

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 29th August, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.03 of 2021

Petitioners : Mani Kumar Rai and Others

versus

Respondents : State of Sikkim and Others

Application under Article 226 of
the Constitution of India

Appearance

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad and Ms. Neha Kumari Gupta, Advocates for the Petitioners.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government for the State-Respondents.

JUDGMENT

Meenakshi Madan Rai, J.

1. The Petitioners were employed in the Respondent No.2, Department, of the Respondent No.1 (State of Sikkim), having been appointed variously through the years 1985 to 2012 as 'Mali(s)'. They are aggrieved by the fact that, although they have completed about eight to thirty-five years of service, in the same post (depending on their date of appointment), no promotional avenues are afforded to them whatsoever, while at the same time, persons in the posts of Field Assistants, which are posts equivalent to that of 'Mali', held by the Petitioners, and discharging similar duties have been promoted as Lower Division Clerks (LDC). They *inter alia* seek the following reliefs;

- (i) Rule upon the Respondents and each of them to show-cause as to why the Petitioners shall not be promoted either as Village Level Workers (VLW) or as Lower Division Clerk (LDC) with retrospective effect from the time

their counterparts/other 'Malis'/Field Assistants were promoted;

- (ii) A writ or order or direction that the posts of Malis be treated as a member of the 1984 Service Rules and promote the Petitioners accordingly;
- (iii) A writ or order or direction that the post of Field Assistant and 'Mali' are equivalent post and therefore to order redesignation of the post of 'Mali' as Field Assistant and that, the Petitioners therefore be made members of the relevant service rules for promotion as VLWs;
- (iv) An alternative prayer has also been sought for viz., a writ or order or direction that the Petitioners holding the post of 'Malis' be promoted as Field Assistants with retrospective effect from the time they were found eligible for promotion and thereafter to promote them as VLW w.e.f the date their Juniors in the rank of Field Assistant were promoted as VLW;
- (v) A writ or order or direction that the posts held by the Petitioners being equivalent to the post of Field Assistants be promoted as VLW with all service benefits;
- (vi) A writ or order or direction that the post of 'Mali' be incorporated as a cadre post under the 2001 Service Rules and promotional avenue may be ordered to be provided in the Service Rules for the persons holding the post of 'Mali';
- (vii) A writ or order or direction that Rule 2(2) and Rule 2(3) of the Sikkim Sub-ordinate (Ministerial and Executive) Service (Amendment) Rules, 2020, requiring Class X pass qualification and thirty years continuous service for Group "D" employee for promotion is bad and hence to set aside the retrospective provision from Rule 2(2) and Rule 2(3) of Amended Rules.

2. The Petitioners case is that, during the year 1976, employees working under the Agriculture and Horticulture Departments were governed by different Service Rules. Now, both departments fall under the ambit of *Sikkim State Agriculture Service Rules, 1994* (hereinafter, "Agriculture Service Rules, 1994"), which does not include the post of 'Mali', despite 'Malis' being employed in the Horticulture Department. Similarly, the *Sikkim State Subordinate Agriculture Service Rules, 2001*

(hereinafter, "Subordinate Agriculture Service Rules, 2001") has left out the post of 'Mali', but includes the post of Village Level Workers (VLW's). The *Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984* (hereinafter, the "Ministerial Service Rules, 1984") amended in 2001 and 2020, governs all Group "C" and "D", employees of all departments of the Respondent No.1, including 'Malis', who fall in Group D category of Government employees. The salaries of both 'Malis' and Field Assistants were initially fixed in the pay scale of Rs.2850/- and Grade Pay of Rs.2250-4170/-. However, in the year 2012, the Grade pay of Field Assistants was enhanced to Rs.2300/- from Rs.2250/- excluding 'Malis' from such enhancement, *sans* reason. The Petitioners claim that they deserve to be promoted under the *Subordinate Agriculture Service Rules, 2001* as VLWs' since they perform similar duties as Fieldman and Field Assistants. Hence, the prayers in the Writ Petition.

(i) Learned Senior Counsel for the Petitioners canvassed the contention that, on account of the enhancement in the Grade Pay of Field Assistants, a disparity has arisen amongst the ranks of Field Assistants and 'Malis', who are essentially tasked with similar works. The unamended *Subordinate Agriculture Service Rules, 2001*, provided for filling up the post of VLW, by 100% direct recruitment. The *Sikkim State Subordinate Agriculture Service (Amendment) Rules, 2011* (hereinafter, "Subordinate Agriculture (Amendment) Rules, 2011"), provides for 85% by direct recruitment, 10% by promotion from Senior Field Assistant/Fieldman and the remaining 5% by promotion from Fieldman/Field Assistants, who are Class X pass. The catch in the amended rules is that, none of the Petitioners have passed Class X

and would thereby never be able to attain the post of VLW. This circumstance necessitates a declaration to the effect that the post of 'Mali' is equivalent to that of Field Assistant to enable them to obtain promotion under the said Rules.

(ii) It was the next contention that, the Petitioners have been discriminated even against labourers who were appointed initially on Muster Roll (MR), and have been absorbed as Field Assistants, ignoring the Petitioners and depriving them of such designation. It was emphasized that ninety-eight members from the *Sikkim Subordinate (Ministerial and Executive) Service (Amendment) Rules, 2001* (hereinafter, the "Ministerial Service (Amendment) Rules, 2001), after completing five years of service have been promoted as VLWs; vide Order dated 08-03-2019, despite being junior to the Petitioners. A representation was addressed to the Chief Minister on 27-07-2019 in vain, although endorsements in the File Noting reveal that, the department officials were in principle in favour of redesignation of the twenty-two posts of 'Malis' as "Field Assistants". That, in the Notification bearing No.21/GEN/DOP, dated 01-07-2020, amendment to *the Ministerial Service Rules, 1984*, only those Group "D" employees having Class X pass qualification, have been given a chance for promotion in the 10% category, but it is undisputed that a majority of the 'Malis' falling under Group "D" category have not passed Class X. Opportunity for promotion to 5% has been afforded on completion of thirty years of continuous service, provided they also fulfill the requisite educational qualification, thus depriving the Petitioners, who do not have such educational qualification, of promotion, in violation of Articles 14, 16, 19, 21 and 300A of the Constitution of India. That, the Petitioners legitimate expectation

to be promoted to the higher posts is in vain. Fortifying his submissions that, the Petitioners ought to be granted avenues for promotion, reliance was placed on ***Food Corporation of India and Others*** vs. ***Parashotam Das Bansal and Others***¹ and ***Dr. Ms. O. Z. Hussain*** vs. ***Union of India and Others***².

3. Learned Additional Advocate General while resisting the claims advanced by the Petitioners, sought to clarify that the 'Malis' fall under Group "D" employees of the State Government and promotional avenues for those without educational qualification is covered by the *Ministerial Service Rules, 1984*, as amended vide Notification bearing No.21/GEN/DOP, dated 01-07-2020.

(i) The post of the Field Assistant comes under Group "C" unlike that of 'Mali', which falls under Group "D" category of employees.

(ii) Admitting that the scale of pay of the Field Assistants was revised it was submitted that, the Petitioners claim promotion with retrospective effect as VLW or LDC, at par with their counterparts/other 'Malis'/Field Assistants but have failed to implead those promoted persons as necessary parties, on which account solely the Writ Petition is liable to be dismissed as not maintainable.

(iii) That, the Petitioners do not qualify for promotion as VLW's as the Notification bearing No.458/GEN/DOP, dated 27-07-2011, the *Subordinate Agriculture (Amendment) Rules, 2011*, mandates educational qualification of Class XII pass, with Bioscience from a recognized board. The selected candidate is also to complete a diploma course in Agriculture/Horticulture Science within three years of appointment as VLW.

¹ (2008) 5 SCC 100

² AIR 1990 SC 311

(iv) The post of LDC as per the *Sikkim Subordinate (Ministerial and Executive) Service (Amendment) Rules, 2020* (hereinafter, the "Ministerial Service (Amendment) Rules, 2020"), provides for 10% to be filled up by promotion from amongst Group "D" employees, who are Class X pass and have completed four years of continuous service, through limited departmental examination, subject to availability of vacancy. 5% of the posts of LDC are however to be filled up by promotion from Group "D" employees, who have completed thirty years of continuous service. Such promotion for 5% is based entirely on seniority.

(v) It was further clarified that, in the absence of specific avenues for promotion, the Office Memorandum bearing No.M(161)/6908/GEN/DOP, dated 25-04-2011, provides for "Assured Career Progression" (ACP) Scheme for State Government employees, whereby financial benefits are granted to those employees who remain in one post *sans* promotion, after every ten years, for three terms of service i.e., a total of thirty years.

(vi) Respondent No.1 appointed thirteen senior-most Muster Roll Fieldworkers as Field Assistants who lacked the educational qualification of Class X pass by duly relaxing the rules, which power the Government is clothed with, after Respondent No.1 provided the list of such eligible personnel vide Office Order bearing No.759/FSAD/ADM, dated 11-08-2004.

(vii) On 29-07-2005, Respondent No.1 issued a second Office Order No.139/FSAD/ADM, dated 29-07-2005, appointing ten senior-most Muster Roll Fieldworkers as Field Assistants.

(viii) The Respondent No.4 made a request to Respondent No. 2, vide letter dated 01-07-2013, to furnish the list of Group "D" employees possessing Class X pass certificate and Group "D"

employees who had attained Grade-I post with thirty years of service. These details were accordingly furnished on 19-07-2013.

(ix) On 19-02-2014, the Respondent No.4 promoted the aforementioned Group "D" employees vide Office Order of the same dates as LDC's in the *Sikkim Subordinate (Ministerial & Executive) Service Rules*, Pay Band-I of Rs.5200-20200/- and Grade Pay of Rs.2600/- in an officiating capacity with immediate effect. The Petitioners did not challenge the lists so furnished as detailed above.

(x) Vide Office Order bearing No.336/GEN/DOP, dated 26-09-2018, one hundred and ninety three Group D employees with Class X pass educational qualification were promoted as LDC in the *Sikkim Sub-ordinate (Ministerial & Executive) Service Rules*, in Level 7 of the Pay Matrix, in an officiating capacity with immediate effect.

(xi) Denying the arguments advanced alleging arbitrary acts of the State Government, it was contended that the Petitioners have been granted ACP as and when eligible and where they fulfill the requisite qualifications as per rules, necessary promotions have been afforded to them. The allegation that the Respondents have redesignated the post of 'Mali' as Field Assistant to which post one Buddha Bir Mangar was promoted in 2001 as also one Phip Raj Subba in the year 2008 cannot be countenanced as they have not been impleaded as parties. Hence, the Writ Petition deserves no consideration and ought to be dismissed. To fortify his submissions reliance was placed on **A. K. Bhatnagar and Others** vs. **Union of India and Others**³, wherein the Supreme Court has held that there cannot be redesignation of a particular post, (in the present

³ (1991) 1 SCC 544

case such as 'Mali'), when rules already cover them and provision is made for their upward movement. Further, reliance was also placed on ***Inder Singh and Others*** vs. ***Vyas Muni Mishra and Others***⁴. That, the State is not debarred by way of reasonable classification in terms of educational qualification for which reliance was placed on ***Babu Verghese and Others*** vs. ***Bar Council of Kerala and Others***⁵ and ***The State of Jammu and Kashmir*** vs. ***Shri Triloki Nath Khosa and Others***⁶.

4. Having given due consideration to the submissions of Learned Counsel for the parties, this Court is to determine;

- (i) whether the Petitioners have been short changed as claimed by them, by lack of promotional avenues, the mandatory requirement of educational qualification of Class X, for promotion, being the drawback for them; and
- (ii) by the failure of the State-Respondents to redesignate the post of 'Mali' as Field Assistant.

5. From a perusal of the averments of the parties and the submissions advanced before this Court, it emerges that;

- (i) The Petitioners fall in 'Group D' category of Government employees in various Government departments and are governed by the *Ministerial Service Rules of 1984* amended from time to time viz., 29-12-2001 and 01-07-2020, vide Notifications bearing No.100/GEN/DOP and No.21/GEN/DOP respectively and not by any of the *Agriculture Service Rules* (*supra*).

⁴ 1987 (Supp) SCC 257

⁵ (1999) 3 SCC 422

⁶ (1974) 1 SCC 19

- (ii) The post of Field Assistant which falls in category 'C' of Government employees, is governed by the *Sikkim Subordinate Agriculture Service (Amendment) Rules, 2011* and the Department of Agriculture, Respondent No.1 is the cadre controlling authority, vested with control over the services under the said rules as amended from time to time.
- (iii) The post of Field Assistant is the feeder post, to the promotional post of VLW, under the *Subordinate Agriculture Service (Amendment) Rules, 2011*. The percentage of direct recruitment to the said post, promotion and seniority, have been detailed in the said *Subordinate Agriculture Service (Amendment) Rules, 2011*. Admittedly, the Agriculture Rules (*supra*) do not cover the post of 'Mali'.
- (iv) In terms of the amendment to the said Rules, vide Notification bearing No.458/GEN/DOP, dated 27-07-2011 (Annexure P7), *the Subordinate Agriculture Service (Amendment) Rules, 2011*, the requisite qualification for appointment to the post of VLW is Class XII pass, with Bioscience from a recognized board. A candidate selected to the post of VLW is required to complete diploma course in Agriculture/Horticulture science, within three years of appointment as VLW.
- (v) Vide Office Order bearing No.336/GEN/DOP, dated 26-09-2018, issued by the Respondent No.4, Group D employees having Class X passed educational qualification were given promotion as LDC in Level 7 of

the Pay Matrix and those without such qualification were also promoted by Respondent No.4 by duly relaxing the rules.

On pain of repetition, it emerges with clarity that, the post of the Petitioners viz., ‘Mali’ is a Group D category post, which falls within the *Ministerial Service Rules, 1984*. Under Rule 10 of the *Ministerial Service Rules, 1984*, the Government is clothed with powers to relax any of the provisions of the Rule with respect to any class or category of person to any post which was thus exercised.

6. Schedule II of the *Ministerial Service Rules, 1984*, referred to above, includes *inter alia*, the method of recruitment to the post of Lower Division Clerk/Record Keeper/Diarist, which is extracted hereinbelow as follows;

"SCHEDULE II
Rules for the future maintenance of the Service
(See Rule 7)

Name of the post	Method of recruitment		Eligibility conditions
1	2		3
.....			
Grade IV			
i. Lower Division Clerk/Record Keeper/Diarist	By recruitment through Competitive Examination.	Direct open	Age limit - 24 years (For Govt. servants upto 28 years) Qualification - (i) Class X examination passed of a recognized Board. (ii) Minimum speed of 15 words per minute in typing. Provided that a person not possessing the said qualification in typing may be appointed subject to the condition that he will not be eligible for confirmation in the grade till he acquires a minimum speed of 20 words per minute in typing.

- (iii) Must be able to converse in one of the language - Nepali, Sikkimese, Bhutia, Lepcha or Limbu.
- (iv) Must have the knowledge of culture and tradition of Sikkim.

(i) The provision pertaining to Grade IV and promotion to the said post was amended vide the Ministerial Service (Amendment) Rules, 2001, dated 29-12-2001, which reads as follows;

“.....

GOVERNMENT OF SIKKIM

DEPARTMENT OF PERSONNEL, ADM. REFORMS & TRAINING

GANGTOK, SIKKIM

No. 100/GEN/DOP

Dated: 29.12.2001

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Sikkim is hereby pleased to make the following rules further to amend the Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984, namely :-

1. (1) These rules may be called the Sikkim Subordinate (Ministerial and Executive) Service (Amendment) Rules, 2001.

(2) They shall come into force at once.

2. In the Sikkim Subordinate (Ministerial and Executive) Service Rules 1984, in Schedule II, under Item Grade IV, the following shall be substituted, namely:-

“Lower Division Clerk/Record Keeper/Diarist /Typist

(1) 85% by direct recruitment through open competitive examination.

Age limit: 18-30 years upper age limit is relaxable by 5 years in case of SC/ST candidates and 3 years for OBC candidates. Upper age limit is also relaxable by 4 years for Govt. Servants.

Qualification :

- (i) Class X examination Passed of recognized Board.
- (ii) Minimum speed of 15 words per minute in typing.

Provided that a person not possessing the said qualification in typing may be appointed subject to the conditions that he will be eligible for confirmation in the grade till he acquires a minimum speed of 20 words per minute in typing.

- (iii) Must be able to converse in one of the languages- Nepali, Sikkimese-Bhutia, Lepcha or Limboo.
- (iv) Must have the knowledge of culture and traditions of Sikkim.

(2) 5% by promotion of the basis of merit-cum-seniority from amongst Group "D" employees holding Grade I post.

Grade 'D' employees with continuous service in Grade I post.

And

(3) 10% by promotion through Limited Departmental Competitive Examination from amongst Group 'D' employees.

Grade 'D' employees having Class X examination passed from a recognized Board with minimum speed of 15 words per minute in Typing."

BY ORDER AND IN THE NAME OF THE GOVERNOR.

Sd/-

R. S. BASNETT, SCS

SECRETARY TO THE GOVT. OF SIKKIM,

DEPTT. OF PERSONNEL, A.R. AND TRAINING

....."

(ii) It was further amended on 01-07-2020, as follows;

".....

GOVERNMENT OF SIKKIM

DEPARTMENT OF PERSONNEL

GANGTOK, SIKKIM

No. 21/GEN/DOP	Dated: 1/7/20
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NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Sikkim hereby makes the following rules further to amend the Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984, namely :-

- Short title and commencement

1. (1) These rules may be called the Sikkim Subordinate (Ministerial and Executive) Service (Amendment) Rules, 2020.

(2) They shall come into force at once.
- Amendment of Schedule-II

2. In the Sikkim Subordinate (Ministerial and Executive) Service Rules, 1984, in SCHEDULE-II, under Grade-IV, for clauses (2) and (3), under the heading "Method of Recruitment" the following clauses shall be substituted, namely:-

(2) 10% by promotion from amongst Group 'D' employees who are Class X Passed from recognized Board and have completed 4 (four) years of continuous service in Group 'D' through Limited Departmental Examination subject to availability of vacancy.

- (3) 5% by promotion from Group 'D' employees who have completed 30 (thirty) years of continuous service on the basis of seniority.

By order and in the name of the Governor.

Sd/-
(Tashi Cho Cho) SCS
SPECIAL SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF PERSONNEL
 (File No.GOS/DOP.III/2019/821-PT-II)
 ”

(iii) As clarified by Learned Additional Advocate General Grade-I post means, a Group D employee, who has been in continuous service in the same post for thirty years. Thus, the amended rule as extracted hereinabove made promotional provision for Group D employees, depending upon their educational qualification. 85% of recruitment to the post of LDC would be by direct recruitment, through open competitive examination and mandates a Class X pass educational qualification. 10% by promotion through limited departmental examination from amongst Group "D" employees with Class X pass educational qualification. 5% provision is for promotion for those employees, from Grade-I, of Group D category. For the said 5% *supra*, there is no requirement of the mandatory educational qualification of Class X pass and the promotion is solely on the basis of the Group D employees having been in continuous service in Grade-I for thirty years on the basis of seniority. Consequently, the arguments of Learned Senior Counsel for the Petitioners, on the aspect of lack of promotional avenues, in light of the above discussions, cannot be sustained.

(iv) It is also seen that the *Agriculture Service Rules, 1994*, does not make provision for the appointment of 'Mali'. Notification bearing No.23/GEN/DOP dated 11-08-1994, of the Respondent

No.4 indicates that, the posts prescribed therein are enumerated in Schedule I and II and do not include 'Mali' or Group D employees.

(v) The *Subordinate Agriculture Service Rules, 2001*, are rules to regulate the service of VLW and Inspector in the Agriculture Department, issued vide Notification bearing No.58/GEN/DOP, dated 06-01-2001. A perusal of the said rules also makes it apparent that the position, strength, grades and scale of pay are included in Schedule I and II of the Rules. The Rules and Schedules do not include the post of 'Mali', although it may be mentioned herein that promotion to a VLW was 100% by direct recruitment, till it was amended on 27-07-2011, vide Notification bearing No.458/GEN/DOP, under column 7 of Schedule II, which provides for 100% by direct recruitment to the post of VLW as follows;

“.....
GOVERNMENT OF SIKKIM
DEPTT. OF PERSONNEL, ADM. REFORMS, TRAINING AND
PUBLIC GRIEVANCE
GANGTOK

No. 458/GEN/DOP

Dated: 27.07.2011

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Sikkim hereby makes the following rules further to amend the Sikkim State Subordinate Agriculture Service Rules, 2001, namely :-

1. (1) These rules may be called the Sikkim State Subordinate Agriculture Service (Amendment) Rules, 2011.
- (2) They shall come into force at once.
2. In the Sikkim State Subordinate Agriculture Service Rules, 2001, in Schedule II against serial number 1 –
 - (i) Under the column “5”, for existing entries under clause (1), the following shall be substituted namely:
 “(1) Class XII passed with Bio-Science from recognized Board. The successful candidates have to complete Diploma course in Agriculture/Horticulture Science within three years of appointment.”

- (ii) Under the column "7", for existing entries, the following shall be substituted namely:-
- (i) 85% by direct recruitment.
 - (ii) 10% by promotion of Fieldman/Field Assistants on seniority basis against the total number of vacancies and
 - (iii) 5% by promotion of Fieldman/Field Assistants who has passed class X examination by interview on merit basis against the total number of vacancies.

By order and in the name of the Governor.

Sd/-

(Dipa Basnet),

**ADDITIONAL SECRETARY TO THE GOVERNMENT,
DEPTT. OF PERSONNEL, ADM. REFORMS, TRAINING & PUBLIC GRIEVANCES
....."**

(vi) In Column 5 (*supra*) the educational qualification prescribed was Class XII pass with Bioscience from recognized board. It is mandated that the selected candidate should obtain diploma in agriculture or horticulture within three years of joining service. The posts of Field Assistant were set apart from the post of 'Mali' as they were required mandatorily to have higher educational qualification of Class X pass. Those who remained without Class X pass qualification continue to be designated as 'Mali' under the *Ministerial Service Rules, 1984*.

7. It is not in dispute that the Government, vide separate rules has provided for the ACP Scheme, which envisages placement in higher pay scale/grant of financial benefit, through financial upgradation of a Government servant, when he remains in one post without promotion or promotional avenues. This is with the aim of dealing with the problem of stagnation and hardship faced by employees, including economic hardship. In order to mitigate such circumstances, in case of acute stagnation in any post, the Government has provided for three financial upgradations under the ACP Scheme, to Government employees, including Group D

employees once, on completion of every ten years of service. ACP is thus granted three times in the entire career of an employee on lack of promotional avenues.

(i) Learned Senior Counsel for the Petitioners has placed reliance on **Parashotam Das Bansal** (*supra*) to bolster his case, however this is distinguishable from the case and circumstances of the instant case. In the said case, the Respondents were engineering staff in the Food Corporation of India and the services of the engineers were necessary for maintenance of godown and other structures. The Appellants therein were aggrieved by the lack of promotional avenues. The Supreme Court noted that when employees are denied an opportunity of promotion for long years (in this case thirty years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior Court will have the jurisdiction to issue necessary direction. It was observed that if there is no channel of promotion in respect of a particular group of officer resulting in stagnation over the years, the Court may issue direction to make a scheme for such purposes. There was no promotional avenues nor scheme for ACP in the said case. The Supreme Court thus issued directions to the Appellants Corporation, to create avenues for promotion of the Respondents.

(ii) Learned Senior Counsel for the Petitioners reliance on **Dr. Ms. O. Z. Hussain** (*supra*), in my considered view is not even relevant to the instant issue, as it deals with a Group A Scientists with Masters degree in the relevant discipline. They were aggrieved with discriminating treatment meted out to them *vis-a-vis* similarly educated persons, on account of which they were stagnating in service. Their contention was that the promotional

posts were all being filled by direct recruitment with no promotional channel provided to the Petitioners. The Supreme Court ruled that appropriate rules be framed to provide them with suitable promotional avenues. As already said, this case is distinguishable from the matter at hand as the Petitioners although not promoted to the next higher post have not been deprived of financial growth by way of granting ACP.

(iii) Learned Additional Advocate General for his part, relied on **A. K. Bhatnagar** (*supra*), the matter that was taken up for consideration therein was with regard to *inter se* seniority between the direct recruits alone. The rule framed for the purpose indicated that the *inter se* seniority of recruits of one year would be on the basis of merit. It was relevantly held as follows;

"13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs."

As rightly pointed out by Learned Additional Advocate General rules have already been framed under Article 309 of the Constitution of India which have a binding effect on Government employees including the Petitioners who do not have the option of selecting Rules, as they fall within the ambit of the *Ministerial Service Rules, 1984*.

(iv) In **Triloki Nath Khosa** (*supra*) also relied on by Learned Additional Advocate General, the Supreme Court was dealing with

a Petition claiming violation under Articles 14 and 16 of the Constitution of India and educational qualification as a basis of qualification for promotion, the Supreme Court went on to hold that;

"34. On the fact of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification Efficiency which comes in the trail of higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunities to those possessing higher educational qualifications. And we are concerned with the reasonableness of the classification, not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact American decisions have gone as far as saying that classification would offend against the 14th Amendment of the American Constitution only if it is "purely arbitrary, oppressive or capricious" [Joseph Radice v. People of the State of New York, 68 L. Ed. 690, 695 American Sugar Ref. Co. v. Louisiana, 45 L. Ed. 102, 103.] and the inequality produced in order to encounter the challenge of the Constitution must be "actually and palpably unreasonably and arbitrary". [68 L. Ed. 690, 695; Arkansas Natural Gas Co. v. Railroad Commission 67 L. Ed. 705, 710.] We need not go that far as the differences between the two classes — graduates and diploma-holders — furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision.

35. Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification. In State of Mysore v. P. Narasing Rao [AIR 1968 SC 349 : (1968) 1 SCR 407 : (1968) 2 Lab LJ 120.] where the cadre of Tracers was reorganized into two, one consisting of matriculate Tracers with a higher scale of pay and the other of non-matriculates in a lower scale, it was held that Articles 14 and 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. Therefore, it was open to the Government to give preference to candidates having higher educational qualifications. In Ganga Ram v. Union of India [(1970) 1 SCC 377, 382 : (1970) 3 SCR 481, 488] it was observed that "The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for promotion in its different departments." In Union of India v. Dr (Mrs.) S.B. Kohli [(1973) 3 SCC 592 : 1973 SCC (L&S) 136.] a Central Health Service Rule requiring that a professor in Orthopaedics must have a post-

graduate degree in the particular speciality was upheld on the ground that the classification made on the basis of, such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". The argument that a degree qualification was not the only criterion of suitability was answered laconically as "strange".

.....
50. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The Rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld."
 [emphasis supplied]

8. In the wake of the observations of the Supreme Court (*supra*) and in consideration of the facts and circumstances of the instant case, Prayer No.(ii) of the Petitioners already extracted hereinabove appears to be otiose as the Petitioners are already covered by the *Ministerial Service Rules, 1984*, as also averred by them. Statutory provisions cannot be supplanted to suit the Petitioners at their whims. Redesignating 'Malis' as Field Assistants would open a Pandora's Box as it would grant the Petitioners scope to claim promotion to the post of VLW(s), *sans* the requisite educational qualifications. All that this Court can suggest to the Respondents No.1, 2 and 4 is to alter the nomenclature from 'Mali' to 'Plantsman' or 'Landscape' as the nomenclature of 'Mali', appears to be one of the root causes for the disgruntlement of the Petitioners, apart from the foregoing discussions. Sanctity for education is imperative. Mandating educational qualification for various posts in Government employment is not an arbitrary act of the Government nor is it unjust. Boundaries can undoubtedly be drawn on the basis of educational levels for appointment to various posts in the Government departments. There cannot be a push and shove for such posts, where applicants are not adequately

educationally equipped, every post is required to be manned by a person who is qualified for it in terms of education. If such boundaries are not drawn, there would be anarchy and utter chaos in society.

9. In conclusion, I find that no injustice or discrimination has been meted out against the Petitioners in the instant matter, besides the lack of promotional avenues has been recompensed by the ACP Scheme.

10. The Petition being without merit, deserves to be and is accordingly dismissed.

11. Pending applications, if any, also stand disposed of.

(**Meenakshi Madan Rai**)

Judge
29-08-2025

Approved for reporting : **Yes**