

(2024) 04 CHH CK 0044
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 1480 Of 2021

Dinesh Kumar Yadav

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Chhattisgarh State Municipal (Executive/Engineering/Health) Services, Recruitment and Conditions of Service Rules, 2017 — Rule 14, 15

Citation : (2024) 04 CHH CK 0044

Hon'ble Judges : Sanjay K. Agrawal, J; Sanjay Kumar Jaiswal, J

Bench : Division Bench

Advocate : Abhishek Pandey, Arvind Dubey

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. Invoking Writ jurisdiction of this Court under Article 226 of the Constitution of India, the Petitioners herein challenge the constitutional validity of Sl. No.9 enacted under Rules 14 & 15 of Scheduled-IV of the Chhattisgarh State Municipal (Executive/Engineering/ Health) Services, Recruitment and Conditions of Service Rules, 2017 (henceforth shall be referred to as, Rules of 2017) by which 12 years experience has been prescribed for Sanitation Inspector to qualify for the promotional post of Health Officer, branding it to be arbitrary, unreasonable and unconstitutional and seeking a writ to declare it ultra vires and unconstitutional to the provisions of Section 14 & 16 of the Constitution of India.

2. Petitioner No.1 was appointed on the post of Sanitary Inspector on 22.10.1997 and Petitioners No.2 to 6 were also appointed on the post of Sanitary Inspector in the year 2013 and all of them are said to have working on the said post since their appointment. Grievance of the Petitioners is that different eligibility criteria have been fixed in Schedule-IV of the Rules of 2017 for promotion from the post of Sanitation Inspector to the post Health Officer for which 12 years experience

has been prescribed on the post of Sanitation Inspector, which is clearly arbitrary, discriminatory and unconstitutional to the provisions of Articles 14 & 16 of the Constitution of India. Further grievance of the Petitioners is that after being promoted to the post of Health Officer, there are no further promotional avenues available for the Sanitary Inspector and therefore the Rules of 2017 require suitable amendment by way of change of cadre for promotion from the post of Sanitation Inspection to the post of Chief Municipal Officer. According to the Petitioners, there are only six posts of Health Officer available in the Municipal Council/Corporation in the State of Chhattisgarh. It is the further case of the Petitioners that Revenue Inspector, Revenue Sub Inspector, Accountant, Assistant Grade-I & II, who are having lower grade pay and less experience, are being promoted to the higher post of Chief Municipal Officer whereas the Sanitary Inspectors are being treated in a discriminatory manner in utter violation of the provisions of Articles 14 & 16 of the Constitution of India. In this regard, the Petitioners also drew the attention of this Court to the Order dated 11.2.2019 passed in W.P.(S) No.3793/2018 titled as "Pushpa Khalko and Others Vs. State of Chhattisgarh and Others" whereby Schedule-IV of the Rules of 2017 in respect to grant of avenues of promotion to Revenue Inspectors on the post of Chief Executive Officers has been struck down by a Division Bench of the High Court of Chhattisgarh declaring it to be ultra vires. Accordingly, the Petitioners prayed for the Rules of 2017 to be struck down declaring it to be ultra vires and unconstitutional and further prayed for framing of new rules by way of amendment in the Schedule-IV of the Rules of 2017 for promotion of Sanitary Inspector to the post of Chief Municipal Officer at par with the criteria fixed for the Revenue Inspectors.

3. Respondents/State filed their reply stating that since Petitioner No.1 was not found fit, he could not be granted promotion on the post of Health Officer but he has been paid time scale pay from time to time and further increments as per his entitlement. Similarly, Respondents No.2 to 6 also found not eligible as they do not fulfill minimum 12 years service period required on the post of Sanitary Inspector to be promoted on the post of Health Officer. Further, the relief sought for by the Petitioners for claiming promotion to the post of Chief Municipal Officer is also without any basis as the service rules prescribes for promotion channel of Sanitary Inspector to the post of Health Officer and it is in accordance with the proportion and as per the requirements and necessity of the Municipal Council/Corporation in the State subject to alteration in the event of administrative exigency so arises. The works assigned to the Sanitary Inspector and Health Officer are entirely different from the work assigned to Revenue Inspector, Revenue Sub Inspector, Accountant, Assistant Grade-I & II and Chief Municipal Officer. Thus, the criteria fixed in Schedule-IV of the Rules of 2017 are neither arbitrary nor discriminatory and are strictly in accordance with law and the challenge made by the Petitioners is liable to be rejected.

4. Mr. Abhishek Pandey, learned Counsel appearing for the Petitioners, would submit that minimum 12 years service period prescribed to qualify for promotion

to the next higher post of Health Officer from the post of Sanitary Inspector, which the Petitioners are holding, is highly unreasonable. He would further submit that only 6 posts of Health Officer are available in the State of Chhattisgarh in all the Municipal Council/ Corporation and the avenues of promotion are not fair and reasonable, therefore, the said condition for promotion of Sanitation Inspector to the post of Health Officer mentioned at Sl. No.9 of Scheduled IV of the Rules of 2017 is liable to be struck down declaring it ultra vires and unconstitutional.

5. Mr. Arvind Dube, learned Government Advocate, per contra, opposing the Writ Petition, would submit that the prescription of qualification is within the exclusive domain of the employer by enacting appropriate rules. He would further submit that Petitioner No.1 was not found fit till the date of filing of the reply and Petitioners No.2 to 6 are found to be ineligible for promotion to the post of Health Officer as they do not fulfill 12 years minimum service as Sanitation Inspector which is required to be promoted on the post of Health Officer and they would be considered on their fulfilling the minimum required criteria for promotion on the said next higher post. Learned Government Advocate therefore would pray that the present Writ Petition has no merit and is accordingly liable to be dismissed.

6. We have heard learned Counsel appearing for the parties, considered their rival submissions made herein-above and also gone through the record of the case with utmost circumspection.

Principles for Examining Constitutional Validity for Acts/Rules:

7. A Statute is construed so as to make it effective and operative on the principle expressed in the maxim "ut res magis valeat quam pereat". Therefore, a presumption that the Legislature does not exceed its jurisdiction, and the burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. [See: Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition, page 592.]

8. It is a settled principle of law that the Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provisions under challenge cannot stand.

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

"101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* (1985) 1 SCC 641 : 1985 SCC (Tax) 121 stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

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

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

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

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

71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or

abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

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

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

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.”

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

“27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does

not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.

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

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

"37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the above-stated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time-bound basis, so that the

legal position is settled one way or the other.”

14. Before proceeding further, it would be appropriate to reproduce herein below the Scheduled-IV enacted under Rules 14 & 15 of the Rules of 2017, of which Sl. No.9 which prescribes for 12 years experience on the post of Sanitation Inspector to qualify for the promotional post of Health Officer, has been sought to be challenged as arbitrary and unconstitutional:-

SCHEDULE-IV

[See rules 14 and 15]

S.No.

Name of the service or post from which promotion to be made

Minimum period required to qualifying for promotion to the next higher post

Name of service or post to which promotion is to be made

Departmental promotion committee

Remarks

(1)

(2)

(3)

(4)

(5)

(6)

1.

Chief Municipal Officer, Class “A”

6 years

Chief

1. Chairman, Public Service Commission or his nominee –

Chairman

2. Principal Secretary/Secretary

/ Special Secretary (Independent Charge), Urban Administration and Development Department –

Member

3. Commissioner/ Director, Directorate of Urban Admin. and Development Department –

Member

4. Representative of Scheduled Caste/ Scheduled Tribe –

Member

2.

Chief Municipal Officer, Class "B" and Revenue Officers in Municipal Council/ Nagar Panchayat

6 years

Chief

3.

Chief Municipal Officer, Class "C" and Revenue Inspectors "AA/A/B"

6 years

Chief

4.

Office Superintendent, Revenue Inspector Class "C", Deputy Revenue Inspector, Assistant Grade III, Head Clerk, Head Clerk cum Accountant, Accountant Grade-II

Office Superintendent (10 years),

Revenue Inspector Class "C" (7 years),

Deputy Revenue Inspector (9 years),

Assistant Grade-III, Head Clerk, Head Clerk cum Accountant, Accountant Grade-II (10 years)

5.

Superintendent Engineer

5 years

Chief Engineer

6.

Executive Engineer

5 years

Superintendent Engineer

7.

Assistant Engineer

5 years

Executive Engineer

8.

Sub-Engineer

10 years

Assistant Engineer

9.

Sanitation Inspector

12 years

Health Officer

NOTE:-1. For promotion to Chief Municipal Officer Grade "C" post, passing of Higher Secondary examination will be essential.

2. Determination of seniority in Clerical Grade posts shall be done on the basis of Assistant Grade-II/Head Clerk cum Accountant/Accountant, but if prior promotion to Head Clerk cum Accountant/Accountant/Office Superintendent was from Assistant Grade-II, then seniority shall be on the basis of Assistant Grade-II.

3 . If promotion to Revenue Inspector Grade "C" is from Deputy Revenue Inspector, seniority will be on the basis of Deputy Revenue Inspector, but if promotion is to Revenue Inspector Grade "AA"/"A"/"B" then Deputy Revenue Inspector shall not be included for promotion to Chief Municipal Officer Grade "C".

4 . Where promotion is proposed from multiple posts, their joint seniority will be determined on the basis of date of joining.

5. Such clerical posts whose pay-band is 5200-20200+grade pay or more than this shall also be considered for promotion to Chief Municipal Officer Grade "C".

15. A careful perusal of the aforesaid rule would show that minimum 12 years service period is required on the post of Sanitation Inspector for consideration to be promoted on the post of Health Officer, which is sought to be challenged as arbitrary and unreasonable.

16. Experience is a commonly required eligibility factor. Experience means knowledge or skill acquired out of practical acquaintance with facts or events. In Black's Law Dictionary the word 'experience' is given the following meaning:-

"A state, extent, or duration of being engaged in a particular study or work; the real life as contrasted with the ideal or imaginary. A word implying skill, facility, or practical wisdom gained by personal knowledge, feeling, and action, and also course or process by which one attains knowledge or wisdom."

17. It is well settled that absence of experience in substantive capacity is not a mere irregularity; it is eligibility criterion for the purpose of promoting to a higher

post and the same must strictly be complied with and no deviation is permissible. [See: R.S. Garg v. State of Uttar Pradesh and Others (2006) 6 SCC 430]

18. In the matter of R Prabha Devi and Others v. Government of India (1988) 2 SCC 233, it has been held by their Lordships of the Supreme Court that experience over a certain number of years in service is a very relevant factor in considering the question of promotion.

19. Similarly, in the matter of B.N. Saxena v. New Delhi Municipal Committee (1990) 4 SCC 205, it has been recognized by their Lordships of the Supreme Court that experience gained for a considerable length of time is itself a qualification.

20. In the matter of State of Uttar Pradesh and Others v. J.P. Chaurasia and Others (1989) 1 SCC 121, their Lordships of the Supreme Court indicated the justification of the requirement of experience by saying:-

"He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of new comers."

21. However, the period and nature of experience naturally differs from case to case. In this case, 12 years experience on the post of Sanitation Inspector is prescribed, which, in our considered, cannot be said to be arbitrary and unreasonable warranting invocation of our jurisdiction under Article 226 of the Constitution of India.

22. It is also well settled that prescription of qualifications in terms of experience for a particular post is a matter of recruitment policy and the State as the employer is entitled to prescribe the qualifications as a condition of eligibility. In the matter of Puneet Sharma and Others v. J.P. Chaurasia and Another (2021) 16 SCC 340, their Lordships of the Supreme Court relying upon their earlier judgments in the matters of P.M. Latha v. State of Kerala (2003) 3 SCC 541, Jyoti K.K. v. Kerala Public Service Commission (2010) 15 SCC 596 and State of Punjab v. Anita (2015) 2 SCC 170 have observed in paragraph 29 as under:-

"29. Thereafter, the Court discussed the previous rulings in P.M. Latha (2003) 3 SCC 541, Jyoti K.K. (2010) 15 SCC 596 and Anita (2015) 2 SCC 170, then concluded that the candidature of the diploma holders was correctly rejected and held as follows: Zahoor Ahmad Rather case [Zahoor Ahmad Rather v. Imtiyaz Ahmad, (2019) 2 SCC 404], SCC pp. 414-15, paras 26-27)

"26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. (2010) 15 SCC 596 in the subsequent decision in Anita (2015) 2 SCC 170. The decision in Jyoti K.K. (2010) 15 SCC 596 turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The

State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in *Jyoti K.K. (2010) 15 SCC 596* turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [*Imtiyaz Ahmad v. Zahoor Ahmad Rather*, LPA (SW) No.135 of 2017, decided on 12-10-2017 (J&K).] of the High Court was justified in reversing the judgment [*Zahoor Ahmad Rather v. State of J&K*, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [*Imtiyaz Ahmad v. Zahoor Ahmad Rather*, LPA (SW) No.135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in *Jyoti K.K. (2010) 15 SCC 596* must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in *Jyoti K.K. (2010) 15 SCC 596* turned."

23. Thus, the prescription of experience on the post of Sanitation Inspector for the next higher post of Health Officer as such cannot be held to be arbitrary as it is for the State Government to prescribe the qualification for the post of Health Officer and which is the prerogative of employer/State bearing in mind the several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification etc., in light of the aforesaid principle of law laid down by their Lordships of the Supreme Court in the matter of *Puneet Sharma and Others* (supra).

24. It was the further contention of learned Counsel appearing for the Petitioners that avenues of promotion are limited for the Sanitary Inspector as for the promotional post of Health Officer, there are only 6 posts now existing in the

Municipal Council/ Corporation in the State of Chhattisgarh and therefore the Petitioners will be stagnated on the post of Sanitary Inspector which they are holding at present.

25. The conditions of service must provide for promotional opportunities. The absence of promotional opportunities may amount to violation of Articles 14 & 16 of the Constitution of India. Promotion is a normal incidence of service. The provision for promotion increases efficiency in public service while stagnation reduces efficiency and makes the service ineffective. In this regard, their Lordships of the Supreme Court in the matter of Council of Scientific and Industrial Research v. K.G.S. Bhatt and Another (1989) 4 SCC 635 have pertinently observed as under:-

"It is often said and indeed, abroitly, an organisation public or private does not 'hire a hand' but engages or employees a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both no managerial employees and their supervisors". (See : Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions."

26. The principles of law laid down in Council of Scientific and Industrial Research (supra) have been followed with approval in the matter of Food Corporation of India and Others v. Parashotam Das Bansal and Others (2008) 5 SCC 100.

27. However, the power of judicial review does not extend to interfering with a policy providing for avenues of promotion and to direct what avenues the authority should provide for its various employees, although the Court will interfere if there is arbitrariness or resultant discrimination. [See : Union of India and Others v. Syed Mohd. Raza Kazmi and Others 1992 Supp (2) SCC 534]

28. In the matter of policy, the Courts should not direct the Government to frame or reframe a promotional scheme in a particular manner in exercise of the power of judicial review and also should not interfere with the channels of promotion to officers working in different departments and offices of the Government. [See : Government of Tamil Nadu and Another v. S Arumugham and Others (1998) 2 SCC 198.

29. Reverting to the facts of the case, in light of the aforesaid principles of law laid down by their Lordships of the Supreme Court in the judgments referred to

herein above, it is quite vivid that in the instant case it is not the case that promotional avenues are not available to the Petitioners as, according to their own saying, 6 posts of Health Officer are available at present in the State for consideration of promotion on the said post. Even otherwise, hardship of the Petitioners, if any, qua the availability of only 6 promotional posts of Health Officer, can cause hardship to the Petitioners but that cannot be a ground for declaring the statute as unconstitutional.

(See: Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal AIR 1950 SC 265, Bengal Immunity Co. Ltd. v. State of Bihar & Ors. AIR 1955 SC 661, and D.D. Joshi (Col.) & Ors. v. Union of India & Ors. (1983) 2 SCC 235.)

30. Furthermore, the Petitioners' prayer for framing of new rules for promotion to the post of Chief Municipal Officer also cannot be directed as it is for the appropriate competent authority and the Court therefor cannot direct framing of the rules for providing promotional avenues, particularly to the post of Chief Municipal Officer.

31. In view of the aforesaid analysis, we do not find any merit in the present Writ Petition for declaring the condition for promotion of Sanitation Inspector to the post of Health Officer as mentioned at Sl. No.9 of Scheduled IV of the Rules of 2017 as ultra vires and unconstitutional.

32. The Writ Petition sans merit and is accordingly dismissed, leaving the parties to bear their own costs.