

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 22nd June, 2022

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

WP(C) No.36 of 2020

Petitioner : Megraj Gurung

versus

Respondents : State Legislative Assembly Secretariat
(SLAS) and Another

Application under Articles 226/227
of the Constitution of India

Appearance

Mr. A. Moulik, Senior Advocate with Ms. K. D. Bhutia and Mr. Ranjit Prasad, Advocates for the Petitioner.

Dr. (Ms.) Doma T. Bhutia, Additional Advocate General with Mr. S. K. Chettri, Government Advocate and Mr. Shakil Raj Karki, Assistant Government Advocate for the Respondent No.1.

Ms. Gita Bista, Ms. Anusha Basnett and Ms. Pratikcha Gurung, Advocates for the Respondent No.2.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Petitioner herein, an aspirant to the post of Joint Secretary in the Sikkim Legislative Assembly Secretariat (for short, the "SLAS"), is disgruntled by the State action of granting promotion to the Respondent No.2 (for short, "R2"), to the post of Joint Secretary, by way of upgradation, duly relaxing the relevant Rules, without considering the Petitioner for promotion to the same post, although he was similarly situated with R2 and held a higher educational qualification. He seeks a declaration that the impugned promotion of R2 is *mala fide*, arbitrary, illegal and unconstitutional being against the provisions of the Sikkim Legislative Assembly Secretariat (Methods of Recruitment and

Qualifications for Appointment) Order, 1984, dated 20-05-1985 (hereinafter, "Recruitment Order 1984"). That, a writ of or in the nature of Mandamus be issued commanding the Respondent No.1 (for short, "R1") to cancel the impugned promotion order of the R2 and a writ or order be issued directing R1 to consider the case of the Petitioner for promotion to the post of Joint Secretary.

2(i). Learned Senior Counsel for the Petitioner while walking this Court through the brief facts of the case advanced the arguments that the Petitioner joined service in the SLAS against a regular sanctioned post of Assistant Language Translator vide Office Order dated 05-03-1999. In the year 2004, on clearing the Limited Departmental Examination, he was appointed as Nepali Translator vide Office Order dated 02-03-2004. Being eligible for promotion in terms of Rule 7 of the Recruitment Order 1984 to the post of Under Secretary in the year 2009, he made representations dated 28-05-2008, 16-12-2008, 16-09-2009 to R1 and 25-05-2009 to the Speaker, SLAS. He was promoted as Under Secretary vide Office Order dated 30-03-2010 w.e.f. 24-03-2010. On 15-09-2013, the Petitioner applied for a one time relaxation of Rules for grant of promotion by upgradation to the post of Deputy Secretary after serving for three and half years as Under Secretary on coming to learn that proposals for promotion of other employees of the department with similar years of service in one Grade was also under consideration. However, a few months' later Notification bearing No.285/436/ADMN/SLAS, dated 27-11-2013, was issued by the SLAS, notifying that henceforth upgradation of post would be limited to once in the entire service career of each individual employee. That, on consideration of his representations dated 04-

07-2014 and 25-03-2016, he was promoted to a vacant post in the rank of Deputy Secretary, vide Office Order dated 16-11-2016 with effect from 02-09-2016.

(ii) That, R2 for his part joined service on 02-05-1983 and was promoted as Under Secretary w.e.f. 24-03-2010 on the same date as the Petitioner and his post upgraded to that of Deputy Secretary w.e.f. 02-09-2016, i.e., on the same date as the Petitioner. However, on a representation filed by R2, one post of Deputy Secretary was upgraded to that of Joint Secretary by issuance of Order No.403/ADMN/SLAS, dated 24-09-2020, and R2 was promoted therein, with effect from 16-09-2020. It was contended that the SLAS deemed it expedient to decrease the prescribed eligibility criteria of six years of regular service as Deputy Secretary for promotion to the post of Joint Secretary to four years, for the pensionary benefits of R2, as requested by him, in consideration of his length of service and precedent in the SLAS. It was further contended that the provisions of Rule 7 of the Recruitment Order 1984 specify that promotion would be on the basis of merit-cum-seniority, academic qualification and consideration of all eligible officers together for promotion. Despite these provisions, the representations of the Petitioner dated 29-08-2020 and 15-09-2020 before the Speaker and R1 respectively, seeking consideration of his case also for promotion to the rank of Joint Secretary was rejected, although he was at par with R2 and academically better qualified. Strength was garnered from the ratio in ***The Principal, King George's Medical College, Lucknow vs. Dr. Vishan Kumar Agarwal and Another***¹. Besides, R2 had already

¹ AIR 1984 SC 221

availed of the benefit of the one time upgradation of post on his promotion as Deputy Secretary, therefore, his second upgradation was in violation of the said Notification dated 27-11-2013 (*supra*). That, considering R2 only for promotion was an arbitrary and discriminatory State action and infringes the Petitioner's fundamental rights as contained in Articles 14, 16, 19, 21 and Article 300A of the Constitution of India towards which reliance was placed on ***Kathi Raning Rawat vs. State of Saurashtra***².

(iii) It was next canvassed that the Speaker as per the Sikkim Legislative Assembly Secretariat (Recruitment and Conditions of Service) Rules, 1983, dated 09-03-1983 (hereinafter, "Rules of 1983") is to consult the State Government regarding the pay, pension, gratuity and other conditions of service of the Secretariat, but the promotion order of R2 reveals that the Speaker on the recommendation of the "Selection Board" promoted R2 to the post of Joint Secretary circumventing the mandate of the Statute. The Order of promotion of R2 however does not indicate that the Speaker had taken steps in terms of Rule 7(1) of the Rules of 1983 whereby it was incumbent upon him to consult the State Government before issuing such an order. Learned Senior Counsel while conceding that Rule 16 of the Recruitment and Conditions of Service Rules, 1983, empowers the Speaker to relax the Rules if he deems it necessary or expedient to do so argued that, however, he is to record reasons in writing and do so "in consultation with the Governor". That, such steps have not been taken by the Speaker as evident from the Order dated 24-09-2020. That, if the promotion of R2 was necessitated only for financial benefit then his

² AIR 1952 SC 123

scale of pay could have been upgraded but he ought not to have been promoted to the 'post' of Joint Secretary, in view of the Notification dated 27-11-2013. To fortify his submissions reliance was placed on ***Bharat Sanchar Nigam Limited vs. R. Santhakumari Velusamy and Others***³. That, in fact the Petitioner does not assail the relaxation clause of the Rules but claims equal treatment with R2, hence the prayers in the Writ Petition be granted.

3(i). *Per contra*, refuting the arguments of Learned Senior Counsel for the Petitioner, Learned Additional Advocate General pointed out that although great emphasis was laid by Learned Senior Counsel for the Petitioner on Rule 7(1)(c) of the Recruitment Order 1984, which provides that, all officers eligible for promotion to a particular post are to be considered together, Rule 7(3) of the same Order which empowers the appointing authority, in the instant case the Speaker, to "relax" the period of service required for promotion to a higher grade, when considered expedient, was blithely ignored by the Petitioner.

(ii) While reiterating the facts leading to the instant dispute, Learned Additional Advocate General submitted that R2 was in fact appointed in the SLAS in the year 1983 as an LDC-cum-Typist much before the Petitioner who joined service only on 05-03-1999 as Assistant Language Translator. That, while R2 retired on 30-04-2021, the Petitioner will retire only on 28-02-2032, hence the relaxation of the relevant Rules for R2 for his pensionary benefits. Learned Additional Advocate General conceded to the submissions of Learned Counsel for the Petitioner with regard to the date of appointment of the Petitioner and R2 as Under

³ (2011) 9 SCC 510

Secretary, thereafter as Deputy Secretary and that subsequently by way of relaxation of Rules, only R2 was promoted to the post of Joint Secretary vide Office Order dated 24-09-2020, with effect from 16-09-2020 reiterating that it was for monetary benefits. It was canvassed that R2 ranked senior in service to the Petitioner, towards which, the attention of the Court was invited to the Office Order dated 25-03-2010 wherein R1 had approved the fixation of *inter se* seniority of the department's highest non-gazetted staff, based on the recommendation of a Committee constituted on 16-10-2008 and issued in consultation with the Department of Personnel, Government of Sikkim. R2 who was placed at Serial No.7, below the Petitioner, was aggrieved by such fixation and thereby filed WP(C) No.55 of 2016 [*Pratap Singh Tamang vs. Sikkim Legislative Assembly Secretariat, SLAS and Another*] before this Court, the Petitioner herein was arrayed as Respondent No.2. During the pendency of the said Writ Petition, a One Man Grievance Redressal Ad-hoc Committee was constituted vide an Order dated 02-08-2019, under the Chairmanship of a retired IAS Officer which resolved the *inter se* seniority dispute vide its report dated 06-09-2019, and placed R2 at Serial No.8 higher in seniority than the Petitioner who was placed at Serial No.9 which was accepted by the parties, WP(C) No.55 of 2016 filed by R2 was accordingly withdrawn by him on 19-12-2019. That, vide a Notice dated 21-01-2021 the draft *inter se* seniority list of Gazetted Officers of the SLAS was circulated to all concerned officers. The Notice not being assailed by the parties, Order No.588/ADMN/SLAS, dated 03-03-2021 was issued confirming the seniority list, placing R2 at Serial No.7 and the Petitioner at Serial No.8, in supersession of all

previous Orders/Notifications. That, the Petitioner has neither challenged the relaxation clause nor the *vires* of the Recruitment Order 1984 or the Order dated 24-09-2020 at any stage, thereby giving all finality.

(iii) While reiterating the reasons for the promotion of R2 to the rank of Joint Secretary it was submitted that the Order No.402/ADMN/SLAS, dated 24-09-2020, elucidates the reasons for R2's promotion, the Speaker having judiciously exercised the powers of relaxation vested on him, which cannot be termed as arbitrary or discriminatory. To buttress her submissions, Learned Additional Advocate General relied on the ratio of this Court in ***Swarna Smriti Pradhan and others vs. State of Sikkim and Others***⁴ and on the decision of the Madras High Court in ***M. Sundararaj vs. The Principal Secretary to Government and Another***⁵.

4. Learned Counsel for R2 endorsed the submissions put forth by Learned Additional Advocate General and urged that the promotion of R2 to the post of Joint Secretary bore no illegality as the relevant Rules were adhered to, hence the State action cannot be termed as 'arbitrary'. The promotion and orders thereto of R2 accordingly be upheld and sustained.

5. Due consideration has been afforded to the rival contentions of Learned Counsel for the parties, all pleadings and documents perused as also the Judgments cited at the Bar.

6. The short question that falls for consideration before this Court is; Whether R1 acted arbitrarily and discriminated between the Petitioner and R2 by promoting only R2 to the post of Joint Secretary after duly relaxing the Rules, when both were

⁴ WP(C) No.14 of 2018 decided on 10-05-2022

⁵ WP No.7267 of 2018 and W.M.P. Nos. 9030 and 9031 of 2018 decided on 14-02-2019

similarly situated, both having been promoted to the post of Under Secretary with effect from 24-03-2010 and as Deputy Secretary with effect from 02-09-2016?

7(i). In this context, it is seen that the Rules of 1983 regulates the recruitment and conditions of service of persons appointed to the SLAS. For brevity all the provisions of the Rules are not being extracted hereinbelow save Rule 16, which provides as follows;

"16. Relaxation, alteration or augmentation -
"Where the Speaker is of the opinion that it is necessary or expedient so to do, he may by order, for reasons to be recorded in writing and in consultation with the Governor, relax or alter any of the provisions of these rules"."

(ii) The Recruitment Order 1984 at Rules 4, 7 and 14 read as follows;

"4. Pension, Gratuity and other Conditions of Service -

Subject to the provisions in the Sikkim Legislative Assembly Secretariat (Recruitment & Conditions of Service) Rules, 1983, the conditions of service as regards leave, pension, allowances, gratuity and other conditions of service to officers of the Secretariat shall be governed by such rules or orders as are applicable to the officers in the corresponding post/class/grade in the State Government modifications as the speaker may from time to time direct to be made.

7. Promotion -

- (1) Where the method of recruitment by promotion has been specified in the Schedule-
 - (a) it shall be made by selection on merit-cum-seniority.
 - (b) for the purpose of selection under clause (a) of the sub-paragraph (1), **merit, in relation to an officer, shall include -**
 - (i) **his performance at a test, whether oral or written or both, if such a test is ordered by the appointing authority to be held for the purpose of such selection;**
 - (ii) **the remarks in the annual confidential report on his work and conduct recorded by his superior officers;**

- (iii) his academic qualifications;
- (iv) his previous experience of the particular type of duties and responsibilities which he will be required to discharge, if selected; and
- (v) any other requirement which the appointing authority may lay down for eligibility by promotion; and
- (c) all officers eligible for promotion to a particular post shall be considered together.

(2) For the purpose of calculating the length of service prescribed for promotion to the next higher grade, the services rendered by the officer in the corresponding post/grade before the date of enforcement of this order, shall be taken into account.

(3) The appointing authority may, for reasons to be recorded in writing, relax, the period of service required for promotion to a higher grade.

.....
 14. **Power to relax - Where the Speaker is of the opinion that it is necessary or expedient so to do, he may, by order for reasons to be recorded in writing, relax any of the provisions of this order in respect of any class or category of persons."** [emphasis supplied]

8. The Rules thus detail the power of the Speaker with regard to conditions of service, promotion of employees based on merit-cum-seniority, and indubitably clothe the Speaker with the Powers to relax the rules if deemed 'necessary' or 'expedient' to do so. The Rules are self-explanatory. While considering the power of the appointing authority to relax the Rules, the Hon'ble Supreme Court in **State of Maharashtra vs. Jagannath Achyut Karandikar**⁶ held that the power to relax the conditions of the rules to avoid undue hardship in any case or class of cases cannot now be gainsaid. In **J.C. Yadav and Others vs. State of Haryana and Others**⁷ it was *inter alia* observed that the relaxation of the Rules may be to the extent the State Government may consider necessary for dealing with a particular situation in a just and equitable manner, with a view to mitigate undue hardship or to meet a particular situation, as often

⁶ AIR 1989 SC 1133

⁷ AIR 1990 SC 857

strict application of Service Rules creates a situation where a particular individual or a set of individuals may suffer undue hardship. In **Sandeep Kumar Sharma vs. State of Punjab and Others**⁸ the Hon'ble Supreme Court observed that the power of relaxation even if generally included in the service rules could either be for the purpose of mitigating hardships or to meet special and deserving situations. Of course arbitrary exercise of such power must be guarded against. But a narrow construction is likely to deny benefit to the really deserving cases. In **Ashok Kumar Uppal and Others vs. State of J&K and Others**⁹ reiterated in **State of Gujarat and Others vs. Arvindkumar T. Tiwari and Another**¹⁰ it was held that it was a case in which the Government had not acted arbitrarily or capriciously but had proceeded to relax the Rules to obviate genuine hardship caused to a class of employees, namely, the Appellants and directed their promotion in relaxation of the Rules. In **Anil Kumar Vitthal Shete and Others vs. State of Maharashtra and Another**¹¹ the Supreme Court held that it is always open to an Employer to adopt a Policy for fixing Service Conditions of his Employees. Such Policy, however, must be in consonance with the Constitution and should not be arbitrary, unreasonable or otherwise objectionable.

9. On consideration of the foregoing observations, what one cannot lose sight of is that the power to relax Rules is conferred upon the Government with the unwavering caveat that such relaxation must be exercised to meet an emergent situation, to address any injustice which has been caused or may be caused

⁸ (1997) 10 SC 298

⁹ (1998) 4 SCC 179

¹⁰ (2012) 9 SCC 545

¹¹ (2006) 12 SCC 148

to an individual employee or even a class of employees, or with a view to meet specific situations or to mitigate undue hardship to an individual employee, class of employees or categories of employees or where the working of the rules or a particular Rule becomes an impossibility. Relaxation of Rules by the State Government is to be done in a just and equitable manner. It is thus no more *res integra* that the employer can adopt a policy for fixing of service conditions including promotions but such a policy must be shorn of arbitrariness and irrationality, neither should it be objectionable in any manner. On the touchstone of the parameters laid down above, it is essential to examine whether the relaxation of the relevant rules for R2 and his promotion can be termed as rational and judicious.

10(i). Indubitably the Petitioner and the R2 were on an equal footing since their promotion to the post of Under Secretary, the Petitioner having been promoted to the post vide Office Order dated 30-03-2010 w.e.f. 24-03-2010 and the R2 vide Office Order dated 08-11-2019 (notional) w.e.f. 24-03-2010. After putting several years of service as Under Secretary both were promoted to the post of Deputy Secretary w.e.f. 02-09-2016 for which purpose so far as R2 was concerned his post was upgraded and he was promoted thereto. For the present purposes we are not concerned with the dates of initial appointment of both the Petitioner and the R2 in their respective services, suffice it to notice that from 24-03-2010 both stood on the same *terra firma* on the facet of seniority both having been promoted as Under Secretary on the same date.

(ii) It is pertinent now to notice that Notification No.285/436/ADMN/SLAS, dated 27-11-2013, specified that relaxation of

Rules would be only once in the entire career of an individual serving in the SLAS. The Notification is extracted below;

“.....
SIKKIM LEGISLATIVE ASSEMBLY SECRETARIAT
NAMNANG, GANGTOK
No. 285/436/ADMN/SLAS... Dated 27./11/2013
NOTIFICATION
 The Hon'ble speaker, Sikkim Legislative Assembly is pleased to notify that henceforth the up-gradation of the post shall be limited to once in the entire service career of each individual employee.
 By Order
 (D. Rinchen)
 Secretary
 File No.436/SLAS/ADM/2013-14
”

Notwithstanding the aforesaid circumstances, the Speaker vide Order No.402/ADMN/SLAS, dated 24-09-2020, in the teeth of the specifications of the Notification dated 27-11-2013 (*supra*) relaxed the service Rules for a second time that too, only for R2, by upgrading one post of Deputy Secretary to that of Joint Secretary and promoting R2 to the post. The Order is reproduced below for easy reference;

“.....
SIKKIM LEGISLATIVE ASSEMBLY SECRETARIAT
SONAM TSHERING MARG, GANGTOK
No: - 402/ ADMN /SLAS Date: 24 /9/2020
ORDER
WHEREAS, the Speaker, has received an application number Nil, dated 18/8/2020 from Shri Pratap Singh Tamang, Deputy Secretary (Admin) requesting for promotion to the post of Joint Secretary for pension benefit considering his long service rendered in Sikkim Legislative Assembly Secretariat.
 AND **WHEREAS**, Shri Pratap Singh Tamang, Deputy Secretary (Admin.) was deemed to have been promoted as Deputy Secretary in the Level 17 of the Pay matrix w.e.f. 02.09.2016 and has completed four (4) years of regular service in the post and retiring on superannuation on 30.04.2021 (AN).
 AND **WHEREAS**, the eligibility criteria prescribed for promotion to the post of Joint Secretary as per Sikkim Legislative Assembly Secretariat (Methods of Recruitment and Qualifications for Appointment) Order, 1984 as amended and notified in Sikkim Government Gazette

No 91, dated 25th February, 2012, for the post of Joint Secretary is by selection from persons in the grade of Deputy Secretary or equivalent post with minimum of 6 (six) years service in the grade.

AND WHEREAS, the Speaker is of the opinion that in consideration of his long service and past practice & precedent in the Sikkim Legislative Assembly Secretariat, it is felt necessary or expedient to relax the prescribed eligibility criteria of 6 (six) years of regular service as Deputy Secretary by remaining 2 (two) years in order to promote senior most and retiring incumbent Deputy Secretary (Admin) for monetary benefit at the time of retirement as requested.

Now, **THEREFORE**, in exercise of the powers conferred by sub-para (3) of para 7 of the Sikkim Legislative Assembly Secretariat (Methods of Recruitment and Qualification of Appointment) Order, 1984, the Speaker, is pleased to relax the prescribed eligibility criteria of 06 (six) years of regular service as Deputy Secretary by 2 (two) years with a view to promote senior most and retiring incumbent Deputy Secretary (Admin) for monetary benefit at the time of retirement.

Dr. G.P. Dahal, SLASS

SECRETARY

Sikkim Legislative Assembly Secretariat

....."

[emphasis supplied]

The Rules, as can be seen, requires completion of six years of service in the post of Deputy Secretary before one is considered for promotion to the post of Joint Secretary, which was nonetheless relaxed for R2. The only ground for relaxing the provisions of the Rules, by the Speaker, as apparent, was to grant monetary benefit to R2 for the purposes of his pension. Indeed the Order is a compassionate and magnanimous one issued by the Speaker in the exercise of his powers of relaxation, but the question is whether this qualifies as an equitable and just order. It is settled law that the principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment, promotion, retirement, payment of pension and gratuity.

11. A document filed by the State-Respondents on the date of final hearing, copy each of which was made over to all other parties and was unopposed was taken on record for proper

adjudication of this matter. The document reflects that the SLAS took up the request of the Petitioner seeking promotion to the post of Joint Secretary on 21-09-2020. His representations seeking promotion were made on 29-08-2020 and 15-09-2020 while the order of relaxation for R2 was issued on 24-09-2020. It is evident from the orders of R1 that the Petitioner was not even considered for promotion to the rank of Joint Secretary and his representations were brushed off peremptorily with the observations made in the minutes of the meeting of the Departmental Promotion Committee which read as hereunder;

"Minutes of the Selection Board / DPC of SLAS date: 21/9/2020.

On its meeting dated 21st September, 2020, the Selection Board/DPC of SLAS examined the matter pertaining to promotion request made by Shri Megraj Gurung, Deputy Secretary (Committee) vide application dated 29/8/2020 and dated 15/9/2020.

The case of Shri P.S. Tamang Deputy Secretary (Admin) was considered and recommended **for promotion purely for monetary pensionary benefit at the time of retirement based on past practice/precedent, since retiring on 30/04/2021 (AN). Whereas, Shri Gurung shall retire on superannuation on 28/02/2032 (AN) and Selection Board/DPC believe that the case can't be taken alike.**

It further appears that the note of Administration is clear as indicated at NSP-246, wherein the representation of Shri Gurung can't be **acceded as per the existing Schedule of Sikkim Legislative Assembly Secretariat (Methods of Recruitment and Qualification for appointment) Order, 1984 amended vide Gazette Notification No.91 dated: 25th February, 2012, which stipulates the minimum 6 years of service for promotion to the post of Joint Secretary.**

Therefore, the Selection Board / DPC agree with the note of administration at the moment.

Sd/- (Karma T. Gyatso) Addl. Secretary (Accounts) Member	Sd/- (Lalit Kr. Gurung) Addl. Secretary (Admin) Member	Sd/- (Lakpa Doma Bhutia) Spl. Secretary (L&PA) Member
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....." **[emphasis supplied]**

The grounds taken for rejection of the representations of the Petitioner are evidently irrational, if the representations of the R2 could be acceded to even though he had not completed the

requisite period of six years of service in the post of Deputy Secretary, for promotion to the post of Joint Secretary, then the case of the Petitioner R2 ought to have also been considered on the same grounds. The reasoning that R2 would be retiring on superannuation on 30-04-2021 and in such a circumstance the case of the Petitioner who would retire only on 28-02-3032 could not be treated alike, without a doubt suffers from the malaise of arbitrariness and irrationality.

12(i). It needs no reiteration here that Article 14 of the Constitution of India enshrines the principle of equality before the law, which does not translate into the same rules of law being applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same [See, *In re The Special Courts Bill, 1978* : AIR 1979 SC 478]

(ii) In *Smt. Maneka Gandhi vs. Union of India and Another*¹² while discussing the content and reach of Article 14 of the Constitution, the Supreme Court observed that;

"56. What is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing

¹² AIR 1978 SC 597

scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14.”

(iii) In **Randhir Singh vs. Union of India and Others**¹³ the Supreme Court held that;

“8. Art. 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any Office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.
.....”

(iv) The Supreme Court in **State of Kerala and Another vs. N.M. Thomas and Others**¹⁴ while considering the guarantee of equality before law or equal opportunity in matters of employment observed as follows;

“66. But the language of Article 16(1) is in marked contrast with that of Article 14. Whereas the accent in Article 14 is on the injunction that the State shall not deny to any person equality before the law or the equal protection of the laws that is, on the negative character of the duty of the State, the emphasis in Article 16(1) is on the mandatory aspect, namely, that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State implying thereby that affirmative action by the Government would be consistent with the article if it is calculated to achieve it. If we are to achieve equality, we can never afford to relax:

“While inequality is easy since it demands no more than to float with the current, equality is difficult for it

¹³ AIR 1982 SC 879

¹⁴ (1976) 2 SCC 310

involves swimming against it. [R.H. Tawney, "Equality", (1952), p. 47]"

13. Article 16 represents one facet of the guarantee of equality. According to this Article, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. It is further provided that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of, any employment or office under the State. The general rule laid down under this Article is that there should be an equal opportunity for citizens in matters relating to employment or appointment to any office under the State. The expression "matter relating to employment or appointment" includes all matters in relation to employment both prior and subsequent to the employments which are incidental to the employment and form part of the terms and conditions of such employment. Therefore, what Article 16 of the Constitution guarantees is equal opportunity to all persons [See, ***Amita vs. Union of India and Another*** : (2005) 13 SCC 721].

14. Thus, Articles 14 and 16 of the Constitution underline the importance attached to ensuring equality of treatment. Such equality has a special significance in the matter of public employment. It was with a view to prevent any discrimination in that field that an express provision was made to guarantee equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

15. Addressing the argument of the Learned Senior Counsel for the Petitioner that Rule 16 of the Rules of 1983 requires consultation with the Governor to relax or alter any of the

provisions of the rules and that as the relaxation order dated 24-09-2020 does not make a mention of the Governor, and it therefore liable to be set aside, cannot be countenanced as the Supreme Court in ***State of Sikkim vs. Dorjee Tshering Bhutia and Others***¹⁵ observed that;

"14. The government business is conducted under Article 166(3) of the Constitution in accordance with the Rules of Business made by the Governor. Under the said Rules the government business is divided amongst the ministers and specific functions are allocated to different ministries. Each ministry can, therefore, issue orders or notifications in respect of the functions which have been allocated to it under the Rules of Business."

16. While considering the aspect of arbitrariness and what it entails, it may be explained that arbitrary action is one that is irrational and not based on sound reason. If an administrative or policy decision is taken without considering the relevant facts it would be termed as an arbitrary decision and violative of the mandate of Article 14 of the Constitution. Thus, arbitrariness is contrary to rule of law, equity, fair play and justice. The relaxation clause provided in the Rules (*supra*) cannot be invoked to benefit one person while discriminating against another similarly situated with the beneficiary, sans rationality. The concept of equality before law means that among equals law should be equal and should be equally administered and likes should be treated alike. At the same time, the fact that the principle of equality does not prevent the State from making a classification on the basis of natural distinctions relevant to the particular subject to be dealt with must be borne in mind. So long as the classification is based on a natural basis and so long as all the persons falling in the same

¹⁵ (1991) 4 SCC 243

class are treated alike, there can be no question of violating the equality clause. If an action is assailed as being violative of Article 14, it is necessary to ascertain the policy underlying the Statute and the object intended to be achieved by it, having done so the dual test has to be applied, whether the classification is rational and based upon intelligible differentia which distinguished persons or things that are grouped together from others and that are left out of the group and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. These objectives are lacking in the action of R1.

17. What is to be considered "necessary and expedient" as required by the Rules of SLAS cannot be for the personal benefit of one official in derogation to others similarly situated. This circumstance would reek of irrationality and arbitrariness. This Court concedes that equation of posts and equation of pay are matters primarily for the Executive but I am constrained to observe that where all relevant considerations are the same, persons holding identical posts cannot be treated differently while justifying the unfairness on grounds of retiral benefits for the beneficiary, to the detriment of the similarly situated Petitioner. The guarantee under Article 14 of the Constitution cannot be whittled down by irrationality. The dates of retirement are immaterial for persons who are otherwise at par and have to be treated equally. The reason for relaxation of Rules for the second time in contravention of the Notification dated 27-11-2013 for purposes of pensionary benefits cannot be countenanced on the bedrock of constitutional safeguards. R2 may have been placed above the Petitioner in seniority but his seniority would have been relevant only if there

was one substantial vacancy in the post of Joint Secretary and R2 had completed the required tenure in the post of Deputy Secretary, rendering him eligible first for promotion to the next higher post on account of his seniority. But, in the instant matter only the post of R2 as Deputy Secretary, was upgraded to facilitate his promotion to that of Joint Secretary, notwithstanding that he along with the Petitioner had put in similar years of service in the post of Deputy Secretary and both had not completed the qualifying years of service for promotion to the post of Joint Secretary. Thus, the upgradation and promotion of R2 only subsequently, was unfair, arbitrary and illegal. The relaxation clause was invoked to favour R2 and it cannot be said to have been invoked for the purpose of mitigating or obviating undue hardship, or to meet a particularly difficult situation which was hampering the career of R2 as he had the advantage of an upgradation of his post from Under Secretary to Deputy Secretary and thereby availed of the benefit of one time relaxation provided by the Rules.

18. The Petitioner has conceded that he does not challenge the relaxation clause nor the *vires* of the Recruitment Order 1984, but the Order dated 24-09-2020 has been impugned by filing the instant Writ Petition on 22-10-2020 within a month from the issuance of the impugned Order, therefore, he cannot be faulted for laches or delay.

19. In consideration of the gamut of facts and circumstances and the discussions hereinabove, it is concludes that;

- (i) the order of relaxation of the prescribed eligibility criteria of six years of regular service as Deputy

Secretary by two years to promote R2 to that of Joint Secretary vide Order No.402/ADMN/SLAS, dated 24-09-2020;

- (ii) the order of upgradation of one post to that of Joint Secretary to R2 vide Notification No.403/ADMN/SLAS, dated 24-09-2020;

being irrational and arbitrary are illegal and thereby quashed and set aside.

20. Consequently, the order of promotion of R2 to the post of Joint Secretary vide Office Order No.404/ADMN/SLAS, dated 24-09-2020, also stands quashed and set aside.

21. The Writ Petition stands disposed of accordingly.

22. No order as to costs.

(Meenakshi Madan Rai)
Judge
22-06-2022

Approved for reporting : **Yes**