

(2010) 07 DEL CK 0144

In the Delhi High Court

Case No : Writ Petition (C) No. 8663 of 2008

Smt. Sunita Bugga

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309
Delhi School Education Rules, 1973 — Rule 108, 96, 98
Prevention of Food Adulteration Rules, 1955 — Rule 5
Railways Act, 1890 — Section 115(7), 14

Citation : (2010) 5 SLR 535

Hon'ble Judges : Dipak Misra, C.J.; Manmohan, J

Bench : Division Bench

Advocate : Ravi Gupta and Sandeep Mittal, for the Appellant; Purnima Maheshwari, for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner, a trained graduate teacher (social sciences) has prayed for declaring the Notification No. F.27(3)/94-Edn/1068-1076 dated 4th November, 1999 issued by the Government of National Capital Territory of Delhi (Education Department) as ultra vires Article 14 of the Constitution of India.

2. The facts which are imperative to be stated are that the petitioner was appointed as Assistant Teacher in the R.M. Arya Girls Senior Secondary School in 1977 and was promoted as TGT (Social Sciences) in August, 1983. The post of PGT (Sanskrit) fell vacant in the school in November, 1992. The petitioner, who was teaching Sanskrit in Classes X to XII for certain academic sessions, was not promoted as she was not found eligible for the post of PGT (Sanskrit) by the Departmental Promotion Committee (DPC) which met on 5th May, 2007. Though various averments have been made with regard to the findings arrived at by the DPC and the deliberations made by it, yet the same do not really deserve to be

dwelled upon in the present case since the acid test is whether the relevant rules 96, 98 and 108 of the Delhi School Education Rules, 1973 (for short "the rules") on a proper interpretation help and assist the petitioner to meet the eligibility criteria and further whether the notification plays foul with Article 14 of the Constitution of India.

3. It is asserted in the petition that the introduction of the amendment in the eligibility criteria which deals with promotion is not in consonance with the Rules 96 and 98 of the rules and certain pronouncements in the field. Be it noted, apart from making some bald allegations, nothing else has been averred as to how the notification really invites the frown of Article 14 of the Constitution.

4. A counter affidavit has been filed by respondent Nos. 1 to 3 contending, inter-alia, that the petitioner is a TGT (Social Study) having done her post graduation in public administration/ Political Science/Sanskrit whereas the selected candidate was TGT (MIL) Sanskrit and she had done M.A. in Sanskrit. It is urged that the Director of Education vide letter dated 29th August, 2007 clarified that the selected candidate deserved to be appointed as she was TGT (MIL) Sanskrit and was qualified as per the recruitment rules. It is also put forth that the notification brought on 4th November, 1999 is not violative of Article 14 of the Constitution.

5. The constitutional validity of the notification that has been called in question reads as follows:

No.F.27(3)/94-Edn: In exercise of the powers conferred by proviso to Article 309 of the Constitution, read with the Government of India, Ministry of Home Affairs" Notification No. F.27/5- Him (I), dated the 13 July 1959, the Lt. Governor of the National Capital Territory of Delhi is pleased to make the following amendments in the schedule annexed to the notification No. F.2(41/72-S.II) dated 10.07.1975 and F.27(3)/94-Edn dated 26.02.1996, as amended from time to time, containing the Rules regarding the method of recruitment and qualifications necessary for appointment to the "Post" of Lecturer excluding (1) Lecturer - (Painting, Commercial Art/Graphic Sculpture/ Engineering Drawing), (2) Lecturer)- Home Science/Domestic Science, (3) Lecturer - Music and (4) Lecturer - physical Education in the Directorate of Education of this Government, namely:

Amendment

In the schedule annexed to the said notifications, the following amendment be made:

7

Columns No. 12: Promotion

1. T.G.T. in the scale of Rs. 1400-2600/- (pre-revised) possessing Post Graduate Diploma of 2 Years duration in science from Delhi University with 5 years regular service in grade.

Or

TGT/Language Teachers in the scale of Rs. 1400-2600/- (pre-revised) possessing qualifications prescribed for direct recruitment and with 5 years regular service in the grade.

2. For the posts of Lecturer in Hindi, Sanskrit, Punjabi etc. only Trained Graduate Teachers/ Language Teachers in Sanskrit and in Modern Indian Language concerned will be considered for promotion in their respective subjects. For the post of Lecturer in other subjects only Trained Graduate Teachers (Science "A" science "B", commerce, Agriculture and General) will be considered.

(NATHU SINGH)

ADDITIONAL SECRETARY (EDN)

No. F 27(3)/94-Edn/1068-1076 dated: 4.11.99

6. On a perusal of the said notification, it is manifest that the schedule that was annexed to the notification dated 10th July, 2005 and 26th February, 1996 which dealt with the method of recruitment and qualifications necessary for appointment to the post of Lecturer barring certain posts has been amended. Clause 2 stipulates that for the posts of Lecturer in Hindi, Sanskrit, Punjabi, etc., only trained graduate teachers/language teachers in Sanskrit and in modern Indian language concerned will be considered for promotion in their respective subjects.

7. Mr. Ravi Gupta, learned senior counsel appearing for the petitioner, has raised the following contentions:

(a) The notification that has been issued runs counter to Rules 96, 98 and 108 and when there is visible transpiration, the same has to be set at naught.

(b) The classification made in the notification between the trained graduate teachers who are senior but come from different faculties and the trained graduate teachers who have been incorporated in Clause 2 of Column 12 is totally arbitrary and has no nexus with the object sought to be achieved and invites the wrath of Articles 14 and 16 of the Constitution of India.

(c) By virtue of the amendment in the notification, the chances of promotion of the petitioner has been totally curtailed and curbed and, therefore, it is fully unreasonable and invites the frown of Article 14 of the Constitution.

8. Ms. Purnima Maheshwari, learned Counsel for the respondent Nos. 1 to 3, resisting the aforesaid submissions, canvassed as follows:

(i) The stand put forth that the notification is contrary to the rules in vogue is misconceived as the rules deal with a different sphere altogether and the notifications from time to time have been dealing with the requisite criteria for promotion. The question of the notification supplanting the rule does not arise and, therefore, the submission in that regard is without any substance.

(ii) When the post in question relates to Lecturer in a particular subject, the teaching experience has in the said subject relevance and it cannot be said that it has no rationale behind it. A teacher teaching in that subject stands on a different footing and the classification made between two categories of teachers is permissible and is not hit by Article 14 of the Constitution.

(iii) An employee has a right to be considered for promotion but he can have no grievance when his chances for promotion are curtailed as that rests with the employer.

9. Though we have reproduced the notification and noted the submissions of the learned Counsel for the parties, yet we are obliged to state that after narration of certain facts in the writ petition relating to certain correspondences, reproduction of some rules and reference to certain citations, namely, Chander Pal Jain and Another Vs. Delhi Administration etc., , T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. 2002(8) Scale 1, Mrs. Sushma Banga Vs. Delhi Administration and Others, , Valsala Kumari Devi M. Vs. Director, Higher Secondary Education and Others, , Sonica Jaggi Vs. Lt. Governor and Others, , the prayer has been made to declare the notification as ultra vires Article 14 of the Constitution of India despite the absence of any specific assertion as to how the notification is violative of Article 14 of the Constitution of India.

10. It is well settled in law that a person who assails the constitutional validity of an Act or a notification must specifically set forth the grounds for such challenge. In this context, we may refer with profit to certain decisions in the field.

11. In State of Uttar Pradesh Vs. Kartar Singh, , while dealing with the constitutional validity of Rule 5 of the Food Adulteration Rules, 1955, their Lordships opined as follows:

(15)...if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration.

12. In The State of Andhra Pradesh and Another Vs. K. Jayaraman and Others, , it has been stated thus:

3. It is clear that, if there had been an averment, on behalf of the petitioners, that the rule was invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out.

13. In Union of India Vs. E.I.D. Parry (India) Ltd., , a two Judge Bench of the Apex Court has expressed thus:

There was no pleading that the Rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial Court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the Rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. This view is contrary to the settled law....

14. In *State of Haryana Vs. State of Punjab and Another*, a two Judge Bench of the Apex Court has expressed thus:

82... It is well established that constitutional invalidity (presumably that is what Punjab means when it uses the word "unsustainable") of a statutory provision can be made either on the basis of legislative incompetence or because the statute is otherwise violative of the provisions of the Constitution. Neither the reason for the particular enactment nor the fact that the reason for the legislation has become redundant, would justify the striking down of the legislation or for holding that a statute or statutory provision is ultra vires. Yet these are the grounds pleaded in sub-paragraphs (i), (iv), (v), (vi) and (vii) to declare Section 14 invalid. Furthermore, merely saying that a particular provision is legislatively incompetent [ground (ii)] or discriminatory [ground (iii)] will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected in limine.

15. Though in the case at hand, no specific asseverations have been made, yet as the learned Counsel for the petitioner urged that the notification runs counter to the rules and the amendment made has no rationale and no object to achieve, we have thought it apt to address the same to put the controversy to rest.

16. First, we shall address whether the notification runs counter to the rules. The learned Counsel has invited our attention to Rules 96, 98 and 108 of the rules.

17. Rule 96, which deals with recruitment, reads as follows:

96. Recruitment- (1) Nothing contained in this Chapter shall apply to an unaided minority school.

(2) Recruitment of employees in each recognised private school shall be made on the recommendation of the Selection Committee.

(3) The Selection Committee shall consist of:

(a) in the case of recruitment of the head of the school, -

(i) the chairman of the managing committee;

(ii) in the case of an unaided school, an educationist is nominated by the managing committee, and an educationist nominated by the Director;

(iii) in the case of an aided school, two educationists nominated by the Director, out of whom at least one shall be a person having experience of school education;

(iv) a person having experience of the administration of schools, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school by the Director;

(b) in the case of an appointment of a teacher (other than the head of the school),-

(i) the Chairman of the managing committee or a member of the managing committee nominated by the Chairman;

(ii) the head of the school;

(iii) in the case of a primary school, a female educationist having experience of school education;

(iv) in the case of an aided school, one educationist to be nominated by the Director, and one representative of the Director;

(v) in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director.

(c) in the case of an appointment of any other employee, not being an employee belonging to ["Group D"].

(i) the Chairman of the managing committee or a member of the managing committee, to be nominated by the Chairman;

(ii) head of the school;

(iii) a nominee of the Director;

(iv) in the case of an aided school, two officers having experience of the administration of school, to be nominated by the Director;

[(d) in the case of an appointment of a Group "D" employee:

(i) the Chairman of the Managing Committee or a member of the Managing Committee nominated by the Chairman;

(ii) the head of the school;]

[(3-A) Notwithstanding anything contained in Sub-rule (3), in the case of an aided minority school, the educationists nominated under paragraph (iii) of Clause (a) of Sub-rule (3), persons nominated by the Director under paragraph (iv) of Clause (a) of Sub-rule (3), educationists nominated under paragraph (iv) of Clause (b) of Sub-rule (3), an expert nominated under paragraph (v) of Clause

(b) of Sub-rule (3), a person nominated under paragraph (iii) of Clause (c) of Sub-rule (3), officers nominated under paragraph (iv) of Clause (c) of Sub-rule (3), a person nominated under paragraph (iii) of Clause (b) of Sub-rule (3), shall act only as advisers and will not have the power to vote or actually control the selection of an employee.

(3-B) Notwithstanding anything contained in Sub-rule (3), the selection committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number.]

(4) Nomination of any educationist or expert as a member of the Selection Committee shall be made out of a panel prepared for the purpose by the Advisory Board.

(5) The Chairman of the managing committee, or, where he is not a member of the Selection Committee, the member of the managing committee who is nominated by the Chairman to be a member of the Selection Committee, shall be the Chairman of the Selection Committee.

(6) The Selection Committee shall regulate its own procedure.

(7) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reasons for such non-acceptance and refer the matter to the Director for his decision and the Director shall decide the same.

(8) Where a candidate for recruitment to any post in a recognised school is related to any member of the Selection Committee, the member to whom he is related shall not participate in the selection and a new member shall be nominated, in the case of any aided school, by the Director, and in the case of any other school, by the managing committee, in place of such member.

(9) No managing committee shall entertain any application for employment from a person who is already serving as teacher in a recognised school, whether aided or not, unless the application from such person is duly forwarded by the manager of the school in which such applicant is serving:

Provided that every application from such person shall be forwarded by the manager, but any application in excess of three in a year shall not be forwarded unless the managing committee, for reasons to be recorded by it in writing, so directs:

Provided further that no such teacher shall be relieved of his duties except after the expiry of a period of:

(i) three months, in the case of a permanent teacher, from the date on which notice of intimation to leave the school is given; and

(ii) one month, in the case of a teacher who is not permanent, from the date on which notice of intimation to leave the school is given; and

Provided also where the managing committee is in a position to provide for a substitute for such teacher earlier than the respective period specified in the foregoing proviso, the managing committee may relieve the teacher of his duties on the expiry of such earlier period.

18. Rule 98, which provides for appointing authority, reads as under:

98. Appointing authority- (i) The appointment of every employee of a school shall be made by its managing committee.

[(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:

Provided further that the provision of this sub-rule shall not apply to a minority aided school].

(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under Sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, [and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.]

(5) Where any appointment made by the managing committee of an aided school is not approved by the Director, such appointment may (pending the regular appointment to the post) be continued on an adhoc basis for a period not exceeding three months and the salary and allowances of the person so continued on an adhoc basis shall qualify for the computation of the aid to be given to such school.

19. Rule 108, which provides for filling of vacancies, is as follows:

108. Filling of vacancies- Every vacancy in an aided school shall be filled by promotion or by the direct recruitment in accordance with such rules as may be made by the administrator in this behalf.

20. The basic test is to determine whether a rule to have effect must have its source of power which is relatable to the rule making authority. Similarly, a notification must be in accord with the rules, if there is a provision in the rule, as it cannot travel beyond it. In this context, we may refer with profit to the

decision in General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, wherein it has been held as follows:

...Before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.

21. In Additional District Magistrate (Rev.), Delhi Administration v. Shri Ram AIR 2000 SC 2143, it has been held that it is a well recognized principle that conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

22. From the aforesaid enunciation of law, it is manifest that a rule has to conform to the provisions of the statute and it should not travel beyond the rule making power of the authority framing the rule. There cannot be inconsistency between the Act and the Rules. Repugnancy is inconceivable.

23. In the case at hand, there is a notification which has been issued in exercise of the power conferred by the proviso to Article 309 of the Constitution read with the Government of India, Ministry of Home Affairs" Notification No. F.27/5-Him(I) dated 13th July, 1959. On a scanning of the anatomy of the rules, it is absolutely clear that the said rules do not prescribe the qualification criteria for appointment. The prescription in the rules relate to recruitment, appointing authority and filling of vacancies. In the rule which comes under the heading "recruitment", there is preference to the selection committee, the concerned recommending authority, procedure to be followed by the selection committee and the rule relating to appointing authority lays down the procedure for appointment. Thus, the rules even remotely do not suggest anything with regard to the qualification required for promotion. As is perceived, the entire sphere of promotion is covered by the notification and, therefore, the submission of the learned Counsel for the appellant that the notification runs counter to the rules is sans substance and we hereby repel the same.

24. The next limb of submission of the learned Counsel for the petitioner pertains to discrimination inasmuch as by the notification, certain trained graduate teachers have been made eligible to be appointed to the post of Lecturer in Hindi, Sanskrit, Punjabi, etc. whereas the other trained graduate teachers, who are senior, have been not treated equally. It is alleged by him that the petitioner, who is a post graduate in Sanskrit, could not have been kept away by the stipulation that a person who is teaching in Sanskrit alone is eligible. The submission of the learned Counsel for the petitioner is that when a qualification is prescribed, it must have an object to achieve and when the petitioner is a post graduate in Sanskrit and has taught Sanskrit periodically, she should have been put in the same compartment.

25. In essence, the submission is that there is non-inclusion as a consequence of which the classification becomes unreasonable. In this regard, it is profitable to quote a passage from Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, :

26...The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, "the guarantee of equality will be sub-merged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments." Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must therefore, be guided by the words of caution uttered by Krishna Iyer, J., in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, .

Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have Constitutional validity. To overdo classification is to undo equality." "

[Emphasis added]

26. In *Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others*, , their Lordships have expressed thus:

18...But the question that falls for consideration, in the context such as the present one, is whether the differences have a reasonable relation to the nature of the office to which the promotion is contemplated. The idea of equality in the matter of promotion can be predicated only when the candidates for promotion are drawn from the same source. If the differences in the qualification has a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional post, the more advantageous treatment of those who possess higher technical qualifications can be legitimised on the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts

of each case and the circumstances obtaining at the relevant time. When the state makes a classification between two sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14. A wooden equality as between all classes of employees irrespective of all distinctions or qualifications, or job requirements is neither constitutionally compelled nor practically meaningful....

[Emphasis added]

27. In *D.S. Nakara and Others Vs. Union of India (UOI)*, a Constitution Bench, while dealing with the facet of Article 14, have expressed thus:

11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question. See *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, at p. 296 : AIR 1958 SC 538 at p. 547. The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be nexus i.e. casual connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

After so stating, their Lordships proceeded to state as follows:

13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, in the earliest stages of evolution of the Constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in *E.P. Royappa Vs. State of Tamil Nadu* and Another, it was held that the basic principle which informs both Articles 14 and 16 is equality and inhibition against discrimination. This Court further observed as under:

From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Article 16.

Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

28. At this juncture, we may sit in a time machine and quote a passage from Bidi Supply Co. Vs. The Union of India (UOI) and Others, : -

Article 14 sets out, to my mind, an attitude of mind, a way of life, rather than a precise rule of law..... (I)n a given case that it falls this side of the line or that, and because of that decisions on the same point will vary as conditions vary, one conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society has altered and the structure of current social thinking is different. It is not the law that alters but the changing conditions of the times and Article 14 narrows down to a question of fact which must be determined by the highest Judges in the land as each case arises.

29. The present factual matrix is required to be tested on the touchstone of the aforesaid enunciation of law. As is evident, Article 14 in its ambit and sweep involves two facets, namely, it permits reasonable classification which is founded on intelligible differentia and accommodates the practical needs of the society and the differentia must have a rational relation to the objects sought to be achieved and secondly, it does not allow any kind of arbitrariness and ensures fairness and equality of treatment. It is the "fon juris" of our Constitution, the fountainhead of justice. In the case at hand, the notification has been brought in stipulating that a teacher in Sanskrit would be eligible for the post of Post Graduate Teacher in Sanskrit. The emphasis has been laid on teaching experience as the language employed in Clause 2 of Column 12 which deals with promotion does clearly so reveal. The words used are "teachers in Sanskrit". Teaching in the same subject has its own signification. Not for nothing, it has been said, when you teach a person you feed him for a lifetime. A true teacher has the potentiality to influence the career and the character of a student and his influence continues for long. Albert Einstein had said "it is the supreme art of the teacher to awaken joy in creative expression and knowledge". It would not be out of place to say that a teacher understands the difficulties a student faces in a particular subject and he has the ability to impart proper training. The imparting of training is also dependent upon the individual chemistry and personal patience. The capacity of a teacher can gradually change a student with slow osmosis. A teacher with experience has the requisite knowledge, both theoretical and practical. One can have experience only when he undergoes it. An experience is basically a harvest of knowledge and hence, it has been said that "practice is the supreme teacher". In this context, we may fully refer to the decision in Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, wherein it has been held as follows:

The services of the teachers working in the schools in the State of Rajasthan are governed by the Rajasthan Educational Service Rules, 1970 and Rajasthan Education (Subordinate Services) Rules, 1971. Teacher Grade-III as also a

Laboratory Assistant come within the purview of the term "subordinate services". The minimum qualification for holding the post of a Teacher Grade-III is matriculation with certificate of training, whereas that of Laboratory Assistant is Secondary with Science as an optional subject. 1970 Rules, on the other hand, deal with appointment inter alia of Head Masters, Assistant Head Masters, Deputy Inspectors of Schools etc.; the minimum qualifications wherefore are Bachelors' Degree and Degree or Diploma in Education. Five years' teaching experience is required for consideration for appointment to the post of Head Master which in turn is referable to teaching in certain capacity on certain categories of posts. The posts of Teacher Grade-III provides for a promotional avenue to the posts of Teacher Grade-II which in turn provides for promotion to the other grades of teacher. It is, thus inconceivable that experience gained by a person holding the post of Teacher Grade-III governed by the subordinate services rules would be entitled to be considered for promotion to the post of Head Master although experience of teaching in particular classes is relevant therefore.

(quoted from placitum]

30. In V.B. Prasad Vs. Manager, P.M.D.U.P. School and Others, , while deal with the concept of teaching experience, their Lordships held thus:

10. ...Five years' teaching experience for appointment to the post of Headmaster was a sine qua non. Such teaching experience was to be "teaching experience" and not a deemed teaching experience.

31. We are conscious that the said decisions were rendered while interpreting the provision and the challenge before us is with regard to the validity of the provision; yet, we have referred to the same only to understand the purport of experience in teaching as their Lordships have laid emphasis on "actual teaching".

32. In our considered view, the classification made between the ten graduate teachers and the ten graduate teachers who teach Sanskrit, on a closer scrutiny, with stands the test of Article 14 of the Constitution and does not invite its wrath, for there is a rationale behind it and the object is to impart proper teaching in the subject in question. Thus, the submission of the learned senior counsel for the petitioner in this regard pales into insignificance.

33. In Mohd. Shujat Ali (supra), it has been held thus:

It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service. Now here in the present case, all that happened as a result of the application of the Andhra Rules and the enactment of the Andhra Pradesh Rules was that the number of posts of Assistant Engineers available to non-graduate Supervisors from the erstwhile Hyderabad State for promotion,

was reduced: originally it was fifty per cent, then it became thirty three and one-third per cent, then one in eighteen and ultimately one in twenty-four. The right to be considered for promotion was not affected but the chances of promotion were severely reduced. This did not constitute variation in the condition of service applicable immediately prior to 1st November, 1956 and the proviso to Section 115 , Sub-section (7) was not attracted. This view is completely supported by the decision of a Constitution Bench of this Court in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, .

34. The said principle was reiterated in Bakhshish Singh Vs. Union of India (UOI) and Others, .

35. In S.B. Mathur and Others Vs. Chief Justice of Delhi High Court and Others, , their Lordships expressed thus:

13... Merely because the chances of promotion of some employees are adversely affected by such grouping or regrouping, that does not lead to a conclusion that it is against the law....

36. In Orissa Judicial Services Association, Cuttack and another Vs. State of Orissa and others, , a two Judge Bench of the Apex Court in this context has opined thus:

3... It is apparent that the Constitution as well as the statutory rules framed under Article 309 provide for recruitment to the Senior Branch of Service by direct recruitment from the members of the bar. The constitutional mandate cannot be challenged merely because it may to certain extent adversely affect the chances of promotion of the Junior Branch of Judicial Service.

37. The last plank of submission of Mr. Gupta is that by virtue of the amendment, the promotional prospect of the petitioner is affected. It is urged by him relying on the decisions which we have referred to earlier while narrating the averments in the writ petition that the factum of promotion is to be considered on the base and backdrop of seniority and suitability. It is urged by him that when the petitioner is totally kept out of the zone of consideration, her chances are totally curtailed. In this regard, we may refer to certain citations in the field.

38. In view of the aforesaid pronouncement of law, there can be no shadow of doubt that curtailment of chances of promotion cannot be a ground to assail the constitutional validity of the provision. That apart, the petitioner can be considered for promotion in her own stream when the occasion arises.

39. In view of our premised reasons, we perceive no merit in the writ petition and accordingly, the same stands dismissed without any order as to costs.