

**(2014) 08 TP CK 0020**  
**In the Tripura High Court**  
**Case No : W.P. (C) No. 282 of 2007**

**Noaram Tripura VsThe State of Tripura**

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**Date of Decision :** 27-08-2014

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226, 309

**Citation :** (2015) LabIC 369

**Hon'ble Judges :** Deepak Gupta, C.J;S.C. Das, J

**Bench :** Division Bench

**Advocate :** S.M. Chakraborty, Senior Advocate and B. Chakraborty, Advocate for the Appellant; B.C. Das, Advocate General and R. Guha, Advocate for the Respondent

**Final Decision :** Allowed

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## Judgement

S.C. Das. J.

1. By filing this writ petition, the petitioners questioned constitutional validity of Rule 11 of the Recruitment Rules for the post of CDPO (Child Development Project Officer) under the Education (Social Welfare & Social Education) Department, Government of Tripura and prayed for quashing the same with further direction to the respondents to put in place a reasonable provision for promotion to the post of CDPO.

2. The Rule impugned, for ready reference, is reproduced, which reads as follows:-

"No. F. 11(29)-DSWE/ESTT/2007 Government of Tripura Education (Social Welfare & Social Education Department, Agartala, Tripura,

Dated, Agartala, The 20th July, 2007,

Notification

In exercise of the powers conferred by the provision to Article- 309 of the Constitution of India, the Governor, in consultation with the Tripura Public Service Commission, is pleased to amend the rules regarding method of recruitment

necessary for appointment to the post of Child Development Project Officer, Government of Tripura and re-publish the amended rules in the schedule annexed hereto.

By order of the Governor, Sd/- 19/7/07 (Sajal Das Gupta) Under Secretary to The Government of Tripura."

3. The petitioners were directly recruited in the posts of Superintendent of Homes on different dates in the year 1998. A combined tentative seniority list for all the Superintendent of Home/Assistant Inspector of Social Education/Extension Officer/Social Education Organiser/Supervisor (ICDS/RFLP) under the Directorate of the Social Welfare & Social Education (for short "SWSE") by Memorandum dated 27.09.2006 (Annexure-3 to the writ petition) was prepared and published to which the Officers working as Superintendent of Homes, i.e., petitioners, raised serious objection and thereafter separate seniority list for the posts of Superintendent of Home was prepared and published by Memorandum dated 06.08.2007 (Annexure-2 to the writ petition). It is the contention of the petitioners that the post of Superintendent of Homes carries the pay scale of Rs. 5,000-10,300/- whereas the post of Supervisor/Social Education Organiser carries the pay scale of Rs. 4,200-8,650/- and, therefore, the posts of Supervisor/Social Education Organiser (for short "SEO") are inferior posts to that of the post of Superintendent of Homes and both the posts cannot be treated at par for promotion to the posts of CDPO. The provision of Rule 11, therefore, is violative of the Article 14 of the Constitution of India and, hence, liable to be struck down.

4. The respondents contended that the posts of CDPO are under the Integrated Child Development Scheme (for short "ICDS") and the recruitment to the posts is made from the Superintendent of Homes as well as from Supervisor/SEO. Before amendment of the Recruitment Rules of CDPO, a common seniority list was used to be prepared wherefrom the candidates were considered for promotion. While the Superintendent of Homes raised objection, separate seniority list was prepared for the Superintendent of Homes as one of the source and another seniority list for Supervisor/SEO as the other source for promotion to the post of CDPO. It is the contention of the respondents that for promotion to the post of CDPO, the person working in the post of Superintendent of Homes has to wait for 5 to 10 years, whereas the person in the post of Supervisor/SEO has to wait for 20 to 25 years and considering the stagnancy position, the Government has taken a policy decision that the promotional post of CDPO would be shared by the two categories of feeder posts, i.e., post of Superintendent of Homes and Supervisor/SEO on the basis of their proportionate ratio in the feeder cadre and accordingly, Rule 11 of the Recruitment Rules was made by the State Government under Article 309 of the Constitution. It is the case of the respondents that fixation of quota for promotion between various feeder categories or posts should be proportionate to the respective cadre strength and that is a sound exercise of administrative discretion, which does not deserve interference in exercise of power under Article 226 of the Constitution since it is

not violative of the Articles 14 and 16 of the Constitution.

5. Heard learned senior counsel, Mr. S.M. Chakraborty, assisted by learned counsel, Ms. B. Chakraborty, for the petitioners and learned Advocate General, Mr. B.C. Das, assisted by learned counsel, Ms. R. Guha, for the respondents.

6. Mr. Chakraborty, learned senior counsel has submitted that the provision of Rule 11 is iniquitous since by that rule two unequal posts have been made equal and the quota fixed proportionate to the sanctioned strength virtually will put the petitioners in such a disadvantageous position that they will never get promotion. The rule since being iniquitous and violative of the Article 14 of the Constitution is liable to be struck down and the respondents may be directed to frame the rule afresh in an equitable manner.

7. Learned Advocate General, Mr. Das, has submitted that there is no violation of fundamental or legal right. The State Government at its wisdom to facilitate the promotional avenues to all the categories of the feeder posts made the rule reserving quota proportionate to the sanctioned strength of each of the categories and such rule since has no conflict with the Articles 14 and 16 of the Constitution cannot be held to be ultra vires and no relief can be granted to the petitioners.

8. Mr. Chakraborty, learned senior counsel, in support of his contention has referred to the case of Shakuntala Sharma (Mrs) Vs. High Court of H.P. at Shimla and Another,

9. It is an admitted position that the post of Superintendent of Homes carries pay scale of Rs. 5,000-10,300/- and the post of Supervisor/SEO carries pay scale of Rs. 4,200-8,650/-. So, it is evident that the feeder posts of two sources for promotion to the post of CDPO are not equivalent posts, rather the post of Superintendent of Homes is a superior post since it is carrying higher pay scale. It is also an admitted position that the recruitment to the post of Superintendent of Homes as well as to the post of Supervisor/SEO are made through direct recruitment. While the posts from two sources are not equivalent posts, whether the rule prescribing promotion to the posts of CDPO, on proportionate basis of sanctioned strength would be justified or not is the crux of the matter to be decided in this writ petition.

10. Almost on a similar issue the Supreme Court has decided the case of Shakuntala Sharma (supra). In that reported case also Rule 10 of the High Court of Himachal Pradesh Recruitment (Conditions of Service) Rules, 1992 was challenged and for fair appreciation the impugned Rule 10 as quoted in the judgment is reproduced, which reads as follows:-

"By promotion from amongst graduate Deputy Superintendents/Revisors with minimum 3 years of service as such in the ratio of 4:1, failing which by promotion from amongst Sr. Assistants/Translators with minimum 6 years" service as such in the same ratio. Explanation. After promoting 4 Deputy

Superintendents/Senior Assistants as Superintendents from general category .... One Revisor/Translator shall be promoted as Superintendent from amongst Revisors/Translators" category."

As per the above rule, the post of Superintendent was supposed to be filled up from two sources. There were two sets of equivalent hierarchical posts, i.e., Clerks, Translators, and Revisors on the one hand and Clerks, Senior Assistants and Deputy Superintendents on the other. The appellant Shakuntala Sharma was appointed as Clerk in the year 1972 and she was promoted to the post of Translator in the year 1979 and thereafter was promoted to the post of Revisor in the year 1992. On the other hand, the respondent No. 2 was appointed in the post of Clerk in the year 1974 and thereafter was promoted to the post of Senior Assistant in the year 1986 and in the year 1992 he was promoted to the post of Superintendent with a jump since he completed six years of service in the post as Senior Assistant, whereas the appellant Shakuntala Sharma though was promoted to the post of Revisor, which is equivalent to the post of Deputy Superintendent, was not promoted to the post of Superintendent since she did not complete three years of service as Revisor as per rules. The rule, since made two unequal posts equal, was struck down by the Apex Court holding that it places two unequal sets of posts on a par with each other and also prescribes qualifying service for the higher post as well. We may gainfully quote here para 11, 12, 13 and 14 of the Judgment, which read as follows :-

"11. What is pointed out to us on behalf of the respondent-High court, is that the said Rule 10 had become necessary because there were more Deputy Superintendents than Revisors and the Senior Assistants and Translators were stagnated for want of a promotional post. Hence the said rule was framed by a Committee of Judges to provide suitable avenues of promotion to both Deputy Superintendents and Revisors on the one hand, and Senior Assistants and Translators on the other. It was also pointed out that even the earlier Rule 11 of the 1990 Rules was almost on the same pattern. In fact, by the said earlier rule, all graduate court employees who had put in minimum of six years" service in the grade of not less than Rs. 1800-3200 were eligible on merit for promotion to the post of the Superintendent. Under the 1990 Rules, therefore, all Senior Assistants and Translators as well as Deputy Superintendents and Revisors were eligible for being considered on merit for promotion to the post of Superintendent. The only two differences which the 1992 Rules brought about in the earlier situation were that they provided firstly, that the Deputy Superintendents and Revisors who carried the pay scale of more than Rs. 1800-3200 with a minimum of three years" service, were eligible to the post of Superintendent and it is only failing the availability of the eligible candidates from the said two categories, that the Senior Assistants and the Translators should be considered for the said post. Secondly, a proportion between Deputy Superintendents and Revisors was laid down for promotion to the post of the Superintendent.

12. In this case, it is not necessary for us to go into the question whether Rule 11 of 1990 Rules which provided for the promotion to the post of the Superintendent was valid or not. Even assuming that the validity of the 1990 Rules was not challenged, that fact by itself would not validate the present Rule 10 if it suffers from an inherent infirmity. The basic weakness in the present Rule 10 is that it places two unequal sets of posts on a par with each other and also prescribes qualifying service for the higher post as well. The posts of Deputy Superintendents and Revisors admittedly are posts higher than those of Senior Assistants and Translators respectively. If the incumbents of both the sets of posts are to be made eligible for promotion to the post of Superintendent, no qualifying period of service can be prescribed for the incumbents of the posts of Deputy Superintendents and Revisors. If Senior Assistants and Translators are to be provided with promotional avenue, more posts of Deputy Superintendents and Revisors which are above the posts of Senior Assistants and Translators respectively, should be created, and first the Senior Assistants and Translators have to be promoted to the said posts. In fact, the appellant who was a Translator was first promoted to the post of Revisor. We are informed that no eligible Deputy Superintendent was available for being considered to the post of Superintendent and hence Respondent 2 who was holding the post of Senior Assistant (post below that of Deputy Superintendent) had to be promoted to the said post as he had put in six years" service as required by the said Rule 10. Rule 10 of the 1992 Rules is thus inequitous and indefensibly unjust. It violates Article 14 of the Constitution since it treats unequals as equals and what is more gives unwarranted advantage to the incumbents of the lower posts over the incumbents of the higher posts.

13. We, therefore, strike down Rule 10 of the 1992 Rules and direct the High court to frame an equitable rule for promotion to the post of Superintendent in place of the said rule.

14. We have no doubt that whatever the anxiety of the High court to provide promotional avenues to those who are stagnated, the promotion rule will not be made in a manner which would deny to the incumbents of the higher posts promotion while giving unmerited advantage over them to those holding lower posts. The necessary consequence is that the promotion given to Respondent 2 stands quashed."

11. No doubt it is the prerogative of the State Government to make rules in respect of recruitment, promotion etc. of the Government servant. But that rules must conform the principles of equality and administrative norms and ethics. The discretion of the State Government in making rules must be a sound discretion, not in conflict with the constitutional mandate of Articles 14 and 16 of the Constitution. Right to be considered for promotion on fair and equitable basis without discrimination is a fundamental right under Articles 14 and 16 of the Constitution, which has been settled by the Apex Court in a catena of judgments. By the impugned Rule 11 of the Recruitment Rules for the posts of CDPO, the

State respondents apparently placed on par two unequal posts which carry different pay scales and, therefore, the rules cannot stand in the eye of law and is liable to be struck down.

12. Accordingly, applying the ratio of the Apex Court in the case of Shakuntala Sharma (*supra*), we hereby strike down the Rule 11 of the Recruitment Rules for the posts of CDPO as notified vide Notification dated 20.07.2007 (Annexure-5 to the writ petition). We direct the respondents to frame an equitable rule for promotion to the posts of CDPO taking into account all relevant factors.

13. The writ petition is accordingly allowed and disposed of.

14. Parties to bear their own costs.