.	PRINCIPAL	CL-I(G)	Rs. 2350-90-33250-100-4450/-	1	1	2
			<u>Nagaland Craftsmen Training Service Rules (Class-II)</u>			
1.	VICE-PRINCIPAL	CL-II(G)	Rs. 1800-60-2400-70-3100-75-3700/-pm	1	1	2
			<u>Nagaland Subordinate Craftsmen Training Service Rules</u>			

			(Class-III)			
1.	GROUP INSTRUCTOR	CL-III(NG)	Rs. 1550-45-1630-50-2080-60-3100/-	1	-	1
					•	
					• -	1
2.	FOREMEN	-do-	-do-	1		
3.	RELATED INSTRUCTOR	-do-	-do-	•	1	1
4.	SENIOR INSTRUCTOR	-do-	Rs. 1450-40-1610-45-2015-55-2840/-	•	5	5
5.	SOCIAL STUDY INSTRUCTOR/ALLIED INSTRUCTOR	-do-	-do-	•	4	4
6.	TRADE INSTRUCTOR	-do-	Rs. 1250-30-1400-35-1680-40-2280/-	16	27	43

SCHEDULE –II(A) EMPLOYMENT WING

(Vide Rule 5)

SL. No.	Name of Post	Percentage to be filled by	Qualification for Direct	Eligibility and other conditions
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1.	2	Direct recruitment Promotion	Departmental Promotion	Recruitment	for promotion
1.	2	3	4	5	6
1.	DIRECTOR	•	100%	Not applicable	The post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (a) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis.
2.	JOINT DIRECTOR	•	100%	-do-	The post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (b) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis.

3.	DEPUTY DIRECTOR	• 100%	-do-	The post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (c) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis.
4.	REGIONAL EMPLOYMENT OFFICER	• 100%	-do-	-do-
5.	ASSISTANT DIRECTOR	• 100%	-do-	The post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (ii) provided that the Officer has completed qualifying and continuous service of 5 years in that grade, on the first day service of the year on merit-cum-seniority basis.
6.	DISTRICT EMPLOYMENT	• 100%	-do-	-do-

	OFFICER				
7.	EMPLOYMENT OFFICER	50%	50%	Degree in Art/ Science or Commerce/ Agriculture/ Engineering/ Medicine/Home Science/ Physical Education/ Veterinary Science/ Divinity/ Agri. Engineering/ a Applied Geology and Applied Geophysics	50% of the post meant for Departmental promotion shall be filled by selection from amongst the confirmed Technical Assistants mentioned in Rule 3(A) (iii) who has completed qualifying and continuous service of 5 years in that grade on the first day of the year of selection on Merit-cum-seniority basis. Confirmation/ Promotion to higher post for Employment Officer and above shall be considered provided he/she has undergone the Integrated Training Course for Employment Officers conducted by the Central Institute of Research and Training in Employment Service under DGE&T New

				Delhi.
8.	TECHNICAL ASSISTANT	100%	NIL	-do-
				100% of the post will be filled by direct recruitment.

SCHEDULE –II(B) TRAINING WING

SL. No.	Name of Post	Percentage to be filled by Direct recruitmentDepartmental Promotion		Qualification for Direct Recruitment	Eligibility and other conditions for promotion
1.	2	3	4	5	6
1.	JOINT DIRECTOR	NIL	100%	Not applicable	The post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(B) (1) (b) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year

				on merit-cum-seniority basis.
2.	DEPUTY DIRECTOR	-do- 100%	-do-	The post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(B) (1) (c) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis.
3.	ASSISTANT DIRECTOR	-do- 100%	-do-	The post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(B) (II) (a) provided that the

					Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis.
4.	PRINCIPAL	-do-	100%	-do-	-do-
5.	VICE-PRINCIPAL	75%	25%	BE MECH/Elect/Civil /Electronic or its equivalent from any recognized University	25% of the post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(B) (III)(a) provided that the Officer has completed qualifying and continuous service of 5 years in that grade, on the first day of the year on merit-cum-seniority basis, provided they are

					qualified.
6.	FOREMEN	NIL	100%	Not applicable	The post shall be filled by selection from amongst the Instructors who have completed the ATI or CTI & CSTR Training, according to seniority-cum-merit, provided he/she rendered continuous service of 5 years in that grade, on the first day of the year on merit-cum-seniority basis.
7.	MILLWRIGHT FORMEN	-do-	-do-	-do-	-do-
8.	RELATED INSTRUCTOR	-do-	-do-	-do-	-do-
9.	SENIOR INSTRUCTOR	NIL	100%	-do-	-do-
10.	SOCIAL STUDY INSTRUCTOR/ ALLIED INSTRUCTOR	100%	100%	Degree in Art/Science or Commerce/Agriculture/ Engineering/ Medicine/ Home Science/	100% of the post will be filled by direct

				Physical Education/ Veterinary Science/ Divinity/ Agri. Engineering/ a Applied Geology and Applied Geophysics.	recruitment.
11.	TRADE INSTRUCTOR	100%	100%	- Academic Metric or its equivalent with Maths & Science. Degree in Art/ Science or Commerce/ Agriculture /Engineering/ Medicine/Home Science / Physical Education/ Veterinary Science/ Divinity/ Agri. Engineering/ a applied Geology and Applied Geophysics - Technical: Diploma in Mech./ Civil/ Elect. Engg./ Electronic or National Trade Certificate or Apprenticeship in an Industrial concern for a period not less than 3 yrs. Or Diploma in appropriate Branch in the trade concerned. - Practical experience: Not	100% of the post will be filled by direct recruitment.

			less than 5 yrs including the Training period as shown in (b) above.	
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41. On the perusal of above provisions of Service Rules 1998, it transpires that Rule 3 provides that the service shall consist of the two wings i.e., Employment Wing and Craftsmen Training Wing headed by the Director and under the Employment Wing, it shall consist of I. Nagaland Employment Service (Class I) (a) Senior Grade-I: Joint Director, (b) Senior Grade-II: Deputy Director/Regional Employment Officer (c) Junior Grade : Assistant Director/ District Employment Officer. II. Nagaland Employment Service (Class-II) (a) Employment Officer. III. Nagaland Subordinate Employment Service (Class-III Non Gazette) Technical Assistant.

42. Under Craftsmen Training Wing, I. Nagaland Craftsmen Training Service (Class-I) (a) Senior Grade-I: Joint Director (b) Senior Grade-II : Deputy Director/ Principal Senior Grade (c) Junior Grade: Assistant Director/Principal II. Nagaland Craftsmen Training Service (Class-II) (a) Vice-Principal III. Nagaland Craftsmen Training Subordinate Service (Class-III Non Gazette) (a) Foreman/ Mill Wright Foremen/ Related Instructor/ Group Instructor (b) Senior Instructor and (c) Trade Instructor.

43. Schedule I(A) provides the name of post, status,

scale of pay and number of posts which includes the post of Director, Joint Director, Deputy Director, Regional Employment Officer, Assistant Director, District Employment Officer, Employment Officer and Technical Assistant for the Employment Wing.

Schedule I(B) provides the post, status, scale of pay and number of posts of Deputy Director, Principal Senior Grade, Junior Grade, Principal, Vice-Principal, Group Instructor, Foremen, Related Instructor, Senior Instructor, Social Study Instructor/ Allied Instructor/ Trade Instructor for Craftsmen Training Wing.

44. Schedule II(A) provides for the method of recruitment/ departmental promotion and eligibility and other conditions for promotion. The post of Director shall be filled up by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (a) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis. For Joint Director, the post shall be filled up by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (b) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis. For the post of Deputy Director, the post shall be filled up by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (c) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on

the first day service of the year on merit-cum-seniority basis. For the Regional Employment Officer, the post shall be filled up by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (c) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis. For the post of Assistant Director, the post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (ii) provided that the Officer has completed qualifying and continuous service of 5 years in that grade, on the first day service of the year on merit-cum-seniority basis. For District Employment Officer, the post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(A) (1) (ii) provided that the Officer has completed qualifying and continuous service of 5 years in that grade, on the first day service of the year on merit-cum-seniority basis. For Employment Officer, the qualification should be 50 degree in Art/ Science or Commerce/ Agriculture/ Engineering/ Medicine/ Home Science/ Physical Education/ Veterinary Science/ Divinity/ Agri. Engineering/ Applied Geology and Applied Geophysics and 50% of the post meant for Departmental promotion shall be filled by selection from amongst the confirmed Technical Assistants mentioned in Rule 3(A) (iii) who has completed qualifying and continuous service of 5 years in that grade on the first day of the year of selection on Merit-cum-seniority basis. For Technical Assistant, 100% of the posts will be filled by direct recruitment which is the entry grade in the Employment

Wing.

45. Schedule-II(B) of Training Wing provides that the post of Joint Director shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(B) (1) (b) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis. It is noted that there is no mention of post of Joint Director in Schedule I (B). For Deputy Director the post shall be filled by selection from amongst confirmed Officers mentioned under Rule 3(B) (1) (c) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis. For Assistant Director, the post shall be filled up by selection from amongst confirmed Officers mentioned under Rule 3(B) (II) (a) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis. The post of Principal shall be filled up by selection from amongst confirmed Officers mentioned under Rule 3(B) (II) (a) provided that the Officer has completed qualifying and continuous service of 3 years in that grade, on the first day service of the year on merit-cum-seniority basis. The post of Vice-Principal, 25% of the post shall be filled up by departmental promotion and 75% of the post shall be filled up by direct recruitment having BE Mech/ Elect/ Civil/ Electronic or its equivalent from any recognized University and the post shall be filled by selection from amongst

confirmed Officers mentioned under Rule 3(B) (III)(a) provided that the Officer has completed qualifying and continuous service of 5 years in that grade, on the first day of the year on merit-cum-seniority basis, provided they are qualified. The post of Foremen, Millwright Foremen, Related Instructor and Senior Instructor shall be filled by 100 % departmental promotion and selection from amongst the Instructors who have completed the ATI or CTI & CSTR Training, according to seniority-cum-merit, provided he/she rendered continuous service of 5 years in that grade, on the first day of the year on merit-cum-seniority basis. For the post of Social Study Instructor/ Allied Instructor, 100% of the post will be filled by direct recruitment having a degree in Art/Science or Commerce/ Agriculture/ Engineering/ Medicine/ Home Science/ Physical Education/ Veterinary Science/ Divinity/ Agri. Engineering/ a Applied Geology and Applied Geophysics and for the post of Trade Instructor, 100% of the post shall be filled by direct recruitment having metric or its equivalent with Maths and Science and Degree in Art/ Science or Commerce/Agriculture/Engineering/ Medicine/Home Science / Physical Education/ Veterinary Science/ Divinity/ Agri. Engineering/ Applied Geology and Applied Geophysics and Technical Diploma in Mech./ Civil/ Elect. Engg./ Electronic or National Trade Certificate or Apprenticeship in an Industrial concern for a period not less than 3 yrs and practical experience of not less than 5 years.

46. On careful consideration of the Rules and Schedules attached above, it transpires that though the Rule

3 provides that the service shall consists of the two wings, i.e., the Employment Wing and the Craftsmen Training Wing headed by the Director with the category of post mentioned herein above, the Schedule attached to the Service Rules, 1998, the attached Schedule I(A), I(B) provides for different post in the two respective wings. The Schedule I (A) clearly provides posts ranging from Technical Assistant to Director, the post of Technical Assistant is the entry point for the Employment Wing.

The Schedule I(B) provides for the post from Trade Instructor to Deputy Director, the Trade Instructor being the entry point for Craftsmen Training Wing.

47. The Schedule II (A) for the Employment Wing prescribes for the method of recruitment/ promotion and its eligibility and other conditions for promotion from entry point i.e., Technical Assistant to the post of Director.

48. Schedule II(B) for Craftsmen Training Wing prescribes for the method of recruitment/ promotion and its eligibility and other conditions for promotion from the entry point, i.e., the Trade Instructor to the Joint Director. Therefore, there is a separate provision prescribed in the Service Rules, 1998 for both the wings which shows the classification between the two wings.

49. Having considered the submissions and the materials available on record, we find that both the wings, i.e., the Employment Wing and the Craftsmen Training Wing

are distinct and different from each other in terms of duties and responsibilities, staffing pattern, thus, we are unable to accept that both are co-equal wings. It also transpires that initially the Craftsmen Training Wing which was called ITI was initially under the Directorate of School Education and thereafter transferred to the Department of Labour and Employment and subsequently brought under the Directorate of Employment Exchange and the Directorate of Employment Exchange was re-designated as the Directorate of Employment and Craftsmen Training and ultimately both the wings are now under the Directorate.

50. We would now proceed to consider the cases referred to by the learned counsel for the parties:

51. In the case of **E.P. Royappa vs. State of Tamil Nadu** (supra), the Hon'ble Supreme Court held as follows:

"85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of 14 and 16. Art. 16 embodies the fundamental guarantee that Arts. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content

and reach of this great equalizing principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivist point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

52. In the case of **The State of Jammu and Kashmir vs. Shri Triloki Nath Khosa** (Supra) the Hon'ble Supreme Court held as follows:

"29. This argument, as presented, is attractive but it assumes in the court a right of scrutiny somewhat wider than is generally recognized. Article 16 of the Constitution which ensures to all citizens equality of opportunity in matters relating to employment is but an instance or incident of the guarantee of equality contained in article 14. The concept of equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and

termination to the payment of gratuity and pension. But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

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.

50. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate articles 14 and 16 of the Constitution and must be upheld.

51. But we hope that this judgment will not be construed as a charter for making minute and microcosmic classifications. Excellence is, or ought to be, the goal of all good government and excellence and equality are not

friendly bed-fellows. A pragmatic approach has therefore to be adopted in order to harmonize the requirements of public services with the aspirations of public servants. But let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment. What after all is the operational residue of equality and equal opportunity ?

KRISHNA IYER, J. We fully endorse what has been said by our learned brother Chandrachud, J., but the profound depths of equal justice in public employment touched in his final paragraph (with which we ardently agree) impel a few concurring observations of our own.

54. In this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to Procrustean cruelty or sanctions indolent inefficiency. Necessarily, therefore, an imaginative and constructive modus vivendi between commonness and excellence must be forged to make the equality clauses viable. This pragmatism produced the judicial gloss of 'classification' and 'differentia', with the by-products of equality among equals and dissimilar things having to be treated differently. The social meaning of arts. 14 to 16 is neither dull uniformity nor specious 'talentism'. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of pervasive and slovenly mediocrity for activist and intelligent-but not snobbish and uncommitted-cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for arts. 14 to 16 and the Courts jurisdiction awakens to deaden such manoeuvres. The soul of Art. [HYPERLINK "https://indiankanoon.org/doc/211089/"](https://indiankanoon.org/doc/211089/) 16 is the promotion of the common man's capabilities, overpowering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of Arts. 14 and 16 by the theory of classified equality which at its worst degenerates into class domination.

56. The wise and tonic words of our learned brother, if we may say so with great deference, are however portentous. While striking a balance between the long hunger for equal chance of the lowlier and the disturbing concern of the

community for higher standards of performance, the State should not jettison the germinal principle of equality altogether. [The dilemma of democracy is as to how to avoid validating the abolition of the -difference between the good and the bad in the name of equality and putting to sleep the constitutional command for expanding the areas of equal treatment for the weaker ones with the dope of 'special qualifications' measured by expensive and exotic degrees. These are perhaps meta-judicial matters left to the other branches of Government, but the Court must hold the Executive within the loading strings of egalitarian constitutionalism and correct, by judicial review, episodes of subtle and shady classification grossly violative of equal justice. That is the heart of the matter. That is the note that rings through the first three fundamental rights the people have given to themselves.

57. Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70% marks could become Chief Engineers and those with 60% alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it.

58. The role of classification may well recede in the long run, and the finer emphasis on broader equalities implicit in the concluding thought of the leading judgment will abide. The decision in this case should not-and does not-imply that by an undue accent on qualifications the Administration can out back on the larger tryst of equalitarianism or may hijack the founding and fighting faith of social justice into the enemy camp of intellectual domination by an elite. The Court, in extreme cases, has to be the sentinel on the qui vive."

53. In the case of **P.Savita vs. Union of India**(Supra), the Hon'ble Supreme Court held as follows:

"13. This Court however observed that a differential treatment in appropriate cases can be justified, when there are two grades based on reasonable grounds, and stated as follows:

It is well known that there can be and there are different grades in a service, with varying qualification for

entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them.

14. With respect we agree with the conclusion arrived at in the above Judgment, that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently."

54. In the case of **Union of India & Ors. vs. N.S. Rathnam & Sons** (Supra), the Hon'ble Supreme Court held, which is reproduced herein below:

"13. It is, thus, beyond any pale of doubt that the justiciability of particular Notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws. Equal protection means the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed. Therefore, if the two persons or two sets of persons are similarly situated/placed, they have to be treated equally. At the same time, the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position. It would mean that the State has the power to classify persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category. Therefore, the person challenging the act of the State as violative of Article 14 has to show that there is no reasonable basis for the differentiation between the two classes created by the State. Article 14 prohibits class legislation and not reasonable classification.

14. What follows from the above is that in order to pass the test of permissible classification two conditions must be

fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. If the government fails to support its action of classification on the touchstone of the principle whether the classification is reasonable having an intelligible differentia and a rational basis germane to the purpose, the classification has to be held as arbitrary and discriminatory."

55. In the case of **Rashmi Metaliks Ltd. Vs. Kolkata Metropolitan Development Authority** (supra) the Hon'ble Supreme Court held as follows:

"16. The following observations found in the celebrated decision in Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi, AIR 1978 SC 851 are relevant to this question :

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) (at p.18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

56. In the case of **Ameerunisa Begum and Ors Vs. Mahboob Begum and Ors** (Supra), the Hon'ble Supreme Court held as which is reproduced herein below:

" 11. A legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate."

57. In the case of **State of West Bengal Vs Anwar Ali Sarkar** (supra), the Hon'ble Supreme Court has held as under:

"54. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristic which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the act. The differentia which is the basis of classification and the object of the Act or Rule are distinct things and what is necessary is that there must be a nexus between them."

58. In the case of **D.S. Nakara and Others vs Union of India** (Supra) the Hon'ble Supreme Court has held which is reproduced herein below:

"15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

59. In the case of **All India Station Masters and Assistant Station Masters' Association & Others vs General Manager, Central Railways and Others** (Supra) the Hon'ble Supreme Court held as under:

"8. It is clear that, as between the members of the same class, the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment. Preceding further the Court held thus:

" There is, in our opinion no escape from the conclusion that equality of opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes." The same principle was later confirmed in the case of Kishori Mohanlal Pakshi vs Union of India AIR 1962 S.C. 1139."

60. In the case of **Unikat Sankunni Menon vs The State of Rajasthan** (Supra) wherein the Hon'ble Supreme Court observed as under:

" 6. It is entirely wrong to think that every one, appointed to the same post, is entitled to claim that he must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the Officer is drawn for appointment to that post. No such equality is required either by Art. 14 or Art.16 of the Constitution."

61. In the case of **State of Punjab vs Joginder Singh** (Supra), the Hon'ble Supreme Court has held which is reproduced herein below:

"21. the question of denial of equal opportunity could arise only as between members of the same class and that it was open to the Government to constitute two distinct services of employees doing the same work but subject to different conditions of service. The court also concluded that the assumption that equal work must receive equal pay was not correct and that it was also not correct to say that if there was equality in pay and work there must be equality in conditions of service."

62. In the case of **General Manager Southern Rly. Vs Rangachari** (Supra) the Hon'ble Supreme Court held which is reproduced herein below :

" 14. It would be clear that matters relating to employment. The narrow construction would confine the application Art. 16(1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and

periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age superannuation. These are all matters relating to employment and they are, and must be, deemed to be included in the expression 'matters relating to employment' Article-16(1).

What Art. 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment as stated above."

16. The three provisions (Art. 16 (1), Art.14 and Art.15(1) form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all 'matters in relation to employment both prior, and subsequent, to the employment which is incidental to the employment and form part of the terms and conditions of such employment."

17. Art.16 (2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Art. 16 (2) must, therefore, include all matters relating to employment as specified in Art. 16(1)."

63. In Madras Bar Association vs Union of India (UOI) and Ors. (Supra), the Hon'ble Supreme Court has held which is reproduced herein below:

" 69. The Court cannot direct the legislature to enact a particular law when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact the law which it has been empowered to do under the delegated legislative authority. It is equally true that judiciary in exercise of power of judicial review cannot direct legislature to frame any law in a particular

manner.”

64. On the careful perusal of the above referred cases we cannot have any discordant or disagreement to the observations and the propositions of law enunciated by the Hon’ble Supreme Court as the same are well settled.

65. Reverting back to the present case, the challenge in the present case is the constitutional validity of the Schedule-I(A), Schedule-I(B) and Schedule –II (A) Serial No. 1 on the ground that the impugned Schedules of the Service Rules, 1998 gives undue advantage to the Officers of the Employment Wing by prescribing the avenues for promotion after the entry point up to the post of Director. Whereas, for the Officers of Craftsmen Training Wing, it only provides from the entry point up to Joint Director (though no post of Joint Director has been created as on date) and there is no mention of post of Joint Director at Schedule I(B), which deprives the petitioners of their promotional avenues. In alternative, the petitioners have also prayed for a direction to amend the Service Rules, 1998 by incorporating the provisions for the post of Joint Director, Additional Director and also to prescribe the avenues of promotion to the post of Director from the officials/officers of Craftsmen Training Wing.

66. On careful consideration, we find that the Service Rules, 1998 provides reasonable classification in as much as both the wings, i.e., the Employment Wing and the Craftsmen Training Wing are having distinct and different

duties and responsibilities as well as staffing pattern which, in our considered view is permissible under the law. It is settled position of law that Court cannot direct the executive authorities of the State to enact a law or frame a rule or to amend the Rules. It is also well settled position of law that a reasonable classification with intelligible differentia having nexus to the object sought to be achieved is permissible under the law. Therefore, we are not persuaded that the Schedule attached to the Service Rules, 1998 particularly Schedule I (A), Schedule II(B) and Schedule II (A) Serial No. 1 are unconstitutional. As noted above, no Court can direct the State or its authorities to enact a particular law or frame/amend the rules, as such, the prayer of the learned counsel for the petitioners is considered for rejection only.

67. We take note that the petitioners belong to the Craftsmen Training Wing and the respondents No. 5 to 16 belong to the Employment Wing. While employment Wing is in charge of administration vested with administrative function, Craftsmen Training Wing is in charge of training and craftsmanship involving completely separate duties and responsibilities. It is not a case of composite cadre with equation of post but a case of two separate wings with different duties and responsibilities. Mere equation of nomenclature of any post is not the deciding factor for equation of post. In the instant case, there are two distinct and separate wings in the Directorate, which no parity or equality can be pleaded.

68. It is settled position that when the employees are drawn from different sources and is being absorbed and integrated in a department, it is within the domain of State or the Executive authority to decide as to how the equation of post should be effected. It is also settled law that the Courts cannot interfere with such a decision unless it is shown to be glaringly unreasonable, unfair or manifestly arbitrary.

69. We would refer to the case of **State of Kerala and Anr Vs. N. M. Thomas and Ors** reported in **(1976) 2 SCC 310**, the Hon'ble Supreme Court has observed, which is reproduced herein below:

"27. There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection.

28. This equality of opportunity need not be confused with absolute equality. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens. Articles 16(1) and (2) give effect to equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Promotion to selection post is covered by Article 16(1) and (2).

34. The equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. (Ganga Ram v. Union of

India. "

70. In the case of **Dwarka Prasad and Ors Vs. Union of India & Ors** reported in **(2003) 6 SCC 535**, the Hon'ble Supreme Court has held which is reproduced herein below:

" 16. *Fixation of quotas or different avenues and ladders for promotion in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer, mainly pertaining to the policy-making field. The relevant considerations in fixing a particular quota for a particular post are various such as the cadre strength in the feeder quota, suitability more or less of the holders in the feeder post, their nature of duties, experience and the channels of promotion available to the holders of posts in the feeder cadres. Most important of them all is the requirement of the promoting authority for manning the post on promotion with suitable candidates. Thus, fixation of quota for various categories of posts in the feeder cadres requires consideration of various relevant factors, a few amongst them have been mentioned for illustration. Mere cadre strength of a particular post in the feeder cadre cannot be a sole criterion or basis to claim parity in the chances of promotion by various holders of posts in feeder categories.*

17. *Normally, where officers are to be drawn for promotion from different posts in the feeder cadre, quota for each post in the feeder cadre is maintained proportionately to the sanctioned strength in that post. This, however, cannot be an inviolable rule of strict application in every case, with an absolute equality of arithmetical exactitude but may vary from case to departmental set-up as well as exigencies and balancing needs of administration. There are other relevant considerations, some of which have been mentioned above, which may require departure from the practice of fixation of quota for each post in the feeder cadre, solely proportionate to its strength."*

71. In the case of **P.U. Joshi and Ors Vs. Accountant General, Ahmedabad and Ors** reported in **(2003) 2 SCC 632**,

the Hon'ble Supreme Court has observed which is reproduced herein below:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

72. We are not oblivious of settled position of law that law/rules may be struck down on two counts i.e., lack of

legislative competence and violation of fundamental rights or constitutional rights for which we would refer to the case of **State of A.P. and Ors Vs. Mcdowell & Co and Ors** reported in **(1996) 3 SCC 709**. The Hon'ble Supreme Court in the case of **Shayara Bano Vs. Union of India and Ors** reported in **(2017) 9 SCC 1** has enlarged the scope (manifest arbitrariness) and observed which is reproduced herein below:

"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

73. We would also refer to the case of **Nagaland Senior Government Employees Welfare Association and Ors Vs. State of Nagaland and Ors** reported in **(2010) 7 SCC 643**, wherein the Hon'ble Supreme Court has held that enactment or rules and its amendment unless shown to be arbitrary, unreasonable or irrational cannot be struck down and there is always a presumption in favour of constitutionality of the enactment/Rule and the burden of proof is upon the person who attacks it. In the present case, the petitioners have not been able to demonstrate that the impugned Schedules

attached to the Service Rules, 1998 are violative of the fundamental rights or constitutional rights and/or there is legislative incompetence or manifest arbitrariness.

74. We would not have any other view than the settled proposition that there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. There is no denial of equality if members are of separate independent class and Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection or promotion. The equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group.

75. It is trite that the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same and it should provide promotional avenues and the employee has no right to challenge the authority of the State to frame, amend, alter

and bring it to force any rule relating to and amend even existing service rule.

76. In the present case, since the nature, duties and responsibilities of the petitioners are distinct and different with that of the Employment Wing, the reasonable classification is permissible. Accordingly, in our considered view, no fault can be found in the impugned schedule attached to the Service Rule, 1998 much less the unconstitutionality. Therefore, the challenge to the vires of impugned schedules and the Service Rules, 1998 stands rejected. Considering the settled position of law that Court cannot mandate the State/executive authority for enactment of particular law or frame particular rule, prayer of the petitioners for amendment of Service Rules, 1998 also stands rejected. Since the matter has been determined on merits we deem it unnecessary to consider the issue of maintainability raised by the learned counsel for private respondents.

77. In view of the above discussions and the conclusion arrived at herein above, we do not find any legal or constitutional infirmity in the impugned schedules attached to the Service Rules, 1998. Therefore, we find no merit in the present writ petition and as such no interference is called for.

78. In the result, the writ petition fails and is hereby dismissed.

We leave the parties to bear their own cost.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant