

(2014) 09 MP CK 0156

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 14833, 15237, 15394, 15633, 18519, 15380, 15478, 15590, 16307, 12600, 15256, 15270, 15355, 15443, 15475, 15797, 16257, 16291, 16292, 16598, 16621, 16731, 16867, 16967, 16968, 17006 (S), 17367, 17458, 17586, 17789 (S), 17887, 18260, 1878

Gazetted Headmasters Pradeshik Sangh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 08-09-2014

Acts Referred:

Constitution of India, 1950 — Article 13(2), 14, 16, 166
Madhya Pradesh Jan Shiksha Adhiniyam, 2002 — Section 2(k)
Madhya Pradesh Municipal Corporation Act, 1956 — Section 433, 58
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 53, 70, 95

Citation : (2014) 5 MPHT 378 : (2015) 1 MPJR 131 : (2014) 4 MPLJ 154

Hon'ble Judges : A.M. Khanwilkar, C.J.; Alok Aradhe, J

Bench : Division Bench

Advocate : Rajendra Tiwari, Senior Advocate and Pratichi Dubey, V.K. Shukla, D.K. Dixit, R.K. Samaiya, P.N. Dubey, Sanjay K. Agrawal, Alok Pathak and Rajendra Mishra, Praveen Verma, Mahendra Pateriya, Jitendra Tiwari, Shashank Verma, Anshuman Singh, Rajneesh Gupta, Nikhil Tiwari, Rajesh Dubey, Manoj Soni, M.K. Rajak, Anand Sharma, S.D. Mishra, Jitendra Arya, Sudha Gautam, Vinod Mishra, Rohtash Babu Patel and V.D.S. Chauhan, Advocate for the Appellant; Samdarshi Tiwari, Government Advocate, Sanjay Agrawal and Hitendra Singh, Advocate for the Respondent

Judgement

Alok Aradhe, J.—In this bunch of writ petitions the subject-matter of challenge is order dated 25-7-2013 issued in exercise of executive power by the State Government by which the State Government has constituted State Education Service as well as the Notification dated 22-8-2013 by which the M.P. Education Service (School Branch) Recruitment and Promotion Rules, 1982 have been amended and the advertisement dated 22-8-2013 by which the process of recruitment to the post of Area Education Officer has been set in motion. The

petitioner in Writ Petition No. 12600/2014 seeks quashment of selection process undertaken by M.P. On-line Limited pursuant to the aforesaid advertisement. The petitioner in W.P. No. 17367/2013 has challenged the validity of the order dated 16-9-2013 issued by School Education Department which provides that the teaching experience of "Adhyapaks" should be counted with effect from 1-4-2007 as "Adhyapak" cadre has been constituted from the aforesaid date. The petitioners have also assailed the validity of the clarificatory memo dated 24-8-2013 issued by Commissioner, Public Instructions, Government of Madhya Pradesh, Bhopal by which clarification has been issued in respect of the qualification with regard to teaching experience as prescribed for recruitment to the post of Area Education Officer in the Advertisement dated 22-8-2013. The background facts leading to filing of these writ petitions, briefly stated, are that the petitioners are employed as Assistant Teachers, Upper Division Teachers, Head Masters of Middle School and Lecturers of Higher Secondary School in School Education Department whereas as some of them are employed as Varishtha Adhyapaks in Government Schools managed by local bodies. The service conditions of Upper Division Teachers, Head Masters, Lecturers and Assistant Teachers, who are the employees of School Education Department, are governed by M.P. Education Service (School Branch) Recruitment and Promotion Rules, 1982 [hereinafter referred to as "the 1982 Rules"] whereas, the service conditions of "Adhyapaks", who are the employees of local bodies, are governed by M.P. Panchayat Adhyapak Samvarg (Employment and Conditions of Service) Rules, 2008 [for brevity "the 2008 Rules"].

2. Under the erstwhile Education Guarantee Schools, "Gurujis" were employed to impart education to the students, who were later on upgraded to the post of "Samvida Shala Shikshaks" and thereafter were further upgraded to the post of "Adhyapaks". After the commencement of Right to Education Act, 2009, the Education Guarantee Schools were converted into primary schools. The erstwhile "Shiksha Karmis" were inducted in service under the provisions of Madhya Pradesh Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997 which were framed in exercise of power under sections 53, 70 and 95 of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. The Shiksha Karmis were recruited by the Selection Committee comprising of 5 members, out of which two members were senior government officers of the District. The educational qualification prescribed for the posts of Shiksha Karmi Grade-I, II and III under the Rules were Master Degree in Second Division in the concerned subject, Bachelor Degree in Second Division in the concerned subject and the Higher Secondary Certificate Examination or equivalent respectively. Similarly, in exercise of power under section 433 read with section 58 of M.P. Municipal Corporation Act, 1956 the State Government framed Madhya Pradesh Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998. Rule 4 of the aforesaid Rules provides that number of posts shall not be increased except with the prior approval of the State Government. The State Government had the control in respect of the appointment and conditions of

service of Shiksha Karmis under the said Rules.

3. Thereafter, the State Government in exercise of power under section 95 read with section 70 of M.P. Panchayat Raj Awam Gram Swaraj Adhiniyam, 1993 framed Madhya Pradesh Panchayat Samvida Shala Shikshaks (Employment and Conditions of Contract) Rules, 2005 under which "Samvida Shala Shikshaks" were appointed. The agency authorized by the State Government was required to hold the eligibility examination for Samvida Shala Shikshaks. Under the aforesaid Rules the educational qualifications prescribed for the post of Samvida Shala Shikshaks Grades I, II and III were Master Degree in Second Division in the concerned subject, Bachelor Degree in Second Division in the concerned subject and the Higher Secondary Certificate Examination or equivalent respectively. Thereafter, the State Government in exercise of power under section 70 read with section 95 of Panchayat Raj Awam Gram Swaraj Adhiniyam, 1993 framed Madhya Pradesh Panchayat Adhyapak Samwarg (Niyojan Avam Sewa Ki Sharten) Niyam, 2008. Under the said Rules the educational qualification prescribed for the post of Varishtha Adhyapak, Adhyapak and Sahayak Adhyapak were Master Degree in Second Division in the concerned subject, Bachelor Degree in Second Division in the concerned subject and the Higher Secondary Certificate Examination or equivalent respectively. It is pertinent to mention here that Varishtha Adhyapak, Adhyapak and Sahayak Adhyapak are imparting education in government schools managed by the local bodies like their counter parts in School Education Department.

4. Under the 1982 Rules Upper Division Teacher was the feeder post for promotion to the post of Head Master, Middle School as well as Lecturer, Higher Secondary School. The further channel of promotion prescribed in 1982 Rules for the post of Head Master Middle School/Lecturer, Higher Secondary School was the post of Principal, Higher Secondary School, which carried the pay scale of Rs. 8,000-13,500/-. The posts of Principals, Higher Secondary Schools were to be filled up to the extent of 75% by promotion and remaining 25% by direct recruitment. The aforesaid 75% posts, which were to be filled up by promotion, were to be filled up from amongst Head Masters and Lecturers in the ratio of 40% and 60% respectively. It is noteworthy that under the 1982 Rules, in the set up of posts, the post of Head Master Middle School was not provided which was an ex-cadre post, on which senior most Upper Division Teacher was nominated to work as Head Master with some financial benefits. The 1982 Rules were amended by Notification of 2nd December, 1991 by which Rule 11(a) was inserted in the Rules which provided for direct recruitment on the post of Lecturer of Higher Secondary School which was to be made by the Commissioner, Public Instructions in consultation with the government from time to time. Thereafter, by Notification dated 21-3-2007 the 1982 Rules were further amended and a new post of Block Education Officer was created.

5. The State Government in exercise of power under Article 166 of the Constitution of India issued an order dated 25-7-2013 by which the State

Education Service was constituted. Thereafter, by Notification dated 22-8-2013, the 1982 Rules were further amended. Under the 1982 Rules, as amended by Notifications dated 21-3-2007 and 22-8-2013, the set up of posts as well as the channel of promotion are reproduced below for the facility of reference:--

6. By the Notification dated 22-8-2013, the 1982 Rules were amended by which a new cadre of Area Education Officer was constituted. Rule 11-B of the Rules provides that post of Area Education Officer has to be filled up by selection by limited examination. Rule 11-B further provides that the post of Area Education Officer has to be filled up from amongst Head Masters of Middle School, Upper Division Teachers and "Adhyapaks" of local bodies. Rule 11-B(ii) mandates that limited examination for appointment to the post of Area Education Officer shall be conducted by such an authority, as may be prescribed by the State Government. By virtue of amendment in the 1982 Rules, the Assistant Teachers and "Varishtha Adhyapaks" as well as "Adhyapaks" who did not have 5 years teaching experience are excluded from participation in the process of appointment of Area Education Officer. The grievance of Lecturers of Higher Secondary School is that in view of impugned amendment Upper Division Teachers and "Adhyapaks" are being permitted to participate in the process of appointment of Area Education Officer and thus unequals are sought to be treated as equals and principles of merger of cadres have not been followed. Similarly, the grievance of the Headmasters is that even though they hold the post which is equivalent to post of Lecturer, yet under impugned amendment, they are being made to appear in the examination for appointment to the post of Area Education Officer to claim further promotion to the post of Principal, High School, whereas, Lecturers can directly be promoted to the post of Principal, High School.

7. The State Government issued an advertisement on 22-8-2013 by which the process for recruitment to the post of Area Education Officer was initiated and M.P. On-line Limited was authorized to conduct the recruitment process. Thereafter, the School Education Department issued an order dated 16-9-2013 by which it was provided that since "Adhyapak Samwarg" has been constituted with effect from 1-4-2007, therefore, the teaching experience in the aforesaid cadre has to be reckoned from the date of actual appointment and not prior to 1-4-2007. However, the aforesaid order provides that the period of service of "Adhyapaks" who are working as "Jan Shikshak", Block Resource Coordinator and BAC shall be counted for teaching experience. Thereafter, clarificatory memo dated 24-8-2013 was issued by the Commissioner, Public Instructions, Government of Madhya Pradesh, Bhopal by which qualifications prescribed in the advertisement were clarified and it was provided that teaching experience of 5 years on a particular post, namely, posts of Head Master, Upper Division Teacher and "Adhyapak" shall be taken into account to ascertain the eligibility of the candidates for participating in the process of recruitment for the post of Area Education Officer. In the aforesaid factual background, the petitioners have approached this Court.

8. Mr. Rajendra Tiwari, learned senior counsel for the petitioner in W.P. No. 17367/2013 has submitted that interpretation put forth by the School Education Department vide order dated 16-9-2013 on the Rules as amended in 2013 is contrary to the same, as the Rules nowhere provide that teaching experience prior to 1-4-2007 in "Adhyapak" cadre cannot be counted. It is further submitted that clarificatory memo dated 24-8-2013 is arbitrary and discriminatory and is contrary to the rules. Our attention has been invited to Rule 2(a), 2(b), 7, 8 and 11(2) of the Rules to contend that direct recruitment on the post of Area Education Officer cannot be made by departmental examination and the examination has to be conducted by M.P. Public Service Commission. Alternatively, it is submitted that in case the interpretation put forth by the School Education Department on the Rules vide order dated 16-9-2013 is accepted then the Rules amended by Notification dated 22-8-2013 be declared ultra vires Articles 14 and 16 of the Constitution of India. It has also been urged that the advertisement is contrary to 1982 Rules as amended by Notification dated 22-8-2013. In support of his submissions, learned senior counsel has placed reliance on the decision in Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar and Others, and Dr. Ms. O.Z. Hussain Vs. Union of India and others, . Mr. Rajendra Mishra, learned counsel for the petitioners in Writ Petitions No. 17068/2013, 18278/2013 and 18283/2013 has adopted the submissions made by learned senior counsel. Mr. R.B. Patel, learned counsel for petitioner in Writ Petition No. 18590/2013 and Mr. S.K. Dubey, learned counsel for petitioner in Writ Petition No. 20635/2013 have also adopted the submissions of Mr. Rajendra Tiwari, learned senior counsel.

9. Mr. Shashank Verma, learned counsel for the petitioners in Writ Petition No. 14833/2013 submitted that in the year 2013 by way of amendment in the Rules the post of Area Education Officer has been created which carries the same scale of pay which is prescribed for the post of Headmaster and there is no career progression of the Head Masters, and the post of Area Education Officer is supervisory in nature and if the juniors to the petitioners are selected on the post of Area Education Officer, they would supervise the functioning of the petitioners who are seniors to them. It is also urged that in the Rules as amended in 2013 there is no provision regarding Head Master of Middle School. In support of his submissions, learned counsel for the petitioners has invited our attention to the averments made in paragraphs 12 and 13 of the return. Lastly, it is urged that the Head Masters and Lecturers are equivalent posts and the Lecturers can directly be promoted to the post of Principal, High School whereas Head Masters have to appear in the limited examination for recruitment to the post of Area Education Officer in order to be promoted to the post of Principal High School and the petitioners are being made to compete with their juniors.

10. Mr. Sanjay K. Agrawal, learned counsel for the petitioners in Writ Petition Nos. 16867/2013 and 18260/2013 submitted that petitioners have worked on the post of "Adhyapaks" for the period of 4 years and 9 months and they have been recently promoted as "Varishtha Adhyapaks" and have completed 6 months

on the said post. However, they are being deprived of an opportunity to seek absorption in the government service by way of recruitment on the post of Area Education Officer, which is one time exercise. The exclusion of "Varishtha Adhyapaks" from recruitment process for the post of Area Education Officer is per se arbitrary as "Adhyapaks" who are juniors to the petitioners have been permitted to appear in the examination. Alternatively, it is submitted that expression "Adhyapak" as used in the rule has to be read so as to include "Varishtha Adhyapaks" as well as those "Varishtha Adhyapaks" who do not have 5 years" teaching experience. It is also urged that post of Area Education Officer is an administrative post and, therefore, the exclusion of the petitioners on the basis of experience of teaching on particular post is arbitrary. In support of his submissions learned counsel for the petitioners has placed reliance on the decisions in Kallakurichi Taluk Retired Official Association, Tamilnadu and Others etc. etc Vs. State of Tamilnadu and Others etc. etc, , B. Manmad Reddy and Others Vs. Chandra Prakash Reddy and Others, and Punjab National Bank by Chairman and Another Vs. Astamija Dash, .

11. Mr. Alok Pathak, learned counsel for the petitioners in W.P. No. 16423/2013, W.P. No. 16435/2013, W.P. No. 18648/2013 and W.P. No. 16430/2013 has submitted that the petitioners are Adhyapaks and even though they do not have requisite teaching experience of five years, yet they are entitled to appear in the examination in question.

12. Mr. D.K. Dixit, learned counsel for the petitioner in Writ Petition No. 15270/2013 has submitted that under Rule 6(4) of 1982 Rules, the Government has the power to prescribe method of appointment to a post after consultation with the General Administration Department. However, in the instant case no consultation with General Administration Department has been made. It is further submitted that the examination ought to have been held by the Public Service Commission and all eligible persons ought to have been allowed to appear in the examination. It is also submitted that "Varishtha Adhyapak" should be allowed to appear in the process of appointment for the post of Area Education Officer. In support of his submissions, learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of Centre for Public Interest Litigation Vs. Union of India (UOI), and Renu and Others Vs. District and Sessions Judge, Tis Hazari and Another, .

13. Mr. Nikhil Tiwari, learned counsel for the petitioner in Writ Petition No. 15355/2013 has submitted that even though the petitioner holds substantive post of "Varishtha Adhyapak" and has 5 years of teaching experience, however, he is not being permitted to participate in the process of recruitment for the post of Area Education Officer on the ground that by order dated 24-7-2012 his services have been lent on deputation.

14. Mr. Rajesh Dubey, learned counsel for the petitioner in Writ Petitions No. 16292/2013 and 17789/2013 has submitted that the expression "Adhyapak" employed by the State Legislature in the amendment should be read as including

"Varishtha Adhyapaks". In this connection, our attention has been invited to section 2(k) of M.P. Jan Shiksha Adhiniyam, 2002 and section 2(f) of M.P. Panchayat Adhyapak Samwarg (Employment and Conditions of Service) Rules, 2008.

15. Mr. P.N. Dubey, learned counsel for the petitioner in Writ Petition No. 15370/2013 has submitted that the petitioners are Assistant Teachers and they hold the same qualifications as of "Adhyapaks" employed in government schools. However, the petitioners have been excluded from competing for appointment on the post of Area Education Officer. It is also submitted that under Rule 2(a) of the Rules, the appointing authority is the State Government whereas under the amendment made in the year 2013 in the Rules the appointing authority of the Area Education Officer is mentioned as Commissioner, Public Instructions which is hit by Article 13(2) of the Constitution of India. It is further submitted that in the Departmental Examination, the persons who are not the employees of the School Education Department, namely, "Adhyapaks" of Government Schools managed by the local bodies are being allowed to appear. While inviting our attention to M.P. Public Service Commission (Limitation of Functions) Regulations, 1957 it is pointed out that Departmental Examination has to be conducted by M.P. Public Service Commission. In support of his submissions, learned counsel has placed reliance on the decision in Arun Singh Bhadouriya Vs. State of M.P. and Others, . Mr. Manoj Soni, learned counsel for the petitioner in W.P. No. 15814/2013, Mr. R.K. Samaiya, learned counsel for the petitioner in W.P. No. 15753/2013 and Mr. J. Arya, learned counsel for the petitioner in W.P. No. 14747/2013 have adopted the submissions made by Mr. P.N. Dubey.

16. Mr. Anshuman Singh, learned counsel for the petitioner in Writ Petition No. 15380/2014 has submitted that the petitioners are the Lecturers and by impugned amendment of 2013 in the Rules, the State Government has permitted the Upper Division Teachers, Head Masters of Middle School and "Adhyapaks" of local bodies to participate in the process of recruitment for the post of Area Education Officer. Thus, the unequals are sought to be treated as equals. It is further submitted that avenues for the petitioners who are Lecturers in Higher Secondary School for promotion to the post of Principal High School have been reduced from 100% to 50% and 25% posts of the Principal High School have been reserved for recruitment from "Varishtha Adhyapaks" who cannot be treated at par with the petitioners as the petitioners hold class-II post whereas Adhyapaks hold local body posts and are not government servants. It is also urged that principles of merger of cadres as laid down by the Supreme Court in S.P. Shivprasad Pipal Vs. Union of India and Others, have not been followed in the instant case. It is further contended that the classification which has been made by the respondents for participation for appointment to the post of Area Education Officer is fanciful and arbitrary. In support of the aforesaid submission, reference has been made to the decision of the Supreme Court in B. Manmad Reddy and Others Vs. Chandra Prakash Reddy and Others, . Mr. Rajneesh Gupta, learned counsel for the petitioner in W.P. No. 16676/2013 has adopted the

submissions made by Mr. Anshuman Singh.

17. While canvassing the arguments in Writ Petition No. 12600/2014 Mr. Anshuman Singh, learned counsel has submitted that examination in question is not being conducted by the authority prescribed under the Rules. While inviting our attention to Annexure-P-3 it is contended that examination in question is being conducted by M.P. On-line Limited which is joint venture company and is a paid service provider. It is also submitted that aforesaid joint venture company has no specific mandate to hold the examination and no order authorizing M.P. On-line Limited to conduct the examination has been issued prior to issuance of the impugned advertisement. It is also submitted that M.P. On-line is not an authority for the purpose of Rule 11(2) of the Rules as the joint venture company cannot be regarded as an authority. In support of aforesaid submission, reference has been made to the decision of Supreme Court in the case of Union of India (UOI) and Others Vs. Alok Kumar, .

18. On the other hand Mr. Samdarshi Tiwari, learned Government Advocate submitted that the post of Area Education Officer has been created at the Sub Block Level to monitor the primary schools and middle schools which are situated in rural areas as well as in Tribal areas. It is further submitted that under the erstwhile Education Guarantee Schools "Gurujis" were appointed who were later on upgraded to the posts of Samvida Shala Shikshaks and were further upgraded to the post of "Adhyapaks". It is also submitted that after commencement of Right to Education Act, 2009 the Education Guarantee Centres were converted to primary schools. Thus, Upper Division Teachers as well as Head Masters and "Adhyapaks" of local bodies cadre, who are already working in rural areas, are well conversant with the local conditions and, thus, are better equipped to perform the duties of Area Education Officer. Accordingly, the State Government has taken a conscious decision to fill up the post of Area Education Officer by limited examination, as the person who is not in the system, may not be able to perform duties of the post in question in the remote rural areas and tribal areas. It is also pointed out that neither any writ petition has been filed by Upper Division Teacher or Head Masters of any private schools nor any ground with regard to propriety of holding the limited examination has been raised in the petitions. It is also urged that there is no merger of cadres and only an opportunity is being afforded to participate in the process of recruitment to the post in question, to the Head Masters of Middle School, Upper Division Teachers as well as "Adhyapaks" of local bodies cadre. While inviting our attention to M.P. Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997, M.P. Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998, M.P. Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005, M.P. Nagariya Nikaya Shala Shikshak (Employment and Conditions of Contract) Rules, 2005 and M.P. Panchayat Adhyapak Samvarg (Employment and Condition of Service) Rules, 2008, it is urged that qualifications prescribed for the post held by the persons governed under the aforesaid Rules are similar to that of their counter parts in government schools

and nature of their duties is also similar to their counter parts in government schools. Thus, the inclusion of "Adhyapaks" of local bodies cadre in the recruitment process cannot either be termed as arbitrary or discriminatory.

19. It is further contended by learned Government Advocate that the Lecturers of the Higher Secondary Schools have no locus to challenge the impugned amendment in the Rules as they are not eligible to participate for appointment on the post of Area Education Officer. It is also pointed out that the Lecturer, Higher Secondary School is a higher post and cannot be equated with the post of Head Master, Upper Division Teacher or Adhyapak. It is further submitted that Lecturer, Higher Secondary School on completion of 5 years of service is eligible for promotion to the post of Principal, High School. The contention of the petitioners that unequals are sought to be treated as equals is ill-founded as every classification is likely to create some inequality. It is also submitted that it is the prerogative of the employer to create cadres, categories and abolition and creation of posts and to prescribe the qualification for the same including the avenues of promotion as the same is in the realm of policy. In support of aforesaid submission, reliance has been placed on the decisions in the case of Ganga Ram and Others Vs. The Union of India (UOI) and Others, , P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, and Union of India (UOI) Vs. Pushpa Rani and Others, .

20. It is also pointed out by learned Government Advocate that Lecturers as well as "Varishtha Adhyapaks" can participate in the process of direct recruitment for the post of Principal, High School as quota of 25% is fixed for direct recruitment for the post of Principal, High School and suitable amendment in this regard would be made in the Rules. It is also pointed out that the educational qualification for the post of Assistant Teacher is Higher Secondary, whereas the Upper Division Teachers, Head Masters and Adhyapaks who have been permitted to participate in the process of appointment for the post of Area Education Officer are graduates. Therefore, the Assistant Teachers cannot claim parity with Upper Division Teachers, Head Masters of Middle Schools as well as "Adhyapaks".

21. It is also argued that Head Masters, "Adhyapaks" or Upper Division Teachers are imparting education in Middle School, therefore, the experience of teaching in primary schools cannot be taken into account. In support of aforesaid submission, learned Government Advocate has referred to the decision of the Supreme Court in V.B. Prasad Vs. Manager, P.M.D.U.P. School and Others, . It is also submitted that taking into account the duties which are to be performed by Area Education Officer, the experience as mentioned in the Rules has to be construed to mean the teaching experience either on the post of Head Master Middle School, Upper Division Teacher as well as "Adhyapak" and the same cannot be construed to mean the overall teaching experience. It was also pointed out that clarificatory memo was accordingly issued on 24-8-2013 by the Commissioner, Public Instructions, Government of Madhya Pradesh, Bhopal.

22. Mr. Sanjay Agrawal and Mr. Hitendra Singh, learned counsel for the

interveners in Writ Petition No. 14833/2013 have supported the submissions made by learned Government Advocate and have referred to the decisions of Supreme Court in the cases of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., and B.M. Solanki and Another Vs. State of Gujarat and Others, .

23. We have considered the rival submissions. At the outset we may deal with the issue of authority of M.P. On-line Limited to conduct the examination for appointment to the post of Area Education Officer raised in Writ Petition No. 12600/2014 by the petitioner who is a Lecturer in School Education Department. Rule 11-B(2) or the 1982 Rules as amended by Notification dated 22-8-2013 reads as under:--

"11-B(2) For appointment of Area Education Officer, the limited examination shall be conducted by such an authority as may be prescribed by the Government."

It is pertinent to mention here that M.P. On-line Limited is a joint venture company of M.P. State Electronics Development Corporation Limited and M/s. Tata Consultancy Services Limited which was incorporated on 11-7-2006. The State Government by order dated 14-8-2013 has prescribed M.P. On-line Limited as an authority for conducting limited examination after obtaining approval of the Chief Minister in co-ordination. The validity of that order is not specifically put in issue. Thus, it can not be contended that M.P. On-line Ltd. had no authority to hold the examination. It is also noteworthy that petitioner is a Lecturer who is not entitled to appear in the examination in question which has been conducted by M.P. On-line Limited. Therefore, in our considered opinion petitioner has no locus to challenge the authority of M.P. On-line Ltd. to conduct the examination in question. Besides that, M.P. On-line Limited has already conducted the examination on 8-9-2013 in which 22,834 candidates have appeared and the writ petition has been filed after 11 months i.e. in August, 2014. Therefore, the challenge to the authority of M.P. On-line Limited in any case is belated, which deserves to be repelled on the ground of laches and delay as well.

24. Now we may advert to the contention raised on behalf of the petitioners that for appointment to the post of Area Education Officer all candidates possessing prescribed qualification ought to have been permitted and the examination ought to have been held by Public Service Commission. By Notification dated 22-8-2013, Rule 6 of 1982 Rules, which deals with method of recruitment has been amended and apart from direct recruitment, promotion and transfer, a new mode of recruitment, namely, recruitment by selection through limited examination is incorporated by way of Rule 6(i)(d). It is noteworthy that post of Area Education Officer is created at Sub Block Level. An Area Education Officer is, inter alia, required to monitor the work of elementary education in 40 to 50 Primary as well as Middle Schools. Initially, the State Government had set up Education Guarantee Schools under the Education Guarantee Scheme in rural as well as tribal areas in which "Gurujis" were employed to impart education. On

coming into force of the Right to Education Act, 2009, the aforesaid Education Guarantee Schools were converted into primary schools and posts of "Gurujis" were upgraded to the posts of Contract Teachers and were further upgraded to the post of "Adhyapaks" under the provisions of M.P. Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997, M.P. Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998, M.P. Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005, M.P. Nagariya Nikaya Shala Shikshak (Employment and Conditions of Contract) Rules, 2005 and M.P. Panchayat Adhyapak Samvarg (Employment and Condition of Service) Rules, 2008 respectively. The Primary Schools and the Middle Schools are situate in rural and tribal areas.

25. The "Adhyapaks" of local bodies, Upper Division Teachers and Head Masters of Middle Schools are imparting education to students in rural and tribal areas and are well versed and are accustomed to living in such areas. Therefore, such persons would be able to effectively discharge the duties of the post of Area Education Officers, namely, supervision of Primary and Middle Schools which are situate in rural/tribal areas. A person from a different background may not be able to work in the remote, rural and tribal area. It is worth mentioning here that petitioners before us are either the employees of School Education Department or of local bodies. In other words, no other person has made any grievance with regard to limited examination. The object of holding the limited examination is to ensure that the persons who have the experience of working in remote rural and tribal areas are selected as Area Education Officers so that such officers are able to effectively discharge their duties. Therefore, no fault can be found with action of the respondents in holding limited examination. No provision of law has been brought to our notice that limited examination must be held only by the Public Service Commission. On the other hand, 1982 Rules, as amended by the Notification dated 22-8-2013, provide that limited examination under the 1982 Rules can be held by an Authority which may be authorized by the State Government. Admittedly, the State Legislature is competent to frame such a rule, as no challenge has been made to the authority of the State Legislature to amend the 1982 Rules. As we have already held that M.P. On-line Limited is an authority authorised by the State Government to hold the examination as provided in Rule 11-B(2) of the 1982 Rules, therefore, it is not necessary for us to dilate further on the issue whether the examination ought to have been held through Public Service Commission.

26. Before proceeding further it is apposite to notice few well settled legal propositions expounded by the Supreme Court with regard to matters relating to creation of posts, formation, structuring/re-structuring of cadres, prescribing source/mode of recruitment as well as scope of judicial review in such matters.

27. In Ganga Ram (supra) the Supreme Court has held that mere pointing out inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. The State is

legitimately empowered to frame rules of classification by securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete. In applying the wide language of Articles 14 and 16 to concrete cases a doctrinaire approach should be avoided and the matter has to be considered in a practical way. Of course, to be outside the vice of inequality, such classification must, however, be founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out.

28. In the case of *Dr. N.C. Singhal Vs. Union of India (UOI) and Others*, , it has been reiterated that the Government is a better Judge of the interests of general public and if it is a better Judge, it must have power to create a post depending upon exigency of service and requirements of general public. In *Pushpa Rani (supra)* it is held that the Court cannot sit in appeal over the judgment of employer and ordain that a particular post be filled up by direct recruitment or promotion or by transfer.

29. It is well settled in law that power of creation of posts rests, with the State Government and whether a particular post is necessary is a matter which depends upon exigencies of situation and administrative necessity. [See : *State of Haryana and Others Vs. Navneet Verma*, . It is equally settled legal proposition that power to reorganize the cadre is a policy decision which is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. [See: *Director, Lift Irrigation Corporation Ltd. and Others Vs. Pravat Kiran Mohanty and Others*, .]. In *P.U. Joshi (supra)* it has been held that questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotion and criteria to be fulfilled for such promotion pertain to the field of policy and is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India. It has further been held that State Government is well within its right to amend the Rules to constitute different categories of posts or cadres and to reconstitute and restructure the pattern and cadres/categories of service as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts.

30. In the background of aforesaid legal position we may now consider the petitioners' grievances. The educational qualifications and nature of duties for the posts of Lecturer, Higher Secondary School, Varishtha Adhyapak of local body, Head Master of Middle School, Upper Division Teacher, Adhyapak and Assistant Teacher are as follows:--

In the instant case there is no merger of cadre by amendment in the Rules. But, only a new post of Area Education Officer has been created at the Sub Block Level in the set up of posts. The minimum qualification for the aforesaid post is Graduate Degree and Bachelor Degree in Education. The nature of duties performed by the Area Education Officer is administrative in nature and the

primary function is to supervise the elementary education of Primary and Middle Schools. The posts of "Varishtha Adhyapak" of local body cadre is a higher post, taking into account the educational qualification prescribed for the post and the nature of duties performed by "Varishtha Adhyapaks" of local bodies. For the post of "Varishtha Adhyapak" the minimum qualification prescribed is the Post Graduate Degree in the concerned subject in second division and "Varishtha Adhyapak" imparts education in Higher Secondary School. Similarly, for the post of Assistant Teacher the minimum qualification is Higher Secondary School Certificate Examination. The aforesaid post has lower qualification than the qualification prescribed for the post of Head Master Middle School, Upper Division Teacher and "Adhyapak" of local body. Thus, the pool of employees from which Area Education Officers has to be selected has been created on the basis of educational qualification and, therefore, the "Varishtha Adhyapaks" and Assistant Teachers have rightly been excluded from pool from which the post of Area Education Officer is to be filled up. A careful scrutiny of the nature and duties of the post of Area Education Officer it is evident that the post is supervisory in nature and the Area Education Officer would not, in any manner, be supervising the work of their seniors as they do not have any power to write the confidential report of their seniors. Therefore, the contention that Area Education Officer who may be junior to the petitioners, namely, Head Master and Lecturers would supervise their work, cannot be accepted.

31. Now, we may deal with the grievance of the Lecturers that by permitting the Head Masters, Upper Division Teachers, "Adhyapaks" of local body cadres to participate in the process of recruitment for the post of Area Education Officer, they are being treated at par with the Lecturer and would compete with the Lecturers for promotion to the post of Principal, High School. In substance, the grievance of the petitioners, who are Lecturers, appears to be that their chances of promotion are diminished. The aforesaid submission looks attractive at the first blush, however on a deeper probe, the same does not deserve acceptance. Taking into account the nature of duties performed by the Lecturer, Higher Secondary School as well as the qualification prescribed, the post of Lecturer is a higher post than that of Area Education officer. The Lecturer, Higher Secondary School on completion of 5 years is entitled to be considered for promotion to the post of Principal, Higher Secondary School, whereas the Area Education Officer is required to have 5 years experience on the post in order to be eligible for consideration for promotion to the post of Principal, High School. It is pertinent to mention here that quota has also been prescribed for promotion to the post of Principal, High School under the executive instructions and suitable amendment in the Rule will be made by the State Government, as has been stated before us. The aforesaid quota provides that the post of Principal High School shall be filled in by promotion to the post to the extent of 75%. Out of aforesaid 75%, 50% post shall be filled up from the cadre of Lecturers, High School and remaining 25% posts shall be filled up from the cadre of Area Education Officers. The remaining 25% post of Principal High School shall be filled up by direct

recruitment, in which, Lecturers of Higher Secondary as well as "Varishtha Adhyapaks" can participate.

32. Thus, two cadres have been constituted for promotion to the post of Principal, High School. The post of Principal, High School is an administrative post. There is need of persons having administrative experience as well as teaching experience. The post of Principal, High School is sought to be filled up by two different cadres i.e. Area Education Officers and the Lecturers and separate quota, as stated above, has also been prescribed for them. For the post of Principal, High School, mixed cadre is sought to be prepared of the persons who have administrative and teaching experience. It is well settled in law that government can provide two cadres for promotion to the post. Reference in this connection may be made to the case of Dwarka Prasad and Others Vs. Union of India (UOI) and Others, . Once separate quotas are prescribed for promotion to the post and two cadres/channels are created for promotion to a particular post, the plea of discrimination does not arise. In this connection we may refer to a decision of Supreme Court in the case of Secretary to the Govt. of Orissa Vs. Laxmikanta Nanda and others, . It is also well settled in law that mere chances of promotion are not conditions of service, and the fact there is reduction in the chances of promotion does not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, chances of promotion are not. [See: State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others, , Union of India and others Vs. S.L. Dutta and another, and Panchraj Tiwari Vs. M.P. State Electricity Board and Others,]. Therefore, the contentions raised by the petitioners that unequals are sought to be treated as equals does not commend to us. We may point out that it is not the case of petitioners that action of respondents in creating post of Area Education Officer is either actuated by mala fides or amounts to colourable exercise of power.

33. That apart, the challenge to the process of recruitment to the post of Area Education Officer at the instance of Lecturer is premature at this stage, as after recruitment on the post of Area Education Officer, they would require 5 years" experience on the post of Area Education Officer in order to be eligible for promotion to the post of Principal, High School and they would be promoted to the post of Principal, High School against their quota of 25%.

34. We shall now advert to the grievance of the Head Masters that they are required to appear in the examination for appointment on the post of Area Education Officer whereas Lecturers who hold the qualification for the post are entitled to be directly promoted as Head Master of the School on completion of 5 years service. Once again we may reiterate that the plea of discrimination is available to similarly situated persons who are differently treated. Taking into account the nature of duties performed by Head Masters of Middle School as well as the Lecturers of Higher Secondary Schools, both the posts cannot be held to be equivalent, as the Lecturers, Higher Secondary impart education in Higher

Secondary Schools whereas Head Masters Middle School impart education in Middle Schools. Thus, nature of their duties are different and, therefore, the plea of discrimination is not available to them.

35. Now we shall consider the challenge to order dated 16-9-2013 as well as memo dated 24-8-2013 issued by the School Education Department as well as Commissioner, Public Instructions, Government of Madhya Pradesh, Bhopal, respectively, which provide that teaching experience on the post of "Adhyapak" should be counted with effect from 1-4-2007 as "Adhyapak" cadre has been constituted from the said date and that a candidate must have teaching experience of 5 years on the post of Head Master Middle School, Upper Division Teacher and "Adhyapak", respectively.

36. It is well settled rule of statutory interpretation that when the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words "of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)" is the rule laid down in Heydon's case which has "now attained the status of a classic. The rule which is also known as "purposive construction" or "mischief rule", enables consideration of four matters in construing an Act: (I) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy". The rule was explained in the Bengal Immunity Co. v. State of Bihar by S.R. Das, C.J.I. as follows: "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case was decided that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (I) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not provide, (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and (4) The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress sub- the inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. [See: Anderton v. Ryan, (1985) 2 All ER 355, The Bengal Immunity Company Limited Vs. The State of Bihar and Others, and National Insurance Co. Ltd. Vs. Baljit Kaur and Others, .] [See: Principles of Statutory Interpretation by Justice G.P. Singh, 13th Edition]

37. The relevant extract of the Advertisement dated 22-8-2013, order dated 16-9-2013 and clarificatory memo dated 24-8-2013 respectively are reproduced below for the facility of reference:--

The relevant extract of the Notification dated 22-8-2013, by which 1982 Rules

have been amended reads as under:--

From careful scrutiny of the minimum educational qualification and other requirements prescribed for the post of Area Education Officer it is evident that the same is in three parts, namely:--

"(i) Qualification i.e. "Graduate Degree" from recognized University and B.Ed. which would be recognized by National Council for Teachers Education;

(ii) The source from where the persons would be recruited to the post of Area Education Officer, namely, Head Master Middle School, Upper Division Teacher and "Adhyapak" of local body cadre

(iii) The minimum teaching experience i.e. of 5 years.

Thus, it is evident that the minimum teaching experience is not referable to any post.

38. In the instant case, by virtue of amendment in 2007 Rules, the Upper Division Teachers and the Head Masters of Middle School, had no further promotional avenues beyond the post of Block Education Officer even though they had educational qualification for promotion to the post of Principal, High School. Realizing this anomaly the legislature brought about the amendment in the year 2013 by which Upper Division Teachers and Head Masters were allowed to participate in the limited selection/recruitment process of Area Education Officer and separate quota for promotion was prescribed for them for the post of Principal High School. The "Adhyapaks" of local body cadre who were performing duties like their counter parts in school Education Department and were imparting education in "Government Schools" are also given the opportunity to appear in the examination for appointment on the post of Area Education Officer. The anomaly crept in by way of amendment in 2007 Rules is sought to be remedied by way of amendment in 2013 Rules.

39. The literal meaning given to the Rules would mean that only "Adhyapak" of local body cadre is required to have 5 years experience whereas the requirement of teaching experience does not apply to the post of Upper Division Teacher and the Head Masters of Middle School. The literal construction in the instant case has to be avoided. If the interpretation to the teaching experience as prescribed in the Rules as mentioned in the advertisement and order dated 22-8-2013 and clarificatory memo dated 24-8-2013 is accepted, it would amount to promoting the anomaly as the person who is serving as Upper Division Teacher and may have 5 years teaching experience would be eligible to appear in the examination and whereas the person who is promoted from the cadre as Head Master and may not have 5 years" teaching experience on the promoted post, even though he is senior to the person holding the post of Upper Division Teacher. Exclusion of such candidate from the participation in the process of recruitment cannot neither be countenanced nor would satisfy the test of reasonableness. No tangible reason for excluding such candidate and the object sought to be

achieved by amending the Rule is forthcoming. It is also pertinent to mention here that the post of "Adhyapak" came into existence on account of merger of the post of "Samvida Shala Shikshak" Grade-II with the post of "Adhyapak" under the 2008 Rules. The nature of duties of Samvida Shala Shikshak Grade-II as well as Adhyapak are similar as both of them impart education in Middle Schools. However, if the teaching experience of such "Adhyapak" on the post of "Samvida Shala Shikshak" Grade-II is not taken into account, he would be excluded from the process of recruitment for the post of Area Education Officer. Similarly, Upper Division Teachers who may not have teaching experience of 5 years on the post of Upper Division Teacher and may have served years of teaching experience on the post of Assistant Teacher would be excluded. It is pertinent to mention here that in some of the writ petitions an averment has been made that though the petitioners are posted as Assistant Teachers, yet they are imparting education in Middle and High Schools. That averment of fact has not been controverted in the return filed by the State.

40. The advertisement dated 22-8-2014 as well as the order dated 16-9-2013 and clarificatory memo dated 24-8-2013 issued by the respondents, therefore, are not in consonance with the Rules, as the teaching experience prescribed in the rules is not relatable to any post. The post of Area Education Officer is an administrative post. The Area Education is, inter alia, required to monitor 40-50 primary and middle schools and academic monitoring of elementary education. The object of process of selection is to appoint most suitable candidates for the post of Area Education Officer and purposive interpretation is to be given to avoid the anomaly which had crept in by amendment in the rules in the year 2007 which the legislature intended to rectify by amendment in the Rules in the year 2013. More so when the amendment of the Rule was to depart from the ordinary rule of direct recruitment on such post. Therefore, the minimum qualification prescribed in the Rules, in our considered opinion, and in the background of aforesaid well settled legal principles with regard to statutory interpretation has to be read as over all teaching experience on any teaching post in the Government Schools.

41. In the result, the challenge to the validity of the Rules, as amended by Notification dated 22-2-2013, is hereby repelled. However, the order dated 16-9-2013 issued by School Education Department and clarificatory memo issued by the Commissioner, Public Instructions, Government of Madhya Pradesh, Bhopal dated 24-8-2013 and the advertisement dated 22-8-2013 insofar it prescribes that Upper Division Teachers, Head Masters Middle School and "Adhyapaks", should have 5 years teaching experience on their "respective posts" for appointment on the post of Area Education Officer is hereby quashed. It is held that the Upper Division Teachers, Head Masters Middle Schools and "Adhyapaks" of local body cadre who have 5 years" of over all teaching experience in Government Schools must be considered as eligible to appear in the examination.

42. We have been informed by learned Government Advocate that such persons have been permitted to appear in the examination. In view of the aforesaid statement made by learned Government Advocate it is directed that the results of such Upper Division Teachers, Head Masters Middle School and "Adhyapaks" who have appeared in the examination, which was held on 8-9-2013 for recruitment to the post of Area Education Officer be also declared. The interim order, if any, passed in the writ petitions are hereby vacated to enable the authorities to take the recruitment process forward in the terms of this pronouncement. Accordingly, the writ petitions are disposed of.