

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18744 of 2017

Dr. Shyam Sunder Singh, S/o Shri Aliyar Singh, Resident of Flat No.203, S.S. Enclave Apartment, Ashiana Digha Main Road, PS.- Rajivnagar, District-Patna, Bihar-Pin- 800014.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
3. The Special Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
4. The Under Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
5. The Union of India through the Secretary, Ministry of Health and Family Welfare, Department of Ayurved, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Red Cross Building, New Delhi- 110001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prashant Kumar Shahi, Sr. Advocate
Mr. Vinay Krishna Tripathi, Advocate
Ms. Shilpi Keshri, Advocate

For the State : Mr. Pushkar Narain Shahi, A.A.G. 6
Mr. Mritunjay Kumar, AC to AAG 6

For Union of India : Mr. Dr. K.N. Singh, A.S.G.
Mrs. Kanak Verma, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-11-2021

The Questions that arise for consideration by this
court are:-



- (a) Whether the demarcation of the position of Director General Aayush, Government of Bihar for an officer of the Indian Forest Service is permissible in law?
- (b) Whether Rule 9(b)(v) of the Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract basis and Service Conditions) (Amendment) Rules, 2017 is ultra vires the Constitution of India?

2. The petitioner has prayed for the following reliefs-

“For issuance of an appropriate writ/order or direction or of declaring as ultra vires the part of notification issued under memo no. 16/M.1-03/2008-1282 (Aa.Chi.) dated 20.11.2017 whereby and where under amendments have been made in Bihar District AYUSH Medical/State AYUSH Medical service (Regular/contract appointment and service conditions) Rules 2010 and a provision has been made that the post of Director General shall be earmarked for officer of the Indian Forest Service and/or for any other order or orders to which the petitioner may be entitled to in the facts and circumstances of this case.”

3. The Rules relating to the Appointment and Service



Conditions of the District and State Ayush (Non-teaching) Doctors, with effect from 21st December, 2010 were enacted under Article 309 of the Constitution of India termed as Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract basis and Service Conditions) Rules, 2010 (referred to as the Rules).

4. Relevant Rules reads as under:

“5. The following two sub-cadres shall be in State Ayush Medical Cadre:-

- (a) State Ayush Medical Service General Duty sub-cadre and
- (b) State Ayush Medical Service specialist sub-cadre.

Doctors of this Cadre may be transferred anywhere in the State.”

“6. All other posts except the posts identified for the District Ayush Cadre, shall be deemed to be post of the State Ayush Medical Cadre.”

“7. Appointment in the State Health Ayush Cadre shall be made by the State Government on the posts of Ayush Medical Officer/Ayush Specialist grade II. They shall be selected every year having regard to available vacancies through a competitive examination according to prescribed procedure. The selection shall be made through commission and it shall be necessary to follow the reservation rules prescribed by the State Government.”

“8. It shall be necessary to have a working experience of at least two years in rural area Hospitals or appointment in the General Duty sub-cadre. For appointment in specialist sub- cadre, it shall be essential to have a post graduate degree.”

“9. (a) Pay scales for different posts shall be as per



schedule-1 of these Rules

(b) The following posts shall be deemed to be administrative posts ;

(i) In-charge Ayush Medical Officer, Primary Health Centre.

(ii) Dy. Superintendent, In-charge Officer, Referral Hospital/Sub-Divisional Hospital/'Sadar Hospital, Hospitals relating to Medical Colleges of Ayush Sector/ Research Officer (Ayush).

(iii) District chief Ayush Medical Officer/ Dy. Director (Ayurved, Unani & Homoeopathic) (Ayush Sector)/Ayush Superintendent/Manager, State Ayurvedic and Unani Drug Pharmacy, Patna & equivalent posts.

(iv) Director (Ayush sector)/ Regional Director Ayush.

(v) Director General/ Director in Chief Ayush.

Post mentioned in SI. No. (i) & (ii) shall be filled on the basis of seniority from amongst working doctors in the concerned Hospital. The total No. of Posts mentioned in SI. No. (iii) Shall be three times to the total No. of sanctioned posts of District Chief Ayush Medical Officer. District Chief Ayush Medical Officer will be selected from amongst the senior doctors of this level on the basis of seniority and efficiency in which 50% posts of Ayurved, 20% posts of Unani and 30% posts of Homoeopathic sector shall be filled out of sanction posts. The posts equivalent to Dy. Director shall also be notified by the Department. Out of total No. of posts mentioned in SI.No-(iii) and (IV), separate number of the posts shall be decided by the Department for general duty Sub-Cadre and specialist Sub-Cadre. The selection to the posts mentioned in sl. no-(v) shall be made from the posts mentioned in sl. no. (iv)”



(Emphasis supplied)

“13. Qualification required for Dynamic ACP/Promotion:

- (i) Service of Ayush Doctors shall be confirmed after satisfactory Service of probation period of two years provided that they have passed the prescribed Departmental Examination and obtained the necessary Treasury Training.
- (ii) The Dynamic ACP/ Promotion shall be considerable on the basis of the recommendation of Departmental Promotion Committee. Departmental Promotion Committee shall, after considering the following facts recommend for the Dynamic ACP/ Promotions. -
 - (a) Satisfactory Character Roll
 - (b) To obtain Clearance Report (at least from internal vigilance) shall be essential.
 - (c) Other criteria fixed for this purpose from time to time by the State Government (General Administration department) namely, completion of *kalawadhi* for general promotion.
- (iii) Development Commissioner shall be the Chairman of the Departmental Promotion Committee. Other members shall be as per Rules.
- (iv) *Reservation* - separate reservation shall not be necessary for dynamic ACP as by said provisions only the level of the sanctioned posts itself is elevated but for regular promotion to the higher post it shall be essential to follow the reservation/Roster”

6. With the enactment of the Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract basis and Service Conditions) (Amendment) Rules, 2017 (referred to as the Amendment Rules), with effect



from 20.11.2017, Clauses (iv) and (v) of Rule 9 (b) stood amended in the following terms:

“4. उक्त नियमावली 2010 के नियम-9 के खंड (ख) का उपखंड (iv) एवं (v) निम्नलिखित द्वारा क्रमशः प्रतिस्थापित किये जाएंगे :—
(iv) निदेशक आयुर्वेद, निदेशक होमियोपैथिक एवं निदेशक यूनानी/क्षेत्रीय निदेशक आयुर्वेद/होमियोपैथिक/यूनानी)
(v) महानिदेशक आयुष (भारतीय वन सेवा के पदाधिकारी के लिए कर्णांकित पद)।”

7. The post of Director (Ayush Sector)/ Regional Director Ayush was redesignated as Director Ayurved, Director Homeopathic, and Director Unani/ Regional Director (Ayurved/Homeopathy/Unani) and the post of the Director General/ Director in Chief Ayush was redesignated as Director General Ayush and earmarked for a member of the Indian Forest Service.

8. Shri P. K. Shahi, learned Senior Counsel appearing for the petitioner argued that - (a) an officer from the Indian Forest Service could not be appointed as the Director General, Ayush as no reasonable classification or nexus with the object to be achieved in the legislation (Rules) is existent with such an appointment; (b) The Officer to be appointed is neither a specialist in the area, nor would he be suitably qualified to take attending decisions.

9. Sri P. N. Shahi, learned Additional Advocate General argued that such amendment does not suffer from any legal



infirmity and it has been made in furtherance of the larger goals of mainstreaming AYUSH and its integration with the National Rural Health Mission as instructed by the Central Government vide letter dated 01.01.2009 (Annexure-A). Further the position of the Director General (Ayush) is purely an administrative position, enabling a person from the Central Services (Indian Forest Service) to be suitable for manning the post.

10. The relevant portion of the communication from the Central Government, prompting the amendment to the Rules reads as under:-

“Create a separate AYUSH wing in the Health Department with a Director General AYUSH who could be from the Indian Forest Service. The various Directorate could report to the Director General (this could be an alternative or in addition to above). Secretary/DG post could be created by amalgamating/surrendering existing vacant posts.”

11. We notice that the present petition was filed on 18.12.2017, since when much water has flown. Our own research reveals, that the Ministry of Ayush was formed on the 9th of November 2014 with a vision of reviving the profound knowledge of our ancient systems of medicine and ensuring the optimal development and propagation of the Ayush systems of



healthcare. Earlier, the Department of Indian System of Medicine and Homoeopathy (ISM&H) formed in 1995, was responsible for the development of these systems. It was then renamed as the Department of Ayurveda;, Yoga and Naturopathy; Unani; Siddha; and Homoeopathy (Ayush) in November 2003 with focused attention towards education and research in Ayurveda, Yoga and Naturopathy, Unani, Siddha, and Homoeopathy and specified salient objectives as under:

1. To upgrade the educational standard of the Indian Systems of Medicine and Homoeopathy colleges in the country.

2. To strengthen existing research institutions and to ensure time-bound research programmes on identified diseases for which these systems have an effective treatment.

3. To draw up schemes for cultivating, promoting, and regenerating medicinal plants that are used in these systems.

4. To evolve Pharmacopoeial standards of Indian Systems of Medicine and Homoeopathy drugs.

12. In keeping with the policy of the Government to lay focused thrust on the Indian Traditional Systems of Medicine, to ease pressure on allopathic system, to ensure the optimal development, propagation and popularisation of AYUSH



systems of health care and to realise the cherished vision of the Government of India to make AYUSH the preferred system of medicine and Yoga a world-wide phenomenon, the Department of AYUSH was granted the status of Ministry with effect from 09.11.2014. The Ministry is responsible for policy formulation, development and implementation of programmes for the growth, development and propagation of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) systems of Health Care. Sowa Rigpa is the recent addition to the existing facility of AYUSH systems.

13. The Ministry of Ayush has on its Website specified measures taken to promote its objective under difference Heads.

1. CITIZEN'S CHARTER

The Citizen's Charter relates to providing services which ultimately lead to promotion of AYUSH for achieving the highest possible level of good health and well being through a preventive and promotive health care orientation in all developmental policies and to achieve universal access to good quality health care services at affordable cost.

2. VISION OF THE MINISTRY



The vision of the Ministry is to position AYUSH systems as the preferred systems of living and practice for attaining a healthy India.

3. MISSION OF THE MINISTRY

The Ministry has identified its Mission in terms of seven broad thematic areas of AYUSH activities. The thematic areas are as follows:

- (i) Effective Human Resource Development, (ii) Provision of Quality AYUSH Services, (iii) Information, Education and Communication (iv) Quality Research in AYUSH (v) Growth of the Medicinal Plants Sector, (vi) Drug Administration, (vii) International Exchange Programme/Seminars/Workshops on AYUSH

4. INDEX OF SERVICES

- (i) Conservation, Development and Sustainable Management of Medicinal Plants, (ii) Extra Mural Research, (iii) Public Health Initiative, (iv) Information, Education & Communication, (v) International Cooperation, (vi) Permission to Ayurveda, Siddha & Unani (ASU) colleges, (vii) Permission to Homoeopathic colleges.



5. CITIZEN SUPPORT SERVICES

(i) Conservation, Development and Sustainable Management of Medicinal Plants

a) State Medicinal Plants Boards (SMPBs)

[www.nmpb.nic.in]

b) Region-wise Regional-cum-Facilitation Centres

(RCFCs) [www.nmpb.nic.in].

LAW ON ARBITRARINESS

14. Article 14 is part of the Golden Triangle of the Indian Constitution with Articles 19 and 21. It embodies one of the most important and essential values of a democracy. A democracy is rule of the people, for the people and by the people and that is only possible when everyone has an equal protection of the laws and equality before law. It has been held by the Supreme Court as the basis of rule of law and a basic feature of the Constitution. [**Raghunath Rao, Ganpath Rao v. Union of India, 1994 Supp. (1) SCC 191**]

15. In the very first year of our republic, the Hon'ble Supreme Court in **Chiranjit Lal v. Union of India, 1950 SCR 869**, held that mere production of inequality is not enough to



hold that equal protection has been denied. For every selection of a person for regulation, produces inequality in some degree.

16. Further, in **K. N Bajoria v. State of West Bengal, AIR 1953 SC 404**, Hon'ble the Apex Court held that the classification need not be scientifically perfect or logically complete.

17. In the current case, we find that we are bound by the decision of a Constitution Bench of Hon'ble the Supreme Court in **State of Mysore v. P. Narasinga Rao, AIR 1968 SC 349**, as the opinion reads as under:-

“The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such.”

18. The validity of the rule is to be judged by accessing its overall effect and not picking up exceptional cases but what the court has to see is: Whether after taking all aspects into consideration the classification is just. [**Md. Usman v. State of Andhra Pradesh, (1971) 2 SCC 188**].

19. Equality does not involve a concept of absolute



equality amongst all. Equality under Article 14 is not indiscriminate. It permits rational or discriminating discrimination. In other words, discrimination, which qualifies as reasonable classification and has also nexus with the object sought to be achieved by undertaking such discrimination, then it is held to be permissible.

20. The Supreme Court has held that classification or differentia adopted must have a rational or reasonable nexus with the object sought to be achieved. [**Lakshmi Khandsari v. Union of India, (1981) 2 SCC 600**].

21. Further, with respect to the classification being valid, Hon'ble the Apex Court held that the practical test for a valid classification is those grouped together must possess common characteristics justifying their inclusion in a group but distinguishing them from those excluded; and this exercise must bear a rational nexus with the reason for the exercise. [**Kerala Hotel and Restaurant Assn. v. State of Kerala (1990 (2) SCC 502**].

22. In the same vein, in **Dhan Singh and Ors v. State of Haryana, 1991 Supp 2 SCC 190**, Hon'ble the Apex Court held:-

“When a rule is challenged as denying equal protection, the question for determination by the Court is



not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of protection does not per se amount to discrimination within the inhibition of equal protection clause under Article 14. To attract the attention of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the Legislature has in view. The Court has to examine whether the classification can be deemed to rest upon differentia discriminating the persons or things grouped from those left out and whether such differentia has a reasonable relation to the objects sought to be achieved irrespective of whether the rule is intended to apply to person or thing or to a certain class of persons or things. Therefore, the policy or the object of the legislation are relevant consideration.”

(Emphasis supplied)

23. And further, the Supreme Court in **Jagnath Versus Union of India, 1992 Suppl (2) SCC 105**, reaffirmed this position saying- “Article 14 permits reasonable classification founded on different basis. It is now well established that the classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In



service matters, merit or experience could be the proper basis for classification to promote efficiency in administration.”

24. From the above analysis of Article 14, two requirements are clear- (i) that there must be reasonable classification; and (ii) that such reasonable classification must have direct nexus to the object sought to be achieved.

25. On this issue, to our mind, principle stands best culled out by the Apex Court in **Subramaniam Swamy v. Director, Central Bureau of Investigation and another, (2014) 8 SCC 682 (five- Judge Bench)**. We deem it appropriate to reproduce the relevant portion of what the Apex Court observed in **Subramaniam Swamy** (supra):

“41. In **Ram Krishna Dalmia v Justice SR Tendolkar & Ors, 1959 SCR 279**, the Constitution Bench of five Judges further culled out the following principles enunciated in the above cases:

"11. ... (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;



(d) that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

Further:

"43.

"12. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law.

(ii) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the court will strike down the law as an instance of naked discrimination."

44. In *Nagpur Improvement Trust and Anr v Vithal*



Rao and Ors, (1973) 1 SCC 500, the five- Judge Constitution Bench had an occasion to consider the test of reasonableness under Article 14 of the Constitution. It noted that the State can make a reasonable classification for the purpose of legislation and that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. *The Court emphasized that in this regard object itself should be lawful and it cannot be discriminatory.* If the object is to discriminate against one section of the minority, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

45. The constitutionality of Special Courts Bill, 1978 came up for consideration *in Special Courts Bill, 1978, In Re: President of India v. The Special Courts Bill, 1978, (1979) 1 SCC 380* as the President of India made a reference to this Court under Article 143(1) of the Constitution for consideration of the question whether the "Special Courts Bill" or any of its provisions, if enacted would be constitutionally invalid. The seven Judge Constitution Bench dealt with the scope of Article 14 of the Constitution. Noticing the earlier decisions of this Court in *Budhan Choudhry v. State of Bihar, AIR 1955 SC 191*, *Ram Krishna Dalmia v. S.R. Tendolkar, AIR 1958 SC 538*, *CI Emden v State of U.P., 1960 2 SCR 592*, *Kangsari Halder & Anr v State of West Bengal, 1960 2 SCR 646*, *Jyoti Pershad v. UT of Delhi, AIR 1961 SC 457* and *State of Gujarat & Anr v Shri Ambica Mills Ltd, Ahmedabad & Anr, (1974) 3 SCR 760*, in the majority judgment the then Chief Justice Y.V.Chandrachud, inter alia, expounded the following propositions relating to Article 14:

"(1) * * *

(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or



things to be subjected to such laws.

(3) * * *

(4) * * *

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well- defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

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

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

26. Further the issue of arbitrariness and equality as enunciated by the Courts in reference to Article 14 of the Constitution of India vis-à-vis service jurisprudence is now well settled. Such principles, enunciated, over a period of time, can be culled down as under:-



I) With respect to promotion

(i) In **State of Kerala v. N.M. Thomas, (1976) 2 SCC**

310, the Hon'ble Apex Court held that:-

“66. The guarantee of equality before the law or the equal opportunity in matters of employment is a guarantee of something more than what is required by formal equality. It implies differential treatment of persons who are unequal. Egalitarian principle has therefore enhanced the growing belief that Government has an affirmative duty to eliminate inequalities and to provide opportunities for the exercise of human rights and claims Fundamental rights as enacted in Part III of the Constitution are, by and large, essentially negative in character. They mark off a world in which the Government should have no jurisdiction. In this realm, it was assumed that a citizen has no claim upon Government except to be left alone. But the language of Article 16(1) is in marked contrast with that of Article 14. Whereas the accent in Article 14 is on the injunction that the State shall not deny to any person equality before the law or the equal protection of the laws that is, on the negative character of the duty of the State, the emphasis in Article 16(1) is on the mandatory aspect, namely, that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State implying thereby that affirmative action by the Government would be consistent with the article if it is calculated to achieve it..”

(Emphasis supplied)

(ii) In **Roop Chand Adlakha v. DDA, 1989 Supp (1)**

SCC 116, the Hon'ble Apex Court held as under:-

“18. The idea of equality in the matter of promotion can be predicated only when the candidates for promotion are drawn from the same source. If the



differences in the qualification have a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional post, the more advantageous treatment of those who possess higher technical qualifications can be legitimised on the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time. When the State makes a classification between two sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14. A wooden equality as between all classes of employees irrespective of all distinctions or qualifications, or job requirements is neither constitutionally compelled nor practically meaningful. This Court in G.M., South Central Railway v. A.V.R. Siddhanti [(1974) 4 SCC 335 : 1974 SCC (L&S) 290 : (1974) 3 SCR 207, 214] observed: [SCC p. 343 SCC (L&S) p. 298, para 20]”

“A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a ‘classless’ and undiscerning ‘equality’ where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible.”

(Emphasis supplied)

(iii) In **T. Devadasan v. Union of India** [AIR 1964

SC 179 : (1964) 4 SCR 680, 689-90 : (1965) 2 LLJ 560] this



Court observed:

“What is meant by equality in this article is, equality amongst equals. It does not provide for an absolute equality of treatment to all persons in utter disregard in every conceivable circumstance of the differences such as age, sex, education and so on and so forth as may be found amongst people in general. Indeed, while the aim of this article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description and the differences which may obtain between them are of no relevance for the purpose of applying a particular law reasonable classification is permissible. It does not mean anything more.”

(Emphasis supplied)

(iv) Though the concept of equal protection and opportunity permeate the whole spectrum of individual employment, it is an inherent limitation, namely that equality is for equals and only those who are similarly circumstanced are entitled to equal treatment. [**Ramesh Prasad Singh v. State of Bihar (1978) 1 SCC 37 (6, 11)**]

II. Fixing the criteria for eligibility and more specifically the educational/technical qualification is solely within the realm and domain of the Experts, i.e. the employer and not the Courts.

(i) Equivalence in educational qualification is a technical question. When the recommendation is by experts, Court not to disturb lightly, the same being uninformed of data and



technical insight. [**Mohd. Shujat Ali v. Union of India, (1975) 3 SCC 76 (paras 14, 15, 24, 25, 26); State of Uttarakhand v. S.K. Singh, (2019) 10 SCC 49, para 19, 20, 27]**

(ii) For the purposes of promotion, a valid classification can be made amongst the members holding the same post on the basis of their qualification. [**Shamkant N. Deshpande v. Maharashtra Industrial Development Corporation 1993 Supp (2) SCC 194, (Para 3); Rajasthan State Electricity Board Accountants Association, Jaipur v. Rajasthan State Electricity Board and another, (1997) 3 SCC 103, para 9, 18, 23]**

(iii) In **T.R. Kothandaraman v. T.N. Water Supply & Drainage Board, (1994) 6 SCC 282**, Hon'ble the Apex Court held as follows:-

“16. From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in public service:

(1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.

(2) Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.

(3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of



promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons for this are being indicated later.”

(iv) In **Sita Devi and others v. State of Haryana and others, (1996) 10 SCC 1 (para 4)**, Hon’ble the Apex Court held that distinction made on technical qualifications or for that matter even on the basis of general educational qualification relevant to the suitability of the candidate for public service is permissible under Articles 14 and 16 of the Constitution of India.

III. Simply because right of promotion stands defeated cannot be a reason for holding the statute to be irrational, hence arbitrary.

(i) Hon’ble the Supreme Court has held that mere chance of promotion or the diminishing of chances of promotion cannot be termed as service conditions. [**Dwarika Pd. v. Union of India, (2003) 6 SCC 535 (para 24); A Satya Narayan v. S. Purushottam, (2008) 5 SCC 416 (Para 23, 30)**].

(ii) Alteration of chances not be interfered with unless arbitrary or malafide as mere chances do not warrant judicial intervention. [**Dhole Govind Sahib Rao v. Union of India,**



(2015) 6 SCC 727, (para 39, 40)]

(iii) There is no vested right for promotion, but only a right to be considered in accordance with the Rules as they existed on the date when the case for promotion was taken up.

[Rajasthan State Sports Council and another v. Uma Dadhich and another, (2019) 4 SCC 316, para 5; Union of India & Ors. v. Krishna Kumar and Ors. (2019) 4 SCC 319, para 13]

IV. Difference in Pay Scales

(i) Different pay scale within the same cadre, when persons having same degree even where roles are interchangeable, are permissible in law. **[State of T. N. and another v. M.R. Alagappan and others, (1997) 4 SCC 401, para 11; Chhatisgarh Rural Extension, Officers Association v. State of M.P., (2004) 4 SCC 646, para 16 & 17, Director of Elementary Education, Odisha vs. Pramod Kumar Sahoo, (2019) 10 SCC 674, para 12 & 13.]**

(ii) In **U.P. State Sugar Corporation v. Sant Raj Singh, (2006) 9 SCC 82**, Hon'ble the Apex Court held that the doctrine of equal pay for equal work as adumbrated under Article 39(d) of the Constitution of India read with Article 14 thereof cannot operate in the vacuum. The constitutional



scheme postulates this principle for those who are placed equally in all respects. Possession of a higher qualification has all along been treated by Hon'ble the Apex Court as a valid basis for classification of two categories of employees.

[Pramod Kumar Sahoo (supra)]

V. Burden of proving the classification to be unreasonable on the person alleging it to be so.

(i) In **Sita Devi (supra) (para 4)**, Hon'ble the Apex Court held that where the petitioners complain of unlawful discrimination of offending Article 14, it is for them to satisfy the Court that the distinction made is irrational and baseless and that it really amounts to unlawful discrimination.

VII. Malice cannot be a ground for challenging a legislation.

(i) It was held by Hon'ble the Apex Court in **V. K. Sood versus Secretary, Civil Aviation and others, 1993 Supp (3) SCC 9, para 6**, that rules having been made under Article 309 of the Constitution, being statutory, cannot be impeached on the ground that authorities have prescribed tailor made qualification to suit the stated individuals whose names have been mentioned in the appeal. It is settled law that no motives



can be attributed to the legislature in making law.

27. Considering the fact that even as recently as 2019, Hon'ble Mr. Justice L. Nageswara Rao and Hon'ble Mr. Justice M. R. Shah, in **Union of India and others Versus S. Maadasamy and another, (2019) 6 SCC 674**, reiterated what stood settled by the Hon'ble Apex Court in **P.U. Joshi v. Accountant General, (2003) 2 SCC 632**, we find fruitful to reproduce in verbatim the opinion rendered in paragraph 10 of the latter, in following terms:-

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and



cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

28. In **State of J&K versus Triloki Nath Khosa**, (1974) 1 SCC, 19, a Constitution Bench of Hon’ble the Apex Court held as under:

“18. This submission is erroneous in its formulation of a legal proposition governing onus of proof and it is unjustified in the charge that the record discloses no evidence to show the necessity of the new Rule. There is always a presumption in favour of the constitutionality of an enactment and the burden upon him who attacks it to show that there has been a clear transgression of the constitutional principles. [Ram Krishan Dalmia v. Justice S. R. Tendolkar AIR 1958 SC 538 : 1959 SCR 279, 297(b) : 1959 SCJ 147] A rule cannot be struck down as discriminatory on any a priori reasoning. “That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the Rules offend Act. 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration.” The burden thus is on the respondents to set out facts necessary to sustain the plea of discrimination and to adduce “cogent and convincing evidence” to prove those facts for “there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification”. [State of U. P. v. Kartar Singh AIR 1964 SC 1135: (1964) 6 SCR 679, 687 : (1964) 2 SCJ 666.] In G.D. Kelkar v. Chief Controller of Imports and Exports [AIR 1967 SC 839 : (1967) 2 SCR 29, 34 : (1967) 2 SCJ 182] Subba Rao, C.J., speaking for the



Court has cited three other decisions of the Court in support of the proposition that “unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by pleading the necessary material before the Court that the said classification is unreasonable and violative of Article 16 of the Constitution”.

“31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.”

32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis 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.”

“54. In this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to Procrustean cruelty or sanctions indolent inefficiency. Necessarily, therefore, an imaginative and constructive *modus vivendi* between commonness and excellence must be forged to make the equality clauses viable. This pragmatism produced the judicial gloss of “classification” and “differentia”, with the by-products of equality among equals and dissimilar things having to be treated differently. The social meaning of Articles 14 to 16 is neither dull uniformity nor specious “talentism”. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of pervasive and slovenly



medicority for activist and intelligent — but not snobbish and uncommitted — cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for Articles 14 to 16 and the Court's jurisdiction awakens to deaden such manoeuvres. The soul of Article 16 is the promotion of the common man's capabilities, overpowering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of Articles 14 and 16 by the theory of classified equality which at its worst degenerates into class domination.”

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

(Emphasis supplied)

29. This view was reiterated in **P. Murugesan and others Versus State of Tamil Nadu and others, (1993) 2 SCC 340 (para 11).**

30. When the statute does not lay down the method of appointment or term of appointment and when the statute specifies that the appointment is one of sure tenure, the appointing authority which has the power to appoint has absolute discretion in the matter and it cannot be said that discretion to appoint does not include the power to appoint on



contract basis. [**Retd. Armed Forces Medical Association and others versus Union of India and others, (2006) 11 SCC 731**

(I)

31. In **Dhole Govind Sahebrao v. Union of India, (2015) 6 SCC 727**, the Hon'ble Apex Court held as under:

“39. It is apparent from a collective perusal of the conclusions recorded in the judgments extracted in the foregoing paragraphs, that chances of promotion do not constitute a condition of service. In that view of the matter, it is inevitable to hold that the High Court erred in recording its eventual determination on the basis of the fact that the promulgation of the 2003 TA Rules and the 2003 STA Rules was discriminatory and arbitrary with regard to the fixation of the inter se seniority, since the same seriously prejudiced the chances of promotion of the erstwhile members of the Ministerial Cadre, namely, those members of the original Ministerial Cadre, who had not opted for appointment/absorption into the cadre of Data Entry Operators, with reference to and in comparison with, those members of the original Ministerial Cadre who had opted for appointment/absorption into the cadre of Data Entry Operators. This extract is taken from **Dhole Govind Sahebrao v. Union of India, (2015) 6 SCC 727 : (2015) 2 SCC (L&S) 340 : 2015 SCC OnLine SC 266** at page 762.

“40. As a proposition of law it is imperative for us to record that chances of promotion do not constitute conditions of service, and as such, mere alteration of chances of promotion, would not per se call for judicial interference. The above general proposition would not be applicable in case the chances of promotion are altered arbitrarily, or on the basis of considerations which are shown to be perverse or mala fide.”

32. Given that the counter affidavits filed by the



respondents were conspicuously silent on the rationale behind appointment of an Indian Forest Officer to the post of Director General, AYUSH, and therefore, we must look into the object sought to be achieved, ourselves. With the object sought to be achieved by creation of a special Ministry, an Indian Forest Officer shall cover both situations as being familiar with both Forest produce which is an essential aspect of Indigenous medicines- one of the core areas of AYUSH and that such Officer shall be equally suitable to take administrative decisions which are imperative to the larger goals of mainstreaming of AYUSH, which is a policy decision of the Central Government.

33. In exercise of its power under Article 309 of the Constitution of India, the Government of Bihar was pleased to notify the Rules relating to the Appointment and Service Conditions of the District and State Ayush (Non-teaching) Doctors, vide Notification dated 21st December, 2010. In terms thereof, the State Government created different cadres for the Medical Services at the State and the District level. Chapter -3 deals with the State level cadre of Medical Officers (Ayush). In terms of rule 5, at the State Level, the cadre was sub-divided to comprise “(a) State Ayush Medical Service General Duty sub-



cadre and (b) State Ayush medical service specialist sub-cadre.”

The selection and appointment to the State Level Cadre is by way of competitive examination as per the prescribed procedure. Rule 9(b) specified the posts to be administrative post and as per sub-rule (iv) and (v), the post of Director (Ayush sector)/Regional Director Ayush and Director General/Director in Chief Ayush, respectively are deemed to be administrative post. As noticed earlier the Rules stood amended.

34. The Government of India, Ministry of Health & Family Welfare has issued guidelines from time to time to the State Governments on the subject of mainstreaming and revitalizing Ayush institutions as bringing Ayush into the mainstream healthcare delivery system of the country is a major policy objective of the Central Government. Mainstreaming of Ayush is one of the objectives under National Rural Health Mission (NHRM) and therefore, several actions have been suggested by the Ministry of Health & Family Welfare, Government of India for mainstreaming of Ayush in the States and in this regard, one of the suggestion is to create a separate Ayush in the Health Department with a Director General, Ayush who would be from Officer of the



Indian Forest Service and the various Directorates could report to the Director General, Ayush.

35. Therefore, the creation of the post of Director General, Ayush and earmarking the said post for an officer of Indian Forest Service by making a specific provision in the above-mentioned amended Rules, 2017, is absolutely justified and perfectly in the tune with the objectives visualized by the Government of India for mainstreaming of the Ayush in the State and bringing the Ayush into mainstreaming delivery scheme of the country and also fulfilling the objectives of the National Rural Health Mission (NHRM).

36. In the light of the Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract basis and Service Conditions) Rules, 2010, three posts of Director in each wing (i.e. Ayurvedic, Homeopathic and Unani) had already come into existence and as per the existing Bihar District Ayush Medical/State Ayush Medical Service (Appointment on Regular/Contract basis and Service Conditions) Rules, 2010 presently, all three Directors in each wing (i.e. Ayurvedic, Homeopathic & Unani) are discharging their duty effectively including the petitioner (i.e. Dr. Shyam Sunder Singh) who has been made Director, Homeopathic



being a senior Doctor in the Homeopathic stream (i.e. Dr. Shyam Sunder Singh).

37. Earmarking the post of Director General, Ayush for an officer of Indian Forest Service because, which is purely an administrative post, under which the Directors of three separate wings have to function. The said post is similar to the post of Chief Executive Officer, State Medicinal Plantation Board, Health Department, Bihar, Patna where an officer of Indian Forest Service of the rank of Chief Conservator of Forests is posted.

38. There cannot be any legitimate expectation on the part of the petitioner for being chosen to the post in question. Significantly, petitioner does not amplify as to how the amendment is ultra vires the parent Statute; of Articles 309; 14 or 16 in his career profile.

39. The Constitution Bench of the Hon'ble Apex Court in **P. Narasinga Rao (supra)** clearly held that “the provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate



for public service as such.”

40. In view of the foregoing discussion as well as the principles enunciated by Hon’ble the Supreme Court, we find no merit in the claim of the petitioner and hold that that the amendment which is under challenge passes the constitutional muster.

41. Questions of law are answered accordingly.

42. The writ petition stands dismissed with the above observations.

43. Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

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Transmission Date	

