



2024:CGHC:48956-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Order Reserved on 28.11.2024****Order Delivered on 12.12.2024****WPS No. 5973 of 2023**

- 1** - Rajesh Kumar Sharma, S/o. Shri B.D. Sharma, Aged About 58 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Buniyadi, Pariksha Sansthan, Bilaspur, Chhattisgarh. R/o. Sumiran Vihar, Uslapur, Tahsil And District - Bilaspur, Chhattisgarh.
- 2** - Sunil Kumar Kaushik, S/o. Shri Narmada Prasad Kaushik, Aged About 53 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government Higher Secondary School, Chantidih, Bilaspur, Chhattisgarh. R/o. Quarter No. 5 Phase II, Near Water Tank, Govindnagar, Sirgitti, Tashil And District - Bilaspur, Chhattisgarh.
- 3** - Jitendra Shukla, S/o. B.P. Shukla, Aged About 52 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government Girls Higher Secondary School, Takhatpur, District - Bilaspur, Chhattisgarh. R/o. Ram Nagar, Tikripara, Takhatpur, Tahsil And District - Bilaspur, Chhattisgarh.
- 4** - Sanjay Kumar Tamboli, S/o. Vishvambhar Prasad Tamboli, Aged About 58 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government Higher Secondary School, Seoni, District - Janjgir-Champa, Chhattisgarh. R/o. Near Ram Mandir At Post Khokara, District - Janjgir-Champa, Chhattisgarh.



- 5** - Komal Prasad Sahu, S/o. Shri Amarnath Sahu, Aged About 58 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Swami Atamannad School, Shivrinarayan, District - Janjgir-Champa, Chhattisgarh. R/o. Ward No. 05, Tiwaripara, Village - Kharoad, District - Janjgir-Champa, Chhattisgarh.
- 6** - Ajay Kumar Kaushik, S/o. Shri Chhedilal Kaushik, Aged About 55 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Swami Atmanand Utkrist Hindi Medium Girls Higher Secondary School, Chakarbhata, District Bilaspur, Chhattisgarh. R/o. Village - Chakarbhata Basti, Tahsil And District - Bilaspur, Chhattisgarh.
- 7** - Dushyant Kumar Bhartrihari, S/o. Shri Badri Prasad Bhartrihari, Aged About 57 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Block Co-Ordinator Rajiv Gandhi Siksha Mission, Pamgarh, District - Janjgir-Champa, Chhattisgarh. R/o. At Post Pamgarh, District - Janjgir-Champa, Chhattisgarh.
- 8** - Nakul Lal Dewangan, S/o. Shri Late M.L. Dewangan, Aged About 58 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government Girls Higher Secondary School, Sakti, District - Sakti, Chhattisgarh. R/o. Ward No. 15, Railway Station Road, District - Sakti, Chhattisgarh.
- 9** - Rakesh Kumar Agrawal, S/o. Shri Jagannath Prasad Agrawal, Aged About 58 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre Currently Working As Assistant Statistical Officer At Office of District Education Officer, District - Sakti, Chhattisgarh. R/o. In Front of Balaji Traders, Station Road, Sakti, Chhattisgarh.
- 10** - Pravin Mishra, S/o. Shri Ram Lakhan Mishra, Aged About 48 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Chhattisgarh Atmanand Utkrist Hindi Medium, Shahid Avinash Sharma Government Girls Higher Secondary School, Sarkanda, Bilaspur, Chhattisgarh. R/o. Jabra Para, Beside Hanuman Mandir, Sarkanda, Tehsil And District Bilaspur, Chhattisgarh.



**11** - Nehru Lal Pradhan, S/o. Shri Pyare Lal Pradhan, Aged About 59 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Diet Janjgir Training Centre, District - Janjgir-Champa, Chhattisgarh. R/o. At Post Kumhari Via Kasdol, District - Balodabazar, Chhattisgarh.

**12** - Shailesh Sharma, S/o. Late Shri S.B. Sharma, Aged About 56 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government Higher Secondary School, Jatari , District - Raigarh, Chhattisgarh. R/o. Danipara, Raigarh, Chhattisgarh.

**13** - Onkar Prasad Kaiwart, S/o. Shri Panch Ram Kaiwart, Aged About 57 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government Girls Higher Secondary School Sakti, Chhattisgarh. R/o. At Post Bade Deogaon, Tahsil - Kharsia, District - Raigarh, Chhattisgarh.

**14** - Dr. Narendra Kumar Parvat, S/o. Late Shri Jamuna Parvat, Aged About 53 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government Higher Secondary School, Patrapali, Raigarh, Chhattisgarh. R/o. Boirdadar, Malidipa, Raigarh, Chhattisgarh.

**15** - Padumlal Mahipal, S/o. Shri Bedram Mahipal, Aged About 58 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government Higher Secondary School, Pamgarh, District - Janjgir-Champa, Chhattisgarh.

**16** - Vidya Bhushan Sahu, S/o. Shyamlal Sahu, Aged About 55 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Government High School, Block - Khoksa, District - Janjgir-Champa, Chhattisgarh. R/o. Ward No. 7, Nahariya Baba Marg, District - Janjgir-Champa, Chhattisgarh.

**17** - Teras Ram Kurrey, S/o. Nakul Prasad Kurrey, Aged About 56 Years, Occupation - Service, Presently Posted As Lecturer (E) Cadre At Swami Atmanand Hindi Medium, Shivrinarayan, District - Janjgir-Champa, Chhattisgarh.

---- **Petitioners**

**Versus**



- 1 - State of Chhattisgarh Through Its Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District - Raipur, Chhattisgarh.
- 2 - Director, Directorate of Public Education, Indrawati Bhawan, Atal Nagar, Naya Raipur, District - Raipur, Chhattisgarh.
- 3 - Union of India Through Secretary, Department of Home 5<sup>th</sup> Level, C-Wing, Delhi Secretariat New Delhi. 110002

---- Respondents

**WPS No. 7678 of 2023**

- 1 - Krishna Kumar Rajak, S/o Shir A.P. Rajak, Aged About 59 Years, Working As Lecturer (LB) And Posted At Govt. Higher Secondary School Sarkaripara, District G.P.M., Chhattisgarh.
- 2 - Manbodh Prasad Yadav, S/o Shri Shyamlal Yadav, Aged About 60 Years, Working As Lecturer (LB) And Posted At Govt. Higher Secondary School Prasi, Block Marwahi, District G.P.M., Chhattisgarh.
- 3 - Ashok Singh Pawar, S/o Shri Chandan Singh Pawar, Aged About 60 Years Working As Lecturer (LB) And Posted At Govt. Higher Secondary School Nawagarh, Block Pendra, District G.P.M., Chhattisgarh.
- 4 - V.S. Chouhan, S/o Kripal Singh Chouhan, Aged About 56 Years, Working As Lecturer (LB) And Posted At Govt. Higher Secondary School Nirndha, Block Marwahi, District G.P.M., Chhattisgarh.
- 5 - Smt. Sandhya Singh Chouhan, W/o Shri V.S. Chouhan, Aged About 53 Years, Working As Lecturer (LB) And Posted At Govt. Higher Secondary School Pendra, Block Pendra, District G.P.M., Chhattisgarh.
- 6 - Y. Padma, W/o Shri J. V. Murti, Aged About 54 Years, Working As Lecturer (LB) And Posted At Govt. Higher Secondary School Kotmi, Block Pendra, District G.P.M., Chhattisgarh.
- 7 - Ganga Ram Rathour, S/o Dadna Rathour, Aged About 54 Years, Working As Lecturer (LB) And Posted At Govt. Higher Secondary School Pendra, Block Marwahi, District G.P.M., Chhattisgarh.
- 8 - Ram Sharma Armo, S/o Kamod Singh, Aged About . Years, Working



As Lecturer (LB) And Posted At Govt. Higher Secondary School Pendra, Block Pendra, District G.P.M., Chhattisgarh.

9 - J.D. Paikra, S/o Shri Bhakham Singh, Aged About 55 Years, Working As Lecturer (LB) And Posted At Govt. Higher Secondary School Pendra, Block Marwahi, District G.P.M., Chhattisgarh.

----**Petitioners**

**Versus**

1 - State of Chhattisgarh Through Secretary, Department of Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, New Raipur, District : Raipur, Chhattisgarh

2 - Director, Directorate of Chhattisgarh Public Instruction, Indravati Bhawan, Naya Raipur, District Raipur, Chhattisgarh

---- **Respondents**

For Petitioners (WPS No.5973/2023)	:	Mr. Rajeev Shrivastava, Senior Advocate alongwith Mr. Sourabh Sahu, Advocate
For Petitioners (WPS No.7678/2023)	:	Mr. Anukul Biswas, Advocate
For Respondent-State	:	Mr. Shashank Thakur, Deputy Advocate General
For Respondent Union of India	- :	Ms. Annapurna Tiwari, Central Government Counsel

**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Amitendra Kishore Prasad, Judge**

**CAV ORDER**

**Per Ramesh Sinha, Chief Justice**

1. Since common issue is involved in both the writ petitions, they are being heard together and decided by this common order.
2. Heard Mr. Rajeev Shrivastava, learned Senior counsel assisted



by Mr. Sourabh Sahu, learned counsel for the petitioners in WPS No.5973/2023 and Mr. Anukul Biswas, learned counsel for the petitioners in WPS No.7678/2023. Also heard Mr. Shashank Thakur, learned Deputy Advocate General appearing for the State as well as Ms. Annapurna Tiwari, learned Central Government counsel appearing for Union of India.

3. WPS No.5973/2023 has been filed by the petitioners with the following reliefs:-

*“i. That, this Hon'ble Court may kindly be pleased to declare the Entry 18 of the Schedule 2 of the Chhattisgarh School Education (Academic and Administrative Cadre) Recruitment and Promotion Rules, 2019 as ultravires to the extent of inclusion of 30% Lecturer E-cadre (L.B.) for the purpose of promotion to the post of Principal.*

*ii. That, this Hon'ble Court may kindly be pleased to direct the respondents to promote the Lecturers to the post of Principal strictly in accordance with the Chhattisgarh Public Service (Promotion) Rules, 2003.*

*iii. Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioners, in the interest of justice.”*

4. Likewise, WPS No.7678/2023 has been filed by the petitioners with the following reliefs:-

*“(i) That, this Hon'ble Court may kindly be*



*pleased to held the separate quota of 30% for LB cadre in entry 18 schedule -II as ultra-virus, in the interest of justice.*

*(ii) That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to consider promotion for the post of Principal as per seniority on the post of Lecturer E & T Cadre and thereafter, LB Cadre who entered in the education department from 01.07.2018, in the interest of justice.*

*(iii) Any other relief which may be suitable in the facts and circumstances of the case, may also be granted.”*

5. The petitioners through the instant petitions are questioning the legality and constitutional validity of Entry 18 of Schedule-II enacted under the Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules, 2019 (for short, “the Rules of 2019”), whereby 65% posts shall be filled by promotion of the Lecturers, in which, 70% posts shall be for Lecturers of E-cadre and 30% posts for Lecturers E (L.B.) cadre. If sufficient number of eligible candidates are not available in feeding cadre in the E-cadre, the posts shall be filled up by promotion of E(LB) cadre and vice-versa.
6. Brief facts for disposal of both the writ petitions, are that, all the petitioners were appointed in the School Education Department



and the services of the petitioners are governed under the Madhya Pradesh (now C.G.) Civil Services (General Conditions of Services) Rules, 1961 for regulating the recruitment and condition of the service of persons appointed to public services and posts in connection with the affairs of the State of Chhattisgarh. In order to regulate services and conditions of service of Shiksha Karmis, the State enacted the Madhya Pradesh (now C.G.) Panchayat Shiksha Karmi (Recruitment and Service Condition) Rules, 1997 (hereinafter referred to as “Rules of 1997”) and as per Schedule-I of the Rules of 1997, pay scale of Shiksha Karmi Grade-I was approved as Rs.1200-40-2040 and the appointing authority of the Shiksha Karmi is the concerned Zila Panchayat. For maintaining uniformity and proper management of the Government Schools around the State, the Department of General Administrative of the State passed an order on 10.03.2015 whereby it was declared that various Departments of School Education working under respondent No.1 are hereby merged and thus, formed a single Department. Respondent No.1 by an order dated 30.06.2018, absorbed the services of all the Teachers (Panchayat/ Urban body) working in the State and who have completed 8 years or more as on 01.07.2018 into School Education Department, by virtue of which, Shiksha Karmis Grade-I was categorized as Lecturer (LB) Cadre. After merger of the services of Teachers of the State, on





05.03.2019, the respondent No.1 framed "Rules of 2019", in which, the absorbed Lecturer from the Panchayat Department have been categorized as separate Local Body as Lecturer ('LB') cadre and earlier original employee of the Education Department were named as Lecturer (E-cadre) and Lecturers of the Tribal Department has known as Lecturer (T-cadre). The Lecturer LB Cadre was absorbed in the Education Department from 01.07.2018 and thus, they have first time came on 01.07.2018, whereas the E-Cadre and T-Cadre were original employees of the Department working since last 20-30 years. As per Rules of 2019, Schedule-II, the promotional post of Lecturer is 'Principal' and out of total posts 10% were to be filled by direct recruitment and 90% by promotion, out of which 65% shall be filled by the promotion from Lecturer of E-cadre and T-cadre and 30% from Lecturer E(LB) and T(LB) cadre.

7. It is further case of the petitioners that by means of the provisions contained in the Rules of 2019, respondent no. 1 has categorized the feeding cadre of the Lecturers into two class i.e. Lecturers and Lecturer (LB), which is creating a class among class without any justification for promotion, as both the employees are now working by reference to the consideration that they were recruited from different sources and because of separation of cadre as (LB) cadre of the absorbed employee and fixing separate quota of promotion from them, they will get earlier promotion on the



post of Principal than the original employee of E-cadre and T-cadre, who are working since last 20-30 years. All the petitioners are having minimum eligibility of 5 years of service with educational qualification, but since 30% posts have been given to the (LB) cadre, the chance of the promotion to the petitioners has been adversely effected and most of them are at the verge of retirement. On account of such action on the part of the respondents, the petitioners who are directly recruited into the service of State Government will become eventually junior and remain junior during the period of their services, which is violative of the fundamental right enshrined under Article 14 of the Constitution of India.

8. Mr. Rajeev Shrivastava, learned Senior counsel assisted by Mr. Sourabh Sahu, learned counsel for the petitioners in WPS No.5973/2023 and Mr. Anukul Biswas, learned counsel appearing for the petitioners in WPS No.7678/2023 submit that the Entry 18 of Schedule-II enacted under the Rules of 2019 is contrary to NCTE Regulation and is thus, unconstitutional being declared ultra vires. They further submit that all the petitioners are having minimum eligibility of 5 years of service with educational qualification, but since 30% post has been given to the (LB) cadre the chance of the promotion to the petitioners has been adversely affected and the instant action on the part of the respondents of preparing separate gradation list of the Lecturers and classifying



the services of the Lecturers is an unjustified exercise as both belongs to a same class of employees and thus, the exercise of creating class among class is without, any justification for promotion is arbitrary and bad in law. They have contended that the petitioners were initially appointed in the erstwhile State of Madhya Pradesh and after formation of State of Chhattisgarh in the year 2000, the services of the petitioners were reflected to the State of Chhattisgarh and it clearly mentioned that the service condition of the employees shall not be varied to the said advantage except with the prior approval of the Central Government. They have contended that by giving separate quota to the (LB) Cadre, the chance of the promotion of the petitioners have been adversely affected and hence, Entry-18 of Schedule-II under the Rules of 2019 sought to be declared ultra vires is on the ground that by the said Rules, the Teachers of the Local Bodies, who were not the Teachers of the School Education Department when they were initially appointed will curtail the chance of promotion in respect of the teachers who were working with the School Education Department right from beginning. It has been argued that the services of Shiksha Karmis were subsequently merged into the School Education Department and by ways of the Rules of 2019, Shiksha Karmis were subsequently, inducted as Lecturers and they have been given 30% seats for promotion to the post of Principal whereas only



70% seats have been reserved for Lecturers coming from School Education Department. Reliance has been placed in the judgments rendered by Hon'ble Supreme Court in the matters of **Mervyn Coutindo and others v. Collector of Customs, Bombay and others** reported in **1966 SCC OnLine SC 13** and **Roshan Lal Tandon v. Union of India** reported in **AIR 1967 SC 1889**, in support of their contentions.

9. On the other hand, Mr. Shashank Thakur, learned Deputy Advocate General submits that under Schedule-II of Serial No. 18 of Rules of 2019, they have fixed the quota for feeder post Lecturer to be promoted on the post of Principal and the petitioners are aggrieved with the fixing of the percentage quota to fill up the promotional post Principal from Lecturer. He further submits that the State Government in exercise of powers conferred by the proviso to Article 309 of the Constitution of India made the Rules of 2019 and it is settled law that fixing of quotas or different avenue and ladder for promotions in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department, which is the prerogative of the employer mostly pertaining to the policy making field. The relevant consideration in fixing a particular quota for particular post are varies such as cadre strength in feeder quota, suitability more or less of the holders in the feeder posts, their nature of duties, experience and channel of promotion available to the



holders of posts in the feeder cadre. Thus, fixation of quota for the categories of posts in feeder cadres requires consideration of various relevant factors, the same cannot be challenged by the petitioners. It has been contended that the submission of the petitioners that the Lecturer (LB) were absorbed in the years 2018, therefore they are juniors to them, is totally incorrect as the policy decision for absorption clearly stipulates that LB Lecturer should have completed 8 years or more service for their absorption in the School Education department. The object of the State Government to bring the post of LB Lecturer in the regular establishment and also to provide them equal benefits, which was being provided to the Lecturers of School Education Department. The LB Lecturers were discharging the similar duties at par with the Lecturer of School Education Department, but they were not getting the similar benefits. Thus, statutory Rules have been framed in order to achieve the said object. It has been further contended that petitioners who become employees of the State Government with effect from the year 2014 & 2017, they have been provided regular salary as well as their pensionable services would be counted from their appointment in the School Education Department, whereas the said benefits are being provided to LB Lecturers from the date of their absorption. Thus, there cannot be any comparison as claimed by the petitioner. It has been lastly contended that similar issue was raised in WPS



No.1275/2022, where the petitioners were aggrieved by the division of promotion between the Teachers of E-Cadre and Teachers of E(LB) Cadre and the said writ petition was dismissed by this Hon'ble Court vide order dated 09.03.2023 holding that chance of promotion is not the Constitutional or Legal right. Reliance has been placed on the judgment rendered by Hon'ble Supreme Court in the matter of **Air Commodore Naveen Jain v. Union of India and others** reported in **(2019) 10 SCC 34**.

10. Ms. Annapurna Tiwari, learned Central Government counsel appearing for Union of India adopted the arguments advanced on behalf of the State.
11. We have heard and considered the rival submissions advanced on behalf of the learned counsel for the parties and perused the Rules of Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules, 2019 as also the documents annexed with the writ petitions.
12. Before proceeding further, it would be relevant to have a glance at some of the relevant provisions of the Rules of 2019, which are framed in exercise of powers conferred by proviso to Article 309 of Constitution of India. Rule 2 (b) defines 'appointing authority' to mean Government of Chhattisgarh and includes the authorities specified in column (6) of Schedule-I. Rule 2 (j) defines 'Lecturer' (Panchayat) / Lecturer (Urban Body), Teacher (Panchayat) /



Teacher (Urban Body) and Assistant Teacher (Panchayat) / Assistant Teacher (Urban Body) to mean persons appointed for teaching in schools of department and under administrative control of District Panchayat, Janpad Panchayat, Municipal Corporation, Municipalities or Nagar Panchayat. Rule 2(s) defines 'teacher' to mean the Teacher of E-Cadre, T-Cadre, E(LB) and T (LB), appointed for the purpose of teaching in Government Schools of the State. Rule 4 deals with constitution of the service and Rule 4 (d) is relevant for the purpose of dealing with grounds raised in writ petitions and therefore, the same is reproduced below:-

*“(d) Persons, who were recruited by the provisions of Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules, 2012 under the notification of Panchayat and Rural Development Department, dated 17<sup>th</sup> August, 2012 and recruited by the provisions of the Chhattisgarh Shikshak (Nagriya Nikay) Samvarg (Recruitment and Conditions of Service) Rules, 2013 under the notification of Urban Administration and Development Department, dated 8<sup>th</sup> March, 2013 and have completed eight years of service and those have not given the option of continuing in the employer department and have been included in the service through absorption.”*



The Rules of 2019 was notified and came into force w.e.f. 05.03.2019. Absorption of Teachers Panchayat and Local Bodies was prior to coming into force of existing Rules.

13. The State Government took policy decision to absorb all teachers appointed by Panchayat Department and working in Government Schools under the control of District Panchayat, Municipal Corporation, Municipalities or Nagar Panchayat, in the School Education Department. Pursuant to policy decision, an order was issued on 30.06.2018 for absorption of teachers Panchayat / Urban Body, who have completed eight years of service, in School Education Department w.e.f. 01.07.2018, as Teacher Panchayat / Urban Body. In the order of absorption some conditions like their status, separate cadre and their placement in separate cadre after their absorption with the condition that for all purposes their services will be calculated from the date of absorption i.e. 01.07.2018, were laid down. Absorption of Teachers (Panchayat) and (Urban Body) are under specific conditions. In the absorption order it is further mentioned that Teachers (Panchayat) and (Urban Body) will be placed in separate cadre with new name i.e. Teacher 'E (LB) Cadre and Teacher 'T (LB)-Cadre'. The Rules of 2019, which are framed and notified after the order of absorption, are in consonance with the order dated 30.06.2018, making specific provisions for the Teachers absorbed from Panchayat Department as also separate





promotion channel. Upon framing of the Rules of 2019, after absorption of Teacher Panchayat and Urban Body, posts have been bifurcated and quota has also been fixed for appointment by way of promotion for 'E-Cadre' as also E(LB) & T(LB) cadre.

14. Challenge is made to the Entry No.18 of Schedule-II under the Rules of 2019 is also relevant for the purpose, which are reproduced below for easy reference:-

18.	Principal	2591	1898	10%	90%	<p>The emergent vacancies as on 1<sup>st</sup> January every year shall be bifurcated as follows :</p> <p>(1) 10% posts shall be filled by direct recruitment through limited examination of the lecturers working in Government schools / Lecturers working with panchayat / lecturer working in urban body.</p> <p><b>(2) 65% posts shall be filled by promotion of the lecturers, in which 70% posts shall be for lecturer of E-cadre and 30% posts for lecturers E(L.B.) cadre. If sufferance number of eligible candidates are not available in feeding cadre in the E-cadre, the posts shall be filled by promotion of E(LB) cadre and vice-versa.</b></p> <p>(3) 25% of the posts shall be filled by promotion of Head Master Middle School (Trained Post graduate) of which 70% posts shall be filled from</p>
-----	-----------	------	------	-----	-----	--



							<p>Head Master Middle School (Trained Post graduate)) of E-cadre and 30% posts shall be filled from E(L.B.) cadre. If sufficient number of eligible candidates are not available in feeding cadre in the E-cadre, the posts shall be filled by promotion of E(L.B.) cadre and vice-versa.</p> <p><b>Note:-</b> Posts of the T/T (L.B.) cadre shall also be filled as per procedure described in point (1), (2) and (3) above.</p>
--	--	--	--	--	--	--	---

15. A statute is construed so as to make it effective and operative on the principle expressed in the maxim "*ut res magis valeat quam pereat*". Therefore, a presumption that the Legislature does not exceed its jurisdiction, and the burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. (See Principles of Statutory Interpretation by Justice G.P. Singh, 12<sup>th</sup> Edition, page 592.).
16. It is well settled principle of law that Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that violation of constitutional provisions was so glaring that legislative provisions under challenge cannot stand.



17. The Constitution Bench of the Supreme Court in the matter of **Shayara Bano v. Union of India** (Ministry of Women and Child Development Secretary) reported in **(2017) 9 SCC 1** held that legislation can be struck down if it is manifestly arbitrary and manifest arbitrariness is the ground to negate legislation as well under Article 14 of the Constitution of India. It has been observed by their Lordships as under:-

*“101. It will be noticed that a Constitution Bench of this Court in **Indian Express Newspapers (Bombay) (P) Ltd. v Union of India** reported in **(1985) 1 SCC 641** stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the*



*view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”*

18. In the matter of **Dr. Jaya Thakur v. Union of India** reported in **2023 SCC OnLine SC 813**, it has been held by three-judge Bench of the Supreme Court that judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive by observing as under:-

*“68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and Executive function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits.”*

19. In **Dr. Jaya Thakur** (supra), the Hon'ble Supreme Court relying upon their earlier judgment in the matter of **Binoy Viswam v. Union of India** reported in **(2017) 7 SCC 59** and reviewing their earlier decisions, speaking through B. R. Gavai, J., have held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly, and observed as under:-



*“70. It could thus be seen that this Court has held that the statute enacted by Parliament on a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad.*

*71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.*



*72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.*

*73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.*

*74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be*



*challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.”*

20. In the matter of **Dental Council of India v Biyani Shikshan Samiti** reported in **(2022) 6 SCC 65**, the Hon'ble Supreme Court have held that there is always a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. B.R. Gavai, J., speaking for the Supreme Court, held in paragraphs 27 & 28 of the report as under:-

*“27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of*



*unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.*

*28. It has further been held by this Court in the said case that for challenging the subordinate legislation the ground on of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.”*

- 21.** In the matter of **PGF Limited and others v. Union of India and another** reported in **(2015) 13 SCC 50**, the Hon'ble Supreme Court have laid down certain guidelines by taking note of certain precautions to be observed whenever the vires of any provision of law is raised before the Court and cautioned the Courts in paragraph 37 as under:-

*“37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into*





*the statute book or any long time-gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again It will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge*



*on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the abovestated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time-bound basis, so that the legal position is settled one way or the other,"*

22. Furthermore, the employees are only having right to be considered for promotion on equal and fair basis without discrimination, but chance of promotion as such cannot be claimed as a matter of right. Hon'ble Supreme Court in case of **Dwarika Prasad v. Union of India** reported in **(2003) 6 SCC 535**, has observed thus:-

*"24. Articles 14 & 16 of the Constitution of India cannot be pressed into service to describe the fixation of lower quota for POs as discriminatory. It is well established in law that the right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and a fundamental right under Article 14 & 16 of the Constitution but chances of promotion as such cannot be claimed as of right (see *Ramchnadra Shankar Deodhar v. State of Maharashtra AIR 1974 SC 259 para 12 at**



*page 267). The decision relied on behalf of the appellants in the case of All India Federation of Central Excise v. UOI [1977 (1) SCC 520] is of little assistance to the appellant's case. In that case, this Court has considered the proposals made by the department for re-fixation of quota to redress grievance of petitioners to some extent. In the other case between the same parties reported in 1999 (3) SCC 384, the Court could not be persuaded to issue any direction for alteration of the quota fixed. None of the two decisions therefore is helpful in supporting the contention advanced on behalf of the appellants.”*

- 23.** Grievance raised in both the writ petitions is with regard to bringing Lecturers in feeder cadre post for promotion to the post of Principal and granting them equivalence. In Entry-18 under Schedule II, out of total available posts of Principal in 'E' & 'T' cadres, 90% posts are to be filled up by way of promotion and 10% by way of direct recruitment among Lecturers through limited examination. Out of 90% posts available for promotion, 65% posts are to be filled up by way of promotion of Lecturers, in which, 70% posts shall be for Lecturers of E-cadre and 30% posts for Lecturers E (L.B.) cadre. Grievance of petitioners appears to be mainly on account of reduction of their chance of promotion, which cannot be a ground to invalidate the rules framed in exercise of powers under Article 309 of Constitution.



24. As discussed in preceding paragraphs that employees are having right to be considered for promotion on fair and equitable basis which may be claimed as a legal and fundamental right under Articles 14 & 16 of the Constitution of India, but chance of promotion as such cannot be claimed as a matter of right.
25. Discrimination is essence of classification and does violence to the constitutional guarantee of equality only if it rests on unreasonable basis. The burden is thus upon the petitioners 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 presumption that every factor which is relevant or material has been taken into account in formulating the classification. Unless the classification is unjust on the face of it, the onus lies upon the party attacking classification to show by pleading necessary material before the Court that said classification is unreasonable and violative to Article 16 of the Constitution of India. In the cases at hand, the petitioners have not pleaded in so many words to discharge their burden to prove infirmity in classification or that classification is unreasonable and violative to Article 16 of the Constitution of India. In **K.R. Laxman v. Karnataka State Electricity Board**, reported in **(2001) 1 SCC 442**, Hon'le Supreme Court has held that amendment in the rules bifurcating posts for promotion is not discriminatory.



26. Determination of conditions of service, alteration thereof by amending rules, constitution, classification or abolition of posts, cadres or categories of service, amalgamation, bifurcation of departments, reconstitution, restructuring of pattern etc., all pertain to executive policy and within exclusive discretion of the State, subject to the limitations and restrictions envisaged in the Constitution. Government servants have only right to safeguarding rights or benefits already earned, acquired or accrued but they cannot challenge the authority of the State to make such amendments or alterations in Rules.
27. In the case of **P.U. Joshi v. Accountant General**, reported in **(2003) 2 SCC 632**, the Hon'ble Supreme Court observed thus:-

*“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 and 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/substruction 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.....”*

- 28.** In the matter of **Air Commodore Naveen Jain** (supra), Hon’ble Supreme Court has affirmed the view relying on various judicial precedents that policy of the State affecting chances of promotion cannot be said to be illegal, arbitrary and discriminatory so as to attract the violation of either Article 14 & Article 16 of the Constitution of India. The Supreme Court further has held that there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

*“(a) Lack of legislative competence to make the subordinate legislation.*

*(b) Violation of fundamental rights guaranteed under the Constitution of India.*

*(c) Violation of any provision of the*



*Constitution of India.*

*(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*

*(e) Repugnancy to the laws of the land, that is, any enactment.*

*(f) Manifest arbitrariness/ unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).”*

29. Reverting to the cases at hand in the light of aforementioned judgments rendered by Hon’ble Supreme Court as well as by this Hon’ble Court, it is quite apparent that since the Lecturers were not the original employees of the School Education Department being given 30% seats, it will not curtail the chance of promotion to the Lecturers of the School Education Department.
30. Considering the matter in its entirety, the Rules of 2019 cannot be declared ultra vires only for the sake of some persons because the Rules are being framed for the benefit of entire employees. It has been noticed that earlier a challenge was made before the Division Bench of this Court in a Batch of writ petitions as well as writ appeal, leading case being **WPS No.502 of 2022 and analogous cases**, the Division Bench of this Court vide order **dated 09.03.2023**, dismissed the writ petitions in respect of the Constitutional validity of some of the provisions contained in the



Rules of 2019 holding that the Rules framed for promotion of the Teachers, Lecturer, are in accordance with law and the rule making authority is competent to frame Rules in respect of promotion to the Lecturers to the post of Principal. The State Government has taken a policy decision to centralize management of all the schools in one Department and therefore, all the schools belonging to Tribal Welfare Department, Urban Administration and Development Department were amalgamated into School Education Department. According to the policy decision taken by the State Government, all the Teachers and other staffs were merged into the School Education Department and two cadres were established. In one cadre, Teachers already working with the School Education Department and in other cadre, the Lecturers and Teachers from the other Departments were kept. It is not the cases where equal promotional avenues have been given to the Lecturers coming from the School Education Department and the Lecturers coming from other Departments, like Tribal and Panchayat. They were subsequently absorbed, but a maximum percentage of 90% posts are to be filled up by way of promotion and 10% by way of direct recruitment among Lecturers through limited examination. Out of 90% posts available for promotion, 65% posts are to be filled up by way of promotion of Lecturers, in which, 70% posts shall be from Lecturers of E-cadre and 30% posts for Lecturers (L.B.)





cadre. Meaning thereby that the Lectures of the School Education Department one being given due weightage and they have been given maximum number of promotional seats i.e. 70% out of 65% on the post of Principal in comparison to that of Lecturers, who are coming and absorbed from the Local Bodies as they have been given only 30% seats out of 65% for promotion on the post of Principal.

- 31.** Furthermore, the petitioners, who are the employees of the School Education Department since their initial date of appointment, are aggrieved with division of promotion between the Teachers of 'E-Cadre' and Teachers of 'E(LB) Cadre'. Under Schedule-II of the Rules of 2019 separate quotas have been fixed for promotion of teacher 'E-Cadre' and teacher 'E-LB Cadre'. The order of absorption of Teachers working in Panchayat Department and Local Bodies clearly mentions that period of service for granting benefit to Teachers (LB) cadre is to be counted from the date of absorption, i.e. 01.07.2018. Absorption of Teachers with Panchayat Department and Local Bodies in the School Education Department is a policy decision by the State Government and to protect interest of the employees of all departments after their absorption in the School Education Department, separate cadres have been created providing separate promotional avenues. Petitioners have neither pleaded nor argued the grounds under which the Rules framed by the



State Government in exercise of power conferred by proviso to Article 309 of the Constitution of India is ultra vires. Additionally, the cases of the petitioners do not come under any of the categories of the judgment rendered in **Air Commodore Naveen Jain** (supra) case, therefore, the petitioners in both the writ petitions, are not entitled for any reliefs prayed by them in the writ petitions.

- 32.** In view of the above facts and circumstances of both the cases and the decision of Hon'ble Supreme Court in **Dwarika Prasad** (supra) that chance of promotion is not the constitutional or legal right, we do not find any merit in both the writ petitions. The Rules as sought to be declared ultra vires is without any substance.
- 33.** In the result, both the writ petitions being WPS Nos.5973/2023 and 7678/2023, are liable to be and is hereby dismissed. There shall be no order as to costs.

**Sd/-**

**(Amitendra Kishore Prasad)**  
**Judge**

**Sd/-**

**(Ramesh Sinha)**  
**Chief Justice**



## **Head- Note**

The Rules cannot be declared ultra vires unless and until it is shown that there is manifest arbitrariness and it takes away any fundamental right enumerated in the Constitution of India. No enactment can be struck down by just saying that it is arbitrary or unreasonable.

Chances of promotion can not be claimed as a right, only consideration for promotion without discrimination may be claimed as a legal right.