

(1968) 11 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition No. 8 of 1967

Lalit Mohan Deb and others	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 11-11-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 16, 16(1)
Essential Commodities Act, 1955 — Section 3

Citation : (1968) 11 GAU CK 0001

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Advocate : S.N. Bose, N.C. Saha, B.C. Dev Barma and M.K. Dutta, for the Appellant; H.C. Nath, Govt. Advocate, J.K. Roy and B.B. Gupta, for the Respondent

Judgement

C. Jagannadhacharyulu, J.C.

1. The petitioners, who are working as Assistants in the Civil Secretariat, Tripura Administration in Agartala, obtained a rule nisi from this court under Article 226 of the Constitution of India against the respondents 1 to 3 namely,

(i) Union of India through the Secretary to the Government of India, Ministry of Home Affairs, New Delhi,

(ii) The Government of Tripura through the Chief Secretary, Agartala and

(iii) The Chief Secretary, Government of Tripura, Agartala and the respondents 4 to 20, who are working now as Assistants in the Selection Grade in the Civil Secretariat, Tripura Administration in Agartala to show cause why a Writ of Mandamus should not be issued commanding the authorities concerned namely, the respondents 1 to 3 to cancel the revised scale of pay under Tripura Employees' (Revision of Pay and Allowances) Rules of 1963 providing for enhanced scale of pay for 25 per cent of the posts of Assistants under Selection Grade and also to revise the pay scale of the petitioners viz Rs. 150-5-195-

EB-5-250/- by bringing it in conformity with the pay scale of the respondents 4 to 20 In the Selection Grade at Rs. 225-10-325-15-475/-.

2. The respondents showed cause against the rule nisi.

3. The petitioners are working as Assistants in the Civil Secretariat, Tripura Administration in Agartala. After the integration of the Territory of Tripura with the Union of India on 15-10-1949, reorganisation of the administrative set up of Tripura was introduced in 1953 with retrospective effect from 1-4-1950. The Civil Secretariat staff was given the scale of pay as under:

Name of post.

Scale of pay.

1.

Head Assistants

Rs. 200-10-300/-

2.

Assistants

Rs. 80-4-160-5-180/-

3.

Clerks.

Rs. 55-3-118-4-130/-

4. The Government of India set up a Commission of Enquiry in 1957 on emoluments and conditions of service of Central Government employees. It also considered the principles to be followed in fixing up the scales of the Central Government employees of the Union Territories. The Tripura Administration Pay Committee submitted its report. In para 7 of the report, Volume I, the Pay Committee stated that the scales of pay and allowances in Tripura might be revised on the basis of those under the West Bengal Government and that a further revision might be made if and when necessary in the light of the recommendations of the West Bengal Pay Committee and the decisions of the Government of that State on the same. In para 10 (v) the Pay Committee stated that considering that the service cadres in Tripura were relatively much smaller, it would be necessary to make some special arrangements for providing adequate avenues of promotion and that for that purpose it suggested that selection grades might be sanctioned wherever the number of employees in a particular grade or scale was fairly large and the chances of promotion to the next higher post were limited. As can be seen from page 20 of the report, the Pay Committee suggested introduction of a "selection grade" for the Assistants working in the Secretariat. It stated that the then pay scale of all the Assistants in the

Secretariat was Rs. 80-4-160-5-180/-, while the pay scale under the West Bengal Government was Rs. 150-10-370-15-400/- for Upper Division Assistants and Rs. 80-4-160-5-180/-for Lower Division Assistants, that the pay scale in the Secretariat in Tripura was extremely low, that the Assistants of the Secretariat did not have sufficient chances of promotion, that, due to want of selection grade, the Assistants of the Secretariat were always on the look out for better jobs and that experienced Assistants were drifting away resulting in weakening of the Secretariat establishment. So, to improve the situation, the Pay Committee recommended the introduction of a "selection grade" for the Assistants. It suggested that at least 25 per cent of the posts of Assistants should carry the higher scale of Rs. 150-10-370-15-400/- and that the selection grade might be given to the Assistants on the basis of seniority-cum-merit.

5. In pursuance of the recommendation of the Pay Committee, the Government of India decided to revise the pay scales of the Tripura employees in accordance with those in West Bengal for equivalent posts. Vide Ext. A-1 letter of the Government of India, Ministry of Home Affairs dated 31-1-1961. The Government of India stated therein that the pay scales in Manipur and Tripura should conform as far as possible to the pay scales obtaining in Assam and West Bengal respectively for equivalent posts. Ext. A-2 shows that in West Bengal Secretariat there are five categories of posts namely. Senior Head Assistants Junior Head Assistants, Upper Division Assistants, Lower Division Assistants and Typists. So far as the Assistants are concerned, they are thus in two categories designated as Upper Division Assistants and Lower Division Assistants. The following are their pay scales, as revised from time to time.

Designation.

Pre-1931 scale.

Post-1931 scale.

Revised scale in 1950.

Revised scale in 1961.

Upper Division Assistant.

125-100/-

115-350/-

150-400/-

225-475/-

L.D. Assistant

60-150/-

60-130/-

80-180/-

150-250/-

with selection grade 175-200/-

with selection grade 150-175/-

No selection grade.

No selection grade.

6. In pursuance of the decision of the Government of India contained in Ext. A-1 the pay scales of Class III employees in the Civil Secretariat, Tripura were revised with effect from 1-7-1959 as follows:

Existing scale

Revised scale

SI. No.

Name of the post-

of pay.

of pay (w.e.f. 1-7-59),

Remarks.

1.

Head Assistant (16 posts)

Rs. 200-10-300/-

Rs. 150-400-plus special pay of Rs. 60/- p. m.

To be redesignated as Superintendent.

2.

Assistant (101 posts)

Rs. 80-180/-

(i) Rs. 150-10-800/-(for 25% posts)

(ii) Rs. 80-180/- (for

others).

Selection Grade.

3.

Clerks (75 posts)

Rs. 55-130/-

No Revision.

7. By a notification dated 4-2-1964 the Government of India promulgated Tripura Employees" (Revision of Pay and Allowances) Rules of 1963 in exercise of the powers conferred by the proviso to Article 309 of the Constitution, which came into force with retrospective effect from 1-4-1961. Pages 13 and 14 of the printed Rules relate to the Secretariat Department. The pay of the Superintendent was revised from Rs. 150-400/- with special pay of Rs. 60/- into Rs. 225-10-315-EB-10-325-15-475/- with special pay of Rs. 60/- per mensem. The pay of Assistants and Accountants was revised from Rs. 80-180/- into Rs. 150-5-195-EB-5-250/- and the pay of the selection grade Assistants for 25% of the posts was revised from Rs. 150-10-300/- into Rs. 225-10-325-115-475/-

8. The petitioners plead that distinction and discrimination were made by the above revisions among the Assistants by classifying 75% of them as "Assistants" and 25% as "Assistants in selection grade", and by giving the latter higher scale of pay though they perform similar work and are placed in the same cadre, that the revision does not conform to the pay scales obtaining in West Bengal and that the impugned revisions are hit by Articles 14 and 16 of the Constitution of India.

9. The petitioners represented their case in the Staff Committee meetings held on 20-11-1961, 15-2-1962, 20-5-1963, 4-3-1964. Vide Exts. A-3, A-14, A-15, A-16 and A-17. They also made several representations to the higher authorities as can be seen from Ext. A-4 letter of the Under Secretary to the Government of Tripura to the first petitioner and the subsequent notice of demand for justice dated 15-3-1967 (vide Ext. A-5) requesting the Government to revise their pay scale, so that it might be on par with that existing in West Bengal Secretariat Hence the petition.

10. The respondents 1 to 3 filed counter stating that the letter of the Government of India contained in Ext. A-1 shows that the pay scales in Tripura should be "as far as possible" in accordance with those in West Bengal, that the expression "as far as possible" is of special significance, that the scales of Tripura might vary from those in West Bengal in suitable cases and that the Secretariat Assistants in Tripura were equated with the Lower Division Assistants in West Bengal. The respondents 1 to 3 created a selection grade with higher pay for 25 per cent of the Assistants in the same post to provide better scale for seniors having merit, who may not get a chance of promotion on account of paucity of promotion posts and stagnate on the maximum pay on the scale. The corresponding posts in West Bengal are under the category of West Bengal Assistants. The basis for selection of some of the Assistants to the higher scale is seniority-cum-merit as envisaged at Pages 7 and 20 of Volume I of the report of the Tripura Administration Pay Committee. The object of introducing the classification is to prevent the weakening of the Secretariat establishment and to

improve the situation by retaining the Assistants with higher pay scale and the differentia was sought to be achieved by the statutory rules.

11. The other respondents 4 to 20 did not file any counter.

12. The point, which arises for determination on the basis of the pleadings, is whether reservation of 25% of the Assistants in the Civil Secretariat under the category of "selection grade" posts with higher pay is liable to be struck down as contravening the provisions of Articles 14 and 16 of the Constitution of India.

13. The main contention of the learned Counsel for the petitioners is that the reservation of 25% of the posts among the Assistants under the category of selection grade posts is arbitrary, that there is no indication in the Tripura Employees" (Revision of Pay and Allowances) Rules, 1963 to show how the selection would be made, that discrimination is made among the Assistants of the same cadre by dividing them into two categories, though they perform the same kind of work and duties and that, therefore, the reservation of 25% of the posts has to be struck down as offending against the provisions of Articles 14 and 16 of the Constitution of India.

Before dealing with the various rulings relied on by the learned Counsel for both the sides, it will be useful to mention here itself that the Government of Tripura appointed a departmental promotion committee, which would recommend appointment of the Assistants to the selection grade on the basis of seniority-cum-merit. The Assistants are required to appear in a qualifying test and answer two papers viz. (i) in general English including precis writing, noting and drafting and (ii) office procedure, rules and regulations which government servants generally are supposed to be conversant with. The written papers carry 100 marks each. The qualifying marks are one-third of the aggregate. After the written examination is held, those who qualify themselves are required to appear for interview before the departmental promotion committee. Such of the Assistants, who are considered by the Committee to be fit for selection grade, would be put on a panel. Selection grade is given to the Assistants in the order of their seniority. Vide Ext. B-5 copy of the note of the Chief Secretary dated 29-8-1961 and Ext. B-6 memorandum incorporating the principles of selection. According to the respondents, the respondents 4 to 20 and some others, who were not made parties to the writ petition, were appointed in accordance with the memorandum contained in Ext. B-6. So, there are separate executive instructions for preparing a panel of the Assistants in the selection grade with higher pay.

14. Article 14 of the Constitution of India relates to the equality of the citizens before the law. The scope of Article 14 of the Constitution of India was indicated in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, . At page 547 it is stated that it is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two

conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

It is also well established by the decisions of the Courts that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

Article 16 of the Constitution of India relates to the equality of opportunity for all the citizens in matters relating to employment or appointment to any office under the State. The scope of Art. 16 of the Constitution of India was laid down in *The General Manager, Southern Railway Vs. Rangachari*, . Clauses (1) and (2) of Article 16 give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15 (1) of the Constitution of India. The three provisions form part of the same constitutional code of guarantees and supplement one another. Article 16(2) prohibits discrimination and thus assures the effective enforcement of the fundamental right of equality of opportunity guaranteed by Article 16(1).

15. The learned Counsel for the petitioners relied on a number of rulings, where discrimination was held to have been made out. In *Mannalal Jain Vs. The State of Assam and Others*, the question was whether the State authority could grant a license under Assam Food Grains (Licensing and Control) Order of 1961 only to a co-operative society and not to others. It was held that Clause (5) (e) of the Order entitling the State authority to grant a license to a co-operative society proceeded on the footing that a monopoly should be created in favour of co-operative societies and that, therefore, there was a discrimination as against a non-co-operative society. It was further held that if the preference had a reasonable relation to the objects of the legislation set out in Section 3 of the Essential Commodities Act, then sub-clause (e) of Clause 5 of the Assam Food Grains (Licensing and Control) Order of 1961 could not be held to be bad on the ground of class legislation, but that the passing of an order under the sub-clause on the footing of creating a monopoly in favour of a co-operative society for a purpose not contemplated by it would amount to discrimination and denial of the guarantee of equal protection of the law.

In *Karimbil Kunhikoman Vs. State of Kerala*, the question was whether sections 52 and 64 of Kerala Agrarian Relations Act (Act IV of 1961) violated Article 14 of the Constitution. The object of the Act was to work out the purchase price or the market value first for the purpose of determining compensation and then make different cuts from the purchase price or the market value according to the question whether in one case the purchase price or the market value was Rs. 15,000/- and in another case more than that amount. It was held that there was

no reason why when two persons were deprived of their property, one richer than the other, they should be paid at different rates when the property, of which they were deprived, was of the same kind and differed only in extent.

In *J. Pandurangarao Vs. Andhra Pradesh Public Service Commission*, , it was held that in testing the validity of any rules, the Court has to consider the true scope and effect of the impugned rule itself, that the decision of the question would have to be confined to the relevant considerations in respect of the said rule and no more and that it is not an acceptable argument that the impugned rule cannot and need not be considered by itself, but that it must be treated as a part of a bigger scheme of rules. In that case, rule 12 (h) in the rules framed by the Governor of Andhra Pradesh for recruitment to the post of a District Munsiff required that the applicant must be practising as an Advocate of the High Court. It was held that the expression "High Court" in the context meant the Andhra Pradesh High Court and not any High Court in India, that the rule introduced a classification between one class of Advocates and the rest and that the said classification was irrational inasmuch as there was no nexus between the basis of the said classification and the object intended to be achieved by the relevant scheme of rules. It was, therefore, held that rule 12 (h) was unconstitutional and ultra vires. This decision was cited by the learned Counsel for the petitioners to show that the Rule, which is challenged, must itself show the rationale behind it.

In *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, there was discrimination in regard to termination of service of railway servants by notice under the Railway Establishment Code without any rational basis between the railway servants and the other public servants. There was no guiding principle for exercising the discretion and the rules were held invalid.

In *A.P. Krishnasami Naidu etc. Vs. State of Madras*, , section 5(1) of the Madras Land Reforms (Fixation of Ceiling on Land) Act (Act 58 of 1961) fixed a double standard for the purpose of ceiling, which resulted in discrimination between persons equally circumstanced. It was held that section 5(1) of the Act was violative of the fundamental right enshrined in Article 14 of the Constitution.

In *Aswini Kumar v. Director of Public Instructions, Government of West Bengal*, Writ Petn. in Civil Rule No. 253 (W) of 1962 decided by the Calcutta High Court on 28-9-1964 (Cal) the petitioners, who were all graduates, were deputed to the same grade and rank of Sub-Inspectors of Schools with the same pay scale along with others, who were M. As. and Honours graduates irrespective of any difference in their individual qualifications. They formed a single unit of employment. Subsequently, the Government of West Bengal introduced different scales of pay with retrospective effect for graduates on one hand and for others holding Master degrees or Honours degrees, whose scale of pay was more than the scale of pay of the graduates. It was held that the subsequent differential treatment on the basis of qualification in the matter of pay as between members of the same unit was violative of Article 16 (1) of the Constitution.

In *C. Channabasavaiah Vs. State of Mysore and Others*, there was a foot-note to sub-rule (3) of Rule 4 of the Mysore Public Service Commission (Functions) Rules, 1957, which read that nothing contained in the rules precluded the Commission from considering the case of any candidate possessing the prescribed qualifications brought to its notice by the Government, even if such a candidate did not apply in response to the advertisement of the Commission. Some of the candidates selected under sub-rule (3) had already appeared at the viva-voce test and some of them obtained very poor marks. It was held that their selection under the sub-rule by virtue of the foot-note could not be justified on the ground that the candidates belonged to the backward classes and some to scheduled castes and that such a dealing with public appointments was likely to create a feeling of distrust in the working of the Public Service Commission.

In *Roshan Lal Tandon Vs. Union of India (UOI)*,) at the time when the petitioner and other direct recruits were appointed to grade "D" of the posts of trained examiners, there was only one class in grade "D" formed of direct recruits and the promotes from the grade of artisans. The recruits from both the sources to grade "D" were integrated into one class. It was held that no discrimination, could, therefore, be made in favour of recruits from one source against the recruits from the other source in the matter of promotion to grade "C".

In *LaLa Hari Chand Sarma Vs. Mizo District Council and Another*, it was held that section 3 of the Lushai Hills District (Trading by non-Tribals) Regulation (2 of 1953) which left to the licensing authority unrestricted power in the matter of granting or refusing license or its renewal to non-tribal traders was violative of Article 19 (1) (g) of the Constitution.

In *K. Koteswararao and Others Vs. State of Andhra Pradesh by Secretary Board of Revenue (Excise), Hyderabad and Another*, prior to 1954 the work of prohibition enforcement was attended to by regular police force in some districts and by separate Prohibition Departments in other districts. In 1956 the Prohibition Department was abolished and the work was entrusted entirely to the Police Department. In 1960 the work was again taken away from the Police Department and was entrusted to a new department called Excise and Prohibition Department. In 1965 the new department was again sought to be reorganised. The Board of Revenue prepared final list of persons to be retained in the new set up. It was held that the delegation of work of preparing final list of officers to be retained in the new set up was bad in law for want of any guidance and that, when something had to be done within the discretion of any authority, it should be done according to the rules of reason and justice and not according to the personal opinion of the officer concerned or somebody else and that it should not be arbitrary and vague.

In *Punjab State and Another Vs. Lekh Raj Bowry and Others*, Vaidyas and Hakims were integrated into a single cadre in the United Punjab in the State Service Class III (Technical) on the same scale of pay with the same duties. After the Punjab Ayurvedic Department Class III (Technical) Service Rules, 1963 were

framed by the Governor, they continued to be treated on an equal footing. But, in 1964 the Government notified that the revised scale of pay mentioned therein would be admissible to Vaidyas and Hakims who held 5 years degree and not to those who held 3 or 4 years degree. It was held that some members of the unified cadre could not be treated dissimilarly as against others of the same cadre in the matter of their pay and other relevant conditions of service on the ground that some of them possessed higher or better qualifications.

In *State of Mysore Vs. S.R. Jayaram*, , the last part of R. 9 (2) of the Mysore Recruitment of Gazetted Probationers" Rules of 1959 reserved to the Government the right of appointment to any particular cadre any candidate whom it considered more suitable for such cadre. But, the rules were silent on the question as to how the Government was to find out the suitability of a candidate for a particular cadre. The Rules did not give the Public Service Commission the power to test the suitability of a candidate for a particular cadre or to recommend that he was more suitable for it. Nor was there any provision in the Rules under which the Government could test the suitability of a candidate for any cadre after the result of the examination was published. It was held that the recommendation of the Public Service Commission became an irrelevant material, that the Government could do whatever it liked and that therefore, the last part of Rule 9 (2) of the Rules was liable to be struck down as violative of Articles 14 and 16 (1) of the Constitution.

16. Now, it has to be noted that in West Bengal there are two grades among the Assistants as can be seen from Ext. A-2. They are divided into Upper Division Assistants with higher scale of pay and Lower Division Assistants with less scale of pay. In Tripura, no such classification was made among the Assistants. But, 25% of the total number of posts of Assistants were reserved for what are called as "selection grade" posts carrying higher scale of pay. So, in substance and in effect the "selection grade" Assistants stand on a par with the category of "Upper Division Assistants" in West Bengal, while the remaining Assistants stand on a par with Lower Division Assistants in West Bengal. As already pointed out, due to paucity of chances for promotion, the Tripura Administration Pay Committee suggested that 25% of the posts of the Assistants should be reserved for selection grade with higher pay and that the selection grade might be given to the Assistants on the basis of seniority-cum-merit. Vide page 20 of the report. Accordingly, the Administration of Tripura issued certain instructions regarding the manner in which the 25% of the posts of the Assistants should be selected for the selection grade. Vide Exts. B-5 and B-6. According to the respondents, the respondents 4 to 20 and some others were appointed in the selection grade after they passed the tests and after the departmental promotion committee selected them. The rulings relied on by the respondents" counsel are more to the point in question whether such a reservation could be made and whether recruitment to the selection grade could be made under executive instructions on the basis of merit-cum-seniority. No employee has any right to promotion as a matter of right and the Government can determine the suitability of a person for

promotion. Vide *Rudraradhya v. State of Mysore*, AIR 1961 Mys 247, The High Court, Calcutta Vs. *Amal Kumar Roy*, M.A. *Moqeen v. State of Mysore*, AIR 1963 Mys 219 and *Arun Kumar Bhattacharjee and Others Vs. State of West Bengal and Others*, . Also, it is clear that the Government can appoint a Committee like the departmental promotion committee as in the present case for obtaining its views about the candidates who are eligible to be promoted. Vide *K.N. Thankam Vs. State of Kerala and Others*, . It was held in that case that it was open to the Government to seek the advice of an expert body in the matter of selection to a post, that the said power is inherent in the executive power of the Government and that it is not necessary that there should be any statutory provision or rules under Article 309 of the Constitution to enable the Government to declare a post a selection post.

In two rulings the Supreme Court held that in the matters of appointment and promotion no rules regarding the same need be shown before the Government exercises its executive powers. In *B.N. Nagarajan and Others Vs. State of Mysore and Others*, , rule 3 of the Mysore State Civil Services (General Recruitment) Rules of 1957 contained the words "shall be asset forth in the rules of recruitment of such service specially made in that behalf". It was held that rule 3 did not imply that, till the rules were made in that behalf, no recruitment could be made to any service, that it was not obligatory under the proviso to Article 309 of the Constitution to make rules of recruitment before a service could be constituted or a post created or filled up, that the State Government had executive power in relation to all matters, with respect to which the Legislature of the State had power to make laws and that, therefore, there is nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It was further held that the rules usually take a long time to make, that various authorities have to be consulted and that it could not have been the intention of Rule 3 to halt the working of the public departments till the rules were framed. It was also pointed out that if the Government advertised the appointments and the conditions of service of the appointments and made a selection, after advertisement, there would be no breach of Article 15 or Article 16 of the Constitution, because everybody, who was eligible in view of the conditions of service would be entitled to be considered by the State.

Sant Ram Sharma Vs. State of Rajasthan and Another, is more to the point. The Supreme Court held that promotion to selection grade posts (in Indian Police Service) was not automatic on the basis of ranking in gradation list, that promotion was primarily based on merit and not on seniority alone and that it could not be said that till the statutory rules governing promotion to the selection grade posts were framed the Government could not issue administrative instructions regarding the principles to be followed and that, if the cases of all the eligible candidates were considered before appointment to such posts, there would be no violation of Articles 14 and 16 of the Constitution.

17. It is also clear from the rulings of the Supreme Court that persons doing the same kind of work are not bound to get the same scales of pay and that in one cadre there can be different scales of pay. In *Kishori Mohanlal Bakshi Vs. Union of India*, it was held that the abstract doctrine of equal pay for equal work has nothing to do with Article 14 of the Constitution and that it could not be said to be violated where the pay scales of Class I and Class II income tax officers are different, though they do the same kind of work.

In *State of Punjab Vs. Joginder Singh*, it was held that it cannot be contended that the State cannot constitute two services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service and that constitution of such services is not violative of Article 14 of the Constitution. It was also held that the proposition Article 14 requires that equal work must receive equal pay or that if there is equality in pay and work there have to be equal conditions of service is untenable and that the Government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the administration and that the limitations imposed by the Constitution are not such as to preclude the creation of such services.

The latest decision of the Supreme Court in *State of Mysore and Another Vs. P. Narasing Rao*, has very material bearing on the question at issue. The Mysore State created two separate pay scales for matriculates and non-matriculates in the same category of tracers. It was held that Article 14 does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, 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 favored. Article 16 (1) does not bar a reasonable classification of employees or reasonable tests for their selection. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical, but they can also be general qualifications relating to the suitability of the candidate for public service as such. It was, therefore, held that the classification of two grades of tracers—one for Matriculate tracers with higher pay scale and the other for non-Matriculate tracers with a lower pay scale was not violative of Article 14 or Article 16 of the Constitution.

18. In the present case, therefore, creation of 25% of "selection grade" posts out of the Assistants amounted to creation of "Upper Division Assistants" corresponding to West Bengal Secretariat and the remaining 75% of the Assistants would correspond to Lower Division Assistants in West Bengal. So, in effect the order of the Government of India as per Ext. A-1 was brought into force by creating two separate divisions among the Assistants. The Government would have been well advised if they separated 25% posts out of 101 posts of the Assistants and designated them as "Upper Division Assistants" carrying higher scale of pay. The Government should have made a separate classification in serial no. 7 in schedule I of Tripura Employees" (Revision of Pay and Allowances) Rules of 1963 by separating Upper Division Assistants from Lower Division Assistants and mentioning the number of their posts and their separate scales of pay instead of creating a confusion by adding "25% of the posts" with a separate scale of pay. But, this is not violative of the provisions of Articles 14 and 15 of the Constitution of India. As already pointed out, the Government of the Union Territory has the executive power to lay down separately the principles for the selection of the Assistants for the selection grade posts and these instructions are found in Exts. B-5 and B-6. So, that portion of classification as "25% of the posts" in serial no. 7 in schedule I of the Tripura Employees" (Revision of Pay and Allowances) Rules of 1963 cannot be struck down on the ground that the said rules themselves do not indicate the method in which the "25% of the posts" should be filled up.

19. The further contention of the learned counsel for the petitioners that either all the Assistants should be given the same scale of pay namely, Rs. 150-250/- or, preferably, the selection grade scale of pay of Rs. 225-475/- by deleting the expression "for 25% of posts" from Col. 4 of serial No. 7 in schedule I of Tripura Employees Revision of Pay & Allowances Rules of 1963 does not arise. No doubt, under the doctrine of severability a rule, which is invalid, can be separated and the rule which is valid can be upheld. Vide *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, , *Gulabhai Vallabhbhai Desai etc. Vs. Union of India (UOI) and Others*, , and *State of Madhya Pradesh Vs. Ranojirao Shinde and Another*, . But, this question does not arise in view of my finding that the separation of 25% of the posts towards the selection grade with higher scale of pay is not invalid.

20. It may be noted that Ext. A-5 copy of the petition dated 15-3-1967 sent by the petitioners by way of demand for justice, shows that their grievance was that the revision of pay scales of the Assistants was not made on par with that in West Bengal. So, they demanded that their pay scales should be revised in accordance with the pay scales obtaining for the same cadre in West Bengal. But, in the course of the arguments it transpired that in making the selection of the Assistants for the selection grade some irregularities were committed. The petitioners and the remaining Assistants in the Civil Secretariat were informed about the test, which was arranged to be held in the Umakanta Academy Campus Hall from 9-30 A.M. to 5 P.M. on 17-9-1961. Vide Ext. B-7. Ext. B-8 contains a list of 84 Assistants who were eligible to sit for the test. The five

petitioners bearing serial Nos. 51 to 53, 59 and 74 as per Ext. B-8 did not sit for the examination. Some other Assistants also did not sit for the examination. After the remaining Assistants appeared for the examination, their marks were listed out. Then there was correspondence between the Chief Commissioner and the Chief Secretary, who suggested that no further oral interview was necessary and that a panel of Assistants eligible for promotion as selection grade Assistants might be prepared on the basis of seniority-cum-merit. Vide Ext. B10. Ext. B11 shows that three Assistants were absent and that the special test for them might be conducted on 15-10-1961, that in the meanwhile the others who stood in the test should be promoted as mentioned in Para 4 of Ext. B-11 and that two posts should be left vacant to be filled up after the remaining three Assistants sat for the examination. Ext. B-12 shows that 18 Assistants were selected and promoted to the selection grade on 7-10-1961 and that they were given higher scale of pay. Ext. B-14 shows that the test for the absentee Assistants was held on 6-6-1965 and not on 15-10-1961 as proposed and that they were selected and appointed to the selection grade on 11-6-1965. The said two Assistants Shri Birendra Kishore Roy and Shri Usha Ranjan Das Gupta, who were selected in 1965, were not made parties to the Writ petition. It further appears that three more Assistants serial Nos. 8, 15 and 35 in Ext. B-8 were also subsequently promoted in 1968 as selection grade Assistants. They too were not made parties to this Writ petition. After the respondents filed documents showing the instructions issued by the Government for selecting the Assistants and the lists of candidates etc., the petitioners filed counter affidavit refuting the documents. The respondents filed a rejoinder to the petitioners' counter. It is not necessary to examine the further question whether the respondents 4 to 20 and some others, who are not parties to this Writ petition, were validly appointed in the selection grade or not. For, the petitioners never challenged their appointments in the Writ petition. This matter is outside the scope of the present Writ petition. As already stated the Writ petitioners want only that all the Assistants should have one uniform scale of pay and grade-either the lower scale or the increased scale given to the selection grade. The petitioners never prayed that the appointments of the respondents 4 to 20 to the selection grade should be set aside. So, it is not necessary to decide a question, which is not pleaded in the Writ petition. Vide *Vidya Sagar Vs. Board of Revenue*, , *S. Pratap Singh Vs. The State of Punjab*, , though according to *Sri-La-Sri Subramania Desika Gnanasambanda Pandarasannadhi Vs. State of Madras* and *Another*, a plea raised in the affidavit-in-rejoinder for the first time may also be considered. The faint contention of the learned Counsel for the petitioners that the appointments to the selection grade are invalid because the executive instructions contained in Exts. B-4 and B-5 were not correctly followed is not tenable. For, the respondents 4 to 20 were taken by surprise. They did not file any counter, because no relief was asked for by the petitioners against them. Besides, this Court cannot issue any Writ against the other Assistants, who were promoted to the selection grade, in their absence as parties to the Writ petition. In fact, the learned Counsel for the petitioners did not seriously press this aspect of the case. He concentrated

his argument only on the question of the alleged discrimination in the pay scale- lower scale for 75% of the Assistants and a higher scale for 25% of them.

21. Before concluding the judgment, it is necessary to point out that it is desirable that the respondents 1 to 3 should separate 25% posts out of the Assistants and designate them as posts of upper division Assistants carrying the revised scale of pay of Rs. 225-475/- and frame rules for filling up the said posts.

22. Thus, there are no grounds for making the rule absolute and the rule is accordingly discharged. In the circumstances of the case, I direct the parties to bear their respective costs.