
(1994) 08 CAL CK 0031

In the Calcutta High Court

Case No : C.O. No. 13545 (W) of 1989 and 783 (W) of 1990

Ainal Haque and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : 99 CWN 193

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : Rabindranath Das and Sadhan Roy Chowdhury, for the Appellant;
S.C. Ukil, L.C. Behani and Suchandra Mukherjee, for the Respondent

Judgement

Samaresh Banerjea, J.—In C.O. No. 13545(W) of 1989 Memo 2987-Regn. dated 13th December, 1989. memo No. 2989-Regn. dated 3rd December. 1989 and Memo No. 2991-Regn. dated 13th December; 1989 issued by the Secretary, Judicial Department, are challenged by 8 writ petitioners, some of whom are Muharrir in the office of Behala Additional District Sub-Registration, Alipore and some are Copyists in the office of Calcutta Assurances. The case as made out in the writ petition is inter alia as follows:

The writ petitioner no. 1 to 5 and 8 were appointed as extra Muharrirs under the District Registrar, 24 Parganas, from which post the said petitioners no. 1 to 5 and 8 were promoted to the post of L.R. Act Muharrirs. The said writ petitioners are still working in the post of Muharrirs under the District Registrar, 24 Parganas, (South). The writ petitioners no. 6 & 7 were appointed initially as extra copyists and thereafter they were promoted to the post of copyist since when the writ petitioners no. 6 and 7 have been working in the said post under the Registrar of Assurances, Calcutta.

2. In the matter of appointment in the post of extra Muharrirs and/ or copyists there was qualification bar and/or criterion, namely there was no question of passing the School Final and/or Matriculation Examination as a condition

precedent for such appointment

3. The promotional channel from the said post of extra Muharrirs was as follows:

From extra Muharrirs to L.R. Act Muharrirs, from L.R. Act Muharrirs to Muharrirs, from Muharrirs to Lower Division Clerk and thence to Upper Division Clerk and to the post of Head Clerk.

Since there was no such bar of educational qualification in the matter of appointment vis-a-vis promotion as indicated above, the extra Muharrirs appointed in the office of the Inspector General of Registration were promoted from the post of extra Muharrirs and thence to the Lower Division Clerk and then from Lower Division Clerk to Upper Division Clerk and to the post of Head Clerk. There being no qualification bar in regard to appointment and promotion, 7 non Matriculate and non School Final Muharrirs were promoted upto the stage of Head Clerk and 5 persons were also promoted to the post of Upper Division Clerk, who are also non Matrix and non School Final in between 1986 and 1989.

4. The writ petitioners and the aforesaid staff thus being similarly circumstanced in the matter of their appointment in the post of extra Muharrirs there cannot be any reason to discriminate amongst the said staffs so as to deprive the petitioners of their promotional opportunities to the post of Lower Division Clerk, then Upper Division Clerk and thence to the Head Clerk in the office of the Inspector General of Registration.

5. The School Final and the Matriculate Muharrirs were not in any inlander distinguished from the non School Final and non Matriculate Muharrirs and the fact that they were for all practical purposes treated at par will be evident from the fact that for both the said two categories of Muharrirs a single combined gradation list was maintained on the basis of their respective dates of entry into service as Muharrirs vide Inspector General of Registration's Memo No. 9192 (19) dated 21st October, 1970.

6. In terms of memo No. 903-Regn. dated 8th May, 1978 being Annexure "D" of the writ petition all the existing extra Muharrirs including the writ petitioners were absorbed in the post of Muharrirs and in this way the said extra Muharrirs were brought under the regular salary establishment of the Inspector General of Registration, West Bengal. By reason of such regularization and/or absorption all the Muharrirs both School Final pass and non School Final candidates were brought at par for all purposes. Hence, there cannot be any artificial and ad hoc classification brought about on the basis of alleged educational qualification so as to divert the writ petitioners of the benefits, which thus accrued to them in the matter of their promotion to the next higher post of Lower Division Clerk to Upper Division Clerk and thence to the post of Head Clerk.

7. Consequent upon the introduction of the Revision of Pay and Allowances Rules of 1981 a dichotomy in the matter of scales of pay for the School Final and non School Final Muharrirs was sought to be created by seeking to grant a scale of

pay of Rs. 300-685/- to the School Final Pass Muharrirs and a scale of pay of Rs. 280-617/- to the non School Final pass Muharrirs. The said purported line of demarcation which was thus sought to be brought about between the two groups of employees Matriculate and non Matriculate holding the same post was discarded by the Inspector General of Registration, West Bengal vide his order bearing no. 5430(16) dated 10th September. 1981 by which it was made clear that no such interpretation could be entertained and all regularised Muharrirs. L.R. Act Muharrirs and Copyists of the Registration Offices be allowed the same scale of pay of Rs. 300-685/-. In view of the said clarificatory order dated 10th September, 1981 it is obvious that it was never the intention of the respondent authorities to bring about many artificial line of demarcation between the School Final and non School Final Muharrirs and/or Copyists and accordingly the said two groups of Muharrirs and Copyists had although been considered for promotion to the post of Lower Division Clerk, Upper Division Clerk and thence to the post of Head Clerk.

8. Consequent upon the bifurcation of the District of 24 Parganas into South and North 24 Parganas draft gradation lists for the said two parts of the District 24 dated 28th July, 1986 - Annexure "F" to the writ petition. The said separate gradation lists for District of 24 Parganas South and District 24 Parganas North are yet to be framed and published. However, from the said Memo dated 28th July. 1986 it will be clear that no distinction as between the School Final and non School Final Muharrirs was made while seeking to prepare such separate gradation lists for the said two parts of bifurcated District" of 24 Parganas. The combined draft gradation list which was however published in respect of the whole of district 24 Parganas vide Annexure "G" to the writ petition will make it obvious that no distinction as between the School Final and non School Final Muharrirs was made, though the said draft gradation list did not reflect the proper seniority position of the Muharrirs according to their respective dates of appointment as Muharrirs in the Registration Office in terms of the earlier Memo dated 21st October, 1970.

9. With a view to remedying the irregularities which were created in the matter of preparation of the draft gradation list by placing the School Final pass Muharrirs though joining service at a later date above the non School Final Muharrirs, an order being Annexure "G" to the writ petition was issued by the District Registrar, South 24 Parganas inter alia suggesting that the pay of the said superseded Muharrirs be protected by upgrading the pay of said senior Muharrirs. The said order being Annexure "G" to the writ petition while Muharrirs also acknowledged the fact that there was no distinction between the said two types of Muharrirs, namely the School Final Pass Muharrirs and non School Final Muharrirs. The authorities thus having accepted the non School Final/non Matriculate extra Muharrirs as Muharrirs consequent upon their regularisation in the regular establishment and after having granted the opportunities of promotion to the similarly circumstanced Muharrirs, namely non School Final/non Matriculate Muharrirs to the post of Lower Division Clerk, Upper Division Clerk

and thence to. the Head Clerk in the Registration Office cannot be permitted to backtrack and take a different stand so as to deprive the petitioners of their accrued and vested rights which have become a condition of their service by purporting to pass the impugned administrative order being No. 2987-Regn. dated 13th December, 1989 being Annexure "N" to the writ petition whereby the authorities have sought to bring about an artificial classification of School Final and non School Final muharrirs for the purpose of conversion of the posts of Muharrirs into Lower Division Clerk in the said office of Inspector General of Registration. The respondent authorities by another impugned Memo bearing No. 2991-Regn. dated 13th December. 1989 being Annexure "N" to the writ petition have further purported to stagnate the writ petitioners/non School Final/Non Metric Muharrirs in the Grade-1 scale as alleged to be contemplated in Finance Department Memo No. 53030F dated 29th May, 1984 and 13641-F dated 18.12.1987.

10. By the impugned order being Annexure "O" to the writ petition the District Registrar, 24 Parganas (South) purported to implement the said two impugned orders dated 13th December, 1989 in the office of District Registrar, 24 Paarganas (South).

11. As the Muharrirs without there being any distinction as to qualification of School Final and Matriculation pass have although been considered for promotion to the post of Upper Division Clerk and Head Clerk in the office of the Inspector General of Registration, the petitioners being the regularised Muharrirs have become entitled to promotion to the post of Upper Division Clerk in the ratio of 1:1 in terms of Government Memo No. 3868-F dated 31st March. 1984 issued by the Finance Department Government of West Bengal. As both the School Final and non School Final Muharrirs perform the same duties and shoulder the same responsibilities, there cannot be any artificial classification as has been sought to be done for bestowing the benefits of conversion of the post of School Final Muharrirs into the benefits of promotion in terms of the Government Order dated 31st March. 1984 depriving the petitioners of the said benefits in an arbitrary and malafide manner.

12. The stand of the State respondents on the other hand in the affidavit in opposition is that the minimum recruitment qualification for enrolment as extra Muharrirs or extra Copyists was always matriculation or School Final Pass, but in exceptional cases when candidates with requisite qualification were not available, persons without having such qualification were enrolled as extra Muharrirs or extra copyists on relaxation of normal rules and separate registers were maintained for extra Muharrirs or extra Copyists. The post of L.R. Act Muharrirs was filled up by senior most enlisted extra Muharrirs. The post of Muharrirs was filled up by senior most L.R. Act Muharrirs. The post of Lower Division Clerk was filled up by senior most Muharrirs. In filling up the abovementioned posts Matriculate/ School Final pass employees got preference over the non Matriculates/non School Final employees. But there were cases of appointment in

the post of Muharrirs and Lower Division Clerks who did not acquire the minimum qualification for the reasons as stated there in above. The same practice was followed in the office of the R.A. Calcutta. As various anomalies were detected in the matter of enlistment of extra Muharrirs and extra Copyists, G.O. No. 9192 (19) dated 17.10.70 was issued to correct the gradation list. Two sets of lists were maintained one for Matriculates and the other for non Matriculates. After issuance of G.O. No. 9192 (19) dated 17.10.70, all extra Muharrirs (extra Copyists) were enlisted according to the date of first appointment irrespective of qualification. As 70% of the total employees were piece rated employees (i.e. no work no pay) the Government of West Bengal brought the piece rated extra Muharrirs/extra Copyists in the regular salaried establishment of Muharrirs and Copyists in the scale of Rs. 230/- 425/- from 1st April, 1978 in terms of G.O. No. 903 dated 8.5.78. The Government of West Bengal decided to open avenues for promotion for each cadre of the State employees from 1.4.81. By G.O. No. 3868 dated 31st March, 1984 it was decided that with effect from 1st April, 1984 the ratio of posts of Lower Division Assistant/ Clerks to those of Upper Division Assistants/Clerks in the Secretariat Directorate, regional offices and establishments under the State Government shall be 1:1, which was commonly known as 1:1 Policy. Pursuant to that the Government upgraded 50% of the total Lower Division Clerks and created 1/3rd posts as Grade-1 post for non clerical and technical personnel pursuant to G.O. No. 6303-F. dated 29.5.34 and 13641-F. dated 18-12-86. It was decided that Lower Division Clerks who will come under the purview of G.O. No. 3868 dated 31st March, 1984 will get the benefit of scale No. 9 (380-910) from the scale no. 6 (300-685) and who will come under the purview of G.O. No. 6303-F will get the benefit of scale no. 8 (360-815) from scale no. 6 (300-685).

13. As the nature of duties of the Muharrirs and Copyists are identical in nature. Government decided to change the designation of Muharrirs and Copyists who have passed the Matriculation or School Final Examination as Lower Division Clerks from 1-7-79 so that they may come under the purview of 1:1 and the Muharrirs and Copyists who have not passed the Matriculation or School Final Examination will continue to work as Muharrirs/Copyists and awarded them the benefit of Grade-1 from 1-4-81. Such Muharrirs/Copyists who will be treated as Grade-1 will get more financial benefit than employees who will get promotion from Lower Division Clerk to Upper Division Clerk from 1-7-79. As there was no rule to fill up the posts of Lower Division Clerk by direct recruitment prior to 1978, even non Matriculate or non School Final Muharrirs/Copyists were promoted to the post of Lower Division Clerk on the basis of seniority in the gradation list irrespective of their educational qualification. But since regularisation of extra Muharrirs/extra Copyists and subsequent rationalisation of pay scales of Muharrirs/Copyists and Lower Division Clerk no order of promotion of Muharrirs/Copyists to the post of Lower Division Clerk was issued. Since 1978 Muharrirs/Copyists/Lower Division clerk got identical pay scale and no order of promotion was issued while placing a Muharrir or Copyist in the post of Lower

Division Clerk. Only the senior most Muharri/Copyist was ordered to act as Clerk (Lower Division) on the basis of seniority.

14. In C.O. No. 783 (W) of 1990 which has been heard analogously with C.O. No. 13545 (W) of 1989. the nine writ petitioners were originally appointed as extra Muharrirs under the District Registrar. Murshidabad and thereafter promoted to the post of L.R. Act Muhaarrir and subsequently absorbed in the permanent post of Muharrirs on different dates. They have also challenged the same Memo being no. 2987-Regn. 12989-Regn. and 2991-Regn. dated 13th December, 1989 and on the self same ground. It is also the case of the writ petitioners in C.O. No. 783 (W) of 1990 that no distinction was made between the Matriculate or non Matriculate. School Final passed or non School Final pass extra Muharrirs by the State respondents and all along they were treated at par having the common gradation list and all along performed identical duties and assumed identical responsibilities; that after the introduction of Rules of Pay & Allowances. 1981 when an interpretation was sought to be made that non Matriculate or non School Final pass are not entitled to pay scale of Rs. 300-685/- the Inspector General of Registration clarified the position regarding the pay scale of the petitioners and by holding that there is no line of demarcation in the matter of acceptance of the Pay Commissioner's Recommendation in respect of the two groups of employees viz. Matriculates and non Matriculates (School Final and Non School Final). On 31st December, 1986 final district wise irrespective of educational qualification and promotion was given according to that gradation list, that the writ petitioners performed identical duties and their nature of duties are identical to the Muharrirs and L.R. Act Muharrirs/Copyists and Lower Division Clerk; Matriculate and non Matriculate Muharrirs/Copyists are in the same cadre and their conditions of service also same. Therefore the discrimination sought to be made by the impugned memo dated 13th December, 1989 is wholly illegal, mala fide, discriminatory and violative of Article 14 and 16 of the Constitution; that the condition of service cannot be altered or modified by any subsequent Administrative Order with retrospective effect; that by the impugned order dated 13th December, 1989 the avenue of promotion of the writ petitioners are going to be blocked and they have been debarred from being promoted to the post of Upper Division Clerk and Head Clerk; that Matriculate and the non Matriculates belonging to the same cadre and having common gradation list, an attempt of the State respondents by the impugned orders to make a classification among themselves on the basis of their educational qualification resulted in a hostile discrimination against the writ petitioners and the non Matriculates Muharrirs.

15. The aforesaid C.O. No. 783 (W) of 1990 was also contested by the said respondents by filing an affidavit-in-opposition. The contention of the State respondents in the said affidavit are same to the contention of the State respondents in their affidavit-in-opposition C.O. No. 13545 (W) of 1989. In addition to that the respondents in their affidavit-in-opposition CO. No. 783 (W) of 1990 specifically pleaded that although the Inspector General of Registration in his Circular No. 9192 (19) dated October 20. 1970 allowed to non Matriculate

and non School Final Muharrirs to enjoy the same privileges with regard to their promotion to higher posts; but today the circumstances had completely changed as the functions of Registration Office require certain educational standard and keeping that, in view, the Government decided that the appointment to the posts of Lower Division Clerks and Upper Division Clerks should be given from the persons who have academic qualification at least to the extent of Matriculation of School Final. It has been specifically pleaded in the said affidavit-in-opposition that the State of West Bengal has adopted an uniform policy to restrict the facilities enjoyed so long by the non qualified Muharrirs by issuing G.O. No. 2987-Regn. dated December 13. 1989 in view of the changed conditions and circumstances of service in the Registration Department at par with other State Government Departments with regard to appointment of Lower Division Clerks and Upper Division Clerks. It has further been specifically pleaded that the said Government Order was made with a view to bring about an uniform pattern in clerical establishment in different Registration Offices under the Administrative control of the Department and considering further the minimum educational qualification for clerical service in other State Government offices is School Final or its equivalent. It has been pleaded further that such differentiation in the pay scales has been made on the basis of the qualification and the Government policy taken under such changed circumstances and the same cannot be said to be arbitrary as the same has been brought about for bringing about uniformity as aforesaid and also to improve standard of work and to cope with the changing circumstances in the functioning of the Registration Department.

16. Mr. R.N. Das learned Counsel appearing for the petitioners in C.O. No. 13545 (W) of 1989 and Mr. Sadhan Roy Chowdhury. learned Counsel appearing on behalf of the writ petitioner in C.O. No. 783 (W) of 1990 in support of the writ petitions have raised a number of contentions. It has been contended on behalf of the petitioners that the respondents having accorded the benefits of promotion to the non School Final and non Matriculate Muharrirs on their regularisation in terms of the G.O. of 1978 and after having treated the non School Final and non Matriculate Muharrirs at par with the School Final and Matriculate Muharrirs for the purpose of promotion and also for other purposes and when both Matriculate and non Matriculate and School Final and non School Final performed identical duties and assume identical responsibilities, the impugned action of the respondents now to make a distinction on the basis of educational qualification in the manner as aforesaid is wholly arbitrary and violative of Article 14 and 16 of the Constitution. It has been further contended on behalf of the petitioners that over the years a right for being considered for promotion to the post of Lower Division Clerk and thereafter Upper Division Clerks and Head Clerk accrued to the non Matriculate and non School Final pass Muharrirs as they were promoted in the aforesaid manner and such right vested upon the non Matriculate and non School Final Muharrirs and therefore the same cannot be take away unilaterally and retrospectively. It has been further contended on behalf of the petitioners that the purported classification is per se violative 14 and 16 of the Constitution

as the impugned action amounts to mini classification based on micro distinction. Even if the Executive may have the power to regulate the conditions of service of the petitioners, the same has to be exercised reasonably, fairly and not in an unjust and arbitrary manner, as it has been sought to be done in the instant case. It has been further contended on behalf of the petitioners that classification which is sought to be made, is not only wholly reasonable, the same has no reasonable nexus to the purpose which it seeks to achieve. The decision of the Supreme Court in the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, has been relied on by the petitioners in support of their submission that the discrimination which is sought to be made in the instant case on educational attainments is not obligated by the nature of the duties and therefore such classification is violative of Article 14 and 16 of the Constitution. It has further been contended that the impugned action of the respondents will result in the stagnation for the petitioners and the non Matriculate and non School Final pass Muharrirs in the rest of their lives with no main in the scale of Gr. 1 instead of having opportunities of promotion from the post of Lower Division Clerk, to the post of Head Clerk etc. It has also been submitted on behalf of the petitioners that the impugned action of the respondents has seriously affected the legitimate expectation of the petitioners for being considered for the post of Upper Division Clerk and to a further higher post.

17. Mr. L.C. Behani, appearing for the respondents in both the cases on the other hand had defended the impugned action of the said respondent by contending inter alia that classification on the ground of academic qualification is permissible referring to a number of Supreme Court decisions in support of the same. It has further been contended by Mr. Behani that relying on the Constitution Bench decision of the Supreme Court in the case of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, that chance of promotion therefore does not amount to alteration of the service condition and although the right to be considered for promotion is a condition of service, the employer has the right to alter the service condition of the employee unilaterally. It has been further contended by Mr. Behani on behalf of the respondents that the classification which has been made in the instant case between the non Matriculate and Matriculate and School Final and non School Final Muharrirs is quite reasonable and has been made as a matter of Government policy to bring about the uniformity in the matter of recruitment in all Government departments and also efficiency of administration and the same therefore being a policy matter and also being a reasonable one the same should not be interfered with by the Writ Court.

18. After considering the respective submissions of the parties and materials on record it appears that the main question which really required determination by this Court in the instant case, is whether the classification which has been made by the impugned Government Orders between the Matriculate and non Matriculate and School Final pass and non School Final Muharrirs for the purpose of promotion in the Lower Division Cadre is a reasonable classification and having

reasonable nexus with the purpose which it seeks to achieve.

19. But before proceeding to determine the aforesaid question, it is worth while to clarify certain factual aspects of the case and also to dispose of first some other legal contentions raised by the parties.

20. After going through the writ petitions and the affidavits in both cases factually it appears that admittedly the original recruitment rules provided Matriculation as a minimum education qualification for recruitment of extra Muharrirs. But admittedly in a number of cases due to non availability of Matriculate candidates non Matriculates and non School Final pass were often recruited and as separate register was maintained for them. Subsequently admittedly under the 1970 the Government Order same list was maintained for all the Muharrirs irrespective of the facts whether they are Matriculate or non Matriculate. School Final or non School Final pass and on the basis of seniority, appointment was made to the post of Lower Division Clerk and thereafter Upper Division Clerk and Head Clerk from the said list as a result whereof even non Matriculate and non School Final pass extra Muharrirs on the basis of seniority in the gradation list was appointed as to Lower Division Clerk and was a passage of time their right to be considered for promotion as Lower Division Clerk, thereafter as Upper Division Clerk and Head Clerk vested on them and the same become a condition of service and therefore the same cannot be altered to their prejudice retrospectively by the impugned Government Order although Government Order may be applicable in case of new recruits and their avenue of channel of promotion has been blocked by impugned Government Order by which their right to be considered for promotion as Lower Division Clerk for further promotion is totally taken away and the alternative channel for promotion to Gr. I introduced by the Government Order is narrower, of lower pay scales and lesser beneficial than a channel of promotion of the School Final pass and the Matriculate Muharrirs.

21. It will thus appear that inspire of requirement of the educational qualification as per the Original Recruitment Rules and maintenance of separate register on the basis of such distinction in education qualification, from 1970 onwards, the non Matriculate and the Matriculate and School Final and non School Final pass Muharrirs were integrated into one class by maintenance of common gradation list for the purpose of promotion to the Lower Division Cadre and for further promotion.

22. The Constitution Bench of the Supreme Court in the case of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, had to deal with the question that after the persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications ? The facts of the said case before the Supreme Court were somewhere similar to the facts of the present cases.

23. The writ petitioners in the aforesaid case were diploma holders in

engineering and were serving in different branches of the engineering services of the State of Jammu & Kashmir being appointed as Assistant Engineers between 1960 and 1966 by promotion from the subordinate engineering service. Their condition of service were, then governed by the rules published under an order of 1939, under which for direct recruitment to the post of Assistant Engineer belonging to Category 2 of Class 11, degree in Civil Engineering of any recognised University was the requisite qualification whereas for filling up of such post by transfer (by promotion) from the subordinate engineering service degree or diploma in civil engineering of any recognised University or upper subordinate diploma of any recognised college of engineering and service as Supervisor for a period of not less than 5 years on date were the eligible qualification. The said rules further provided that appointments by transfer (that is by promotion) to the cadre of Divisional Engineers subsequently known as Executive Engineer could be made only from the cadre of Assistant Engineers. The scale of pay was same for all category of Assistant Engineers whether they were degree holders or diploma holders. In 1962 State of Jammu & -Kashmir undertook a general revision of pay scales and framed "Jammu & Kashmir Civil Services (Revised Pay) Rules" which divided the Assistant Engineers into two categories date wise. Those appointed prior to August 1, 1960 were placed in Gr. I while those appointed subsequently were placed in Gr. II, regardless of whether appointments to the posts of Assistant Engineers were made directly or by promotion and whether the incumbents held a degree or a diploma. Those in Gr. I were put in the pay scale of 300-700/- while those in Grade II were put in the scale of Rs. 250-600/-. Thereafter the further revision of pay scale was effected under the 1968 Rules under which Assistant Engineers were granted a new pay scale of Rs. 300-750/- but providing inter alia that the "QB" at Rs. 610/- will not be crossed by Assistant Engineers with Diploma Course. This rule was challenged by the writ petitioners in so far as it denied to them an opportunity to cross the qualification bar. Then came the Jammu & Kashmir Engineering (Gazetted) Service Recruitment Rules 1970 superseding the order rules, which provided inter alia that recruitment to the cadre of Executive Engineer could be made by promotion. But as regards promotion to the posts of Executive Engineers, it was provided that only those Assistant Engineers would be eligible for promotion who possessed a bachelor's degree in engineering or held the qualification of A.M.I.E. (Sec. A & B) and who had put in at least 7 years service in the J & K Engineering (Gazetted) Service were made eligible. Thus by the said rule the diploma holder became ineligible under the old rules. The said rule was also challenged by the writ petitioners. The grounds of challenge were more or less similar to the grounds of challenge in the present writ petition.

24. In paragraph 16 of the said judgment it was held that it is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in future, in the sense, that it

governs the future right of the promotion of those who are already in service. The impugned rules do not recall a promotion already made or reduce a pay scale already granted, but provided for classification by prescribing a qualitative standard, the measure of that standard being educational attainment; whether a classification founded on such a consideration suffers from a discriminatory vice is another matter. But the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past.

25. Applying the said principle laid down by the Supreme Court in the said case I am of the view by the impugned Government order by making a classification by prescribing an educational standard for the purpose of promotion to Lower Division Clerk has not retrospectively taken away, any right of the petitioners as alleged by them, although it governs the future right to be considered for promotion of the petitioners and other non Matriculate or non School Final pass extra Muharrirs who are already in service. The contention of the writ petitioners therefore that the impugned Government Orders retrospectively affects vested right of the petitioners and hence is liable to be struck down, is therefore not tenable and is rejected.

26. It has further been held by the Supreme Court in the aforesaid case of Jammu & Kashmir v. Triloki Nath Khosa (Supra) that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a "status" on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or Constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions in matters relating to public services is often attempted to be achieved, consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding it has been further held by the Supreme Court in the aforesaid case that although a right to be considered for promotion is a condition of service, chance of promotion is not.

27. Applying the aforesaid principles laid down by the Supreme Court in the instant case, it cannot be said that the petitioners had any right to the chance of promotion as Upper Division Clerk. Furthermore, although it can be contended that after integration of the non Matriculates and non School Final and the Matriculates and School Final passed were integrated into one class and after promotion of such integrated class into higher posts irrespective of such qualifications, petitioners had the right to be considered for promotion to the Upper Division Clerk and to further higher posts and the same became a condition of service of the petitioners; but the respondents as employer can unilaterally alter such service condition of the petitioners and for the aforesaid purpose no consent of the petitioners is necessary.

28. The questions therefore which are new left to be determined by this Court are whether such classification sought to be made on educational qualification

can be made by the respondents for the purpose of promotion after integration of Matriculates and non Matriculates into one class and if the same is permissible whether such classification are reasonable under the facts and circumstances of the case.

29. The learned Advocate appearing for the petitioners has submitted that such discrimination not having made earlier, after integration of two classes into one on the basis of educational qualification; the same is now impermissible and such classification is also unreasonable and has no reasonable nexus with the purpose which it seeks to achieve. In support of his contention learned Advocate appearing for the petitioners referred to a number of decisions of the Supreme Court.

30. Educational qualifications have been recognised by the Supreme Court in a number of decisions as a safe criterion for determining the validity of classification. The Constitutional Bench of the Supreme Court in the aforesaid case of State of Jammu & Kashmir v. Triloki Nath Khosa (Supra) held that educational qualifications have been recognised by the Supreme Court as a safe criterion for determining the validity of classification.

31. The Supreme Court came to such finding after referring to and approving its earlier decision in the case of State of Mysore and Another Vs. P. Narasing Rao, in the case of Ganga Ram and Others Vs. The Union of India (UOI) and Others, and in the case of The Union of India (UOI) and Others Vs. Dr. (Mrs.) S.B. Kohli and Another, in each of which distinctions made on educational qualification were upheld by the Supreme Court. In State of Mysore v. P. Narasing Rao (Supra) where the cadre of Tracers was reorganised into two, one consisting of Matriculate Tracers with a higher scale of pay and the other of non Matriculates in lower scale, it was held that Article 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 (Supra), 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 department. In the Union of India v. Dr. (Mrs.) S.B. Kohli (Supra) a Central Health Service Rule requiring that a Professor in Orthopedics must have a post graduate degree in the particular specialty 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 and the argument that a degree qualification was not the only criterion of suitability was rejected.

32. The submissions of the writ petitioners therefore that no classification can be made on the ground whether one is Matriculate or non Matriculate. School Final or non School Final, is not tenable and cannot be accepted.

33. But the next question which immediately comes up for consideration is admittedly when the Matriculate and non Matriculate and School Final and non School Final were integrated into one class and thereafter were treated equality for all purposes including for the purpose of promotion to next higher posts, whether such classification can now be made for the purpose of conversion of post of Muharrir into post of Lower Division Cadre. following 1:1 policy.

34. The writ petitioners inter alia relying on the decision of the Supreme Court in the case of Roshan Lal Tandon Vs. Union of India (UOI), has submitted that such classification is not permissible. In the said case of Roshanlal Tandon the Supreme Court held inter alia after the recruits from both the sources to Gr. D were integrated into one class, no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Gr. C once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Gr. C.

35. This very question however came up for consideration before the aforesaid Constitution Bench of the Supreme Court in the case of State of Jammu & Kashmir v. Triloki Nath Khosa (Supra). After considering the aforesaid decision in the case, of Roshanlal, the Constitution Bench of the Supreme Court held in Triloki Nath Khosa's case that Roshanlal case is no authority for the proposition that if direct recruits and promotes are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. It was further held by the said Constitution Bench that direct recruits and promotes lose their birth-marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. After considering all aspects of the matter of the Constitution Bench ultimately was of the view that after integration into one class classification is permissible for promotion to higher posts on the basis of educational qualification.

36. Applying the said principle in the instant case. I am therefore of the view that impugned action of the respondents in making classification on the basis of educational qualification namely whether one is Matriculate or non Matriculate and whether one is School Final or non School Final is permissible and valid.

37. The learned Advocates for the petitioners have drawn my attention to the observations in paragraph 51 of the aforesaid decision of the Constitution Bench of the Supreme Court whether the Supreme Court held that the judgment will not be construed as a charter for making minute and microcosmic classifications.

38. It cannot however be said under the facts and circumstances of the case that by making classification on the basis whether one has passed Matriculate or School Final or not, any microscopic or mini classification has been made.

39. It has also been argued on behalf of the petitioners that the impugned classification as made is wholly unreasonable and has no nexus with the purpose

which it seeks to achieve and therefore the same would really amount stagnation for the writ petitioners and other non Matriculate and non School Final extra Muharrirs by blocking their avenue of promotion altogether. As it has been held by the aforesaid Constitution Bench of the Supreme Court in the case of State of Jammu & Kashmir v. Triloki Nath Khosa that the constitutionality of a rule is to be presumed, unless the classification is unjust on the face of it and the onus lies upon the party attacking the classification to show by pleading and by placing necessary material before the Court that the said classification is not reasonable and violative of Art. 16 of the constitution. The same principle will be applicable in case of the impugned orders, in the present writ petition, which were issued in the name of the Governor.

40. The onus is therefore upon the petitioners to show how the classification made by the impugned notification on educational qualification is unreasonable and arbitrary. After considering the writ application I am of the view that the writ petitioners have not been able to discharge their aforesaid onus inasmuch as apart from making a bare allegation in the petition that classification based on the same is unreasonable, there is no pleading as to how this classification based on such educational qualification will be unreasonable and no material in respect thereof has also been placed before the Court.

41. Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions service; and if, looked at from the stand point of the authority making it, the classification if found to rest on a reasonable basis, it has to be upheld.

42. The above view expressed by the Supreme Court in the aforesaid Constitution Bench decision can be best expressed by quoting hereunder the paragraph 21 of the said report where such view was so expressed.

Our reason for saying this is to emphasise that the respondents ought to have furnished particulars as to why, according to them, the classification between diploma holders and degree holders is not based on a rational consideration having nexus with the object sought to be achieved. In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the respondents to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the Constitutional guarantee of equality only if it rests on an unreasonable basis. It was therefore incumbent on the respondents to plead and show that the classification of Assistant Engineer into those who hold diplomas and those who hold degrees is unreasonable and bears no rational nexus with its purported object. Rather than do this, the respondents contended themselves by propounding an abstract theory that educational qualifications are germane at the stage of initial recruitment only. Omission to furnish the necessary particulars was construed by this Court in two cases that the plea of unlawful discrimination had no basis. Such an infirmity in pleadings

led this Court in State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd., to remand the, matter to the High Court in order to enable the petitioner therein to amend its petition,

(emphasis supplied).

43. In the instant case at the time of submission although it was sought to be argued by learned Counsels appearing for the writ petitioners relying on the decision of the Supreme Court in the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, that to permit discrimination based on educational attainments not obligated by the nature of the duties of the higher posts will be violative of Article 14 of the Constitution, no particulars have been furnished how such classification is unreasonable and it was not even pleaded in the petition that such classification is not obligated by the nature of the duties of the higher posts.

44. On the contrary, the submission made on behalf of the respondents that the impugned classification has been made by the Government as a matter of Government policy to bring about the uniformity in the matter of recruitment in all Government departments and also for efficiency of administration is also borne out by the specific pleadings to that effect made by the respondents in their affidavit-in-opposition of C.C. No. 783 (W) of 1990. It has been specifically pleaded in the said affidavit-in-opposition as follows:

I state that prior to September 4, 1962, a non-matriculate Extra Muharrirs were engaged to clear off arrears in copying as there was extreme dearth of matriculate in remote villages at that particular time. Such Extra Muharrirs were subsequently appointed as Muharrirs and lower Division Clerks by a Special Orders of the State Government in relaxation of normal Recruitment Rules.

45. I further state that the Inspector General of Registration in his Circular No. 9192 (19) dated October 20, 1970, allowed the non matriculate and non school final Muharrirs to enjoy the same privileges with regard to their promotion to higher posts. But to day the circumstances had completely changed as the functions of Registration office require certain, educational standard and keeping that in view, the Government decided that the appointment to the posts of Lower Division Clerks and Upper Division Clerks should be given from the persons who have academic qualification at least to the extent of Matriculation or School Final. I state that the petitioners have no locus standi to challenge the Government order as it is the policy of the Government to restrict the promotional facility once enjoyed by the non qualified employees as the circumstances as aforesaid have totally changed. Furthermore, the Registration Department should be allowed to be re-organised vis-a-vis changed circumstances.

46. It is specifically stated that the State of West Bengal has adopted an uniform policy to restrict the facilities enjoyed so long by the non qualified Muharrirs by issuing G.D. No. 2987-Regn. dated 13-12-089 in view of the changed conditions and circumstances of service in the Registration Department and to bring the

Registration Department at par with other State Government Departments with regard to appointment of Lower Division Clerks and Upper Division Clerks.

47. I State that the differentiation in promotional matters has been made in view of the Government Order No. 2987-Regn. dated 13-12-89 considering the circumstances as stated in the Government order itself wherein it has been clearly stated that "with a view to bring about an uniform pattern in clerical establishment in different Registration office under the administrative control of this Department and considering further the minimum educational qualification for clerical service, in other State Government Officer is a pass in School Final or its equivalent". I State that it becomes evident from the Government order that the said Government order had been issued to bring about the. uniformity in the recruitment of clerical services in the Registration Department with that of other Government Departments and in that view of. the matter. Government order in question is in conformity with the Recruitment Rules of the State Government.

48. I State that with the advancement of the civilisation and daily rising complexity the Government has demanded minimum qualifications as aforesaid and in that view of the matter neither the Government order can be called arbitrary nor it can be said that the restrictions have been imposed on certain class of persons who are not qualified to the barest minimum level. I State that the State Government has divided the employees into two groups one those who have School Final or Matriculation pass qualification and the others who have not such qualification and such decision has been taken by the State Government to improve the standard of work and to scope with the over-changing circumstances."

49. It thus appears that after introduction of ROPA Rules, 1981 after submission of the report of the Pay Commission, the scope of promotion from Lower Division Clerk to Upper Division Clerk was increased in all Government Departments applying the 1:1 policy and to cope up with such changed circumstances including changed circumstances in the Registration Department and with a view to bring about an uniform pattern in clerical establishment in different Registration Offices under the Administrative control of this Department and also to improve the standard of work, it was decided by the impugned Government Orders to restrict the promotion to the Upper Division Clerk only from the Matriculate and School Final pass extra Muharrirs and by creating a separate channel of promotion of the non Matriculate and non School Final pass Muharrir.

50. The aforesaid purpose therefore cannot be said to be arbitrary or unreasonable nor can it be said there is no reasonable nexus between the classification and the purpose which it seeks to achieve. If the object of the classification in the instant case is to introduce an uniform pattern in clerical establishment after changed circumstances as aforesaid and to raise the standard of work of Upper Division Clerk, and for efficiency in administration the classification is certainly reasonable and co-related to the object, higher educational qualifications being at least prima facie evidence of higher mental

equipment.

51. The learned Counsels appearing for the writ petitioners have also relied in support of their contentions, in another Constitutional Bench decision of the Supreme Court in the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, where the Supreme Court held inter alia that to permit discrimination based on educational attainments not obligatory to the nature of the duties of the higher posts is to stifle the social thrust of the equality clause. It was further held that a rule of promotion which while conceding that non graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non graduate Supervisors, would clearly be calculated to destroy the guarantee of equal opportunity.

52. The aforesaid decision of the Supreme Court in my view, is clearly distinguishing able. It was not held by the Supreme Court in the said case that classification on the basis of educational qualification can never be made or will always be arbitrary, but under the facts and circumstances of the aforesaid case, the Supreme Court found such classifications to be unreasonable. In the aforesaid case the graduate Supervisors were given a preferential treatment over non graduate Supervisors, in that, two out of every three vacancies initially and after the amendment, three out of every four vacancies in the posts of Assistant Engineers were reserved for promotion of graduate Supervisors and only the remaining one vacancy was left to be filled by promotion of non graduate Supervisors. Thus in the aforesaid case the Government after accepting both graduates and non graduates as fit and therefore eligible for promotion to the higher post, laid down a quota of promotion in each case making a preferential treatment to graduates over non graduates in the matter of continuance of such quota, which the Supreme Court found to be unreasonable. The reasons for which the Supreme Court was of the view perhaps can be best understood from the observations of their Lordships of the Supreme Court in the said case itself which is quoted hereunder :

But where graduates and non graduates are both regarded as fit and, therefore, eligible for promotion it is difficult to see how consistently with the claim for equal opportunity any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduate over non graduate in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, a non graduate Supervisor cannot be promoted to that vacancy even if, he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non graduate Supervisors. That would clearly amount to denial of equal opportunity to him. When there is a vacancy earmarked for graduate Supervisors, a non graduate Supervisor would be entitled to ask : "I

am senior to the graduate Supervisor who is intended to be promoted. I am more suitable than he is. It is no doubt true that I am a non graduate, but my non being a graduate has not been branded as a disqualification. I am regarded fit for promotion and like the graduate Supervisor, I am equally eligible for being promoted: My technical equipment supplemented by. Experience is considered adequate for discharging the functions of Assistant Engineer. Then why am I being denied the opportunity for promotion and the graduate Supervisor is preferred?" There can be no satisfactory answer to this question.

53. The other case cited on behalf of the writ petitioners namely the decision of the Supreme Court in the case of State of Mysore Vs. B. Basavalingappa, is also clearly distinguishable. Careful reading of the aforesaid decision will clearly reveal that in the said case the Supreme Court did not lay down any principle at all, but merely approved the decision of the High Court which admittedly was rendered under the facts and circumstances of that peculiar case, after recording that the High Court did not indulge in the examination of the general question. In fact in the said case none of the earlier decision of the Supreme Court where classification and educational qualification held to be permissible, were considered or referred to. In the said case the respondents referred to some of such judgments for assailing the High Court judgment whereupon the Supreme Court recorded-that it was significant that the High Court did not indulge in the examination of the general question but restricted to the particular case and only the same was approved by the Supreme Court. It is also worth noting that the aforesaid, decision was by a Bench comprising of two Hon"ble Judges of the Supreme Court whereas earlier decision of the Supreme Court in the case of State of Jammu & Kashmir v. Triloki Nath Khosa is a Constitutional Bench decision comprising of five Hon"ble Judges of the Supreme Court.

54. I therefore hold that the classification made in the impugned notifications are quite valid and proper and are not violative of Article 14 and 16 of the Constitution. The contention of the writ petitioners that the result of holding such classification would amount to stagnation for the writ petitioners and other non Matriculate and non School Final pass extra Muharir is also not tenable as It appears from the facts and circumstances of the case that for such class of persons a separate channel of promotion have been made. The fact that such separate channel of promotion allegedly may have narrowed down the avenue of promotion or chance of promotion is however not a relevant consideration as chance of promotion is not a condition of service.

55. I am also unable to accept the contention of the writ petitioners that the impugned notifications are liable to be struck down on the ground that the same has violated the legitimate expectation of the writ petitioners. As it has been held by the Supreme Court in the case of Union of India and others Vs. Hindustan Development Corpn. and others, the notion of a legitimate expectation is too nebulous form a basis for invalidating the exercise of a power when its exercise otherwise accords with law. If a denial of legitimate expectation in a given case

amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14. but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

56. In the instant case it already having been held that the impugned notifications are not violative of Article 14 and 16 of the Constitution and not arbitrary, the writ petitioners cannot succeed merely on the ground that there is violation of their legitimate expectation and the aforesaid contentions of the writ petitioners therefore also fail.

57. The writ application in both the cases are therefore dismissed. All interim orders stand vacated there will be no order as to costs.

58. Later

59. Learned Advocate for the petitioners prays for stay of operation of this judgment. The effect of such stay would be that the respondents will not be able to give promotions to the incumbents following the aforesaid Policy.

60. After carefully considering the prayer of the learned Advocate for the petitioners as well as the effect of such stay. I am not inclined to grant such stay. As such, the prayer for stay of operation of this judgment is refused. Let xerox copy of this judgment be given to the learned Advocates for the respective parties on usual undertaking.