

**THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SMT JUSTICE ANIS**

-
**WRIT PETITION NOS.21172, 23212, 25885, 25889, 25893, 22265,
26027, 26207, 25388, 31423 AND 33953 OF 2014**

-
COMMON ORDER: (per the HON'BLE SRI JUSTICE K.C.BHANU)

There are two sets of writ petitions. Since they involve common question of law, they are being disposed of by this common order.

2. First set of writ petitions relates to G.O. Ms.No.208 Home (Legal II) Department, dated 31-08-2013 issued by the Government reducing minimum service from 6 years to 4 years in respect of Sub-Inspector of Police (Civil) by transfer from Reserve Sub-Inspector of Police for the purpose of getting eligibility for promotion as Inspector of Police (Civil) by an amendment by substituting sub-rule (b) of Rule 6 of Andhra Pradesh Police (Civil) Service Rules, 1998.

3. Second set of writ petitions relates to G.O.Ms.No.212 Home (Legal I) Department, dated 06-09-2013 reducing minimum service from 5 years to 3 years as eligibility criteria for promotion to the post of Head Constable (Civil) to such of those Police Constables (Civil) who were appointed by conversion from Armed Reserve etc.,

4. With regard to the first set of writ petitions, the applicants in the Original Applications (for short 'O.A.') were appointed by way of direct recruitment to the post of Sub-Inspector of Police (Civil) (for short 'S.I.') whereas unofficial respondents were initially recruited as Reserve Sub-Inspector of Police (for short 'R.S.I.'). Common selection of S.Is and R.S.Is is taken up by the Police Recruitment Board by issuance of combined notification duly specifying number of vacancies to be

filled in for each category. A.P. Police (Civil) Subordinate Service Rules, issued under G.O.Ms.No.374, dated 14-12-1999 was amended thereby fixing 5% quota for R.S.Is by appointment by transfer as S.I.. Accordingly, some of the writ petitioners were appointed by conversion as S.Is from the category or cadre of R.S.Is. It is not in dispute that the regular S.Is and the persons who were converted by transfer from R.S.Is to S.Is have to put up minimum service of 6 years for eligibility to be promoted as Inspector of Police. In pursuance of the amendment to the Andhra Pradesh Police (Civil) Service Rules, 1998 (for short 'the Rules') in G.O.Ms.No.208, Home (Legal II) Department, dated 31-08-2013, the period of 6 years has been reduced to 4 years in respect of S.Is who are appointed by conversion from R.S.Is and that period has to be counted from the date of conversion. That was under challenge before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') by the direct recruit S.Is.

5. In the other set of writ petitions, the writ petitioners therein were initially appointed as Armed Police Constables and subsequently they were converted as Police Constables (Civil). The Government amended Rule 7 of the Rules whereby the converted Reserve Constables have to put up not less than 3 years of service for promotion as Head Constables. Earlier for promotion from the category of Police Constables (Civil) to the Head Constable, the direct recruit police constables or reserved constables, who have been converted to regular Police Constables, have to put up minimum of 5 years of service which is eligibility criteria. That 5 years of service was reduced to 3 years in respect of Reserve Constables who have been appointed by conversion to the post of Police Constables (Civil). This amendment was brought in G.O.Ms.No.212, Home (Legal I) Department, dated 06-09-2013. The source of recruitment to the Police Constables and Armed Constables is different. But the Rules permit for conversion of Armed Constables to Police Constables. The said amendment was under challenge before the Tribunal by the directly recruited Police Constables as the amendment violates Article 14 and 16 of the Constitution of India.

6. The Tribunal after considering the material available on record, held thus:

“We are of the considered view that the Civil Police and the Armed Reserve Police come under different organizations and the personnel in those organizations are governed by different set of Rules. When once Armed Reserved Police is converted as Civil Police, the Rules applicable to the Civil Police are applicable to the persons converted from Armed Reserve. After conversion, they become one class along with the persons working in Civil Police. It is an established proposition that there cannot be any further classification among one class and there cannot be any distinction or discrimination between persons directly recruited as Civil Police and the persons appointed by transfer from Armed Reserve Police , G.O.Ms.No.208 gave scope for further classification among the same class by prescribing four years experience to the candidates appointed by transfer from Armed Reserve and six years experience to the candidates, who are appointed as Civil Police, which is in violation of Articles 14 and 16 of the Constitution of India. The right to be considered is violated in G.O.Ms.No.208 as this leads to discrimination. Therefore, there is violation of fundamental rights. G.O.Ms.No.208 creates a situation of discrimination between the direct recruit S.I. (Civil) and converttee S.I. (Civil). The contention of wrong interim order passed by the Tribunal dated 07-10-2013 we have to say that by doing so, the Court did not allow the main prayer of the applicants as contended and it was passed after hearing both parties. Regarding permissibility of differential treatment in terms of citation (1991) 2 SCC 48, we have to observe that intelligible differentia between S.I. (Civil) and Converttee S.I. (Civil) is not based on any rational in G.O.Ms.No.208 and therefore, G.O.Ms.No.208, dated 31-08-2013 is bad in law and accordingly allowed the O.As setting aside the G.O.Ms.No.208, Home (Legal II) Department, dated 31-08-2013.”

In respect of Police Constables (Civil), the Tribunal held thus:

“After going through all the citations and the position analysed above, We are of the considered view that the Civil Police and the Armed Reserve Police come under different organizations and the personnel in those organizations are governed by different set of Rules. When once Armed Reserved Police is converted as Civil Police, the Rules applicable to the Civil Police are applicable to the persons converted from Armed Reserve. After conversion, they become one class along with the

persons working in Civil Police. It is an established proposition that there cannot be any further classification among one class and there cannot be any distinction or discrimination between persons directly recruited as Civil Police and the persons appointed by transfer from Armed Reserve Police, G.O.Ms.No.212 gave scope for further classification among the same class by prescribing three years experience to the candidates appointed by transfer from Armed Reserve and five years experience to the candidates, who are appointed as Civil Police, which is in violation of Articles 14 and 16 of the Constitution of India. The right to be considered for promotion is violated in G.O.Ms.No.212 as this leads to discrimination. Therefore, there is violation of fundamental rights. G.O.Ms.No.212 creates a situation of discrimination between the direct recruit P.C. (Civil) and Armed Reserve P.C. (Civil) converted as P.C. (Civil). The contention of wrong interim order passed by the Tribunal we have to say that by doing so, the Court did not allow the main prayer of the applicants as contended and it was passed after hearing both parties. Regarding permissibility of differential treatment, we have to observe that intelligible differentia between P.C. (Civil) and Armed Reserve P.C. converted as P.C. (Civil) is not based on any rational in G.O.Ms.No.212 and therefore, G.O.Ms.No.212, dated 06-09-2013 is bad in law and accordingly struck down G.O.Ms.No.212, dated 06-09-2013 as unconstitutional.

Challenging the same, the present writ petitions are filed.

7. The facts which are necessary for disposal of the present writ petitions may be stated as follows:

A common notification was issued for recruitment to the posts of S.Is and R.S.Is. Number of vacancies for each category i.e., regular S.Is and R.S.Is were notified depending upon the vacancies in both categories. Selection process is common for both the categories of posts. Depending upon the number of vacancies notified for both the categories, merit will be taken into consideration in filling up of the posts of S.Is in the first instance basing upon the order of merit. After identifying the candidates for filling up of the posts of S.Is, the next

meritorious candidates in the merit list will be taken into consideration for selection as R.S.Is. In short, less meritorious persons than the selected candidates of S.I category will be appointed as R.S.I. in the order of merit. The same selection process will be taken up in the similar way in recruiting constables as well as Armed Reserve Constables. Conversion of Armed Reserve S.Is to the regular Civil S.Is is permissible as per rules subject to limitation of 5% of cadre strength. In respect of Reserve Constables, it is 10%. Insofar as S.I. is concerned, after conversion from Armed Reserve to regular S.I., 6 years minimum service is required to be put in for promotion to the post of Inspector of Police. That length of service was reduced to 4 years in respect of R.S.Is converted to regular S.Is, whereas that minimum length of service of 6 years continues to be the same in respect of directly recruited S.Is. In respect of Constables, one has to put up minimum service of 5 years in the category of constable to get promotion to the post of Head Constable. That period of service has been reduced to 3 years in respect of Constables who were converted as Civil Constables from Armed Reserve.

In both the category of cases, the contention of the direct recruit appointees is that their right to be considered for promotion to the higher category would be reduced or condensed by virtue of cutting short the length of eligibility service in respect of converted Reserve Police and therefore, it is violative of Article 16 of the Constitution of India. The contention of the directly recruited S.Is and directly recruited Police Constables is that once Armed Reserve S.I. or the Armed Reserve Constable is appointed by transfer, they became one service as their birth-mark obliterated into one category/service once they were converted into regular police and therefore, there cannot be any further classification among one class and it violates Article 14 of the Constitution of India.

8. In the factual background, the question of law involved is whether the further classification of one class is reasonable classification among the same group and if so, does it amount to discrimination between persons of the same group or class?

9. Mr.G.V.Sivaji, learned counsel for the petitioners in W.P.No.21172 of 2014 contended that R.S.Is after conversion as Civil S.Is are entitled to count their service from the date of their initial appointment as R.S.I and their conversion as S.I. (Civil) shall not be treated as first appointment and that there was nexus between basis of classification and the object of the amendment sought to be achieved as the persons who are appointed as R.S.Is could not get conversion even after putting service for more than 8 years and after conversion, he has to put up minimum service of 11 years in post of regular S.I and in some cases, one has to put up 16 years of service to get promotion as Inspector of Police and therefore, R.S.Is. who are converted as S.I. (Civil) represented to the Government for reducing minimum service required for promotion as Inspector of Police and accordingly, Government issued amendment to the Rules reducing minimum service from 6 years to 4 years and hence, he prays to set aside the impugned order.

10. Learned counsel for the petitioners in W.P.No.23212 of 2014 contended that 5% quota by R.S.I. into Civil S.I. is not under challenge, that counting of past seniority in the R.S.I. when they were converted as regular S.I. is upheld by the Courts, that the Government, after taking note of hardship of R.S.Is into account, carved out a particular class of persons out of homogeneous group and reduced the period of service, that the classification is only based upon the source of recruitment, that it would

not be irrational in reducing the length of service for the R.S.Is, that the seniority of R.S.Is is settled and the eligibility criteria i.e., length of service which has reduced by the Government by amending the rules is based upon seniority and experience and hence, it is a rational and reasonable classification between the two groups of those direct recruit S.Is and converted R.S.Is, that the writ petitioners are direct recruits of 1996-98 batch R.S.Is whereas applicants are of 2004-07 batch of direct recruits Civil S.Is and the applicants failed to discharge their initial burden as to how their fundamental rights are violated and hence, he prays to set aside the impugned order.

11. Mr.Y.S.Venkat Rao, learned counsel for the petitioners in W.P.No.25885 and 33953 of 2014 contended that the applicants and the unofficial respondents cannot be formed as same homogeneous group by themselves because they have come from two different sources, that if any discrimination is shown to one particular group namely either direct recruits S.Is or R.S.Is, it attracts the wrath of Article 14 of the Constitution of India, that it is not such a case and hence, he prays to set aside the impugned order.

12. Mr.E.Manohar, learned senior counsel appearing for Mr.G.Ramgopal, learned counsel appearing for the petitioners in W.P.No.22265 of 2014 contended that the amendment to G.O.Ms.No.208 will not in any manner affect the rights of the applicants under Articles 14 and 16 of the Constitution of India, that the right to promotion to the unofficial respondents herein has not been taken away in pursuance of G.O.Ms.No.208 and therefore, the unofficial respondents cannot complain about the violation of fundamental right and it is for the Government to prescribe eligibility criteria for effecting promotion to the next higher post depending upon hardship caused to the group of persons, that reducing

eligibility criteria from 6 years to 4 years cannot be said to be arbitrary and that has been reduced considering arduous nature of work rendered by R.S.Is in effectively handling Maoists and terrorists and that the observation of Tribunal that after conversion, R.S.Is. became one class and there cannot be any further classification is contrary to the ratio laid down in various decisions of the Supreme Court, that except paras 22 and 23 of the impugned order, no reasons were recorded or assigned for striking down the rules impugned in O.As. and the pleas taken up by the writ petitioners have not been taken into consideration and adverted and hence, he prays to set aside the impugned order of the Tribunal.

13. Mr.P.V.Krishnaiah, learned counsel for the petitioner contended that the amendment which was impugned in the O.A. was not shown to be arbitrary, unreasonable and irrational, that the Armed Reserve Constables and Civil Constables form a separate and distinct class and hence, they cannot be treated as equals and therefore, treating equals and unequals differently would not amount to violation of Article 14 of the Constitution of India as constitution permits reasonable classification and that before conversion they worked for more than 10 years as Armed Constables and as per the Rules, 10% only Armed Reserve can be converted to the regular police and they have completed more than 10 years of service before conversion as regular police and therefore, considering the length of service put up by them reducing the minimum service of 5 years to 3 years for getting next promotion cannot be said to be unreasonable and unjust, that the applicants failed to give justifiable reason to establish as to how amendment under challenge before the Tribunal violates the Constitutional provisions and the Tribunal has no power to grant interim suspension of the Rules except in extraordinary circumstances when the O.A. was pending

and hence, he prays to set aside the impugned order.

14. Mr.N.Janardhan Reddy, learned counsel for the petitioners in Writ Petition Nos.25889 and 25893 of 2014 and Smt.S.V.Indira, learned counsel for the petitioner in Writ Petition No.25388 of 2014 and Mr.K.Gopal, learned counsel for the petitioner in Writ Petition No.3142 of 2014 adopted the arguments submitted by the other counsel for the petitioners.

15. On the other hand, Mr.C.V.Mohan Reddy, learned senior counsel appearing for Mr.Gode Satish, learned counsel appearing for the respondents in Writ Petition No.21172 for 2014 contended that direct recruits S.Is and converted Armed Reserve to regular S.Is were integrated into one class and one cadre, that no discrimination thereafter could be shown to the Armed Reserve S.Is. and converted S.Is and therefore, putting a condition such as a particular period of service selectively on the converted R.S.Is to the disadvantage of the regular S.Is. becomes discriminatory and violates Article 14 of the Constitution of India, that when both the categories formed into one class and further classification among the one class for the purpose of promotion on the basis of the birth source of one class which they were drawing can be said to be unjust and unreasonable and it will cause prejudice and disadvantage to the directly recruited S.Is, that after conversion of S.Is as regular S.Is, they are to be treated similarly with regard to their service conditions and there should not be any discrimination among one class and that the two categories of S.Is inducted as a fusion into one class and so, there could not be any differential treatment to the members of the same group of persons, that the Government by reducing the eligibility criteria from 6 years to 4 years, there is no justification as to how it is intelligible differentia and the nexus between the object sought to be achieved in reducing eligibility criteria for

certain persons for promotion to higher category when the two sources of persons were grouped or formed as one class, that if the entire judgment is read as a whole, it is very clear that the Tribunal has considered the point raised by the applicants with regard to distinction based on the birth-mark of two sources of persons and that following the decisions of the Supreme Court, it was observed that the recruits from different sources are integrated into one class and no further discrimination is permissible and hence, he prays to dismiss the writ petitions.

16. Mr.V.Ravichandran, learned counsel appearing for the respondents in Writ Petition No.26027 of 2014 contended that when the Armed Reserve Constables and Armed Reserve S.Is were converted by appointment by transfer to the post of Constables and S.I. (Civil) respectively, both categories were governed by the Rules and as such both the S.Is and R.S.Is come under class I of category I whereas Constable come under Class I of Category VII and that the training undergone by the directly recruited Armed Reserve S.Is is entirely different from that of the directly recruited S.Is. and the writ petitioners failed to substantiate as to how the nature of duties of Police Constables and Armed Reserve Constables or Armed Reserve S.Is and S.Is are one and the same, that the Civil Police are discharging their duties right from the date of their appointment relating to law and order whereas the nature of duties of Armed Reserve Police, is entirely different and that Armed Reserve Police or Constables have become main class with that of S.Is and thereafter if any undue and unjust preference in the matter of next promotional post is arbitrary per se which violates Article 14 of the Constitution of India and the sediment was brought over to get over judgment of this Court where it is held that concept of seniority and eligibility is one and the same and that appointment to one

cadre to birth mark i.e., source of recruitment loose its relevance and significance as any classification basing on the source of recruitment was held to be bad in law and hence, he prays to dismiss the writ petitions.

17. Learned counsel for some of the respondent in Writ Petition No.26207 of 2014 contended that statutory period prescribed of putting 5 years of eligibility service in the category of Civil Constables to the promotion to the next higher category has to be followed irrespective of their mode of recruitment/appointment and reducing minimum service of 5 years to 3 years in respect of converttee Civil Constable creates two classes among same class by prescribing different eligibility criteria for promotion and it violates Article 14 of the Constitution of India and that by virtue of the impugned order in the O.A., the Government has chosen to create two different class among same group resulting into discrimination and that the eligibility criteria prescribed under the Rules is altogether different from the concept of seniority and the 1st respondent issued amendment without assigning reasons for classification and without specifying the object sought to be achieved and it is without any independent application of mind by the Rule making authority and that the nature of duties of both Armed Reserve and Civil Constables are altogether different and thereby injustice was done to the Civil Constables who were directly recruited and hence, he prays to dismiss the writ petitions.

18. Mr.Challa Dhanunjaya, learned counsel appearing for the respondents in Writ Petition No.21172 of 2014 contended that Rule 11-A of the Rules provides details of training undergone by the regular S.Is and those who are transferred from Armed Reserve Police, that A.P. Police (Civil) Rules, 1966 were superceded by A.P. Police (Civil) Service Rules 1998 and in both the

Rules, the requirement of minimum of 6 years of service by S.I.s (Civil) for the promotion to the post of Inspector of Police was not dispensed with, that the petitioners failed to show about the nature of duties of S.I.s. and Armed Reserve S.I.s as one and the same right from the training to discharge regular duties and that everything is different and distinct and in view of undertaking given by the converttees at the time of conversion, they are not entitled to be promoted to the next post and hence, he prays to dismiss the writ petitions.

19. There cannot be any dispute that Article 14 of the Constitution of India prohibits class legislation and not reasonable classification for the purpose of legislation. So the *doctrine of equal protection* does not take away from the State the power of classifying persons for legitimate purpose. The legislature is competent to exercise its discretion and make reasonable classification. Every reasonable classification is in some degree likely to produce some inequality and mere production of inequality is not enough. Differential treatment does not *per se* constitute violation of Article 14 of the Constitution of India. It denies equal protection only when there is no reasonable basis in the differentiation. The finding of the Tribunal that there cannot be any further classification among one class and it is violative of Articles 14 and 16 of the Constitution of India can be said to be perverse and against the law laid down by the Supreme Court. It is well settled principle of law that in order to pass the test of permissible classification, two conditions must be fulfilled viz., 1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group and 2) that differentia must have a rational relation to the object sought to be achieved by the statute in question.

20. Mr.G.V.Sivaji, learned counsel for the petitioners relied on a decision reported in **BUDHAN CHAUDARY V STATE OF BIHAR** ^[1], wherein it was held thus:

“Again, in Budhan Choudhry v. State of Bihar, [(1955) 1 SCR 1045: AIR 1955 SC 191], after considering earlier decisions, this Court stated;

"It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, 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. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.”

21. Mr. J.Sudheer, learned counsel appearing for the petitioners relied on a Constitution Bench decision of the Supreme Court reported in **CONFEDERATION OF EX-SERVICEMEN ASSOCIATIONS AND OTHERS V UNION OF INDIA AND OTHERS** ^[2], wherein it was held thus:

“In our judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfill the twin-test, namely;

(i) the classification must be founded on an intelligible differential which must distinguish persons or things that are grouped together from others leaving out or left out; and (ii) such a differential must have rational nexus to the object sought to be achieved by the statute or legislation in question.”

From the above decisions, it is clear that Article 14 of the Constitution of India does not prohibit classification if otherwise it is legal, valid and reasonable. What is prohibited is classification based upon discrimination or a class legislation.

22. He further relied on a decision reported in **STATE OF BIHAR AND OTHERS V BIHAR STATE ‘PLUS 2’ LECTURERS**

ASSOCIATION AND OTHERS ^[3], wherein it was held thus:

“. NOW, it is well settled and cannot be disputed that Article 14 of the Constitution guarantees equality before the law and confers equal protection of laws. It prohibits the State from denying persons or class of persons equal treatment; provided they are equals and are similarly situated. It, however, does not forbid classification. In other words, what Article 14 prohibits is discrimination and not classification if otherwise such classification is legal, valid and reasonable.”

23. He further relied on a decision reported in **UTTAR PRADESH POWER CORPORATION LIMITED V AYODHYA PRASADMISHRA AND ANOTHER** ^[4], wherein it was held thus:

“IT is well settled that Article 14 is designed to prevent discrimination. It seeks to prohibit a person or class of persons from being singled out from others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It, however, does not prohibit classification, if such classification is based on legal and relevant considerations.

Every classification, to be legal, valid and permissible, must fulfil the twin- test, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute or legislation in question.”

24. He further relied on a decision reported in **KALLAKKURICHI TALUK RETIRED OFFICIALS ASSOCIATION, TAMIL NADU AND OTHERS V STATE OF TAMIL NADU** ^[5], wherein it was held thus:

“At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see, State of Kerala vs. N.M. Thomas (1976) 2 SCC 310). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating

one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied.”

From the above decisions, it is clear that Article 14 prohibits discrimination. But such discrimination must be shown to have involving an element of intentional and purposeful differentiation thereby creating unfavourable bias. In other words, it implies an unfair classification. Dictionary meaning of fairness is treating people equally without favoritism or discrimination.

25. Mr. E.Manohar, learned senior counsel appearing for the petitioners relied on a decision reported in **ROOP CHAND ADLAKHA AND OTHERS V DELHI DEVELOPMENT AUTHORITY AND OTHERS** ^[6], wherein it was held thus:

“But then the process of classification is in itself productive of inequality and in that sense antithetical of equality. The process would be constitutionally valid if it recognises a pre-existing inequality and acts in aid of amelioration of the effects of such pre-existent inequality. But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow up or magnify insubstantial or microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification. The presumption of good faith in and of constitutionality of a classification cannot be pushed "to the point of predicating some possible or hypothetical but undisclosed and unknown reason for a classification rendering the precious guarantee of equality "a mere rope of sand".

"To overdo classification is to undo equality". The idea of similarity or dissimilarity of situations of persons, to justify classification, cannot rest on merely differentia which may, by themselves be rational or logical but depends on

whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance or nexus to objects sought to be achieved by the law imposing the classification.”

26. He further relied on a decision reported in **STATE OF KERALA AND ANOTHER V N.M.THOMAS AND OTHERS** ^[7], wherein it was held thus:

“Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.”

27. He further relied on a decision reported in **CHARANJIT LAL CHOWDARY V UNION OF INDIA AND OTHERS** ^[8], wherein it was held thus:

“The only serious point, which in my opinion, arises in the case is whether Art. 14 of the Constitution is in any way infringed by the impugned Act. This article corresponds to the equal protection clause of the Fourteenth Amendment of the Constitution of the United States of America, which declares that "no State shall deny to any person within its jurisdiction the equal protection of the laws". Professor Wills dealing with this clause sums up the law as prevailing in the United States in regard to it in these words:

"Meaning and effect of the guaranty-The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to whole it is directed or by the territory within which it is to operate. 'It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed.' 'The inhibition of the amendment was designed to prevent any person or class of persons

from being singled out as a special subject for discriminating and hostile legislation.' It does not take from the states the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfects equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis." Having summed up the law in this way, the same learned author adds :

"Many different classifications of persons have been upheld as constitutional. A law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it."

There can be no doubt that Art. 14 provides one of the most valuable and important guarantees in the Constitution which should not be allowed to be whittled down, and, while accepting the statement of Professor Willis as a correct exposition of the principles underlying this guarantee, I wish to lay particular emphasis on the principle enunciated by him that any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed."

From the above decisions, it is clear that Article 14 does not forbid classification, which rests upon reasonable ground of distinction. Equal protection must mean that there will not be arbitrary discrimination made by the laws themselves in their administration. The word equality means equality among equals and it does not provide an absolute equality of all in all circumstances.

28. On the other hand, Mr.C.V.Mohan Reddy, learned senior counsel appearing for some of the respondents relied on Constitution Bench decision of the Supreme Court reported in **THE STATE OF JAMMU AND KASHMIR V SHRI TRIKOKI NATH KHOSHA AND OTHERS** ^[9], wherein it was held thus:

"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.

18. JUDICIAL scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and 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 rule-making authority on the need to classify or the desirability of achieving a particular object. Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into Degree-holders and Diploma-holders rests on any unreal or unreasonable basis. The classification, according to the appellant, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly correlated to it for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere presence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend.”

29. He further relied on Constitution Bench decision of the Supreme Court reported in **ROSHAN LAL TANDON V UNION OF INDIA AND ANOTHER** [\[10\]](#), wherein it was held thus:

“The main question to be considered in this case is whether the notification by the first respondent dated 27/10/1965 is violative of Arts. 14 and 16 of the Constitution in so far as it makes a discrimination against the petitioner for promotion to Grade 'C'. According to the

impugned notification the existing Apprentice Train Examiners who had already been absorbed in grade 'D' by 31/03/1966 should first be accommodated in grade 'C' in 80% of the vacancies reserved for them without undergoing any selection. With regard to 20% of the vacancies there is a reservation in favour of the departmental Train Examiners, but the promotion is by selection and not by the test of seniority- cum-suitability which prevailed before the date of the impugned notification. It was not disputed by Mr. Mehta on behalf of the petitioner that the Railway Board was competent to say that with effect from 1/04/1966 vacancies in the Entry grade posts of Train Examiners should not be filled from Apprentice Train Examiners upto 50% but should be exclusively filled by promotion from amongst artisan staff. As regards the recruitment to grade 'C', the impugned notification states that with effect from 1/04/1966 all the Apprentice. Train Examiners on successful completion of their training should be straightaway brought on to the scale Rs. 205-280 instead of being first absorbed in scale Rs. 180-6-240 as at present. The period of training was also increased to 5 years on completion of which they should be put on to the working posts in scale Rs. 205-280. So far as this portion of the notification is concerned, Counsel for the petitioner did not raise any constitutional objection. But the contention of the petitioner is that the following portion of the notification was. constitutionally invalid: 'The Apprentice TXRS. who have already been or will be absorbed in scale Rs. 180-240 upto 31- 3-66 should first be accommodated in scale Rs. 205-280 against the quota 80% vacancies reserved for them. Such staff should not be required to undergo a 'Selection' before being absorbed in that grade. The upgraded vacancies in scale Rs. 205-280 left over after earmarking those for the apprentices under training on 2-4-66 should be filled by promotion of TXRs in scale Rs. 180-240 on a selection basis.' In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well-founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to Grade 'D', there was one class in Grade 'D' formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade 'D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade 'C'. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further

promotion to the higher grade 'C'. In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing Apprentice Train Examiners who have already been absorbed in Grade 'D' by March 31, 1966, because the notification provides that this group of Apprentice Train Examiners should first be accommodated en bloc in grade 'C' upto 80 per cent of vacancies reserved for them without undergoing any selection. As regards the 20 per cent of the vacancies made available for the category of Train Examiners to which the petitioner belongs the basis of recruitment was selection on merit and the previous test of seniority-cum-suitability was abandoned. In our opinion, the present case falls within the principle of the recent decision of this court in *Mervyn v. Collector*(1). In that case, the petitioners who were Appraisers in the Customs Department filed a writ petition under Art. 32, challenging the validity of the 'rotational' system as applied in fixing the seniority of Appraisers and Principal Appraisers. The system, as laid down in the relevant departmental circulars was that vacancies occurring in the cadre of Appraisers were to go alternatively to 'promotees' and 'direct recruits'. According to the petitioners of that case this resulted in inequality, especially in view of the fact that the number of direct recruits over the years was very low. Promotion to the grade of Principal Appraisers was from the cadre of Appraisers; only those who had served as Appraisers for five years were entitled to be promoted to the higher grade. Since the direct recruits had to wait for five years before they could become Principal Appraiser the promotees below them who had put in five years as Appraisers became Principal Appraisers. In order to restore the seniority of the direct recruits thus lost, the rotational system was applied to the cadre of Principal Appraisers also i.e., one vacancy was to go to a promotee and the other to a direct recruit. The plea of inequality in violation of Art. 16(1) of the Constitution was raised by the petitioners in respect of this also. It was held by this court, in the first place, that there was no inherent vice in the principle of fixing seniority by rotation in a case when a service is composed in fixed proportion of direct recruits and promotees. It was held in the second place that the same could not be said when the rotational system was

applied to the recruitment of Principal Appraisers. The source of recruitment for these was one only, namely, the grade of Appraisers. There was no question of any quota being reserved from two sources in their case. In so far therefore as the government was doing what it called restoration of seniority of direct recruits in Appraisers grade on their promotion to the higher grade it was clearly denying equality of opportunity under Art. 16 of the Constitution. At page 606 of the Report Wanchoo, J., as he then was, speaking for the court observed as follows: 'This brings us to the question of Principles Appraisers. We are of opinion that the petitioners have a legitimate grievance in this respect. The source of recruitment of Principal Appraisers is one, namely, from the grade of Appraisers. There is therefore no question of any quota being reserved from two sources in their cases. The rotational system cannot therefore apply when there is only one source of recruitment and not two sources of recruitment. In a case therefore where there is only one source of recruitment, the normal rule will apply, namely, that a person promoted to a higher grade gets his seniority in that grade according to the date of promotion subject always to his being found fit and being confirmed in the higher grade after the period of probation is over. In such a case it is continuous appointment in the higher grade which determines seniority for the source of recruitment is one. There is no question in such a case of reflecting in the higher grade the seniority of the grade from which promotion is made to the higher grade. In so far therefore as the respondent is doing what it calls restoration of seniority of direct recruits in Appraisers' grade when they are promoted to the Principal Appraisers' grade, it is clearly denying equality of opportunity LP(N)ISCI-14 to Appraisers which is the only source of recruitment to the Principal Appraisers' grade. There is only one source from which the Principal Appraisers are drawn, namely, Appraisers, the promotion being by selection and five, years' experience as Appraiser is the minimum qualification. Subject to the above all Appraisers selected for the post of Principal Appraisers must be treated equally. That means they will rank in seniority from the date of their continuous acting in the Principal Appraisers' grade subject of course to the right of government to revert any of them who have not been found fit during the period of probation. But if they are found fit after the period of probation they rank in seniority from the date they have acted continuously as Principal Appraisers whether they are promotees or direct recruits. The present method by which the respondent puts a direct recruit from the grade

of Appraiser, though he is promoted later, above a promotee who is promoted to the grade of Principal Appraiser on an earlier date clearly denies equality of opportunity where the grade of Principal Appraiser has only one source of recruitment, namely from the grade of Appraisers. In such a case the seniority in the grade of Principal Appraisers must be determined according to the date of continuous appointment in that grade irrespective of whether the person promoted to that grade from the Appraisers' grade is a direct recruit or a promotee. This will as we have already said be subject to the government's right to revert any one promoted as a Principal Appraiser if he is not found fit for the post during the period of probation. The petition therefore will have to be allowed with respect to the method by which seniority is fixed, in the grade of Principal Appraisers. That method denies equality of opportunity of employment to the Appraisers who are the only source of recruitment to the grade of Principal Appraisers. What the impugned method seeks to do is to introduce a kind of reservation in respect of the two categories of Appraisers from which the promotions are made, and that cannot be done when the source of promotion is one."

30. He further relied on Constitution Bench decision of the Supreme Court reported in **MOHAMMAD SHUJAT ALI AND OTHERS** ^[11], wherein it was held thus:

"BUT the question is: what does this ambiguous and crucial phrase "similarly situated" mean ? Where are we to look for the test of similarity of situation which determines the reasonableness of a classification ? The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. BUT the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so

that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is and this test has been consistently applied by this court in all decided cases since the commencement of the Constitution that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation”

31. He further relied on decision reported in **FOOD CORPORATION OF INDIA AND OTHERS V BHARTIYA KHADYA NIGAM KARMACHARI SANGHAND ANOTHER** [\[12\]](#), wherein it was held thus:

“IT is trite law that Article 14 of the Constitution, which enshrines the principle of equality, is of wide import. IT guarantees equality before the law and equal protection of the laws within the territory of India. IT implies right to equal treatment in similar circumstances, except in cases where the two persons form a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved. (See: State of West Bengal Vs. Anwar Ali Sarkar⁶ and John Vallamattom & Anr. Vs. Union of India⁷).”

32. He further relied on a decision reported in **STATE OF MADHYA PRADESH V RAKESH KOHLI AND ANOTHER** [\[13\]](#), wherein it was held thus:

“THE High Court has not given any reason as to why the provision contained in clause (d) was arbitrary, unreasonable or irrational. The basis of such conclusion is not discernible from the judgment. The High Court has not held that the provision was discriminatory. When the provision enacted by the State Legislature has not been found to be discriminatory, we are afraid that such enactment could not have been struck down on the ground that it was arbitrary or irrational. “

33. He further relied on a decision reported in **THE STATE OF WEST BENGAL V ANWAR ALI SARKAR AND ANOTHER** [\[14\]](#), wherein it was held thus:

“It was suggested that good faith and knowledge of existing conditions on the part of a legislature has to be

presumed. That is so; yet to carry that presumption to the extent of always holding that there must be some undisclosed intention or reason for subjecting certain individuals to a hostile and discriminatory legislation is to make the protection clause of Art. 14, in the words of an American decision a mere rope of sand, in no manner restraining State action. The protection afforded by the article is not a mere eye wash but it is a real one and unless a just cause for discrimination on the basis of a reasonable classification is put forth as a defence, the statute has to be declared unconstitutional. No just cause has been shown in the present instance. The result is that the appeals fail and are dismissed.”

34. He further relied on a decision reported in **B.MANMAD REDDY AND OTHERS V CHANDRA PRAKASH REDDY AND OTHERS** ^[15], wherein it was held thus:

“That leaves us with the question whether any imbalance among those eligible for appointment against class II category 1 posts coming from different sources and categories would itself justify a classification like the one made in Note 6. Our answer is in the negative. There is no gainsaying that classification must rest on a reasonable and intelligible basis and the same must bear a nexus to the object sought to be achieved by the statute. By its very nature classification can and is often fraught with the danger of resulting in artificial inequalities which make it necessary to subject the power to classify to restraints lest the guarantee of equality becomes illusory on account of classifications being fanciful instead of fair, intelligible or reasonable. We may gainfully extract the note of caution sounded by Krishna Iyer J. in his Lordship's separate but concurring judgment in Triloki Nath's case (supra):

".....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 leading 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."

Even from the above decisions, reasonable classification is permissible and what is prohibited is arbitrary selections or discrimination within the class. If the power was exercised according to one's pleasure or will, it can be said to be arbitrary. In other words, it is unfair exercise of right and without reasons.

35. The Tribunal placed reliance on Roshanlal's case (10 supra), Trilokinath's case (9 supra) and Manmad Reddy's case (15 supra). In Roshanlal's case, it is held by the Supreme Court that direct recruits and promotees lose their birth-marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Roshanlal's case was explained in Trilokinath's case and it is held that Roshanlal's case is no authority for the proposition that if direct recruits and promotees are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. So, from the above decisions, it is clear that the classification of direct recruits and the promotees for further promotion as C.Is should not rest on unreal or unreasonable basis. Article 14 of the Constitution of India permits classification among one class, provided the twin test as enunciated in Boodhan Chowdary's case (1 supra) is fulfilled or satisfied. The contention of the learned counsel for the unofficial respondents that there cannot be further classification once the direct recruits and promotees/converted category of persons grouped to a common category cannot be accepted. Differential treatment does not per se constitute violation of Article 14 of Constitution. It denies equal protection when there is no reasonable basis for the differentiation. The expression 'reasonable' means 'rational according to the dictates of reason and not excessive or immoderate'. An act is reasonable when it is conformable or agreeable to reason, having regard to the facts of the particular controversy.

36. There cannot be any dispute that right of promotion to higher post is not a fundamental right, but right to be considered for promotion is a fundamental right. The amendments to rules impugned in O.As were made in pursuance of the proviso to Article 309 of the Constitution of India. Therefore, both the

amendments are legislative in character. There cannot be any dispute that a legislation can be struck down only on two grounds viz., (1) legislative competence and 2) violation of fundamental rights or any other constitutional provision. This has been stated by three Judge bench of the Supreme Court in **STATE OF A.P. V MC.DOWELL AND COMPANY LTD.** ^[16], wherein it was held thus:

“A law made by the Parliament or the Legislature can be struck down by the Courts on two grounds alone (i) Lack of legislative competence (ii) Violation of any of the fundamental rights guaranteed in part III of the Constitution of India or of any other constitutional provisions. There is no third ground.”

For the proposition that the amendment to challenge rules or amendment made under proviso to Article 309 of the Constitution of India, which are in the nature of legislature, it is relevant to refer to a decision reported in **RAJ KUMAR V UNION OF INDIA AND OTHERS** ^[17], wherein it was held thus:

“There is no doubt that this rule is valid rule because it is now well established that rules made under the provisions to Article 309 of the Constitution are legislative in nature and, therefore, can be given effect to retrospectively.”

37. Now it has to be seen whether further classification among direct recruited S.Is/Constables and converted R.S.Is/converted reserve constables when they formed into one class is fair, reasonable and justifiable.?

38. One of the grounds taken is that the proposed amendments are discrimination, arbitrary and illegal among S.Is and R.S.Is and also Constables and Armed Reserve Constables. The word ‘discrimination’ connotes differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured. In other words the effect of rule of law confers privileges on certain class or that denies privileges to a certain class because of the nature of duties. The word ‘arbitrary’ is founded on preference rather than on reason or fact. In other words, it depends upon the individual discretion. The word ‘illegality’ means an act that is not authorized by law or a state or condition of being unlawful. The

case on hand does not fall under the category of illegality or arbitrariness. Whether it amounts to discrimination or not has to be seen.

39. The only ground taken in the O.As. is that the direct recruits were ripe for promotion by virtue of their seniority and eligibility criteria and by reducing minimum service of 6 years to four years/five years to three years by virtue of the amendments, their chances of promotion are hampered and reduced. Promotion in the context of the law relating to service, means advancing or raising an employee to a higher rank or office or post than the one the employee was holding or to a higher scale of pay than the one the employee was enjoying immediately before such promotion. Although an employee has no right to be promoted, he has a right to be considered for promotion. This right to be considered for promotion is one of the 'matters relating to employment or appointment' within the meaning of Article 16 (1) of the Constitution. Consideration for promotion is directly related to the concept of opportunity in Article 16 and the constitutional requirement of equality with regard to such opportunity necessarily means exclusion of arbitrariness in the course of consideration for promotion. It is not a case where the direct recruits would be left with no avenues of promotion. The power of judicial review does not stretch to interfere with a policy providing for avenues of promotion unless there is manifest arbitrariness or resultant discrimination. By virtue of these amendments, right of the applicants to be considered for promotion from the category of S.I. to Inspector of Police or Police Constable to Head Constable, is not taken away. At best by virtue of the said amendments, the right to promotion to the higher category may be reduced to a small extent because the direct recruits have to wait for some time for promotion. Under no stretch of imagination it can be said that by virtue of these amendments, the right of the applicants to be considered for the promotion to the higher post has been taken away. When the right to be considered for promotion to the higher post of the applicants has not been taken away by virtue of the amendments, it cannot be said that it violates Article 16 of the Constitution of India. What the Courts have to do is whether a classification is legal, valid and reasonable and whether the amendments challenged in the O.As fulfill two tests.

40. Learned senior counsel for the petitioners placed reliance on the decision of Trilokinath's case (9 supra). The issue fell for consideration in that case was if the persons drawn from different sources are integrated into one class, can they be classified for the purpose of promotion on the basis of their educational qualifications. Referring to the various decisions, Constitution Bench held that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purpose of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualification. The rule provides that the graduates shall be eligible for such promotion to the exclusion of diploma holders and it does not violate Articles 14 and 16 of the Constitution and must be upheld. From the above decisions, it is clear that when the persons appointed directly by promotion are integrated into a common class, there can be further classification for getting promotion on the basis of educational qualification.

41. The counsel for unofficial respondents placed reliance on Roshanlal's case (10 supra). But in Trilokinath's case (9 supra) it is held that the ratio in Roshanlal's case is not authority for the proposition that if the direct recruits are integrated into one class, they cannot be classified for the purpose of promotion. Therefore, it is held that the discrimination is not in relation to the source of recruitment as in Roshanlal's case. In Siva Guru's case the issue fell for consideration was whether the executive instructions cannot supplant statutory rules and whether the academic qualification prescribed cannot be relaxed. By applying the principles relying upon in Manmadha Reddy's case (15 supra) and Roshanlal's case (10 supra), the classification based on birth-mark stood obliterated. So from the authoritative pronouncements, it is clear that the classification is made on educational qualifications for the purpose of promotion or if the classification is made on the ground that the persons are similarly circumstanced with regard to their entering into employment such classification can be justified. Classification between direct recruits and the promotees for the purpose of promotion has been held to be reasonable.

42. Learned senior counsel for the petitioners relied on the decision of the Manmadha Reddy's case (15 supra), but that

judgment is solely based upon the judgment in Roshanlal's case (10 supra) and Trilokinath's case (9 supra). Therefore, there cannot be any dispute that the ratio laid down in any decision has to be understood in the factual back ground of the case. In Thomas case (7 supra) also, it is pointed out by the Supreme Court that equality of principle need not be confused with absolute equality, Article 16 (1) of the Constitution does not prohibit reasonable rules for selection to any employment or appointment to any office. It is also further held that rule of parity is the equal treatment of class in equal circumstances.

43. Now it has to be seen whether the classification is founded on intelligible differentia which distinguished persons that are grouped together from others left out of the group. By virtue of G.O.Ms.No.98, Home (Legal II) Department, dated 01-05-2006 the Government issued amendment orders fixing 5% quota for appointment by transfer from R.S.I to S.I. (Civil). It is not as if all the R.S.Is are eligible for conversion for appointment by transfer to the cadre of S.I. Only 5% of the vacancies in the category of S.Is are earmarked for conversion from Reserve S.Is. Therefore, the promotion avenues or prospects of remaining 95% of the cadre of S.Is would not be affected in any manner. Before conversion to the cadre of S.Is, the R.S.Is. have to put up minimum service of 5 years as R.S.I. in that cadre and thereafter they are eligible to be converted that too if they come within 5% of quota. This is only eligibility criteria for conversion from R.S.Is to S.Is. It does not mean that after completion of 5 years of service as R.S.I., they would be converted as S.Is. Some times R.S.Is have to wait for more than 10 years because 5% conversion quota has to be available in the cadre of S.Is. As per the rules regular direct recruit S.I. is eligible for promotion after completion of 6 years of service after recruitment, whereas the persons appointed in the same recruitment as R.S.I. would be eligible for promotion as Inspector of Police only after completion of 9 years of service (i.e., 5 years as R.S.I. and then he became eligible within 5% quota for conversion as S.I. and thereafter 4 more years of service in the category of S.Is). In view of the fact that the recruitment is one and the same, it cannot be presumed that the persons who were selected for R.S.I. are less meritorious persons who were selected as S.Is. Selection of R.S.Is is based upon order of merit. Depending upon the number of vacancies notified for S.Is, the required candidates as notified in the order of merit will be given

appointment in the first instance and thereafter in the same merit list, the remaining candidates will be appointed as R.S.Is as per vacancies notified. The difference of merit between the last candidate selected in the S.I. category and the first candidate selected in the R.S.I. category may be negligible with reference to the marks secured by them. It may also be possible that the last candidate of S.Is and first candidate R.S.Is may get equal marks. Depending upon age criteria though both the candidates secured equal marks, the aged person would be selected for regular S.Is. Therefore, there cannot be any vast difference of marks secured by the persons appointed to the post of S.Is. and the persons appointed to the post of R.S.Is. Under no stretch of imagination it can be said that the persons selected for R.S.Is are less meritorious persons. Considering this aspect of the case, there must be a dissatisfaction with regard to promotion among the converted S.Is. Prior to the impugned amendment a coverttee S.I. has to put up 11 years of service to secure eligibility for promotion to the post of Inspector of Police, whereas a direct recruit S.I. is eligible only after 6 years of entering into service. Further all converted S.Is become juniors to the direct recruit S.Is because they have to put up minimum period of 5 years of the service in the category of S.I. Therefore it is a rational classification. There is intelligible differentia between two classes or category of persons. It is not in dispute before this Court that the past service i.e., minimum 5 years of service rendered by R.S.I. was taken into account for the purpose of seniority upon conversion. When R.S.Is were converted into regular S.Is., the seniority of converted R.S.I is of no avail because in the category of R.S.I. they have to put up minimum of 6 years of service earlier. Now it has been reduced to 4 years. Minimum service of 4 years after conversion is mandatory to become eligible for the next promotion. It is also not in dispute that the pay scales of both regular S.Is and R.S.Is and reserved constables and constables are one and the same, when they were initially recruited by a common notification. By reducing the eligibility criteria, R.S.Is or Reserve Constables would not be converted immediately as S.Is or Constables because conversion is limited to 5% and 10% respectively.

44. It is argued that the nature of duties of both the categories i.e., S.Is and R.S.Is, and also Civil Constables and Armed Reserve Constables are entirely different and distinct, and

that after conversion, the converttees have to undergo training required. On the aspect of nature of performance of the duties, the pleadings are not exhaustive. As seen from the pleadings, it is clear that the Armed Reserve have to do more arduous nature of work and sometimes, they would help the Civil Police to maintain law and order and in order to improve physical efficiency of the police in the first instance, the Government introduced 5% quota to fill up the posts of S.Is by conversion from the R.S.Is namely Armed Reserve and A.P. Special Police, In respect of direct recruits, applicants were appointed as S.Is. in the year 2008 whereas unofficial respondents in the O.A. were appointed in the year 1996-98 and 2002 respectively. Thereafter, they were converted into Civil Police in the year 2009. So, having put up more than 10 years of service before they were converted to Civil Police, putting minimum period of 6 years again in that category would be unreasonable. Therefore, the Government rightly reduced it into 4 years, which is the only eligibility criteria.

45. The applicants who were appointed in the year 2008 as S.Is have to put up not less than 6 years of service and they are eligible to be considered for promotion in the panel year 2015-16. Now at this point of time, they cannot contend that their promotion prospects have been hampered with. As on the date of filing of O.A., the right to be considered for promotion of all the applicants would not in any manner affect or hampered because as on that date, they are not eligible to be considered for promotion to the posts of Inspector of Police. Therefore, filing of Original Application itself is pre-mature. The amendment, will not have any effect over the right of the petitioners to be considered for promotion to the higher post. Therefore, there is no violation of Article 16 of the Constitution of India. The object sought to be achieved may be to improve the physical efficiency of the police by converting 5% and 10% in respect of reserve S.I., and reserve constables respectively to the category of regular S.Is and Head Constables. After conversion, the R.S.I or the Reserve Constable would be given training on law and order and forensic subjects and after completion of their successful training, their respective postings would be given. So without adverting to anyone of the aforesaid aspects, the Tribunal simply held that there cannot be any further classification among one class. This finding is totally incorrect. The decisions relied upon by the Tribunal and the

counsel for unofficial respondents herein do not lay down any ratio decidendi in terms of Article 141 of Constitution to the effect that when two groups or classes formed into one group or class, there cannot be any further classification and therefore, it violates Article 16 of the Constitution of India. As the Constitution permits reasonable classification, burden is on the applicants to establish as to how that classification is arbitrary or discriminatory. The grounds raised before the Tribunal by the applicants do not show that amendments to the rule contravene Article 14 of the Constitution of India. The pleadings in O.As are silent with regard to the violation of any constitutional provisions.

46. The complexities of situations and the involvement of a large number of persons has compelled the Courts to evolve a balance and pragmatic approach in deciding the constitutional validity of service rules. There cannot be any dispute that in service jurisprudence there cannot be any rule which would satisfy each and every employee. The rules may be amended to do justice to the majority or minority of the employees. By virtue of the amendment fortune of some of the Reserve S.Is or Reserve Constable is not the touch stone. The validity of the amendment with regard to the Articles 14 and 16 of the Constitution of India has to be judged whether it is fair and reasonable. In testing the amendment impugned in the O.As as to arbitrariness unjust discrimination or unreasonable restrictions on the service conditions of the regular S.Is, the important consideration is whether the amended Rule sub-serves the concept of integrity and efficiency in public service. If there is any nexus between amended rule and the object of achieving integrity and efficiency, then ordinarily the Courts would not interfere. The word 'right to promotion' is used in the sense that an employee can, as a matter of right, claim that he must be promoted when the promotional opportunity arises to the higher post. Non consideration of case of a person for promotion will amount to infringement of Article 16 of the Constitution of India. Any alteration in the service conditions would be subject to constitutional limitations. It is well settled that although a right to be considered for promotion is a condition of service, a mere chance of promotion is not a constitutional right. In all the O.As, there is no pleading that as to how many sanctioned posts are available in the category of Inspector of Police as well as in the category of Head Constables. In case of

regular S.Is who are directly recruited they have not even completed 6 years of qualifying service to be considered for promotion. Immediately thereafter their promotion has to be considered depending upon the vacancies available in the next higher category of Inspector of Police. The pleadings are very clear that their chances or avenues of promotion are reduced to a small extent by virtue of the amendments which were challenged before the Tribunal. As already pointed out that mere chances of promotion are not condition of service and thereby it cannot be said that it violates Article 16 of the Constitution of India.

47. The Tribunal without assigning any reasons set aside the G.Os impugned before the Tribunal. Therefore, the writ petitions are liable to be allowed.

48. Accordingly, the writ petitions are allowed setting aside the impugned orders of the Tribunal. No order as to costs. Miscellaneous petitions, if any pending in these writ petitions shall stand closed.

K.C.BHANU, J

ANIS, J

DATED: 22ND DAY OF JANUARY, 2015

Hsd

[\[1\]](#) AIR 1955 SC 191

[\[2\]](#) (2006) 8 SCC 399

[\[3\]](#) (2008) 7 SCC 231

- [\[4\]](#) (2008) 10 SCC 139
- [\[5\]](#) (2013) 2 SCC 772
- [\[6\]](#) 1989 SUPP (1) SCC 116
- [\[7\]](#) (1976) 2 SCC 310
- [\[8\]](#) AIR 1951 SC 41
- [\[9\]](#) (1974) 1 SCC 19
- [\[10\]](#) AIR 1967 SC 1889
- [\[11\]](#) (1975) 3 SCC 76
- [\[12\]](#) (2012) 2 SCC 307
- [\[13\]](#) (2012) 6 SCC 312
- [\[14\]](#) AIR 1952 SC 75
- [\[15\]](#) AIR 2010 SC 1001
- [\[16\]](#) (1996) 3 SCALE 146
- [\[17\]](#) (1975) 4 SCC 13