**AFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**Judgment Reserved on: 29/08/2018**

**Judgment Delivered on : 15/11/2018**

**Writ Petition (S) No. 4265 of 2017**

1. Shivnarayan Gajendra S/o Ganpat Ram Gajendra, Aged About 54 Years Posted As Head Master At Government Middle Boys School Bharwar, Block Kurud, District Dhamtari, Chhattisgarh.
2. Devendra Kumar Dadar S/o Nand Kumar Dadar Aged About 54 Years Posted As Head Master At Government Girls Middle School Kurud, Block Kurud, District Dhamtari, Chhattisgarh.
3. Horilal Sahu S/o Thukelram Sahu Aged About 53 Years Posted As Head Master At Government Middle School , Khamhariya District Dhamtari, Chhattisgarh.
4. Nandkumar Sahu S/o Mohanlal Sahu, Aged About 56 Years Posted As Head Master At Kodebod Block Kurud, District Dhamtari, Chhattisgarh.
5. Tansen Yadav S/o T R Yadav Aged About 54 Years Posted As Head Master At Government Middle Girl School Narhara Aarang District Raipur, Chhattisgarh.
6. Virendra Kumar Sahu S/o Kuleshwar Sahu Aged About 56 Years Posted As Head Master At Government Middle School, Devrdi Block Kurud District Dhamtari, Chhattisgarh.
7. Daniram Sahu S/o Kunjbihari Aged About 56 Years Posted As Head Master At Government Middle School, Bangoli, Block Kurud, District Dhamtari, Chhattisgarh.
8. Umendiram Sahu S/o Gasiyaram, Aged About 59 Years Posted As Head Master At Government Middle School, Lunge, Block Magarload, District, Chhattisgarh.
9. Smt. Lata Dewangan W/o Ashok Dewangan Aged About 50 Years Posted As Head Master At Government Middle Girls School Dhamtari, Block Dhamtari, District Dhamtari, Chhattisgarh.
10. Sadhuram Rigri S/o Ramauram Aged About 54 Years Posted As Head Master At Government Middle Boys School Jamgaon, Block Kurud, District Dhamtari, Chhattisgarh.
11. Rajendra Kumar Minpal Dhimar S/o Sitaram Aged About 53 Years Posted As Head Master At Government Middle School Rewagahan, Block Dhamtari, District Dhamtari, Chhattisgarh.

12. Dayaluram Sahu S/o Shriram Sahu Aged About 53 Years Posted As Head Master At Government Middle School Silauri, Block Dhamtari, District Dhamtari, Chhattisgarh.

13. Mahesh Kumar Sahu S/o Viselal Sahu Aged About 54 Years Posted As Head Master At Government Middle School Silauri, Block Dhamtari, District Dhamtari, Chhattisgarh.

14. Toman Singh Sahu S/o Nekram Sahu Aged About 57 Years Posted As Head Master At Government Middle School Magarlod, Block Dhamtari, District Dhamtari, Chhattisgarh.

15. Adheriyas Khakha S/o Fransis Khakha Aged About 58 Years Posted As Head Master At Government Middle School Parsabuda, Magarlod Block Magarload, District Dhamtari, Chhattisgarh.

16. Dwarika Prasad Sahu S/o D R Sahu Aged About 58 Years Posted As Head Master At Government Middle School Parsabuda, Magarlod Block Magarload, District Dhamtari, Chhattisgarh.

17. Nand Kumar Sinha S/o Sukaluram Sinha Aged About 54 Years Posted As Head Master At Middle School, Sirsida, Block Kurud, District Dhamtari, Chhattisgarh.

18. Yasoda Sahu Sandilya W/o Bhagwani Ram Sandilya Aged About 52 Years Posted As Head Master At Government Middle School Koliyari, Block Magarlod, District Dhamtari, Chhattisgarh.

19. Punaram Sahu S/o Kailuram Sahu Aged About 57 Years Posted As Head Master At Government Middle School Jugrehi, Block Magarlod, District Dhamtari, Chhattisgarh.

20. Horilal Sahu S/o Lakhanlal Aged About 48 Years Posted As Head Master At Government Middle School Dudhwara, Block Magarlod, District Dhamtari, Chhattisgarh.

21. Vinod Kumar Thakur S/o Tulsiram Thakur Aged About 48 Years Posted As Head Master At Government Middle School Pachpedhi, Block Kurud, District Dhamtari, Chhatttisgarh.

22. Pawan Kumar Baskar S/o Ramratan Baskar Aged About 52 Years Posted As Head Master At Government Middle School Dhuma, Block Kurud, District Dhamtari, Chhattisgarh.

23. Smt. Sheela Chandrakar W/o Devnarayan Chandrakar Aged About 57 Years Posted As Head Master At Government Middle School Bhathagaon, Block Kurud, District Dhamtari, Chhattisgarh.

24. Sant Kumar Dhruv S/o Jeevan Lal Aged About 51 Years Posted As Head Master At Government Middle School Bhendra, Block Kurud, District Dhamtari, Chhattisgarh.

25. Chandrakumar Manhar S/o Mehattarram Manhar Aged About 49 Years Posted As Head Master At Government Middle School Bhatapara, Banjari, Block Kurud, District Dhamtari, Chhattisgarh.

26. Omprakash Sahu S/o Naradram Sahu Aged About 49 Years Posted As Head Master At Government Middle School Bhatapara, Bajari, Block Kurud, District Dhamtari, Chhattisgarh.

27. Ashok Kumar Nirmalkar S/o G R Nirmalkar Aged About 50 Years Posted As Head Master At Government Middle School Kurra, Block Kurud, District Dhamtari, Chhattisgarh.

28. Shyamlal Sahu S/o Kunjilal Sahu Aged About 52 Years Posted As Head Master At Government Middle School Giroud, Block Magarlod, District Dhamtari, Chhattisgarh.

29. Ugeshram Bansor S/o Jairam Bansor Aged About 56 Years Posted As Head Master At Government Middle School Arjuni, Block Dhamtari, District Dhamtari, Chhattisgarh.

30. Devnand Bansor S/o Chaituram Aged About 55 Years Posted As Head Master At Government Middle School Parkhand, Block Dhamtari, District Dhamtari, Chhattisgarh.

31. Madhusudan Nag S/o Mahipal Nag Aged About 56 Years Posted As Head Master At Government Middle School Parkhand, Block Dhamtari, District Dhamtari, Chhattisgarh.

32. Kartikram Sahu S/o Mangal Sahu Aged About 58 Years Posted As Head Master At Government Middle School Koshbhara, Block Dhamtari, District Dhamtari, Chhattisgarh.

33. Kanhaiya Lal Dhruv S/o Baisakhuram Aged About 50 Years Posted As Head Master At Government Middle School Bagaoud, Block Dhamtari, Chhattisgarh.

34. Deepak Dahariya S/o Bhukhan Lal Aged About 48 Years Posted As Head Master At Government Middle School Kodapaa, Block Kurud, District Dhamtari, Chhattisgarh.

35. Motilal Sahu S/o Thanuram Sahu Aged About 57 Years Posted As Head Master At Government Middle School Machheli, Block Kurud, District Dhamtari, Chhattisgarh.

36. Uttamlal Sahu S/o Phoolji Sahu Aged About 52 Years Posted As Head Master At Government Middle School Machheli, Block Kurud, District Dhamtari, Chhattisgarh.

37. Ramdhan Banchhor S/o Umend Singh Banchoor Aged About 59 Years Posted As Head Master At Government Middle School Mudhpara, Block Dhamtari District Dhamtari, Chhattisgarh.

**---- Petitioners**

**Versus**

1. State of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. Director, Public Instruction Department Indravati Bhawan New Raipur, District Raipur, Chhattisgarh.

**---- Respondents**

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For Petitioners : Shri Anoop Majumdar, Advocate.
For Respondents/State : Shri UNS Deo, Government Advocate.

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**Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**
**Hon'ble Shri Parth Prateem Sahu, Judge**

**C.A.V. Order**

**Per Ajay Kumar Tripathi, Chief Justice**

1. This writ application has been filed by a bunch of Petitioners challenging remark under column No. 7 of serial No. 1 under Schedule II of Chhattisgarh School Education (Gazetted) (School Level) Service Recruitment and Promotion Rules, 2014 (*for short 'the 2014 Rules'*) since the Head Masters of Middle School of Education Department have been deprived of the opportunity for further promotion to the post of Principal of High School or Higher Secondary School directly.

2. The Petitioners are working as Middle School Head Masters in various schools where they are presently posted. The order of promotions granted to them between 2008 and 2012 is on record as Annexure P/1. They plead that the post of Head Master and Lecturer are Class II officers carrying same pay scale and grade pay and are appointed by the same authority as prescribed under Schedule II of Rule 6 of the 2014 Rules. For promotion to the post of Principal High School/Higher Secondary School, 75% posts are to be filled up from regular Lecturers. The feeder cadre for the post of Lecturer

is Teacher or Head Master (Middle School) who must be a trained Teacher and Post-Graduate with B.Ed./D.Ed./BTC. The feeder cadre for promotion to the post of Head Master is a Teacher who has completed 5 years of service. As per the Petitioners, both the posts of Lecturer and Head Master are equivalent, yet Head Masters are not given equal treatment and they are not being treated at par with the Lecturers for the purposes of promotion to the post of Principal, High School/Higher Secondary School as a common pool.

3. It is their case that earlier the service conditions of Head Master (Middle School) was governed by Madhya Pradesh Education Service (School Branch) Recruitment Rules. This was a Rule of the year 1982. Under the said Rule, the feeder cadre for promotion to the post of Principal, High School consisted of Lecturers and Head Masters of Middle School, both. After formation of State of Chhattisgarh, new set of rules was promulgated in the year 2008. The rule was named as Chhattisgarh School Education (Gazetted) (School Level) Service Recruitment and Promotion Rules, 2008 (for short 'the 2008 Rules). Here also, the posts of Principal of Higher Secondary School was to be filled up to the extent of 75% by way of promotion of Lecturers and Head Masters of Middle School.

4. When the 2014 Rules were notified on 22.05.2014, the cadre of Head Master of Middle School has been omitted altogether thereby closing the avenues of further promotion beyond the post of Head Master. Lecturers are being promoted subject-wise, however, for these Petitioners, further avenues for promotion to the post of Principal is closed. It is also their grievance that the Petitioners belong to Arts faculty and since there are lesser number of vacant post in Arts subject and there is no gradation list prepared subject-wise, the Teachers of Science faculty get preference over the Teachers of Arts faculty ignoring their *inter se* seniority.

5. It is also their case that even in the case of Headmasters of Middle School in the Tribal Department, they are being granted equivalent treatment alongwith regular Lecturers forming feeder cadre for promotion to the post of Principal/Vice-Principal.

6. As the Petitioners are working on the post of Head Masters of Middle School for many years and there are no future avenues of promotion to any higher post since there are no vacancies available, they are left with no option but to approach the Court.

7. The Rule dated 22.05.2014 which is the subject matter of present dispute is Rule 6 read with Schedule II, serial No. 1, which reads as under:

> "**6. Method of recruitment**. - (1) Recruitment to the service, after the commencement of these rules, shall be made by the following methods, namely:-
>
> > (a) By direct recruitment through selection (competitive examination/interview) and Limited Departmental Examination.
> >
> > (b) By promotion of members of service;
> >
> > (c) By transfer of persons, who hold in a substantive capacity such post in such services, as may be specified in this behalf.
>
> (2) The number of persons recruited under clause (a), (b) or (c) of sub-rule (1) shall not at any time exceed the percentage shown in Schedule-II of the number of duty posts, as specified in Schedule-I.
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> (3) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service, as may be required to be filled during any particular period of recruitment and the number of persons to be recruited by such methods, shall be determined on each occasion by the Appointing Authority in consultation with the Commission/Government.
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> (4) Notwithstanding anything contained in sub-rule (1), if in the opinion of the Appointing Authority the exigencies of the service so require, then he may after consultation with the Commission or the Government adopt such methods of recruitment to the

service other than those specified in the said sub-rule as it may, by order issued in this behalf, prescribe.

(5) At the time of recruitment to the service the provisions of the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (No. 21 of 1994) and instructions issued, from time to time, under this Act by the General Administration Department of the Government shall apply.

**Schedule II**
(See Rule 6)

| S. No. | Name of Service | Total number of posts | Percentage of posts to be filled in | | | Remarks |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1. | Principal High School / Higher Secondary School | 1266 | 25% | 75% | | 25% posts shall be filled from Lecturer / Shiksha Karmi Grade I {Lecturer (Panchayat)} through limited departmental examination and 75% posts shall be filled by promotion from regular Lecturer by the department. |
| 2. | Lecturer | 14537 | 50% | 50% | | Teacher/ Head Master (Middle School) who have passed post graduation examination and qualified B.Ed/D.Ed/B.T.C. shall be promoted to the post of Lecturer. 50% of the vacant posts shall be sent to the Panchayat and Rural Development and Urban Administration & Development Department for filing by direct recruitment of Lecturer (Panchayat) / Shiksha Karmi Grade – I. |
| 3. | Head Master, Middle School | 9914 | 50% | 50% | | 1. All post for promotion – Teacher who has completed 5 years of service shall be promoted to the post of Head Master, Middle School. |

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|---|---|---|---|---|---|---|
| | | | | | | 2. All post for direct recruitment – Post shall be filled by limited departmental examination of Lecturer (Panchayat) having 5 years teaching experience and Teacher (Panchayat) having 8 years teaching experience. |

8. It is argued on behalf of the Petitioners that the 2014 Rules is violative of Section 69(1) of the Madhya Pradesh Reorganization Act, 2000 in the sense that as per the said provision, the service conditions of the employees of the State of Chhattisgarh, as framed under Section 68 will not be varied to their disadvantage except with the approval of the Central Government. In the present case, Head Master of Middle School form feeder cadre for promotion to the post of Principal as per the 1982 Madhya Pradesh Rules and the 2008 Chhattisgarh Rules but the same has been omitted in the year 2014 without prior approval of the Central Government. It is further urged on their behalf that since the pay scale of Lecturer and Head Master is the same *i.e*. Rs. 9300-34,800/- + grade pay Rs. 5,400/-, for computation of period of eligibility for promotion, the date from which the public servant has been receiving the pay scale is to be counted. Since the Petitioners are receiving the pay scale just below that of a Principal for more than five years, they are entitled for consideration for promotion to the post of Principal.

9. It is submitted that the duty of a Principal is more of administrative nature than academic. The Head Masters of Middle School are trained and in better position to discharge the job of Principal than the Lecturers, therefore, not granting equivalence is unreasonable. It is pleaded that appointment on the post of Lecturer is made subject-wise, even though, there is no subject-wise seniority. However, the Head Masters of the Middle School are not being promoted subject-wise but only Teachers having five years experience are

posted as Head Masters. It is again repeated that there are more Arts Teachers than Science Teachers, therefore, hardly any avenues for promotion to the post Lecturers from the post of Head Master is available.

10. The State has filed its return as well as rejoinder to the reply filed by the Petitioners. Their stand is that 2014 Rules does not violate any constitutional provision and the Rules have been framed in exercise of the power of the State Government under Article 309 of the Constitution of India. The stand of the State is that the entry made in Column No. 7 of Serial No. 1 under Schedule II of the 2014 Rules, cannot be quashed since it is a policy decision of the State Government and as already submitted, the Rule does not suffer any legal or constitutional infirmity. The Petitioners are trying to mix up two different Rules, one relating to Chhattisgarh Tribal and Scheduled Caste Development Department Educational Cadre (Gazetted) Service Recruitment Rules, 2011, whereas the 2014 Rules relate to general Teachers and merely because two divergent kind of Teachers have been brought under one Department for the purposes of administrative efficiency, the two issues cannot be equated.

11. The Petitioners are holding substantive post of Head Master and as per the 2014 Rules, under Schedule II at serial No. 1, it has been provided that 25% posts shall be filled from Lecturers / Shiksha Karmi Grade I {Lecturer Panchayat)} through Limited Departmental Examination and 75% posts are to be filled by promotion from regular Lecturers of the Department. The Rule further states in serial No. 2 that the feeder post for the post of Head Master, High School/ Higher Secondary School has been prescribed as Lecturer. Thus, it is clear that there is avenue for promotion for the Head Masters of the School Education Department on the post of a Lecturer, and then as a Principal but not directly. After the 2014 Rules were notified, many

promotions on the post of Lecturers and then Principals have been granted but none were challenged by any of these Petitioners. The persons who have been granted promotion in terms of the Rules have acquired a valuable right, that cannot be taken away now and a settled position cannot be unsettled.

12. The Petitioners are time and again harping on what the Rules were in the State of Madhya Pradesh as well as the set of Rules notified in the year 2008 after the formation of State of Chhattisgarh. But that by itself does not bar the State from notifying a new set of Rules restructuring the education hierarchy keeping in mind the kind of schools which are in place and level of education which the two different schools impart. The Madhya Pradesh Reorganisation Act, 2000 has no applicability since the same protected those employees whose cadre was being changed on division of the two States, which is not the case now.

13. If the State Government by notifying the 2014 Rules decided to form a separate cadre for avenues of promotion to the post of Principal of High School/Higher Secondary School which are +2 schools, the Head Masters of Middle School which is a closed cadre now, unless they get promoted as Lecturers first cannot make a grievance that they too must be provided avenues for further promotion directly to the post of Principals of High School/Higher Secondary School by jumping the necessity of earning the promotion as Lecturers.

14. The 2014 Rules therefore cannot be assailed or struck-down merely because the aspiration and the ambition of the Head Masters of Middle School are not being fulfilled by bye-passing the requirement of the 2014 Rules.

15. Two unequals cannot be treated as equals and merely because there is a common controlling department, which is the Education Department, and there could be equality of pay of a Head Master of Middle School with that of a Lecturer, the two cannot be equated for promotion to the post of Principals of High School/Higher Secondary School as there is huge difference in the level of education being imparted at the Middle School and High School/Higher Secondary School. The exposure as a Lecturer and gaining experience is a must to maintain standards of the Higher Schools.

16. The arguments made on behalf of the Petitioners of a kind of perceived discrimination is not emerging on a closer examination of the structure of the schooling system and the level of teaching which is imparted in a High School or a Higher Secondary School vis-a-vis a Middle School.

17. We therefore, are not impressed by the submissions that the 2014 Rules are either arbitrary or violate Article 14 and 16 of the Constitution and therefore, the remarks fixing avenues of promotion to the post of Principal of High School / Higher Secondary School from the post of Lecturers only and not creating avenues for Head Masters of Middle School directly as a feeder cadre are in any manner required to be struck-down.

18. In our opinion, the cadres have been rightly restructured and there is a rationale and objective behind the same.

19. The writ application stands dismissed.

Sd/- Sd/-

(Ajay Kumar Tripathi) (Parth Prateem Sahu)
**CHIEF JUSTICE** **JUDGE**

Subbu