

GAHC020006082019



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

Case No. : WP(C)/238/2019

DR. KHUITO MURUMI
S/O P. PHUHETO SEMA,
R/O AOKONG COLONY,
DIPHU ROAD,
DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SSECRETARY,
GOVT. OF NAGALAND, KOHIMA,NAGALAND

2:THE COMMISIONER AND SECRETARY/SECRETARY DEPT. OF
WORKS AND HOUSING
KOHIMA NAGALAND

3:THE COMMISSIONER AND SECRETARY/SECRETARY DEPT. OF
PERSONNEL AND ADMINISTRATIVE REFORMS GOVT. OF
NAGALAND
KOHIMA NAGALAND

4:THE ENGINEER-IN-CHIEF
NAGALAND PUBLIC WORKS DEPT.
GOVT. OF NAGALAND KOHIMA NAGALAN

Advocate for the Petitioner : A. ZHIMOMI

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ODER

Date : 03-10-2023

Heard Mr. A. Zhimomi, learned counsel for the petitioner and Mr. K. Angami, learned Sr. Government Advocate for the State respondents.

2. The present petition has been filed for grant of advance increment in the time scale of pay as per the statutory rules governing recruitment and conditions of service of persons in the department of Works & Housing.

3. That the fact of the case in a nutshell is that, by the notification dated 18/06/2007, the petitioner was appointed as a Sub-Divisional Officer (C) in the department of Works & Housing. The appointment was made consequent to the recommendation made by the Nagaland Public Service Commission (NPSC). At the time of entry into service, the petitioner had a degree in Civil Engineering (BE. Civil). In the year 2011, the petitioner applied for higher study leave, and on permission being accorded the petitioner secured admission in the Indian Institute of Technology Delhi. On successful completion of the course, the petitioner was awarded the degree of Doctorate of Philosophy (Ph.D) on 04/11/2017. The subject chosen by the petitioner for the doctoral studies was "Enhancing Fly Ash Utilization In Concrete".

4. The Nagaland Engineering Service (Group-A and Group-B) Rules, 2012 (hereinafter referred to as the Rules of 2012) governs the service in the department of Works & Housing. The Rules of 2012 was preceded by the Nagaland Engineering Service (Class-I and Class-II) Rules, 2006. Rule-13 of the Rules, 2006 and Rule-12 of the Rules, 2012 are relevant for the present case and is reproduced hereunder;

"Rule-13 of the Rules, 2006. A candidate for direct recruitment or departmental promotion should possess the academic and technical qualifications prescribed against each post in Schedule VI. For direct recruitment, the Commission shall verify recognition by University Grants Commission (UGC) and AICTE (All India Council for Technical Education) for degree and

diploma respectively, for the purpose. A candidate with Post Graduate Degree on being selected through competitive examination and appointed to any grade shall be entitled to three advance increments in the time scale of his pay.”

Rule-12 of the Rules, 2012. A candidate for direct recruitment or departmental promotion shall possess the academic, technical and other qualifications prescribed against each post in the schedules from any of the University/Institutions recognized by the Central/State Government. A candidate with Post Graduate Degree on being selected through competitive examination and appointed to any grade shall be entitled to 2(two) advance increments in the time scale of his/her pay from the date of completion of the Post Graduate Degree. Simultaneously, a candidate with Doctorate Degree shall be entitled to 3(three) advance increments in the time scale of his/her pay from the date of completion of the Doctoral Degree.”

5. The rules more particularly Rule-12 of the Rules, 2012 provides that a candidate with Doctorate Degree shall be entitled to 3(three) advance increments in the time scale of his/her pay from the date of completion of the doctoral studies. It is the case of the petitioner that he completed his doctoral studies on 04/11/2017 and therefore, he is entitled to 3(three) advance increments in the time scale of his pay with effect from 04/11/2017 in terms of the Rule-12 of the Rules, 2012.

6. That the Government of Nagaland, Personnel and Administrative Reforms Department (Administrative Reforms Branch) has issued the Office Memorandum No. AR-3/Gen-2004/2009 dated 17/06/2014 on review of granting incentives to the Government employees who acquire higher qualification by availing study leave. The Office Memorandum dated 17/06/2014 is reproduced hereunder;

“OFFICE MEMORANDUM

Sub:-Review of granting incentives to the Government employees who acquire higher qualification by availing study leave

1. Presently, the State Government employees who have put in 2(two) years or more in service are granted study leave as per Central Service Study Leave Rules, 1972 and amended from time to time. And on acquiring higher qualification they are given increments based on their respective Departmental Service Rules,

which vary from 1(one) increment to 6(six) increments. Now, the Government of India has issued a notification stipulating that in lieu of increments, some incentives will be given to the employees. As per FR 27(16) government employees who acquire higher qualification by availing study leave will also not be eligible for grant of any incentive.

2. The State Government has now decided to discontinue grant of incentives to the State Government employees who acquire higher qualification by availing Study Leaves. The lumpsum incentive in replacement of the existing increment will now be given to the employees as per provision in the FR 27(16). All the Departments are, therefore, requested to convert the existing increment-based incentive already incorporated in their Service Rules into one time lumpsum incentive as detailed below with immediate effect.

This amount will be reviewed as and when the Government of India modifies it.

- (i) One increment : Rs 2,000/- (minimum)*
- (ii) Two increments : Rs 4,000/-*
- (iii) Three increments : Rs 6,000/-*
- (iv) Four increments : Rs 8,000/-*
- (v) Five & Six increments : Rs 10,000/- (maximum)*

3. The following provisions for guiding the principle of incentives are as follows:

(i) The incentive will not be available for the qualifications which are laid down as essential or desirable qualifications in the Recruitment Rules for the post. No incentive shall be allowed for acquiring higher education purely of an academic or literary subject. Incentive should be considered only, if the higher qualification will make the, official more effective in the present or next higher assignment. Incentives need not be considered for qualifications like MBA or Degree in Humanities.

(ii) The incentive will not be admissible where the government servant is sponsored by the government or he/she avails of study leave for acquiring the qualification. No stepping up of pay shall be allowed in the case of juniors by virtue of drawing more pay under the scheme of advance increments.

(iii) The acquisition of the qualifications should be directly

related to the functions of the post by him/her or to the functions to be performed in the next higher post. No incentive would be admissible if an appointment is made in relaxation of the educational qualification. No incentive would be admissible if employee acquires the requisite qualification for such appointment at a later date.

4. Any clarification arising out of the provisions of this scheme may be referred to the P&AR Department for decision of the Government. Further, the existing procedure for sending the file to the P&AR Department for granting of Study Leave to the government employees would still continue. Any Department to consider extension of the incentive scheme to qualifications other than those listed in the respective Service Rules should be done only with the prior approval of the P&AR Department.

Sd/- C.J. PONRAJ

Addl. Chief Secretary to the Govt. of Nagaland."

7. That on award of the Ph.D, the petitioner submitted representation for grant of advance increment as per the rules, the representation submitted by the petitioner was however rejected. In the meantime, the Cabinet in its Meeting held on 04/07/2018 modified the O.M dated 17/06/2014 and restored the grant of advance increment for medical doctors on acquiring higher qualification. The Minutes of the Cabinet Meeting held on 04/07/2018 was brought out in the Office Memorandum dated 05/07/2018. It may be noted that the Nagaland Health Service Rules, 2006 which governs recruitment and conditions of service in the Department of Health & Family Welfare do not provide for advance increments on acquisition of higher qualifications. Subsequent to the review of granting advance increment to the medical doctors, the petitioner along with Ar. Kevisino Angami, Asst. Architect submitted the representation dated 26/07/2018 for granting of the advance increment. On the same line Er. Theruovituo Pienyu, SDO and Er. Swedi Kiso, SDO also submitted the representation dated 26/07/2018. The representation submitted by the petitioner and Ar. Kevisino Angami was forwarded by the department to the Commissioner & Secretary, Works & Housing department by the letter dated 26/07/2018 with a recommendation to grant the increment as per the relevant service rules. By the

notification dated 22/08/2019 issued by the Deputy Secretary, Works & Housing department, Ar. Kevisino Angami with whom the petitioner submitted representation was allowed 2(two) advance increment w.e.f. 05/06/2013 for holding a Post-Graduate Degree. So also by the notification dated 22/08/2019, Er. Theruovituo Pienyu and Er. Swedi Kiso who had also submitted representation were allowed 2(two) increment w.e.f. 13/12/2012 for holding Post-Graduate Degree. The petitioner's case was however rejected by the department by the letter dated 09/09/2019 stating that the petitioner had acquired the higher qualification only in the year 2017. In the letter dated 09/09/2019, the P&AR and Finance Department's observation has also been referred. The observation which is dated 05/08/2019 and is annexed to the writ petition inter-alia reads as follows;

"1. As in the case of Veterinary Doctors, Engineers/Architects cannot be equated with Medical Doctors for grant of advance increments.

2. However, Engineers/Architects who had acquired higher qualification prior to the discontinuation of the advance increment vide Personnel & Administrative Reforms Department Office Memorandum No. AR-3/Gen-204/09 dated 17/06/2014 should be finalized with reference to the prevailing rules/orders."

8. Being aggrieved by the actions of the State respondents in denying the grant of advance increment, as per the rules, the petitioner has filed the present writ petition seeking for the following relief(s).

A). Quash and set aside:

i) Office Memorandum No. AR-3/Gen-204/2009 dated 17/06/2014 (Annexure-C to the writ petition).

ii) Letter No. WH/EST/73/2010 dated 09/09/2019 (Annexure-J to the writ petition).

B). Direct the respondents to grant increments to the petitioner as per the rules."

9. Mr. A. Zhimomi, the learned counsel for the petitioner submits that the Rules, 2006 and Rules, 2012 specifically provides for granting of advance increment to persons who acquired higher qualification and therefore, the statutory rights provided by the rules cannot be abridged by the Office Memorandum dated 17/06/2014. Mr. A.

Zhimomi also submits that the advance increment granted to the petitioner's colleagues for acquiring higher qualification prior to the issuance of the Office Memorandum dated 17/06/2014 is discriminatory as it fixes an arbitrary cutoff date for grant of the increment. Mr. A. Zhimomi however submits that the said Memorandum is of no consequence vis-à-vis the rules more particularly the Rules, 2012. Mr. A. Zhimomi has also submitted that the Nagaland Health Service Rules, 2006 which governs the service of persons in the department of Health & Family Welfare do not provide for advance increment on acquisition of higher qualification, but by the Minutes of the Cabinet Meeting held on 04/07/2014, the Office Memorandum dated 17/06/2014 was modified and the advance increment for medical doctors on acquiring higher qualification was restored. Mr. A. Zhimomi accordingly submits that there is no rationality in granting advance increment to the medical doctors while denying the same to the Engineers governed by the Rules, 2012. Importantly, Mr. A. Zhimomi submits that the Rules, 2012 holds the field for governing the service of persons in the department of Works & Housing and therefore, the O.M dated 17/06/2014 cannot override the statutory rules to deprive the grant of advance increment to the petitioner. In support of his submission, the learned counsel for the petitioner has relied in the following cases;

i). **K. Kuppusamy & Another -versus- State of T.N. & Others**, reported in **(1998) 8 SCC 469**.

ii) **Virender Singh Hooda & Others -versus- State of Haryana & Another**, reported in **(2004) 12 SCC 588**.

iii) **Public Service Commission Uttaranchal -versus- Jagdish Chandra Singh Bora & Another**, reported in **(2014) 8 SCC 644**.

10. Mr. K. Angami, the learned Sr. Government Advocate has submitted that the reason as to why the petitioner's colleague were considered for grant of advance increment is for the reason that they had acquired the higher qualification prior to 17/06/2014 whereas the petitioner had acquired the higher education only in the year 2017. Besides the submission made above, Mr. K. Angami has only referred to paragraph-5, 6 & 7 of the affidavit-in-opposition filed by the State respondents which

is reproduced as follows;

“5. That with regard to the statements made in paragraphs 10 and 11 of the writ petition, the deponent states that the petitioner’s colleagues were considered for the Increment as they had acquired the higher degree prior to the issuance of the Office Memorandum dated 17.06.2014 (Annexure-C/Pg-14, to the writ petition). Whereas, the petitioner’s case could not be considered as he had acquired the Doctorate Degree only in 2017.

It is also pertinent to mention herein that even as per the Nagaland Engineering Service (Group-A and Group-B) Rules, 2012 (Service Rules, 2012 for short), a candidate with Doctorate Degree shall be entitled to 3 (three) advance increments in the time scale of his/her pay from the date of completion of the Doctoral Degree.

As such, the question of bias or arbitrary action on the part of the respondents does not arise.

6. That with regard to the statement made in paragraph 12 of the petition, It is stated that as per the Service Rules, 2012 the petitioner will be entitled to 3(three) advance increments in the time scale of his pay from the date of completion of the Doctoral Degree. As the petitioner acquired the Doctorate Degree only in 2017, no accrued right has been denied to the petitioner.

7. That with regard to the statement made in paragraph 13 and 14 of the petition, the deponent states that the Office Memorandum dated 17.06.2014 (Annexure C/Pg-14, to the writ petition), only lays down the guidelines for granting of incentives to government employees who acquire higher qualification. Therefore, the question of overriding statutory rules does not arise.”

In support of his submission, the learned Sr. Government Advocate has relied in the case of the **State of Uttar Pradesh -versus- Chandra Mohan Nagam & Others**, reported in **(1977) 4 SCC 345** more particularly to paragraph-26 of the said judgment.

11. Heard the learned counsel for the parties and perused the material on record. The issue which is to be decided in the present case is whether in view of the O.M dated 17/06/2014 issued by the Government, the petitioner can be denied the 3(three) advance increment in time scale of his pay as provided under Rule-12 of the

Rules, 2012.

12. The admitted position is that the service in the department of Works & Housing is governed by the statutory rules called the Nagaland Engineering Service (Group-A and Group-B) Rules, 2012. Rule-12 of the said rules inter-alia provides that a candidate with doctorate degree shall be entitled to 3(three) advance increment in the time scale of his/her pay from the date of the completion of the doctoral degree. The petitioner has successfully completed his doctoral degree on 04/11/2017 from the Indian Institute of Technology Delhi. The petitioner therefore in terms of the Rule-12 of the Rules, 2012, is entitled to receive the 3(three) advance increment in the time scale of his pay from the date of completion of the doctoral degree. This statutory entitlement of the petitioner has however been denied by the State respondents, in view of the O.M dated 17/06/2014 issued by the Government. The O.M dated 17/06/2014 is with regard to review of granting incentive to the government employees who acquired higher qualification by availing study leave and inter-alia provides for discontinuance of the advance increment to the State Government employees who acquired higher qualification by availing study leave. The Office Memorandum further provides that in lieu of the advance increment, lumpsum incentive will now be given to the employees as per the provisions made in FR-27(16). All the departments have accordingly been asked to convert the existing increment based incentive incorporated in the service rule into one time lumpsum incentive. The said O.M also lays down the guidelines as to who will be eligible to receive the lumpsum incentive. Moreover, the State Government has taken the date of issuance of the O.M dated 17/06/2014 as the date to discontinue the grant of advance increment for acquiring higher qualification.

13. It is however pertinent to note that,although the State respondents, in the affidavit-in-opposition has stated that the petitioner cannot be granted the advance increment as he had acquired the higher qualification only in the year 2017, it is the clear stand of the Government that as per the Rules, 2012 a candidate with doctorate degree shall be entitled to 3(three) advance increment in the time scale of his/her pay on completion of the doctoral course and accordingly, the petitioner is also entitled to the 3(three) advance increment from the date of completion of the doctoral degree. It

is further the stand of the Government that the O.M dated 17/06/2014 only lays down the guidelines for granting incentive to Government employees who acquired higher qualification. This Court has also perused the letter dated 26/07/2018 written by the department to the Government recommending the case of the petitioner for grant of increments as per the relevant service rule. A reading of the affidavit-in-opposition filed by the State respondents demonstrates a clear admission that the Rules, 2012 governs the service in the department of Works & Housing.

14. The question which therefore arises for consideration of this Court is whether the O.M dated 17/06/2014 issued by the Government of Nagaland, can have primacy over the statutory rules, to deny the benefits of the advance increment to the petitioner as mandated by the rules. It is a well settled law that the norms regarding recruitment and conditions of service can be laid down either by a law made by the appropriate legislature or by the rules made under the proviso to Article 309 of the Constitution of India or by means of an executive instruction issued under Article 73 of the Constitution of India in case of civil services under the Union of India and under Article 162 of the Constitution of India in case of civil services under the State Government. If however there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under the proviso to Article 309 of the Constitution of India shall prevail. It is equally well settled that the rules framed under the proviso to Article 309, unless repealed or replaced by another rule or is amended, continuous to be in force and the Government cannot act contrary to such rules merely because it had taken a decision to amend the rules. Importantly, the statutory rules cannot be overridden by executive orders, notifications etc.,nor such executive orders can supplant the rules but can only supplement the rulesbut not inconsistent with the rules already framed.

15. In the present case, the Nagaland Engineering Service (Group-A and Group-B) Rules, 2012, which governs the service of the petitioner has not been repealed or replaced by another rule nor has it been amended and this position is also admitted by the State respondents. Therefore, the O.M dated 17/06/2014 issued by the Government, deciding to discontinue the grant of advance increments to the State employees for acquiring higher qualification cannot override the provisions of the

Rules, 2012 and accordingly the said Office Memorandum cannot be enforced against the petitioner to eliminate the petitioner's entitlement of availing the advance increments under the rules.

16. In *K. Kuppusamy (supra)*, the Hon'ble Supreme Court has held that statutory rules cannot be overridden by executive orders or executive practice and merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Paragraph-3 of the said judgment reads as follows;

“3. The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to [Article 309](#) of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule.”

In the case of **Punjab State Warehousing Corporation Chandigarh -versus- Manmohan Singh & Another**, reported in **(2007) 9 SCC 337**, the Hon'ble Supreme Court has held that;

“12. Furthermore, when the terms and conditions of the services of an employee are governed by the rules made under a statute or the proviso appended to [Article 309](#) of the Constitution of India, laying down the mode and manner in which the recruitment would be given effect to, even no order under [Article 162](#) of the Constitution of India can be made by way of alterations or amendments of the said rules. A fortiori if the recruitment rules could not be amended even by issuing a notification under [Article 162](#) of the Constitution of India, the same cannot be done by way of a circular letter.

13. This aspect of the matter is covered by a decision of

this Court in *A. Umarani v. Registrar, Coop. Societies*² wherein the law was stated in the following terms: (SCC p.126, para-45)

"45. No regularisation is, thus, permissible in exercise of the statutory (sic executive) power conferred under *Article 162* of the Constitution if the appointments have been made in contravention of the statutory rules."

In the case of **State of Orissa & Others -versus- Prasana Kumar Sahoo**, reported in **(2007) 15 SCC 129**, the Hon'ble Supreme Court has held as under;

"12. Even a policy decision taken by the State in exercise of its jurisdiction under *Article 162* of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative Act or the proviso appended to *Article 309* of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions."

So also in the case of **Union of India & Another -versus- Ashok Kumar Aggarwal**, reported in **(2013) 16 SCC 147**, the Hon'ble Supreme Court has held as follows;

"58. A Constitution Bench of this Court while dealing with a similar issue in respect of executive instructions in *Sant Ram Sharma v. State of Rajasthan*⁵⁶, held: (AIR p.1914, para 7)

"7.....It is true that the Government cannot amend or supersede statutory Rules by administrative instruction, but if the Rules are silent on any particular point, the Government can fill-up the gap and supplement the rule and issue instructions not inconsistent with the rules already framed."

59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/ executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide: *Union of India & Ors. v. Majji Jangammayya*⁵⁷, *P.D. Aggarwal v. State of U.P.*⁵⁸, *Paluru Ramkrishnaiah. v. Union of India*⁵⁹, *C. Rangaswamaiah v. Karnataka Lokayukta*⁶⁰ and Joint

*Action Committee of Airlines Pilots' Assn. of India v. DG of Civil Aviation*⁶¹⁾

60. Similarly, a Constitution Bench of this Court, in *Naga People's Movement of Human Rights v. Union of India*⁶², held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions.”

17. In *Chandra Nigam Mohan* (supra), the paragraph-26 of the said decision which has been relied by the learned counsel for the State respondents reads as follows;

*“26. The learned single Judge held the instructions of the Ministry of Home Affairs as statutory and as such binding, on a concession made in the counter-affidavit submitted before him by the Under Secretary of the Personnel Department (Cabinet Secretariat). According to counter-affidavit these instructions were made by the Government by Rule 2 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960. It is not necessary to go into this aspect in detail in this case as to whether the instructions can be elevated to the status of statutory rules or even constitutional directions as found by the learned single Judge. It is sufficient for our purpose that these instructions do not violate any provision of the Act or of the rules. Rule 16(3), being a rigorous rule vis-a-vis a Government servant not himself willing to retire under Rule 16(2), has to be invoked in a fair and reasonable manner. Since Rule 16(3) itself does not contain any guidelines, directions or criteria, the instructions issued by the Government furnish an essential and salutary procedure for the purpose of securing uniformity in application of the rule. These instructions really fill up the yawning gaps in the provisions, and are embedded in the conditions of service. These are binding on the Government and cannot be violated to the prejudice of the Government servant (see also *Sant Ram Sharma v. State of Rajasthan*² and *Union of India v. K. P. Joseph*³).”*

The case relied by the learned Government Advocate, in the considered opinion of this Court, has no relevance to the present case, as the O.M dated 17/06/2014, issued by the Government, in the instant case, is not in the nature of guidelines, directions etc., to fill up the gaps in the rules, but is in complete derogation of the Rules, 2012.

18. Secondly, the State respondents in their affidavit-in-opposition has stated that the petitioner's colleague were considered for increment as they had acquired the higher degree prior to the issuance of the O.M dated 17/06/2014, however the petitioner's case could not be considered as he had acquired the doctorate degree only in the year 2017. It is to be noted that the petitioner had acquired his doctoral degree on 04/11/2017. This Court has also perused the impugned letter dated 09/09/2019 (Annexure-K to the writ petition) in which the Government has informed the Engineer-in-Chief, NPWD, Nagaland, Kohima, that the increment cannot be granted to the petitioner, as the petitioner, had completed his higher qualification only in the year 2017. The said letter reflects the observation made by the P&AR and Finance Department. The said observation is found in the note dated 05/08/2019 (Annexure-J to the writ petition) of the P&AR department and inter-alia states that Engineers/Architects who had acquired higher qualification prior to the discontinuation of the advance increment vide Personnel & Administrative Reforms Department, Office Memorandum No.AR-3/Gen-204/09 dated 17/06/2014 should be finalized with reference to the prevailing rules/orders, thus clearly conveying that the advance increment mandated by the rules shall be granted only to those who had acquired higher qualification prior to 17/06/2014.

19. Though, the State respondents have taken a stand that the advance increment cannot be granted to those who had acquired higher qualification post 17/06/2014, the State respondents nowhere in their affidavit has explained the *raison d'être* as to why the date 17/06/2014 has been specified as the cutoff date for granting the advance increment. The learned Government Advocate has also not been able to explain or satisfy this Court, the rational, behind adopting 17/06/2014 as the cutoff date for granting the advance increment. This Court is therefore of the view that the cutoff date introduced by the Government for granting the advance increment to the same class of employees is discriminatory, more particularly when the Rules, 2012 is in force. By adopting the cutoff date, the State respondent has arbitrarily divided the petitioner and his colleagues who constitutes as single homogeneous class into two groups and subjected them to differential treatment without any reasonable basis. It is a settled law that discrimination presupposes classification of similarly situated person

into different groups without any rational basis for extending dissimilar benefits or treatment. Moreover equality before the law postulates that equals must be treated equally. In the present case, the State respondents has without any rational principle, divided the petitioner and his colleagues, who formed a class into two different groups for granting advance increment on the basis of an artificial cutoff date which is not only irrational but discriminatory. This Court is therefore of the considered view that the impugned O.M dated 17/06/2014 and the impugned letter dated 09/09/2019 denying advance increment to the petitioner is not relatable to any rational principle and violative of Article 14 of the Constitution of India, the same therefore, cannot stand the scrutiny of law and is liable to be quashed and set aside. This Court has also taken note of the fact that, by modifying the O.M dated 17/06/2014, the medical doctors, whose services are governed by the Nagaland Health Service Rules 2006, has been granted the advance increment on acquiring higher qualification, although the Rules, 2006 does not provide for advance increment to the medical doctors. No reason has been cited as to why the O.M dated 17/06/2014 has been modified to restore the benefit of advance increment to the medical doctors. It can therefore be inferred that the O.M dated 17/06/2014 is not uniformly applied to the departments, under the State Government, but on a pick and choose method.

20. In the case of **All India Station Masters' and Assistant Station Masters' Association, Delhi & Others** -versus- **General Manager, Central Railways and Others**, reported in **AIR 1960 SC 384 (V 47 C 64)**, 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. It will, for

example, plainly make no sense to say that because for employment as professors of colleges, a higher University degree is required than for employment as teachers of schools, equality of opportunity is being denied. Similarly, it is meaningless to say that unless persons who have obtained employment as school teachers, have the same chances of promotion as persons who have obtained employment as teachers in colleges, equality of opportunity is denied. 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.”

In the landmark decision in the case of **D.S Nakara & Others -versus- Union of India**, reported in **(1983) 1 SCC 305**, the Hon'ble Supreme Court while dealing with the liberalized pension formula which was made applicable prospectively to those who has retired on or after 31/03/1979 while disentitling the benefits to those who had retired prior to the specified date held that the classification between the pensioners on the basis of the date of retirement specified in the Memorandum is not only arbitrary but violative of Article 14 of the Constitution of India. The Hon'ble Supreme Court in the said case has held as follows;

“10. The scope, content and meaning of [Article 14](#) of the Constitution has been the subject-matter of intensive examination by this Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise save and except referring to the latest decision on the subject in [Maneka Gandhi v. Union of India](#)¹ from which the following observation may be extracted: (SCC pp.283-84, para 7)

".....[w]hat is the content and reach of the great equalising principle enunciated in this Article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made 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 imprisoned within traditional and doctrinaire limits..... [Article 14](#) strikes at arbitrariness in State action and ensures fairness and

equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence....."

11. The decisions clearly lay down that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (See *Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar*²). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. After an exhaustive review of almost all decisions bearing on the question of Art. 14, this Court speaking through Chandrachud, C.J. in *In re Special Courts Bill, 1978*³ restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are: (SCC pp.424-25, para 72)

(3). The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4). The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all

persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.

(6). The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7). The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics 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."

15. Thus the fundamental principle is that [Art. 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."

In the case of **Union of India & Others-versus- N.S. Rathnam & Sons**, reported in **(2015) 10 SCC 681**, the Hon'ble Supreme Court has held that:

"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. In [Sube Singh v. State of Haryana](#)¹¹, this aspect is highlighted by the Court in the following manner: (SCC p.548, para 10)

“10. In the counter and the note of submission filed on behalf of the appellants it is averred, inter alia, that the Land Acquisition Collector on considering the objections filed by the appellants had recommended to the State Government for exclusion of the properties of Appellants 1 and 3 to 6 and the State Government had not accepted such recommendations only on the ground that the constructions made by the appellants were of 'B' or 'C' class and could not be easily amalgamated into the

developed colony which was proposed to be built. There is no averment in the pleadings of the respondents stating the basis of classification of structures as 'A', 'B' and 'C' class, nor is it stated how the amalgamation of all 'A' class structures was feasible and possible while those of 'B' and 'C' class structures was not possible. It is not the case of the State Government and also not argued before us that there is no policy decision of the Government for excluding the lands having structures thereon from acquisition under the Act. Indeed, as noted earlier, in these cases the State Government has accepted the request of some land owners for exclusion of their properties on this very ground. It remains to be seen whether the purported classification of existing structures into 'A', 'B' and 'C' class is a reasonable classification having an intelligible differential and a rational basis germane to the purpose. If the State Government fails to support its action on the touchstone of the above principle, then this decision has to be held as arbitrary and discriminatory. It is relevant to note here that the acquisition of the lands is for the purpose of planned development of the area which includes both residential and commercial purposes. That being the purpose of acquisition it is difficult to accept the case of the State Government that certain types of structures which according to its own classification are of 'A' class can be allowed to remain while other structures situated in close vicinity and being used for same purposes (residential or commercial) should be demolished. At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the land proposed to be acquired. This assumes importance in view of the specific contention raised on behalf of the appellants that they have pucca structures with R.C. roofing, Mozaic flooring etc. No attempt was also made from the side of the State Government to place any architectural plan of different types of structures proposed to be constructed on the land notified for acquisition in support of its contention that the structures which exist on the lands of the appellants could not be amalgamated into the plan."

21. Having held that the Nagaland Engineering Service (Group-A and Group-B) Rules, 2012 has not been repealed or replaced by another rule nor amended and the O.M dated 17/06/2014 issued by the Government of Nagaland cannot have primacy and override the statutory rules and further having held that the cutoff date i.e. 17/06/2014 introduced by the Government for granting the advance increment to

those governed by the Rules, 2012 is arbitrary, this Court arrives at the following findings;

i) The impugned O.M dated 17/06/2014 (Annexure-C to the writ petition) to the extent, it is in derogation of Rule-12 of the Nagaland Engineering Service (Group-A and Group-B) Rules, 2012, is quashed and set aside.

ii) The letter dated 09/09/2019 (Annexure-K to the writ petition), written by the Government to the Engineer-in-Chief, NPWD, Nagaland, Kohima, conveying that advance increment cannot be granted to the petitioner as the petitioner has acquired the higher qualification only in the year 2017, is quashed and set aside.

iii) The petitioner, in terms of the Rule-12 of the Rules, 2012, shall be entitled to 3(three) advance increments in the time scale of his pay from the date of completion of the doctorate degree.

iv) The State respondents shall take steps for granting the advance increment to the petitioner within 90(ninety) days from the date of passing of this order.

22. Writ petition allowed. No cost.

Sd/-
JUDGE

Comparing Assistant