

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. : 8502 of 2017(O&M)
Reserved on : September 24, 2019
Date of decision : November 13, 2019

Joginder Sharma and others ...Petitioners

Versus

State of Haryana and others ...Respondents

2. Civil Writ Petition No. : 7676 of 2017(O&M)

Dheeraj Chahal and others ...Petitioners

Versus

State of Haryana and others ...Respondents

3. Civil Writ Petition No. : 8640 of 2017(O&M)

Amarinder Singh and others ...Petitioners

Versus

State of Haryana and others ...Respondents

4. Civil Writ Petition No. : 16288 of 2019(O&M)

Navdeep Singh and others ...Petitioners

Versus

State of Haryana and others ...Respondents

5. Civil Writ Petition No. : 24738 of 2019(O&M)

Vikram Singla ...Petitioner

Versus

State of Haryana and others ...Respondents

6. Civil Writ Petition No. : 24973 of 2019(O&M)

Naresh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

AND

7. Civil Writ Petition No. : 25833 of 2019(O&M)

Rakesh

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Parveen Gupta, Advocate,
Mr.Pawan Kumar, Advocate,
Mr.V.K.Jindal, Senior Advocate with
Mr.Gopal Soni, Advocate,
Mr.Sudhir Rana, Advocate
Dr.Anmol Rattan Sidhu, Senior Advocate with
Mr.Shiv Kumar Sharma, Advocate
for the petitioners.

Mr.Samarth Sagar, Addl. A.G.Haryana.

Mr.Kanwal Goyal, Advocate for
respondent – Haryana Public Service Commission.

Mr.Gurminder Singh, Senior Advocate with
Mr.R.P.S.Bara and Mr.Sumit Jain, Advocates
for the private respondents.

Mr.Sandeep Yadav, Advocate for
Mr.Vipin Yadav, Advocate for
respondent No.6 in CWP No.8640 of 2017.

Mr.Sajjan Singh, Advocate for
respondent No.7 in CWP No.8640 of 2017.

Harinder Singh Sidhu, J. :

1. This judgment shall dispose of seven writ petitions namely CWP No.7676 of 2017, CWP No.8502 of 2017, CWP No.8640 of 2017, CWP No.16288 of 2019, CWP No.24738 of 2019, CWP No.24973 of 2019 and CWP No.25833 of 2019 as the issues raised therein are identical.
2. However, the facts are being referred from CWP No.8502 of 2017.
3. This petition has been filed praying for directions to quash the notification dated 16.02.2017 to the extent of amendments made in Rule 9 (1)(a)(i) of the Haryana Civil Service (Executive Branch) Rules, 2008 (herein for short 'the 2008 Rules'), whereby those with eight years continuous government service as District Revenue Officer/ Tehsildar including service rendered as Naib Tehsildar, have been made eligible for consideration for inclusion in Register A-1. The petitioners have also sought quashing of circular dated 12.04.2017 issued by the respondent No. 1 inviting lists of eligible District Revenue Officers/ Tehsildars for filling 09 vacancies of HCS (Executive Branch) from Register A-1 containing the stipulation that 08 years continuous government service includes the service rendered as Naib Tehsildar.
4. The primary contention of the petitioners is that as per the Haryana Civil Services (EB) Rules, 2008 prior to the impugned amendment for appointment to HCS(EB) under Register A-1 the eligibility was eight years regular Government Service as District Revenue Officer/Tehsildars.

The 2017 amendment by including service rendered as Naib Tehsildar along with service as District Revenue Officer/Tehsildar in the eight years government service required for eligibility for selection for Register A-1 is arbitrary and unconstitutional for the vice of treating unequals as equals. It is contended that the post of Naib Tehsildar is different and of a lower cadre than District Revenue Officer/Tehsildars. A Naib Tehsildar works under the Tehsildar and the cadre of Naib Tehsildar serves as feeder cadre for the post of Tehsildar. The combined service of eight years as Tehsildars/Naib Tehsildars cannot be equated with eight years of service as Tehsildar. The arbitrariness is sought to be emphasized by contending that by virtue of the amendment a Naib Tehsildar who may have worked as Tehsildar even for a single day would become entitled to consideration for appointment to HCS(EB) under Register A-1 at par with a person who has worked as Tehsildar for eight years. It was also argued that the amendment has the effect of nullifying a judgment of this court in CWP No.21845 of 2015 titled Vijay Kumar Yadav and another vs. State of Haryana and others decided on 22.12.2015, wherein, interpreting the provisions of Rule 9(1)(a)(i) of the 2008 Rules it has been held that the government service as contemplated therein relates to the posts which have been specified in the main Rule 9 i.e., District Revenue Officers and Tehsildars. It cannot mean any other post than the said two posts. The contention of the petitioners therein that experience as Naib Tehsildar should be considered as experience within the meaning of Rule 9(1)(a)(i) was rejected. It was thus argued that the amendment was illegal and impermissible.

5. In the written statement filed on behalf of the State, it has been

stated that the Government is empowered to make Rules regulating the recruitment and conditions of service of persons appointed to the HCS(EB). Before 13.02.2008 the State Civil Service was governed by Punjab Civil Service (Executive Branch) Rules, 1930 (for short “1930 Rules”). In those Rules, Tehsildars and Naib Tehsildars were eligible be considered for recruitment to HCS(EB) from Register A-1. The 1930 Rules were repealed by the Haryana Civil Service (Executive Branch) Rules, 2008 (for short “2008 Rules”) w.e.f. 13.02.2008. As per these Rules District Revenue Officers/Tehsildars were made eligible to be considered for the recruitment to HCS(EB) from Register A-1. Now, vide notification dated 16.02.2017, experience/service rendered as Naib Tehsildars has also to be counted towards 8 years continuous Government Service for the recruitment to HCS (Executive Branch) from Register A-1 of District Revenue Officers/Tehsildars.

6. Justifying the inclusion of experience/service rendered as Naib Tehsildars for the purpose of eight years continuous Government Service, it has been stated that vide notification dated 18.01.2006, the Naib Tehsildars in the Revenue Department have been granted Class-II/Gazetted status by the Government. The power and duties of Tehsildars and Naib Tehsildars are of similar nature. The Tehsildars and Naib Tehsildars have powers of Executive Magistrate to maintain law and order. Their powers and functions include Maintenance & Updating Revenue Record, Registration of documents and recovery of Government dues. Therefore experience/service rendered as Naib Tehsildars and Tehsildars is similar.

7. Further, it is the case of the respondents that there was not

sufficient zone of consideration for the recruitment to HCS(EB) from Register A-1 of DROs/ Tehsildars. As per Rule 9 of the 2008 Rules, the Additional Chief Secretary to Government, Haryana Revenue and Disaster Management shall prepare a list of DROs/ Tehsildars not more than five times of the number of vacancies and submit the same for the consideration of the Committee with Chief Secretary as Chairman and to such other officers as members. The Committee considers all such names and prepares a list equal to twice the number of vacancies of persons considered suitable for being entered in Register A-1.

For the recruitment to HCS(EB) from Register A-1 against the four vacancies of the year 2012, the Additional Chief Secretary-cum-Principal Secretary, Revenue and Disaster Management had recommended the names of 3 District Revenue Officers and 8 Tehsildars. Later on 15.10.2013 name of Shri Vijender Bhardwaj, DRO was recommended provisionally pursuant to interim orders dated 29.10.2013 passed in CWP No.23265 of 2013.

For the 6 vacancies of the year 2014 of Register A-1, respondent No.3 had recommended the names of 3 District Revenue Officers and 6 Tehsildars on 15.01.2016 which was not sufficient zone of consideration of eligible officers at the level of Additional Chief Secretary as well as the Committee.

8. The respondents have also questioned the bonafides of the petitioners who are Tehsildars in questioning the validity of the amendment. It was stated that Tehsildar is promoted to the post of District Revenue Officer after serving for more than eight to ten years as such. The

senior District Revenue Officers who are equated with the Tehsildars for being selected as candidates for entry into Register A-1 may have a similar grievance against the inclusion of Tehsildars.

9. Before proceeding further, it would be appropriate to extract the relevant Rules of 1930, 2008 and the Rule as amended in 2017 :

The Punjab Civil Service (Executive Branch) Rules, 1930 :

“6. The following Registers of Accepted Candidates shall be maintained by the Chief Secretary, namely -

- (a) Register A-I of Tehsildars and Naib-Tehsildars accepted as candidates;*
- (b) Register A-II of members of subordinate services holding ministerial appointments accepted as candidates;*
- (c) Register B of persons accepted as candidates on the result of a competitive examination ; and*
- (d) Register C of persons accepted candidates after consultation with the Selection Board constituted under Sub-rule (1) of rule 14.*

7. (1) The Financial Commissioners shall maintain a list of Tehsildars and Naib Tehsildars whom they consider fit for acceptance as Members of the Services, and shall each year not later than the first day of December and at such other times as the Governor in Council may require submit for the consideration of the Governor in Council the nomination rolls in Form 1 of so many persons borne on such list as the Governor in Council may prescribe; provided that, unless the Governor in Council otherwise directs, the roll of no person shall be submitted who -

- (a) has not completed five years' continuous Government service; and*
- (b) has attained the age of thirty five years on or before the first day of November immediately preceding the date of submission of names ; and*
- (c) is a graduate of a recognized university.*

(2) The Governor in Council may select from the persons whose nomination rolls are submitted by the Financial Commissioners under the provisions of sub-rule (1) such persons as he may deem suitable for the Service and the names of the persons so selected shall, subject to the provisions of rule 16, be entered in Register A-I.”

Haryana Civil Service (Executive Branch) Rules 2008 Rules :

- (8) *The following Registers of Accepted Candidates shall be maintained by the Chief Secretary, namely :-*
- (a) *Register A-I of District Revenue Officers/ Tehsildars accepted as candidates;*
 - (b) *Register A-II of members of Group C Service accepted as candidates;*
 - (c) *Register B of persons accepted as candidates as a result of a competitive examination for the post of the Haryana Civil Services (Executive Branch); and*
 - (d) *Register C of District Development and Panchayat Officers/ Block Development and Panchayat Officers.*
- (9) (1) *The Financial Commissioner and Principal Secretary to Government, Haryana, Revenue and Disaster Management shall, by a date to be determined by the Government, prepare a list of District Revenue Officers/Tehsildars not more than five times of the number of vacancies and submit the same for the consideration of a Committee with Chief Secretary as Chairman and two such other officers as members, as may be nominated by the Government from time to time provided that unless the Government otherwise directs regarding the age, name of a person shall be submitted who -*
- (a) (i) *has completed eight years continuous Government service ;*
 - (ii) *has not attained the age of forty five years; on or before the date on which names are required to be submitted before the Committee ;*
 - (iii) *is not facing disciplinary proceedings/ against whom action is being contemplated; and*
 - (iv) *is clear from vigilance angle.*
 - (b) *is a graduate of a recognized University.*
- (2) *The Committee mentioned in sub rule (1) shall consider all such names and prepare a list, equal to twice the number of vacancies of persons considered suitable for being entered in Register A-I. This list shall be sent to the Commission for recommending, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry into Register A-I, and thereafter the names of the persons so selected shall be entered*

in the Register A-I.”

Rule 9 as substituted by the The Haryana Civil Service (Executive Branch) (Amendment) Rules, 2017 is as under:

“(9) Selection of Candidates for Register A-I.-

(1) The Additional Chief Secretary and Financial Commissioner to Government, Haryana, Revenue and Disaster Management shall, by a date to be determined by the Government, prepare a list of District Revenue Officers/ Tehsildars not more than five times of the number of vacancies and submit the same for the consideration of a Committee with Chief Secretary as Chairman and two such other officers as members, as may be nominated by the Government from time to time, the name of a person shall be submitted who -

- (a) (i) has completed eight years continuous Government service including service rendered as Naib-Tehsildar;*
- (ii) has not attained the age of fifty on the first day of November immediately preceding the date of submission of names by the concerned authority;*
- (iii) is not facing disciplinary proceedings and against whom action is being contemplated; and*
- (iv) is clear from vigilance angle.*
- (b) is a graduate of a recognized University.*

(2) The Committee mentioned in sub rule (1) shall consider all such names and prepare a list, equal to twice the number of vacancies of persons considered suitable for being entered in Register A-I. This list shall be sent to the Commission for recommending, in order of merit and equal to the number of vacancies, the most suitable persons entered in the list, for being selected as candidates for entry into Register A-I, and thereafter the names of the persons so selected shall be entered in the Register A-I.”

10. Thus, the main contention of the petitioners in assailing the validity of the amendment is that it treats unequals as equals. The justification of the State for the amendment for including the service rendered as Naib Tehsildar in computing the eight years government

service for recruitment to HCS (EB) in Register A-1 is that the powers and duties of the posts of Tehsildars and Naib Tehsildars are similar. It is also their contention that with the existing provision the zone of consideration was not found sufficient. Further if the Tehsildars object to the inclusion of the Naib Tehsildars, the District Revenue Officers may have a similar grievance against the Tehsildars who are a feeder post for the District Revenue Officers.

11. Similar questions have been considered by Hon'ble Supreme Court in a number of cases. Hon'ble Supreme Court has held that merely because a feeder post is clubbed with the promotional post for further selection/ promotion the rule cannot be held to be ultra vires if there is a sound and reasonable justification for the same.

12. In **Mohd. Usman v. State of A.P., (1971) 2 SCC 188**, Hon'ble Supreme Court was considering the vires of Rule 5 of the Andhra Pradesh Registration Subordinate Service Special Rules (for short 'Rules'). The High Court had struck down the Rule holding it to be violative of Article 14 of the Constitution. The Rules provided for the promotion to the posts of Sub-Registrar as well as for recruitment to those posts. Rule 2 provided that a post of Grade-I Sub-Registrar should be filled up by promotion from Grade-II Sub-Registrar. Rule 5 dealt with qualifications for being recruited as Grade-II Sub-Registrars. That Rule read as under:

Qualifications.— No person shall be eligible for appointment to the category mentioned below unless he possesses the qualification shown.

*Category and qualifications.— (1) Sub-Registrars, II-Grade:—
(i) Must be a permanent clerk and must have served for a period of not less than seven years on duty as clerk in the Registration and Stamps Department including the Office of*

the Registrar-General of Births, Deaths and Marriages and the Office of the Registrar of Firms;

(ii) must have passed the Registration Test; and

(iii) (1) must have taken at the final examination at the end of his school or college course, one of the following languages, namely:

Telugu, Hindi, Oriya, Kannada, Tamil, Urdu or Marathi, or

(2) must have passed the Government Translation Test or the Second Class Language Test — Full Test.

‘(iv) must have passed the second class language Test — Full Test — in a language other than that taken for SSLC or University’.

Preference shall be given to persons who, in addition to the qualifications specified in items (i) to (iii) possess a Degree in Law of a University in the State or any other equivalent qualification or a Pleadership Certificate in the First Grade or who have put in five years service in the category of Upper Division Clerks in the Registration Department.”

13. The Rule was challenged as being violative of Article 14 on the ground that though among the clerks there were UDCs as well as LDCs, yet all of them had been put in one class for the purpose of recruitment as Grade II Sub-Registrar. It was contended that as per the Ministerial Service Rules the UDCs had to be selected from the LDCs after the LDCs had put in certain number of years of service and after they had passed the Accounts Test as well as the Registration Test. Thus a UDC held a superior post to that of an LDC His salary was higher and his conditions of service were better than that of an LDC. It was urged that as Rule 5 treats UDCs as well as LDCs as equal for the purpose of recruitment for the post of a Grade-II Sub-Registrar, the Rule violates the doctrine of equality.

14. While not disputing that the position of a UDC was superior to that of a LDC the action of grouping together UDCs as well as the LDCs for the purpose of recruitment for the post of Grade-II Sub-Registrar was sought to be justified by the State for various reasons. It was stated that the

Grade-II Sub-Registrars were in a statewide cadre whereas the UDCs and LDCs belonged to a districtwise cadre. Promotion from LDC to UDC was made districtwise. The chances of promotion from LDC to UDC in one district materially differed from another district. It depended on the number of posts available in a particular district. In one district an LDC may be promoted as a UDC as soon as he puts in a service of five years, whereas in another district an LDC possessing the same or better qualifications as well as efficiency may not be so promoted even for fifteen years or more. In these circumstances it was only reasonable to treat the UDCs and LDCs as one class for the purpose of recruitment. But the rule also provided for giving preference to the UDCs who had put in a service of five years or more.

15. This justification was accepted by the Supreme Court. The Court observed that there may be some anomaly in the case of LDCs and UDCs serving in the same district. But that anomaly could not be avoided. The Hon'ble Supreme Court held that the validity of a rule has to be judged by assessing its overall effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is a just one taking all aspects into consideration.

The Court concluded as under:

“7. On the facts before us we are unable to agree that for the purpose of recruitment with which we are concerned herein the State should have classified the UDCs and LDCs separately. If the State had treated the UDCs as being superior to the LDCs for the purpose of that recruitment it would have resulted in a great deal of injustice to a large section of the

clerks. The fortuitous circumstance of an officer in a particular district becoming an UDC would have given him an undue advantage over his seniors who might have been as efficient or even more efficient than himself, merely because they chanced to serve in some other district. For the reasons mentioned above, we do not think that in the present case the State can be said to have treated unequals as equals. The rule of equality is intended to advance justice by avoiding discrimination. In our opinion the High Court by overlooking the reason behind Rule 5 came to the erroneous conclusion that the said rule violated Article 14 of the Constitution.”

16. In **Union of India v. N.Y. Apte, (1998) 6 SCC 741** a somewhat similar issue was considered by the Supreme Court. The Indian Meteorological Department (Class I and Class II) Posts Recruitment Rules were framed in 1969. Under these Rules the posts of MG I and MG II were Class I gazetted posts. The post of AM was Class II gazetted post. All the three posts were selection posts. The post of MG I was to be filled up by promotion of MG II with three years' approved service in the grade. The post of MG II was to be filled up by promotion to the extent of 50% and the remaining 50% by direct recruitment. The promotion was to be from AM/Assistant Agricultural Meteorologist/Assistant Seismologist with three years' approved service in the grade. The post of AM was to be filled up 50% by promotion and 50% by direct recruitment. The educational qualifications for all the three posts were the same.

17. The 1969 Rules were partially superseded in 1978. As per the 1978 Rules the post of MG II was to be filled up entirely by direct recruitment. The post of MG I was to be filled up by promotion from the

post of MG II with five years' approved service in the grade or with 8 years' combined service in the grades of MG II and AM or AM with 10 years' approved service in the grade. The selection was to be made in consultation with the UPSC on each occasion. Thus by the 1978 Rules, the avenue of promotion for AM to the post of MG II was closed. In lieu of that, AM with ten years' approved service in the grade and MG II with 8 years' combined approved service in the grades of MG II and AM were included in the field of consideration for promotion to the post of MG I along with MG II with five years' approved service in the grade. In June 1983, the 1978 Rules were amended whereby the post of MG I could be filled by promotion of MG II with five years' approved service in the grade or MG II with 8 years' combined approved service in the grade of MG II and AM or AM with 8 years' approved service in the grade.

18. The amendment made in 1983 was challenged. The Central Administrative Tribunal, Principal Bench, New Delhi opined that by virtue of the amendment, the post of AM had been equated to the post of MG II and thereby unequals were treated as equals. The amendment was struck down as unconstitutional.

19. Hon'ble Supreme Court allowed the appeal filed by the Union of India. It took into consideration the fact that after the amendment to the Rules in 1978 the post of MG-II was to be filled up entirely by direct recruitment. Thus persons holding posts of AM lost their chance of promotion to MG-II. The 1978 Rules widened the field of consideration for promotion to the post of MG I by including persons who had put in sufficient number of years of service either as AM exclusively or as MG II

and AM put together. Hon'ble Supreme Court held that when the educational qualifications were same and the scales of pay were almost equal, there was nothing wrong in equating MG II with five years' approved service in the grade with MG II with total of 8 years' combined approved service in the grades of MG II and AM as well as AM with 10 years' approved service in the grade.

It was observed as under:

“7. We have already pointed out that in 1978, when the 1969 Rules were partially superseded and the posts of MG I and MG II were bracketed with higher posts all of which were termed as Group A posts, the persons holding the posts of AM lost their chance of getting promoted to the post of MG II as the same was to be filled up entirely by direct recruitment though they had the requisite educational qualification. The only promotional avenue available to them under the 1969 Rules was closed. Necessarily, the rule-making authority had to make an alternative provision for such qualified persons with an avenue of promotion. Hence the 1978 Rules widened the field of consideration for promotion to the post of MG I by including persons who had put in a long number of years of service either as AM exclusively or as MG II and AM put together. It is obvious that the rule-making authority gave credit to the experience gained by AM either as AM or as AM and MG II for a specified number of years. When the educational qualifications are same and the scales of pay are almost equal, there is nothing wrong in equating MG II with five years' approved service in the grade with MG II with total of 8 years' combined approved service in the grades of MG II and AM as well as AM with 10 years' approved service in the grade. The mere fact that on account of certain fortuitous or other circumstances, a person with equal educational

qualification entered the service in a lower grade will not keep him permanently inferior or unequal to a person who had entered a higher grade and prevent him from being placed on a par with the latter after gaining sufficient experience in the service.

8. Further, what all has been done in the Rules is only to include such persons in the field of consideration and give an opportunity to them to be considered for promotion. It should not be forgotten that such promotion is only by selection and that too by a Board consisting of high officials in consultation with the UPSC on each occasion. In such a situation, there is no warrant for the contention of the respondents that they have been deprived of any right. It is too well settled that chance of promotion is not a right, nor a condition of service.

9. There is no merit in the contention that thereby unequals have been made equals. A person holding the post of MG II for five years cannot claim that a person holding the post of MG II and AM on a combined service of 8 years is not equal to him; nor can it be said that the person holding the post of AM for ten years is not equal to either of them. The matter of equation of posts is entirely within the domain of the rule-making authority and unless the rule is wholly unreasonable and irrational, the court will not interfere with the same.

xxx xxx xxx

11. With reference to the amendment brought in 1983, it is obvious that the same was introduced on the footing that a person holding the post of AM with 8 years' approved service in the grade could be equated to a person in combined service of 8 years in the posts of MG II and AM. There is no difference in the educational qualification and the scales of pay are almost equal. If the rule-making authority has thought it fit to equate those posts on the basis of longer experience in the lower post, we do not find any justification to interfere with the

same. The respondents are not in a position to satisfy us that MG II with five years' approved service is superior to MG II with eight years' combined service in the posts of MG II and AM or AM with eight years' approved service in the grade.

12. The respondents have placed before us the Rules made in 1982 regulating the method of recruitment to Grade B posts of AM. Recruitment for that post from 1982 is by promotion only. The feeder category is that of Professional Assistant including Professional Assistant (Foreman) with three years' regular service in the grade and possessing at least Bachelor's degree in Science or diploma in Engineering from a recognized university/institution or equivalent or should have successfully completed intermediate training in Meteorology conducted by the Indian Meteorological Department. The respondents placed reliance on those Rules for the purpose of contending that the essential qualification of at least second class M.Sc. degree prescribed for the post of AM in the 1969 Rules had been done away with. Hence, according to them AM with longer experience cannot be equated to MG II.

13. The fallacy in the argument of the respondents is apparent. The educational qualifications for the post of MG I as per the 1978 Rules are at least second class Master's degree in Science or second class degree in Engineering from a recognized university or equivalent plus five years' experience in a responsible capacity in the relevant field. Any person holding the post of MG II with five years' approved service in the grade or eight years' combined service in the grades of MG II and AM or AM with eight years' approved service in the grade will be considered for promotion to the post of MG I only if such person fulfils the essential qualifications prescribed for that post. Hence, there is no substance in the contention that a person holding the post of AM having been promoted thereto from the post of Professional Assistant with

lesser educational qualification would be equated to those having the essential qualifications requisite for the post of MG I.

14. Looking at the matter from any angle, we do not find any illegality or unconstitutionality in the 1978 Rules or the 1983 Rules.”

20. In **Bihar State Subordinate Industries Field Officers’ Assn. v. Kapildeo Prasad Singh, (2000) 6 SCC 507** Hon'ble Supreme Court reviewed the entire case law on the subject. In that case a Single Judge of the High Court of Patna had held that the Rule contained in Annexure I and in particular in Schedule IV of the Bihar Industries Service Rules, 1987 was arbitrary and irrational inasmuch as under that Rule, the non-gazetted category officers i.e. Field Employees and Statistical Employees of senior scales were included along with the gazetted categories, for promotion to the post of Manager/Assistant Director etc. The decision of the learned Single Judge was upheld by the Division Bench.

21. Aggrieved by their consequent exclusion from the channel of promotion, the two sets of non-gazetted employees appealed before the Supreme Court.

22. The Hon'ble Supreme Court formulated the question for consideration in paragraph 18 :

“18. The point for consideration is: whether the grouping together of employees in Group (B) in scale 940-1660 and in Group (C) in scale 880-1510 in Schedule IV belonging to the non-gazetted category with Group (A) gazetted officers in Schedule IV in scale 880-1510 for promotion as Manager etc. in the scale of Rs 1000-1820 is violative of Articles 14 and 16(1) as being irrational.”

23. Hon'ble Supreme Court elaborately considered the issue. It referred to various relevant decisions:

“20. Before we advert to the reasons given by the State for clubbing the senior scale in the non-gazetted Groups (B) and (C) with the gazetted Group (A) for promotion, we shall refer to a few rulings of this Court which, in our view, are quite relevant.

21. The earliest of these decisions is the one in Mohd. Usman v. State of A.P. In that case, the High Court of Andhra Pradesh struck down Rule 5 of the A.P. Registration Subordinate Service Special Rules but this Court set aside the said judgment and upheld the Rule. Under Rule 5, promotion was to the post of Sub-Registrar. There Grade I posts would be filled from Grade II Sub-Registrars. The Grade II Sub-Registrar category was to be filled from (i) Reserve Sub-Registrars, and (ii) “Clerks”, by transfer from the Registration/Stamp Department including Office of Registrar General and Registrar of Firms. It was contended for Upper Division Clerks that among “Clerks”, there were Upper Division as well as Lower Division Clerks and that initially, Lower Division Clerks had to be promoted as Upper Division Clerks and that clubbing an inferior feeder category and a superior category for purposes of further promotion was violative of Article 14 in the sense that unequals were treated as equals. This Court reversed the High Court and held that the policy of the Government was based upon the fact that promotion as Upper Division Clerk was districtwise and in some districts promotions of Lower Division Clerks as Upper Division Clerks were faster than in other districts due to fortuitous circumstances in one district and that with a view to remove this inequity, the Government took a policy decision to club the LDCs and UDCs into one group. This policy was held

valid.

22. The facts of the case in State of Rajasthan v. Rajendra Kumar Godika are also similar. The High Court struck down the relevant Rule but this Court again reversed the judgment. In that case, Group 'E' Headmasters who were in charge of Higher Secondary Schools objected to being clubbed with Group 'F' Headmasters in charge of Secondary Schools, for promotion into Group 'D' as Principals, Higher Secondary Schools. They raised objection on the ground that Group 'F' posts were themselves feeder posts for filling up Group 'E' posts. The plea was that this amounted to treating unequals as equals. The High Court accepted this contention. But this Court rejected the said contention on the ground that the nature of duties and functions were same and the policy there was to give only the remaining vacancies of Group 'D' to Group 'F' and on merit. Mohd. Usman v. State of A.P. was followed.

23. More recently, in Union of India v. N.Y. Apte a similar situation arose. The Central Administrative Tribunal's decision striking down the Rule was set aside by this Court. In that case, the posts in meteorological posts of MG I and MG II were Class I gazetted posts whereas posts of AM were Class II gazetted posts. In 1969, the posts of MG I were to be filled from MG II. Fifty per cent of posts in MG II were to be filled by promotion from AM and equivalent posts (posts of AM were to be filled from posts of Professional Assistant, Superintendent etc.). In 1978, the Rules were modified. Posts in MG II were to be filled only by direct recruitment. The impugned provision however stated that posts in MG I were to be filled from MG II with 5 years' experience or from AM with 10 years' approved service or with combined 8 years' service of MG II and AM. Later, in 1983, the 10 years' qualifying service referred to above was reduced to 8 years. The direct

recruits of MG II of 1981-82 challenged the Rule and the Central Administrative Tribunal held that the 1978 and 1983 Rules were bad because the post of AM had been equated with MG II for promotional purposes and thereby unequals were treated as equals. This Court set aside the judgment of the Tribunal. Apart from the educational qualification and scales being same it was held that the fact that certain persons with equal qualification, joined a lower grade would not keep them permanently inferior or unequal to a person who had entered a higher grade so as to prevent them from being placed on a par with the latter after gaining sufficient experience in the service. A mere chance of promotion was not a right nor a condition of service. If the rule-making authority thought it fit to equate these persons with persons having longer experience, there was nothing wrong.”

The Court concluded as under:

“24. Thus, there may be varied reasons or situations or considerations that may be the basis for a decision by the Government in clubbing two groups together to improve the chances of promotion, even though one was a feeder channel for the other. In the present case, it is also important to note that under Rule 12, the Government stated that the quota for promotees could extend from 50% to 75% if suitable promotees were available. This increase in promotional quota was indeed intended to accommodate Groups (B) and (C) also in the channel to the promotion category. Secondly, Group (A) officers were in the scale of Rs 880-1510. Once in Group (B), the senior selection grade officers were put in the scale of Rs 940-1660, it was not permissible — even though they were in non-gazetted category — to bring them down to the scale of Rs 880-1510 in the gazetted category by reducing their grade and then to promote them as Managers etc. in Rs 1000-1820. That

was indeed the implication of the contention of the gazetted category. Once these officers in Group (B) were getting a higher scale than those in Group (A), and if the Government felt that they should be brought into the feeder group, the same could not be treated as irrational. Similarly, on the same considerations, Group (C) officers drawing Rs 880-1510, which was a scale equivalent to the scale of Group (A) officers, were also included in the feeder category. This could not by itself be treated as irrational. One other important consideration, — as stated in the Government’s counter — was that among Managers, it was felt that there must be more persons having experience in Extension posts and Statistical/Investigator posts in Groups (B) and (C) categories. Those who might have reached through an intermediate post, if any, were not found sufficient, even assuming that those from Groups (B) and (C) could have first gone to Group (A) and then as Managers. The promotion quota could go beyond 50% to 75% if suitable persons were available. In addition to this the State Government explained in their counter-affidavit filed in the High Court that, in respect of the inclusion of the senior scale officers of Groups (B) and (C), the Public Service Commission was consulted and it concurred with the policy of inclusion of these groups in the feeder channel. Industrial Extension Officers’ posts were created in all the districts and they have their importance in preparation and industrial planning. In Manager cadre, people with such experience were considered necessary. Most of the posts in the scale of Rs 1000-1820 were also created at district level. If the Government kept these facts and the scales of pay in mind when they made the provision creating the avenue of promotion from Group (B) and Group (C) employees, it cannot, in our opinion, be held to be irrational. The use of the words “just below” in Rule 11(a) does not mean just below in

the gazetted category.

25. The learned Single Judge relied upon Lalit Mohan Deb v. Union of India and on Dayaram Asanand Gursahani v. State of Maharashtra for holding that appointment to a higher grade was not a promotion. But, in State of Rajasthan v. Fateh Chand Soni the same passages were relied upon by this Court to hold that the appointment was in the nature of a promotion. But, we fail to see any relevance of this aspect in the present case. Whether the grant of a senior scale amounted to a promotion or not is not relevant. The question here is whether there was some rational basis for including these posts in the feeder categories. Two or three reasons have been given. One was that those in senior scale in Group (B) were drawing higher scale than Group (A). Those in higher scale in Group (C) were drawing same scale as Group (A). The posts of Manager in Rs 1000-1820 were mostly in districts and those working in same or higher scales in certain lower posts were included because in the promotional post of Managers those having experience in these areas where these Group (B) and Group (C) employees were having experience, were felt necessary. In other words, more posts of Managers were to be manned by those having experience in some other areas as well and that is why the quota in the Manager's post as per Rule 12 could go beyond 50% up to 75% for promotees, if suitable hands were available. The considerations in our view cannot be ignored nor characterised as irrational."

24. In the present case we are satisfied with the reasons/ justification offered by the State for the amendment by including the service rendered as Naib Tehsildar in computing the eight years regular government service for recruitment to HCS (EB) in Register A-1. It has been pointed out in the written statement that vide notification dated

18.01.2006, the Naib Tehsildars in the Revenue Department have been granted Class-II/Gazetted status by the Government. The power and duties of Tehsildars and Naib Tehsildars are of similar nature. The Tehsildars and Naib Tehsildars have powers of Executive Magistrate to maintain law and order. Their powers and functions include Maintenance & Updating Revenue Record, Registration of documents and recovery of Government dues. Therefore experience/service rendered as Naib Tehsildars and Tehsildars is similar. Another reason was with the existing provision where service rendered as District Revenue Officer/Tehsildar is only taken into consideration the zone of consideration was found to be not sufficient. In view of this the impugned amendment cannot be held to be arbitrary and unconstitutional.

25. Further it is to be noticed that entry into Register A-1 is on the basis of a selection to be made by the State Public Service Commission from amongst the names sent by a Committee comprising the Chief Secretary and two other officers to be nominated by the State Government. The petitioners can have no grievance against enlarging the zone of consideration. If the argument of the petitioners is accepted then even the inclusion of Tehsildars along with District Revenue Officers will have to be held to be illegal and arbitrary.

26. The extreme example given by the petitioners that in view of the amendment a person who has experience of only one day as Tehsildar will rank equal to a Tehsildar who has worked as such for more than eight years also does not justify holding the amendment to be arbitrary.

27. It is well settled as held in ***Mohd. Usman v. State of A.P.***

(1971) 2 SCC 188 that the validity of a rule has to be judged by assessing its overall effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is a just one taking all aspects into consideration.

28. The argument based on the judgment of this Court in CWP No.21845 of 2015 Vijay Kumar Yadav and another vs. State of Haryana and others is also of no avail to the petitioners. In that case, this Court was interpreting Rule 9 as it stood before its amendment in 2017. The petitioners in that petition had canvassed that the experience as Naib Tehsildars be also included in the eight years regular government required for consideration for being entered in Register-A1.

Referring to Rule 9 as it then existed the Court held as under:

“....After hearing the learned counsel for the parties, I am of the considered view that rule 9(1)(a)(i) has necessarily to be read with the main provision of Rule 9 and that the word 'government service' as contemplated in rule 9(1)(a)(i) has to relate back to the posts which have been specified in main rule 9 i.e. District Revenue Officers and Tehsildars. it cannot mean government service in isolation to mean any other post than the ones mentioned in the principal section.

xxxxxxx

A proper reading therefore, of the rules would be to say 8 years continuous government service as envisaged in rule 9(1)(A)(i) would mean government service as a District Revenue Officer or a Tehsildar and none other. Since the petitioners concededly do not fulfill this condition, they would not be entitled to consideration for being brought in Register A-I.”

29. Thereafter, the Rule has been amended in 2017 by specifying that the eight years continuous government service would include the service rendered as Naib Tehsildar.
30. The judgment interpreting the un-amended Rule 9 is thus not relevant.
31. Accordingly, there is no merit in these petitions and the same are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

November 13, 2019

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No