

(2015) 09 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 11829/2015, 13108/2015, 13111/2015, 13150/2015, 13152/2015, 13154/2015, 13155/2015, 13157/2015, 13221/2015, 13237/2015, 11929/2015, 11984/2015, 11988/2015, 11989/2015, 12200/2015, 12234/2015, 12290/2015, 12347/2015, 12350/2015, 12

Govind Prasad Sharma and Others

APPELLANT

Vs

State (Education Department) and Others

RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 16, 16(1)

Citation : (2015) 4 LLN 240

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : D.K. Bhardwaj, Amit Singh Shekhawat, Anshuman Saxena, Sumer Singh, Laxmi Kant Sharma, Sandeep Garssa, Kailash Sharma, Munesh Bhardwaj, G.S. Goutam, Balveer Singh Beniwal, Sanjay Mehla, Naveen Dhuwan, Ghanshyam Sharma, Ram Pratap Saini, Jeetendra Kumar Sha

Final Decision : Dismissed

Judgement

Ajay Rastogi, J—In the instant batch of writ petitions, few of the petitioners have prayed to declare R.2(j) & R.16 & Schedule-I of the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 (for short "the Rules, 2015") and few of the petitioners have prayed to declare R.15(x) & R.25 of the Rules, ultra vires to the extent that it does not include the work experience gained by the petitioners as Prerak, Anganbari Worker, Mid Day Meal, Guest Faculty, Child Labour Projects and other categories of employment on daily wages, contract or temporary employment to be considered eligible and age relaxation in recruitment to the post of Vidhyalay Sahayak which is included in the Schedule-I appended to the Rules, 2015. The selection process has been initiated for recruitment for 30,522 posts of Vidhyalay Sahayak vide advertisement dt. 21.07.2015 published by the Director (Elementary Education), Government of Rajasthan.

2. In the present batch of writ petitions, the petitioners have claimed similar reliefs in respect of alleged discrimination met out to them in excluding their experience and grant of relaxation in holding them ineligible to participate in the selection process initiated pursuant to advertisement dt. 21.07.2015.

3. That apart, the petitioners have also challenged, on the ground of discrimination, with the category of persons in various schemes, of which reference has been made in Schedule-I appended to R.16 read with R.2(j) of the Rules, 2015 defining "experience" and weightage for the experience gained in State Government School/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana, Sarva Shiksha Abhiyan, District Primary Education Programme, Rajiv Gandhi Pathshala, Shiksha Karmi Board and Madarsa listed under the Madarsa Board and for grant of relaxation in upper age provided u/R. 15(x) of the Rules, 2015.

4. Apart from categories, who are engaged through the placement agencies under the scheme of Rules, they have been excluded from consideration for participation in the selection process but we are not at the moment concerned with exclusion of those placement agencies since that has been decided by the Division Bench of this court in batch of writ petitions before the main seat at Jodhpur in D.B. Civil Writ Petition No. 9423/2015 [Shanti Lal Regar v. State of Rajasthan & Others].

5. After repealing the Rajasthan Education Assistant Services Rules, 2013, the State Government in exercise of powers conferred by the proviso to Art. 309 of the Constitution of India framed the Rules called "the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015" regulating recruitment to the posts included in Schedule-I and the conditions of service of persons to be appointed as Vidhyalay Sahayak vide notification dt. 20.07.2015 issued by the Department of Personnel (A-II), Government of Rajasthan and the said Rules came into force with immediate effect.

6. The post of Vidhyalay Sahayak is included in Schedule-I appended to R.16(i) of Rules, 2015 laying down minimum qualification and experience for direct recruitment and apart from the minimum qualification of Senior Secondary (10+2) from recognized Board or its equivalent, the candidate is supposed to hold minimum one year's experience of working in State Government School/State Recognized Non-Government School/State Government Educational Projects and the experience has been defined u/R. 2(j) which means the experience gained from academic/non-academic work in State Government School/State Recognized Non-Govt. School/State Govt. Educational Projects are considered to be eligible to participate in the selection process and those who fall within the consideration zone apart from their eligibility, they have to be within age and a candidate for direct recruit must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January next following the last date fixed for receipt of applications, provided u/R. 15 of the Rules, 2015, although under proviso (i) the upper age limit has been relaxed for

the category of candidates mentioned therein but still u/R. 15(x) relaxation has been provided to such of the persons serving under the State Government School/State Government Educational Projects, had they been within the age limit when they were initially engaged even though may have crossed the age limit at the time of consideration for direct recruitment and apart from it those persons who are serving in connection with the affairs of the State and who are Short Service Commissioned Officers and Ex-Service Personnel, they too have been granted relaxation in age, however, there is no upper age limit for widow and divorcee women.

7. We have already examined the scheme of Rules, as regards the candidates who are Ex-Servicemen and who are working as Vidhyarthi Mitra having less than one year's experience and both the batch of writ petitions have been dismissed after being heard at length by us vide judgments dt. 09.09.2015.

8. It would be appropriate to take note of provisions of Rules, 2015 which are relevant for the present purpose. The age relaxation has been provided u/R. 15 to various categories of persons. In proviso (x), age relaxation is provided to the following categories of persons and experience has been defined u/R. 2(j), which reads ad infra:--

"R.2(j) "Experience" wherever prescribed in these rules means the experience gained by Academic/Non-Academic work in State Government School State Recognized Non-Government School/State Government Educational Projects (other than those engaged through placement agencies) viz. Lok Jumbish Pariyojana Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board.

15. Age.--A candidate for direct recruitment to a post enumerated in the Schedule-I must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January next following the last date fixed for receipt of applications.

Provided that -

(i) to (ix) XX XX XX

(x) the persons serving under State Government School/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board shall be deemed to be within age limit, had they been within the age limit when they were initially engaged even though may have crossed the age limit at the time of direct recruitment."

9. R.16 of the Rules, 2015 provides for academic & technical qualifications and experience. The relevant R.16 and Schedule-I appended thereto are quoted ad infra:--

"16. Academic and technical qualifications and experience.--A candidate for direct recruitment to the post enumerated in the Schedule-I shall possess:--

- (i) the qualifications and experience given in column-4 of the Schedule-I; and
- (ii) working knowledge of Hindi written Devnagri script and knowledge of Rajasthani culture.

SCHEDULE-I

10. The nature of work which is to be assigned to the persons who are finally selected for the post of Vidhyalay Sahayak has been specified under Schedule-II annexed to R.4(2) of the Rules, 2015, which reads ad infra:--

SCHEDULE-II

11. The procedure for direct recruitment in Part-IV of the Rules, 2015 provides for inviting of applications for direct recruitment by the Director advertising vacancies to be filled, in the official gazette or in such other manner as may be deemed fit and the scrutiny of applications u/R. 24 by the Committee, referred to in Column-5 of Schedule-I and applications which are found to be incomplete or not filled up in accordance with the instructions issued by the Director, it is open for the authority to reject such applications at initial stage and the Committee has been entrusted to prepare the list of rest of the candidates and has to follow the scheme of selection provided u/R. 25 of the Rules, 2015 which is extracted ad infra:--

"25. Scheme of Selection.--(1) The Committee shall award marks to the candidates, whose names included in the list prepared under rule 24, on the basis of such weightage as may be specified by the State Government for the marks obtained in qualifying examination mentioned in the Schedule-I and such marks as may be specified by the State Government having regard to experience of working in State Government School/State Recognized Non-Government School/State Government Educational Projects (other than those engaged through placement agency) viz. Lok Jumbish Pariyojana, Sarva Shiksha Abhiyan, District Primary Education Programme, Rajiv Gandhi Pathshala, Shiksha Karmi Board and Madarsa listed under the Madarsa Board. After awarding marks, the Committee shall arrange the list in order of merit and five times candidates of the total number of vacancies category wise and district wise to be filled in, shall be called for interview.

Explanation: Wherever percentage of the marks cannot be ascertained due to grade awarded to the candidate in the particular examination, the median of the grade awarded to the candidate in such examination shall be basis for the preparation of merit list.

(2) The interview shall carry such marks as may be determined by the State Government. The Committee shall award marks to each candidate interviewed by it. The marks, so awarded, in interview, shall be added to the marks awarded to

the candidate under sub-rule (1) above, for the qualifying examination and working experience. The Committee shall prepare final merit list on the basis of aggregate marks awarded to each candidate."

12. The Committee is supposed to arrange the list in order of merit and five times candidates of the total number of vacancies category-wise and district-wise are to be called for interview, as provided under sub-rule (2) of R.25 of the scheme of Rules, 2015. The Committee has been empowered to take note of the marks awarded in interview, to be added to the marks awarded to the candidates under sub-rule (1) of R.25 for qualifying examination and working experience and shall prepare the final merit list on the basis of aggregate marks awarded to each candidate. R.26 of the scheme of Rules, 2015 provides for recommendation of Committee and R.28 for selection by the Appointing Authority.

13. Apart from the procedure for direct recruitment provided under Part-IV, Part-V deals with appointment, probation & confirmation & Part-VI provides for Pay and other Rules dealing with Pay, Leave, Allowances, Contributory Pension and other conditions of service and u/R. 39 (Removal of Doubts) if any doubt arises relating to the application and scope of these rules, it shall be referred to the Department of Personnel, whose decision shall be final and R.40 (Repeal & saving) repeals the Rajasthan Education Assistant Services Rule, 2013 and all the orders issued in relation to matters covered by these rules and in force immediately before the commencement of these rules are repealed. However, under proviso to R.40 any action taken under the Rules and orders so repealed, that shall be deemed to be taken under the Rules, 2015. R.41 in exceptional cases where the administrative department of Government is satisfied that operation of the Rule relating to age or regarding requirement of experience for recruitment causes undue hardship in a particular case or where the Government is of the opinion that it is necessary or expedient to relax any of the provisions of the Rules with respect to age or experience of any person, it may do so in a just and equitable manner, provided that such relaxation shall not be less favourable than the provisions already contained in the Rules.

14. The Director of Elementary Education (Rajasthan) issued an advertisement dt. 21.07.2015 initiating the process to fill 30,522 posts of Vidhyalay Sahayak by Direct Recruitment-2015 and invited applications on-line. The present petitioners are not holding one year's experience of academic/non-academic working in the State Govt. School/State Recognized Non-Govt. School/State Government Educational Projects, which is one of the condition of eligibility, provided under Schedule-I annexed to R.16 of the Rules, 2015 and in absence of experience defined u/R. 2(j) of the Rules, being held by the candidate and requirement of age prescribed u/R. 15, the petitioners have challenged the validity of R.2(j), R.15(x), R.16 & Schedule-I appended to the Rules, 2015 on the ground of discrimination & violating their rights enshrined u/Art. 14 of the Constitution of India.

15. At the outset, it may be noticed that in the present scheme of Rules, there is

an inclusion of experience gained by a person either of academic/non-academic work in State Government School/State Recognized Non-Government School/State Government Educational Projects but exclusion of such of the employees who have been working in the projects & engaged through placement agencies and that question earlier came to be considered by the Division Bench of this Court in *Mitendra Singh Rathore & Others v. State of Rajasthan & Others* [D.B. Civil Writ Petition No. 1723/2013] and other connected matters decided on 30.07.2013 and the Division Bench of this court held that experience earned in the employment in the schemes run by the State Government, if such persons have been employed through the placement agencies, is not different in any manner than the experience of the persons employed otherwise than by a recruitment agency and even such exclusion under the present scheme of Rules also came to be considered by the Division Bench at main seat at Jodhpur in D.B. Civil Writ Petition No. 9423/2015 [*Shanti Lal Regar v. State of Rajasthan & Others*] and it has been finally held that no distinction could be made regarding experience earned while in employment in the schemes run by the State Government and experience of persons having been employed through placement agencies, is not in any manner different than the experience of the persons employed otherwise than by a recruiting agency are at par. However, at present we are not dealing with the issue in the present batch of petitions.

16. Counsel for petitioners jointly submits that the experience in various categories of posts namely Prerak, Anaganwari Workers, Midday Meal, Child Labour Project and those who are working as Guest Faculty and of various other categories in Sarva Shiksha Abhiyan has been illegally and arbitrarily ignored by the State Government and the experience of the projects, to which weightage has been given by the State Government and included in Schedule-I appended to Rules, 2015 are almost pari-materia to the nature of experience gained by the petitioners under various schemes/projects and they have been illegally and arbitrarily ignored by the State Government by not giving due weightage to their experience is violating their rights of equality protected u/Art. 14 of the Constitution of India.

17. It is further submitted that the experience of academic/non-academic work gained in any State Government School/State Recognized Non-Government School/State Government Educational Projects which are included of a kind under Schedule-I annexed to R.16 of the Rules, 2015 viz., Lok Jumbish Pariyojana, Sarva Shiksha Abhiyan, District Primary Education Programme, Rajiv Gandhi Pathshala, Shiksha Karmi Board and Madarsa listed under the Madarsa Board is quantitatively and qualitatively the same experience, related to education and various educational projects and thus the list of projects defined is illustrative and not exhaustive and weightage in such employments, causes hostile discrimination to the petitioners. However, their grievance is that non-consideration or exclusion of experience gained by the petitioners for the purpose of considering them eligible & to participate in the selection process and also relaxation in age u/R. 15(x) of the Rules of 2015, is discriminatory and it has no

nexus with the object sought to be achieved & looking to the nature of work which has to be assigned to a person recruited as Vidhyalay Sahayak under the scheme of Rules. Broadly, the petitioners are working in various organizations and having experience to their credit, as alleged:--

"(1) Prerak in Sakshar Bharat Abhiyan,

(2) Anganbari Workers,

(3) Mid-day Meal,

(4) Working as Guest Faculty,

(5) Child Labour Scheme."

18. Before we may proceed to consider the submissions made at the Bar by counsel appearing for the parties, we may like to quote R.2(k), 15(x) & 25 of the Rajasthan Education Assistant Services Rules, 2013, which now stands repealed by virtue of R.40 of the Rules, 2015, ad infra:--

"2(k) "Experience" wherever prescribed in these rules for the purpose of weightage means the experience gained in any Government school/Government Educational Projects viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board. Note:-- Absence during service e.g. training, leave, deputation and summer vacation etc. shall also be counted as service for computing experience required for the purpose of weightage."

15(x) The person serving under any Government school/Government Educational Projects viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board shall be deemed to be within age limit, had they been within the age limit when they were initially engaged even though may have crossed the age limit at the time of direct recruitment."

25. Scrutiny of applications.--The Committee referred to in column 5 of the Schedule, shall scrutinize the applications received and merit shall be prepared by the Committee on the basis of such weightage as may be specified by the State Government for the marks obtained in minimum qualifying examination mentioned in the Schedule and such marks as may be specified by the State Government having regard to experience, exceeding one year acquired by persons other than those engaged through placement agency, working in any Government school/Government Educational Projects viz. Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme/Rajiv Gandhi Pathshala/Shiksha Karmi Board and Madarsa listed under the Madarsa Board. 16 Explanation: Wherever percentage of the marks cannot be ascertained due to grade awarded to the candidate in the particular examination, the median of the grade awarded to the candidate in such examination shall be basis for the preparation of the merit list."

19. Earlier validity of Rules quoted supra which too provide for experience gained in any Government School/Government Educational Projects viz. Lok Jumbish Pariyojana, Sarva Shiksha Abhiyan, District Primary Education Programme, Rajiv Gandhi Pathshala, Shiksha Karmi Board and Madarsa listed under the Madarsa Board and there was exclusion of experience gained by persons in informal education centre, Anganbari, School Coordinator, Resource Teacher, Prerak, Computer Assistant, workers of Special Child Labour School, etc., came to be examined by the Division Bench of this court in a batch of writ petitions D.B. Civil Writ Petition No. 10038/2013 & others and after the matter was heard at length, all such writ petitions came to be dismissed. We consider it appropriate to quote para-41 of the judgment ad infra:--

"41. In view of the aforesaid discussions, we are of the view that the classification under the Rules of 2013 for counting the experience for giving weightage is confined to those employees, who are employed in connection with school education and are directly under the control and supervision of the State Government and their salary and wages are paid directly from the public exchequer. All such employees, who have been given weightage of experience, have been working in connection with school education under the supervision of the Education Department of the State Government and thus, they form a separate class, which is identifiable and is distinct from the other categories of employment. The Rules of 2013, therefore, do not cause any discrimination for counting the weightage of only those categories of employees, and that the age relaxation to them also does not cause any discrimination to other categories of employments. The prayers made in the writ petition to declare the Rules 15 and 25 of the Rajasthan Education Assistant Services Rules, 2013 as ultra vires is without any substance and further, to provide the relaxation in age and other benefits to the petitioners, is meritless."

20. It was held by the Division Bench that classification for counting experience for giving weightage is confined to those employees, who are employed in connection with school education and are directly under the control and supervision of the State Government and their salary and wages are paid directly from the public exchequer and all such employees, who have been given weightage of experience, have been working in connection with school education under the supervision of the education department of the State Government and they form a separate class, which is identifiable and distinct from the other categories of employment and upheld the validity of R.15 & 25 of the Rules, 2013.

21. In the reply filed by the respondents, the reasons for denying the categories of employees except those of which experience has been recognized and considering them eligible u/R. 2(j), R.16 & Schedule-I of the Rules, 2015, it has been averred as under:--

PRERAK:

22. There was a scheme known as Continuing Education Scheme funded by Central Government and the State Government in the ratio of 75:25 and there were three categories of persons working in the said scheme namely Prerak, Assistant Prerak and Nodal Prerak and all such persons were required to work as part timer i.e. for 2-3 hours a day and they used to identify the illiterate persons and motivate them for education under Adult Education Programme which was a non-formal education programme and in this scheme Preraks were working village-wise. However, this scheme was closed w.e.f. 31.03.2009. However, a new scheme was floated known as Sakshar Bharat in the year 2010 and it was funded by Government of India and the State of Rajasthan in the ratio of 75:25 and there were two Preraks in each Gram Panchayat i.e. one lady and one male. Every Prerak was a part timer and has to work for 2-3 hours and was free to do job elsewhere and there was no restriction for it. The educational qualification for appointment as Prerak was secondary school whereas in the old scheme it was 8th standard. It has also been averred that Preraks were engaged Gram Panchayat-wise instead of village-wise in the projects which were non-formal educational projects and are not run and managed by the State Government like the schemes of which reference has been made in Schedule-I and in R.2(j) and R.15(x) of the Rules, 2015 and it is further stated that the projects which have been specifically referred to u/R. 2(j), R.15(x), R.16 & Schedule-I annexed to the Rules, 2015 are primarily run & managed by the State Government like Lok Jumbish Pariyojana, Sarva Shiksha Abhiyan, District Primary Education Programme, Rajiv Gandhi Pathshala, Shiksha Karmi Board and Madarsa listed under the Madarsa Board and the work which is performed by the petitioners as Preraks, in no manner, could be comparable with the work to be discharged by Vidhyalay Sahayak and their method of appointment, source of recruitment, method and hours of teaching and mode of payment are entirely different. The aforesaid view has also been taken note of by the Apex Court in the judgment dt. 19.07.1996 in the case of State of West Bengal & Others v. Monirujjaman Mullick & Others, wherein the Apex Court was pleased to decide the issue by observing ad infra:--

"We are of the view that the non-formal education centers cannot be equated with the primary schools which are regularly run by the Education Department of the State Government. Apart from the basic qualitative differences between the two institutions even the nature of work of the non-formal instructors and the primary school teachers is not identical. The method of appointment, the source of recruitment, method of teaching, hours of teaching and the mode of payment are entirely different."

23. There appears to be a reasonable basis for which the persons having experience as Prerak have not been included consciously under provisions of the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015.

24. Apart from the petitioners who worked as Prerak are large in number, few of the other similar categories, which either are not having one year's experience

to their credit or scheme not been included and have raised their grievance for treating them eligible and for participation in the process are as under:--

ANGANBARI:

25. The Anganwadi Workers are the basic functionaries of the ICDS who run the Anganwadi Centre and implement the ICDS scheme in coordination with the functionaries of the health, education, rural development and other departments. Their services also include the health and nutrition of pregnant women, nursing mothers and adolescent girls. They provide services to villagers, poor families and sick people across the country helping them access health care services, immunization, healthy food, hygiene and provide healthy learning environment for infants, toddlers and children. However, Anganwadi system in one village/area is managed by a single Anganwadi Worker, who is chosen from the community and has been trained for at least four months in areas such as health, nutrition and child care. Each Anganwadi Worker covers a population of about 1000 people.

26. It has been pleaded that Anganbari Worker is a part timer worker i.e. four hours a day and Anganbari Centers are not run by any educational institution and apart from it, Anganbari worker must be a woman and is engaged by Gram Sabha/Municipality and such candidate must be from coverage area of centres and if in the coverage area, population of SC/ST/Minority is 50%, then incumbent must be from that very community to work as Anganbari Worker and it is a project run by the Women and Child Development Department and the Division Bench of this Court in the judgment dt. 26.11.2014 (supra), also dealt with the kind of work which is being discharged by the Anganbari Worker at page-32 in para (viii), which reads ad infra:--

"(viii) Anganbari Workers:

These Anganbari Workers are appointed by the respective Gram Panchayats, they work for pre-school children. They help in bringing-up younger siblings so that the older siblings of the family may go to schools. These Anganbari Workers prepared the children so that they may go to school and their education may be started. These employees are not at all related to imparting of education in the government schools. Hence, there is no reason to count their experience for the purpose of Education Assistant."

MID-DAY MEAL:

27. The Government of India launched National Programme of Nutritional Support to Primary Education (Commonly known as "Mid Day Meal Scheme) on 15.08.1995 to provide mid-day meal to the children studying at primary stage and to improve the nutritional status of school-age children nationwide. It supplies free lunches on working days for students of primary and upper primary classes in Government Schools and Government Aided Schools under Sarva Shiksha Abhiyan, Education Guarantee Scheme and National Child Labour Project

run by the ministry of labour. The scheme was introduced by the State Government through Gramin Vikas and Panchayati Raj Department. The object of the scheme is to help & improve the effectiveness of primary education by improving the nutritional status of primary school children and to ensure presence of students and to take care of dropouts and to improve the nutritional status of children in Classes-I to VIII in Government, Local Body and Government Aided Schools and Education Guarantee Scheme (EGS) and Alternative and Innovative Education (AIE) Centers, National Child Labour Project (NCLP) Schools and Madarasa and Maqtabas supported under Sarva Shiksha Abhiyan (SSA); to encourage poor children, belonging to disadvantaged sections, to attend school more regularly and help them concentrate on classroom activities; and to provide nutritional support to children of elementary stage in drought-affected areas during summer vacation. The persons engaged in the Mid-day Meal Programme are not regularly appointed employees and the experience gained by them is not in any manner similar to the "experience" gained by academic/non-academic work in State Government School/State Recognized Non-Government School/State Government Educational Projects, as provided u/R. 2(j) of the Rules, 2015 and their experience cannot be compared with the kind of experience recognized by the rule making authority under the scheme of Rules, 2015.

GUEST FACULTY:

28. The Guest Faculty system was introduced in the year 2003 and the engagement was made on period basis or days basis. The Lecturers working in Senior Secondary Schools were paid Rs. 40/- per period and maximum amount could have been paid to Rs. 125/- per day with maximum ceiling of payment in the form of honorarium not to exceed Rs. 3,000/- per month. Similarly, Senior Teacher working in the Secondary and Senior Secondary Schools were also paid period-wise i.e. Rs. 30/- per period and maximum honorarium could have been Rs. 100/- per day and Rs. 2,500/- per month and the scheme was introduced for the persons working on the post of Teacher Gr.III and the persons engaged as Guest Faculty Teachers are not regularly appointed employees and they are part timers and the experience gained by them as Guest Faculty Teachers is not in any manner similar to the experience which has been taken note of by the rule making authority under the existing scheme of Rules, 2015.

CHILD LABOUR PROJECT:

29. The persons are engaged as Educational Instructors in the Special Child Labour Schools, through placement agency, and their work is to spread awareness to Labour Child towards education and also spread awareness/guidance to their parents about the education and study. These employees visit at the Chokhati where the labourers gather for daily labour and wages. These labour Schools are run by the NGOs and the experience gained by the persons while working in Child Labour Project in no manner could be equated with the "experience" which has been taken note of by the rule making authority under

the scheme of Rules, 2015. The Division Bench of this Court in the judgment dt. 26.11.2014 (supra), also dealt with the kind of work which is being discharged by the workers of Child Labour Project at page-32 in para (v), which reads ad infra:--

"(v) Labour Schools:

In these schools the candidates/employees are appointed through placement agency, and their work is to spread awareness to Labour Child towards education and also spread awareness/guidance to their parents about the education and study. These employees visit at the Chokhati where the labourers gather for daily labour and wages. These labour Schools are run by the NGOs."

30. It is jointly submitted by Mr. N.M. Lodha, Advocate General & Mr. D.V. Tholia, Additional Advocate General that the scheme of Rules, 2015 recognize experience of those persons who have gained experience in any State Government School/State Recognized Non-Government School/State Government Educational Projects and the bonus marks could be extended only to the candidates who had gained experience from State Government School/State Government Educational Projects in which the Government has direct control & supervision through the Department of Education. Further submits that the candidates who have gained experience from State Government School/State Recognized Non-Government School/State Government Educational Projects are eligible to participate in the selection process but the candidates who gained experience of State Recognized Non-Government School are not eligible to claim bonus marks u/R. 25 and for age relaxation u/R. 15(x) of the Rules, 2015 submits that eligibility and suitability in the selection process are two different concepts in service jurisprudence, a person might be eligible who has gained experience to his credit from academic/non-academic work in State Government School/State Recognized Non-Government School/State Government Educational Projects but he is not eligible to claim bonus marks u/R. 25 or relaxation in age provided u/R. 15(x) of the scheme of Rules, 2015 and submits that those who have gained experience in any State Government School/State Recognized Non-Government School/State Government Educational Projects like Lok Jumbish Pariyojana, Sarva Shiksha Abhiyan, District Primary Education Programme, Rajiv Gandhi Pathshala, Shiksha Karmi Board and Madarsa listed under the Madarsa Board, etc. the experience gained by them is directly in the schools or projects initiated, supervised by the State Government and they were selected by a selection process for which selection committees have been constituted by the State Government for selection of such of the employees. The petitioners might have served under the Government sponsored programmes but have not served any academic/non-academic work in the State Government Schools/State Government Educational Projects and their experience having no nexus with the work which is to be assigned, as provided under the Schedule-II annexed with the scheme of Rules, 2015. However, relaxation in age and bonus marks provided u/R. 15(x) & 25 of the scheme of Rules, 2015 that has been purposely

confined to the extent of such of the persons who have received their salary directly from the State Exchequer and apart from serving under the Government, the State Government has a direct control & supervision over the projects.

31. Ld. Advocate General has relied on the explanation of the scope of Arts. 14 & 16(1) of the Constitution in *State of Kerala and Another Vs. N.M. Thomas and Others*, AIR 1976 SC 490 : (1976) LabIC 395 : (1976) 1 LLJ 376 : (1976) 2 SCC 310 : (1976) 1 SCR 906 wherein while explaining the fundamental rights guaranteed under Arts. 14 and 16(1) of the Constitution of India, the Supreme Court held in paragraphs 21, 24, 25, 27, 28 & 34 ad infra:--

"21. Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16 which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(1) gives effect to Article 14. Both Articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment or appointment.

24. Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.

25. The crux of the matter is whether Rule 13AA and the two orders Exhibits P-2 and P-6 are unconstitutional violating Article 16(1). Article 16(1) speaks of equality of opportunity in matters relating to employment or appointment under the State. The impeached Rule and orders relate to Promotion from Lower Division Clerks to Upper Division Clerks. Promotion depends upon passing the test within two years in all cases and exemption is granted to members of Scheduled Castes and Scheduled Tribes for a longer period namely, four years. If there is a rational classification consistent with the purpose for which such classification is made equality is not violated. The categories of classification for purposes of promotion can never be closed on the contention that they are all members of the same cadre in service. If classification is made on educational qualifications for purposes of promotion or if classification is made on the ground that the persons are not similarly circumstanced in regard to their entry into employment, such classification can be justified. Classification between direct recruits and promotees for purposes of promotion has been held to be reasonable in *C.A. Rajendran v. Union of India*.

27. There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged

to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection *State of Mysore v. V.P. Narasinga Rao*.

28. This equality of opportunity need not be confused with absolute equality. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens. Articles 16(1) and (2) give effect to equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Promotion to selection post is covered by Article 16(1) and (2).

34. The equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. *Ganga Ram v. Union of India*."

32. *Ld. Advocate General* has also relied upon a judgment of the Supreme Court in *State of Kerala Vs. M.K. Krishnan Nair and Others*, AIR 1978 SC 747 : (1978) LabIC 723 : (1978) 1 SCC 552 : (1978) 2 SCR 864 in which it was held in paragraph 10 as follows:--

"It may be stated that by way of deriving support for its finding that there had come into existence a complete integrated Judicial Service in the State of Kerala prior to February 12, 1973, the High Court has pointed out that in a Full Bench decision of that Court in *P.S. Menon's case*, (supra), the Full Bench has in connection with the 1959 (Rules in G.O. MS 851 dated September 24, 1959) observed that the said Rules had been framed for the absorption of the personnel, who were occupying the posts of District Magistrates and Sub Divisional Magistrates into the Civil Judiciary. The High Court has further pointed out that when *P.S. Menon's case* (supra) was carried to the Supreme Court in appeal, even this Court in its judgment has referred to the ad hoc Rules framed on February 11, 1966 as being meant for absorption of the Criminal Side Judicial Officers of the Travancore-Cochin Branch who were kept in the separate cadre into Civil Judiciary. The observations of the Kerala High Court in the Full Bench decision in connection with the 1959 Rules in G.O. MS 851 and of this Court in connection with the 1966 ad hoc Rules are obviously correct, but, as discussed earlier, both these Rules had a limited operation effecting a partial absorption of such of the incumbents of the eleven posts which were kept in a separate cadre who were to be found suitable by the High Court into Civil Judiciary; but from this fact it is impossible to draw the inference that there had come into existence a complete integrated Judicial Service in the entire State of Kerala in the sense that all posts on the Magisterial Side had got integrated with those on the Civil Side. On the other hand the very fact that there have been in operation three

separate sets of Rules, namely, (1) the Kerala State Higher Judicial Service Rules 1961 (dealing only with District and Sessions Judges) (2) the Kerala Subordinate Magisterial Judicial Service Rules 1962 and (3) the Kerala State Judicial Service Rules (Special Rules) of October 5, 1966, shows that there was no integration of the Judicial Magisterial posts with Judicial Civil posts. If that be so, there will be no question of singling out of certain posts from any integrated service for a separate, avenue of promotion under Exhs. P1 and P2 respectively as contended for by the petitioner and the scheme of bifurcation as contained in Exhs. P1 and P2 cannot be regarded as being violative of either-Art. 14 or Art.

16. In this view of the matter it is unnecessary for us to deal with the decision of this Court in *State of Mysore v. Krishna Murthy & Ors.* (supra), on which reliance was placed by counsel for the original petitioner, for, the ratio of that decision would be inapplicable to the instant case. In that case on an examination of the Mysore State Accounts Services' 882 Cadre and Recruitment Rules, 1959, the High Court had come to the conclusion, which was accepted by this Court, that there was a clear and complete integration brought about between the P.W.D. Accounts unit and the Local Fund Audit. unit under the common administrative control of the Controller of State Accounts, the qualifications and status of the officers of the formerly separate units being identical, their work being of the same nature, the recruiting authorities being the same and the standards observed and tests prescribed for entry into the formerly separate units being identical and as such the impugned Notifications which resulted in a striking disparity in the promotional opportunities between the officers of the two wings in the, same category were struck down. In the instant case before us, we are clearly of the view that prior to the introduction of the scheme of bifurcation as per Exhs. P1 and P2 a complete integrated Judicial Service in the State of Kerala in the sense that all Magisterial posts on the Criminal Side (all District Magistrates and Sub Divisional Magistrates) had got integrated with the posts of Sub Judges and Munsiffs on the Civil Side, had not come into existence and, therefore, in the absence of such a complete integrated Judicial Service having come into existence, it was open to the State Government to bifurcate the service into two Wings-Civil and Criminal-in the manner done under Exhs. P1 and P2 respectively and to provide for a particular type of option specified therein and no violation of Arts. 14 and 16 is involved."

33. Ld. Advocate General has also relied on the judgment of the Supreme Court in *Om Kumar and Others Vs. Union of India*, (2000) 3 JT 92 : (2000) 7 SCALE 524 : (2001) SCC(L&S) 1039 : (2000) 4 SCR 693 Supp , in which it was held in paragraph 32 as follows:--

"32. So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the

adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable. [see *Air India v. Nergesh Meerza* (SCC at pp.372-373)]. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in *State of A.P. v. McDowell and Co.*"

34. *Ld. Advocate General* has cited the judgment in *National Council for National Council for Teacher Education and Others Vs. Shri Shyam Shiksha Prashikshan Sansthan and Others etc. etc.*, AIR 2011 SC 932 : (2011) 2 SCALE 59 : (2011) 3 SCC 238 : (2011) 2 SCR 291 : (2011) 2 UJ 1039 : (2011) AIRSCW 1075 : (2011) 1 Supreme 673 , in which the Supreme Court held in para 22 as follows:--

"22. Article 14 forbids class legislation but permits reasonable classification provided that it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and the differentia has a rational nexus to the object sought to be achieved by the legislation in question. In *Re: The Special Courts Bill, 1978*, AIR 1979 SC 478 : (1979) 1 SCC 380 : (1979) 2 SCR 476 , *Chandrachud, C.J.*, speaking for majority of the Court adverted to large number of judicial precedents involving interpretation of Article 14 and culled out several propositions including the following: (SCC pp.424-25, para 72)

"72.(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law

enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

35. Taking note of the fundamental principles laid down by the Apex Court and after examining the matter in detail, we do not find any force in the submissions made by counsel for the petitioners that their experience in the employments, as alleged, under various schemes, has direct nexus with the kind of work to be discharged by Vidhyalay Sahayak, as provided under Schedule-II appended to the Rules and as the experience gained by the persons of academic/non-academic work under the State Government School/State Recognized Non-Government School/State Government Educational Projects are made eligible while they were being permitted to participate in the selection process but the benefit has not been extended to those having experience of working in various projects sponsored by the State Government and thus it remains confined to the experience gained by the persons of academic/non-academic work in the State Government School/State Recognized Non-Government School/State Government Educational Projects and their contention is that non-consideration of their experience causes discrimination and the action is violative of Art. 14 of the Constitution of India.

36. In Kallakkurichi Taluk Retired Official Association, Tamilnadu and Others etc. etc Vs. State of Tamilnadu and Others etc. etc, (2013) 2 AD 133 : (2013) 136 FLR 764 : (2013) 2 JT 42 : (2013) 2 LLJ 9 : (2013) 1 LLN 360 : (2013) 1 SCALE 424 : (2013) 2 SCC 775 : (2013) 2 SCC(L&S) 452 : (2013) 1 SCT 780 : (2013) 1 SLJ 413 , the Hon"ble Supreme Court has held that a valid classification is based on a just objective. The result to be achieved by the just objective pre-supposes, the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the

distinguishing rational has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved and this what has been held by the Hon'ble Supreme Court in *State of M.P. Vs. Rakesh Kohli and Another*, AIR 2012 SC 2351 : (2012) 3 CTC 770 : (2012) 3 RCR(Civil) 158 : (2012) 5 SCALE 467 : (2012) 6 SCC 312 : (2012) 113 SCL 255 : (2012) AIRSCW 3245 : (2012) 3 Supreme 675 while reiterating the tests of the permissible classification laid down in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, AIR 1958 SC 731 : (1959) 1 SCR 629 wherein it was held that there is always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The court must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts, which can be conceived existing at the time of legislation.

37. We do find substance in the contention of the Advocate General that the State Government was fully conscious while inserting one year of experience gained by academic/non-academic work in the State Government School/State Recognized Non-Government School/State Government Educational Projects like Lok Jumbish Pariyojana, Sarva Shiksha Abhiyan, District Primary Education Programme, Rajiv Gandhi Pathshala, Shiksha Karmi Board and Madarsa listed under the Madarsa Board and the State Government has purposely included persons of such categories of employments, which are connected and related to school education and the State Government can have a direct or indirect control and supervision over them being recognized schools by the State Government and all other categories of employments which are not connected with the school education are purposely excluded as they are either non-formal education projects which are not directly connected with school education or are not run and managed by the Department of Education and merely parting with the funds for such projects by the State Government under Integrated Child Development Scheme, Sarva Shiksha Abhiyan, Anganwadi, Mid-Day Meal, Guest Faculty, Child Labour Projects, etc. to be sufficient to consider them to be at par with the kind of experience which has been taken note of by the rule making authority in holding the candidates to be eligible, permitting them to participate in the selection process, as contemplated under the Schedule-I annexed to R.16 &

R.2(j) of the scheme of Rules, 2015.

38. The Preraks were working in a non-formal education programme and the method of appointment, source of recruitment, method of teaching, hours of teaching and mode of payment to Preraks are entirely different from the persons who are specifically included under the scheme of Rules, 2015 and even the computer operators are appointed in Sarva Shiksha Abhiyan by the placement agencies along with computer for providing computer instructions to the students and the nature of their employment cannot be equated with a kind of experience which is required by the rule making authority under the present scheme of Rules, 2015.

39. As regards Anganwadi Workers are concerned, they are appointed by the Gram Panchayats under the Integrated Child Development Scheme and they carry out the work of integrated child development including their health and elementary education and such of the employees are engaged by Gram Panchayats and paid by the funds allocated to the Gram Panchayats. They are neither concerned with school education nor are working under the control and supervision of the Director of Elementary Education looking after the elementary education.

40. So far as the persons engaged in the Mid-day Meal Programme are concerned, they are not the employees of State Government and neither they work directly under the control & supervision of the State Government nor paid by the State Government and the experience gained by them is not in any manner similar to the "experience" gained by academic/non-academic work in State Government School/State Recognized Non-Government School/State Government Educational Projects, as provided u/R. 2(j) of the Rules, 2015 and they are not eligible to participate in the selection process initiated by the respondents pursuant to the advertisement dt. 21.07.2015.

41. As regards the persons engaged as Guest Faculty Teachers are concerned, they too are not the employees of the State Government and they are part timers and neither work directly under the control & supervision of the State Government and the experience gained by them is not in any manner similar to the experience which has been taken note of by the rule making authority under the existing scheme of Rules, 2015 and they could not be considered eligible to participate in the selection process for the post of Vidhyalay Sahayak under the Rules, 2015.

42. As regards persons engaged in Child Labour Project are concerned, the Labour Schools are run by NGOs, in which the employees are required to motivate the children of the labourers by visiting Chokhati, where the labourers gather for daily labour and wages. Such employees are not appointed by the State Government nor working directly under the control and supervision of the State Government, nor paid by the State Government.

43. After having gone through the submissions & discussions which has taken

place, we are of the view that the classification which is made under the Rules, 2015 for counting experience as noticed under the Schedule-I appended to R.16 & R.2(j) of the scheme of Rules, 2015 which has been confined to all such persons, whose experience has been recognized by the rule making authority have been working in connection with school education under the direct or indirect supervision of the Education Department of the State Government and thus, they constitute a separate class which is identifiable and distinct from the other categories of employment of which discussion has been made by us in detail. The R.2(j), R16 & Schedule-I appended to the Rules, 2015 do not cause any discrimination for counting the experience of those categories of persons which have been taken note of by the rule making authority and in our considered view, it does not cause any discrimination to other categories of employments. The prayer made in the writ petitions to declare the R.2(j), R.16 & Schedule-I appended to the Rajasthan Vidhyalay Sahayak Subordinate Service Rules, 2015 as ultra vires is without any substance and all the writ petitions being devoid of merit deserves to be dismissed.

44. In few of the writ petition, validity of R.15(x) & R.25 of the scheme of Rules, 2015 is also under challenge but since we have upheld the validity of R.2(j), R.16 & Schedule-I appended to the Rules, 2015, we leave it open to examine the validity of Rs. 15(x) & R.25 of the scheme of Rules, 2015 in similar other appropriate proceedings, if matter arises in any independent proceedings.

45. Consequently, the instant batch of writ petitions stands dismissed with no order as to costs.