IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No.7490 of 2016

Sukhwinder Kaur, wife of late Manorath Singh, R/o Arjun Enclave Block-A, G-03, PO and PS- Mango, Distt. East Singhbhum.

…… **Petitioner**

Versus

1. The State of Jharkhand
2. The Director, Secondary Education, State of Jharkhand Project Building, Dhurwa, PO & PS: Dhurwa, District Ranchi.
3. The District Education Officer, East Singhbhum, Jamshedpur, PO and PS: Bistupur District: East Singhbhum.
4. The Secretary, Managing Committee Guru Nanak High School Mango, PO and PS: Mango, district East Singhbhum, Jamshedpur.

……**Respondents**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner(s) :Mr. Harendra Kr.Mahato, Advocate;
Mrs. Ahalya Mahato, Advocate;
Ms. Jyotsna Mahato, Advocate
For the State :Mr. Navneet Toppo, AC to GP-1

Order No.16/Dated:07/05/2026

1. The present writ petition under Article 226 of the Constitution of India has been filed seeking following relief(s):

(i) For issuance of appropriate writ(s)/order(s)/direction(s) commanding the respondents to quash order dt. 16/05/2016 passed in memo no. 1028 by the respondent Director which is illegal.

(ii) For issuance of appropriate writ(s)/order(s)/direction(s) commanding the respondents to accord approval for the post of Head Master to the petitioner with effect from 01/12/2009 in accordance with rules and decision of the managing committee and to pay arrears of the salary and revise the pension and pensionary benefits accordingly.

Factual Matrix:

2. The brief facts of the case as per pleadings made in the instant writ petition require to be enumerated herein which read as under:

(i) It is stated that the petitioner was appointed as an Assistant teacher on 03/01/1971 in Guru Nanak High School Jamshedpur, a Govt. Aided Minority High school funded and financed by the Govt. permanently since July 1977. Petitioner being B.A. B.Ed. since 1975, her appointment was approved by the competent authority since July 1977 itself, she was granted senior selection scale which was equivalent to M.A. scale on 29/07/1986.

(ii) It is further stated that since January 1986 itself the petitioner was made Assistant Head Master with the approval of the DEO Singhbhum and discharged duty as the same. In 2001 on the retirement of the Head Master of Guru Nanak High School, the petitioner was made in Charge Head Master of the said school by the Managing Committee and discharged duty as the same till November 2009.

(iii) It is pertinent to mention the petitioner did her M.A. with 57.56% of marks in November 2009 itself.

(iv) It is further stated that seeing her competency and prudent ability, seniority, eligibility and suitability the Managing Committee promoted her to the post of

Head Master with effect from 01/02/2009 and the resolution was sent for formal approval from the Govt. sending the same to the Director Secondary Education, which was pending.

(v) Thereafter the Managing Committee revised the appointment of the petitioner as the Head Master with effect from 01/12/2009 vide Resolution dated 27/12/2010 and again forwarded such resolution to the Director Secondary Education for its approval vide letter dated 19/06/2013. She has also stated that on same and similar situation other person like C. Usha Naidu has been appointed as Head Master in A.D.L. society High School Sakchi Jamshedpur whose M.A. result was published in October 2009 and approval was accorded by the Director on 23/05/2013. The D.E.O. has also mentioned the matter to the Director in his forwarding in his letter dt. 04/09/2013.

(vi) The Director in view of the order of the Hon'ble High Court in writ petition being W.P.(S) No. 2180 of 2014 wherein the court deemed appropriate that petitioner makes representation before respondent no.2, Director and further directed that representation be considered after due scrutiny of relevant record within reasonable time but vide order dated 16.5.2016 the Director refused to give approval and has not considered all

these facts and laws and has passed the impugned order on the baseless grounds that the Managing Committee has in its subsequent resolution contained in memo no. 91A dated 09/10/2013 has rejected the proposal of making Head Master to the petitioner etc.

(vii) The grounds of refusing approval are not based on healthy and legal grounds but quite on baseless and illegal grounds.

(viii) The Director ought to have considered that the Managing Committee have already resolved and posted the petitioner as the Head Master who worked for the said post for a considerable time vide resolution dated 27/12/2010 and further after her retirement the committee cannot change its resolution for some or other reason/ pressure of any one and take back such resolution.

(ix) The petitioner also fulfills all requisite criteria including the academic qualification and as such the impugned order is liable to be quashed.

3. It is admitted fact as per the pleadings made, as referred herein above, that the writ petitioner was working as teacher to be eligible to hold the post of Headmaster she offered her candidature for the same. The Managing Committee has recommended the case of the writ petitioner vide decision so taken by the Managing Committee on 7.8.2009. But the said recommendation has not been accepted by the

competent authority of the State Government on the ground that the writ petitioner is not found to be eligible to hold the post of Headmaster as per the eligibility criteria provided under the Recruitment/Promotion Rule notified as per the Notification dated 5.11.2004 (Annexure-B to the counter-affidavit). The said order is under challenge on the ground that the petitioner is eligible to hold the post of Headmaster being post graduate along with ten years of teaching experience.

Arguments advanced on behalf of the petitioner:

3. The learned counsel appearing on behalf of the writ petitioner has submitted that the writ petitioner has got the Post Graduation degree on 14.11.2009 and prior to that date the case was recommended, i.e., on 7.8.2009 and, as such, the said recommendation was not approved by the authority but herein admitting the aforesaid fact also since the writ petitioner has got the eligibility criteria as provided under Rule 4 (i)(kha) of the Notification dated 5.11.2004 then it was the bounden duty of the said authority to consider the case of the writ petitioner for promotion finding her eligible for the said post. However, he has tried to make out a case that the petitioner is also coming under the fold of eligibility criteria of Rule 4 (ii) (Aa) since the writ petitioner is having the selection grade and also eligible to hold the post of Headmaster and, as such, on that count also the case of the writ petitioner ought to have been taken into consideration.

Arguments advanced on behalf of the State:

5. Per contra, Mr. Navneet Toppo, the learned counsel appearing for the State has submitted that the impugned decision suffers from no

error, reason being, that as per the Recruitment/Promotion Rule appointment by any mode can only be made to such candidate who is found to be eligible to hold the post and the writ petitioner is not possessing the basic eligibility criteria as provided under Rule 4 (i) (kha) as she has not got the post graduation degree the date when the case of the writ petitioner was recommended for the promotion to the post of Headmaster. So far as the eligibility as per Rule 4(ii) (Aa) is concerned, the same cannot be allowed to be taken into consideration reason being that the same is the enabling condition to grant promotion subject to the consideration of promotion to be made initially as per the condition stipulated under Rule 4 (i)(kha).

6. Mr. Mahato, the learned counsel appearing on behalf of the writ petitioner has submitted in response to the submission made on behalf of the State that it was the duty casted upon the authority to consider the case of the writ petitioner for promotion on the basis of subsequent recommendation made by the Managing Committee as per minutes of meeting dated 27.12.2010 (Anneuxre-6). It has been submitted that at the moment the writ petitioner became eligible for promotion to the post of Headmaster possessing the requisite qualification then the subsequent recommendation ought to have been approved.

7. Again Mr. Toppo, the learned counsel for the State has submitted that the said recommendation dated 27.12.2010 has been rejected by the school management committee on 09.10.2013.

8. At this juncture, a question has been posed to the learned State counsel that what is the date of retirement of the writ petitioner. It has been

submitted that the writ petitioner has retired from service on 31.10.2012.

Analysis:

8. This Court has heard the learned counsel for the parties and gone through the pleadings made in the writ petition as also the affidavits filed on behalf of the State and the Managing Committee. The issue revolves here regarding the claim of the writ petitioner for promotion to the post of Headmaster based upon the Rules notified by virtue of Notification dated 5.11.2004.

9. This Court, therefore, needs to refer herein the provision upon which the issue of promotion is to be considered by the authority which is provided as under Rule 4 thereof, for reference the same is being referred herein under:

*"4. (1) **आर्हताएँ**:-*

क)……

ख) राज्य सरकार अथवा केन्द्र सरकार द्वारा स्थापित विश्वविद्यालय से कला, विज्ञान अथवा वाणिज्य में स्नातकोत्तर की डिग्री। नई नियुक्ति में स्नातकोत्तर द्वितीय श्रेणी किन्तु संबंधित विषय में न्यूनतम 50 प्रतिशत अंक अनिवार्य होगा।

प्रोन्नति द्वारा प्रधानाध्यापक के पद पर नियुक्ति हेतु द्वितीय श्रेणी में स्नातकोक्तार विश्वविद्यालय डिग्री/अथवा तीन वर्षीय डिप्लोमा तथा स्नातकोतार शिक्षा के रुप में किसी उच्च माध्यमिक विद्यालय में दस वर्षों का शिक्षण कार्य का अनुभव । अनुसूचित जाति/अनुसूचित जन जाति के मामले में प्राप्तांक न्यूनतम 45 प्रतिद्दात की सीमा लागू रहेगी। राष्ट्रीय अध्यापक शिक्षा परिषद् (एन० सी० टी० ई०) से मान्यता प्राप्त संस्थान से बी० एड० की डिग्री अथवा एन० सी० टी० ई० के 16 अस्तित्व में आने की तिथि 17 अगस्त, 1995 के पूर्व के मामलों में संबंधित राज्य सरकार से मान्यता प्राप्त शिक्षक प्रशिक्षण संस्थान से बी एड की डिग्री की योग्यता अनिवार्य होगी।

(ii) अ) ……..

(आ) प्रवरण वेतनमान प्राप्त शिक्षकों में से वरीयता के आधार पर प्रधानाध्यापक पद पर प्रोन्नति दी जा सकेगी। प्रवरण वेतनमान प्राप्त शिक्षकों के

आभाव में अथवा यदि ऐसे शिक्षक अनिच्छा व्यक्त करते है तो वरीय वेतनमान के शिक्षक जिनकी कुल सेवा अवधि (मूल वेतनमान तथा सरीय वेतनमान मिलाकर) 24 वर्ष हो गयी है, को भी वरीयता के आधार पर प्रोन्नति दी जा सकती है। अनुसूचित जाति/अनुसूचित जनजाति के शिक्षकों की अनुपलब्धता की स्थिति में इस कोटि के शिक्षकों के लिए कालावधि (24) वर्ष) को सरकार शिथिल कर सकती है, बशर्ते कि उनकी कुल सेवा 18 वर्ष की हो."

10. It is evident from the aforesaid provision as contained under Rule 4 particularly 4(i) (kha) which is in two parts. The first part is not relevant so far as the facts of the present case is concerned. Since it is a case of promotion and, thus, the second part is relevant which provides eligibility criteria for promotion. It is evident from the aforesaid provision that a candidate is to possess post graduate degree in second class from a University/or three years diploma and the ten years teaching experience in the post graduate education in any higher /primary school. The another provision which is 4(ii) (Aa) is also for consideration for such candidate who is having the selection grade based upon its seniority who can also be considered for promotion to the post of Headmaster. The aforesaid provisions provide that under which category the promotion can be granted to the post of Headmaster but if such candidate expresses her willingness in negative then the consideration can also be made to such teacher who is having the senior pay scale and has completed 24 years of service. The case of the writ petitioner was recommended by the Managing Committee on 7.8.2009, referring therein, that the date when this case was recommended the writ petitioner was not having post graduation degree. The same was disapproved by the competent authority by passing order impugned.

11.The questions which require consideration herein is that as to whether the decision so taken by the authority in disapproving the decision so made by the Managing Committee by passing impugned order can be said to be unjustified ?

12. The answer of this Court will be in negative, reason being, that a candidate if intends to hold a post he must be eligible as per the Recruitment/Promotion Rule otherwise such appointment through direct mode or through promotion will dehors the rule and such appointment will be nullity in the eye of law on the principle that a candidate is to possess eligibility criteria as per the Recruitment Rules. It has been held by the Hon'ble Apex Court in case of **Rakesh Kumar Sharma vs. State (NCT and Delhi) and Others** reported in **(2013) 11 SCC 58** which is as follows:

> *"17. A three-Judge Bench of this Court in Ashok Kumar Sharma vs. Chander Shekhar reconsidered and explained the judgment of Ashok Kumar Sharma (1993) observing (Chander Shekar case, SCC pp.21-22 para 6:*
>
> *"6. .... A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. All advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. On reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualification by the prescribed date, they could*

not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment."

The court in Ashok Kumar Sharma further explained that the majority view in Ashok Kumar Sharma (1993) was not correct, rather the dissenting view by R.M. Sahai, J. was correct as the Court held as under:

"The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview."

20. This Court lately in ***State of Gujarat vs. Arvindkumar T. Tiwari*** *held in paragraph no.14 which is as under:*

"(14) A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the Court for any relief for the reason that he does not have a right which can be enforced through Court." (See Prit Singh vs. S.K. Mangal and Pramod Kumar vs. U.P. Secondary Education Services Commission)."

(Emphasis Supplied)

13. This Court, therefore, is of the view that the impugned order therefore suffers from no error. But moving further the promotion although is not a

fundamental right but it1s consideration is the fundamental right as has been held by the Hon'ble Apex Court in the case of ***Union of India v. Manpreet Singh Poonam,*** reported in ***(2022) 6 SCC 105*** which is as under:

> *"14. ---- The law on this aspect is settled by this Court in Ajay Kumar Shukla v. Arvind Rai [Ajay Kumar Shukla v. Arvind Rai, 11 (2022) 12 SCC 579]:*
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> *"41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty [Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty, (1991) 2 SCC 295 : 1991 SCC (L&S) 472] in para 4 of the Report which is reproduced below :*
>
> *'4. ... <u>There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules</u>. From this perspective in our view the conclusion [Pravat Kiran Mohanty v. State of Orissa, 1984 SCC OnLine Ori 268] of the High Court that the gradation list prepared by the corporation is in violation of the right of the respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.'*
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> *42. A Constitution Bench in Ajit Singh (II) v. State of Punjab [Ajit Singh (II) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] , laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27 : (SCC pp. 227-28)*
>
> *'Articles 14 and 16(1): is right to be considered for promotion a fundamental right.*
>
> *22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". Article 16(1) issues a positive command that "here shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".*

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14.

The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment" being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

*"Promotion" based on equal opportunity and "seniority" attached to such promotion are facets of fundamental right under Article 16(1) ****

27. In our opinion, the above view expressed in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 12 SCC 201 : 1997 SCC (L&S) 1299] and followed in Jagdish Lal [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] , if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e,. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] right from 1950. "

14. The writ petitioner claiming herself to be eligible for promotion but the day when the recommendation was made she admittedly was not eligible by not holding the post graduation degree rather she has got the post graduation degree on 14.11.2009.

15. The issue which is to be considered by this Court in exercise of power under Article 226 of the Constitution of India in order to avoid the

miscarriage of justice is that when the writ petitioner has become eligible for promotion whether her case is to be considered or not?

16. We all are conscious that the promotion is the incentive to the service rendered by the employee and if the employee is eligible to be promoted then certainly his/her case is to be considered as it is the fundamental right of the public servant or any employee working under any establishment.

17. This Court considering the aforesaid is of the view that the only rider against the writ petitioner for not granting promotion was that she was having no post graduation degree when her case was recommended by the Managing Committee. But subsequent thereto, the writ petitioner has got the post graduation degree and not only that the recommendation was also made by the Managing Committee in its meeting dated 27.12.2010 appended as Annexure-6. The authority has sat tight over the matter and thereafter a ground has been taken as would be evident from paragraph no.17 (C) that the recommendation which was made vide decision dated 27.12.2010 was already cancelled by the Managing Committee vide office order No. 91A dated 9.10.2013.

18. This Court, therefore, has posed a question to the learned State Counsel that what is the date of retirement of the writ petitioner. The date of retirement was relevant for the purpose that if after superannuation of the writ petitioner the recommendation so made by the Managing Committee on 27.12.2010 if cancelled then what is relevance of cancellation after retirement of writ petitioner and the further question is why the department has sat tight over upon the said recommendation even though the writ petitioner was found to be eligible to hold the post of

Headmaster of the school in question. The admitted fact is that the petitioner since has retired on 31.10.2012 and it is not the case of the writ petitioner that the recommendation dated 27.12.2010 has not been forwarded to the competent authority of the State Government rather the aforesaid fact of forwarding the recommendation has been admitted as would be evident from the statement made in paragraph no. 17(C) but even then no decision has been taken and now the plea is being taken that the same was cancelled after retirement of the writ petitioner.

19.This Court, therefore, is of the view that the writ petitioner being eligible as per the recommendation made by the Managing Committee then her case was to be considered on the basis of said recommendation, having not done so, the respondent authority is at fault and by that way the writ petitioner has deprived from the vital right of being promoted to the higher post of Headmaster.

20.The another issue required to be considered is the consideration which has been taken by the coordinate Bench after hearing the parties that as to whether the provision as contained under 4(i) (Kha) and 4(ii) (Aa) are to be read in isolation or in conjunction required adjudication, which would be evident from the order dated 25.2.2025 passed in W.P.(S) No. 7490 of 2016.

21. This Court is of the view that in the promotion Rule if any eligible criteria has been given then the same is to be considered parallely as on the basis of the present case particularly on the basis of the reference made in 4(i) (kha) and 4(ii) (Aa). These two conditions are parallel to be applied, 4(i) (kha) is the first condition speaks that one or other teacher

can be promoted to the post of Headmaster subject to condition that the candidate must have second class post graduation degree from university/or three years diploma and ten years teaching experience in the high school/primary school. The provision 4(ii) (Aa) is also a condition in addition to the condition as available in Rule 4(i) (kha). Rule 4(ii) (Aa) is independent to that of 4(i) (kha) by providing therein that the teacher having the senior selection grade can also be considered based upon the seniority.

22.Therefore, the condition which has been stipulated under 4(i) (kha) speaks about the candidate who are having the post graduation degree with ten years experience while 4(ii) (Aa) speaks about the acceptance of candidature who have got the selection grade to be considered based upon the seniority for promotion to the post of headmaster.

23. Therefore, the issue which has been framed by the coordinate Bench vide order dated 25.2.2025 is, accordingly, answered that both the provisions as contained under 4(i) (kha) and 4(ii) (Aa) are independent to each other.

24.The learned counsel appearing for the petitioner has also submitted that the petitioner is also coming under the fold of Rule 4(ii) (Aa) as the moment she has got the post graduation degree she also became eligible to be considered for promotion as per the provision of Rule 4(i) (kha).But since this Court has come to the conclusion based upon the arbitrariness of the authority in not considering the due recommendation made by the Managing Committee which has been forwarded for its approval in the minutes dated 27.12.2010 and, as such, this Court thought it proper to go

on that line for the purpose of consideration of the case of promotion in favour of the petitioner since the Managing Committee has also recommended on that line twice i.e. (i) on 7.8.2009 and (ii) 27.12.2010.

25.This Court, therefore, has proceeded to examine the claim of the writ petitioner first on the basis of the recommendation made by the Managing Committee which was turned down by passing the impugned order but subsequently when the writ petitioner became eligible again made recommendation by its meeting dated 27.12.2010. As such, the recommendation of Managing Committee since has not been acted upon hence this court has thought it proper to consider the eligibility of the writ petitioner on the basis of the recommendation so made by the Managing Committee.

26.This Court, after having discussed the legal as well as the factual issue, without interfering with the impugned order directs the respondent no.2 to pass order on the basis of the recommendation made by the Managing Committee in the minutes dated 27.12.2010. The concerned respondent is directed to take decision within three months from the date of receipt of the copy of this order.

27.Let the entire consequential benefits be released within the aforesaid period in favour of the writ petitioner.

28.The instant writ petition accordingly disposed of.

29.Pending interlocutory application (s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

Date:07/05/2026
KNR/AFR

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