

(2011) 04 CHH CK 0004

In the Chhattisgarh High Court

Case No : Writ Petition (S) No's. 4686, 4818, 5997, 5996, 5536, 4012, 5998, 5291, 4919, 4876, 5476, 5985, 4239, 5351, 5761, 5693, 4819, 4891, 4859, 4581, 5979, 5980, 5762, 5496, 5881 and 4640 of 2010 and 215 of 2011

Yogendranath Pandey and Another

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2011) 2 CG.L.R.W. 237

Hon'ble Judges : Rangnath Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Advocate : Anup Majumdar, Mr. Ajay Shrivastava, Mr. Rajesh K. Sharma, Mr. Somkant Verma, Mr. Anil Singh Rajput, Mr. Awadh Tripathi, Mr. Ashwini Shukla, Mr. C.J.K. Rao, Mr. Rajesh Kumar Sharma, Mr. Pushpendra Kumar Patel, Mr. K.K. Pandey, Mr. A.N. Bhakta, Mr. R.S. Patel and Mr. Gautam Khetrapal, for the Appellant; Yashwant Singh Thakur, Dy. Advocate General for the State and Shri Prateek Sharma for the Interveners, for the Respondent

Final Decision : Allowed

Judgement

Dhirendra Mishra, J.—The batch of writ petitions is being disposed of by this common order as issue involved in all these writ petitions is similar. The petitioners were initially appointed as Assistant Teachers and subsequently, they were promoted on the posts of Upper Division Teachers (for brevity "UDT").

2. The petitioners have challenged the constitutional validity of condition of conducting departmental examination as per Schedule-II, Serial No. 3 of the Chhattisgarh School Education Gazetted Service (School Level Service) Recruitment and Promotion Rules, 2008 (hereinafter referred to as the "Rules, 2008") on the ground that the same is illegal, arbitrary and ultra vires. The petitioners have also prayed for quashing of the advertisements issued by the District Education Officers for filling vacant posts of Headmaster, Middle School in

their respective districts by conducting departmental limit examination in accordance with the Rules, 2008.

3. Writ Petition (S) No. 4686/2010 has been jointly filed by the UDT and Headmaster Primary School. In this petition, the petitioners, apart from challenging the eligibility criteria prescribed for promotion on the post of Headmaster, Middle School under the Rules, 2008, have also challenged the eligibility criteria prescribed under Schedule-II and IV for appointment and promotion on the post of Lecturer and Principal, High and Higher Secondary Schools and further prayed for direction to consider the cases of the petitioners for promotion on the post of Headmaster, Middle School on the basis of their qualification and experience.

4. In Writ Petition (S) No. 5536/2010, the petitioner is Shiksha Karmi Grade-II. Grievance of this petitioner is that he has been appointed as Shiksha Karmi Grade-II on the vacant post of UDT and he also possesses other educational qualifications prescribed under the Rules, 2008 for promotion on the post of Headmaster, Middle School. Shiksha Karmis are eligible to appear in the departmental limit examination for the post of Principal, however, they have been excluded under the impugned Rules from appearing in the departmental limit examination. Thus, their exclusion under the impugned Rules for appearing in the examination for promotion on the post of Headmaster Middle School has no nexus with the object sought to be achieved and the same is discriminatory, unreasonable and unconstitutional.

5. Grievance of the petitioners is that they were initially appointed as Assistant Teachers. Subsequently, they were promoted on the post of UDT. As per the Chhattisgarh Lok Seva Padonnati Niyam, 2003 (for short "the Rules, 2003"), the promotions are to be made on the basis of seniority cum suitability except in case of promotion from Class-1 to Class-I carrying higher pay scale, which is to be made on the basis of merit cum seniority. The petitioners are promoted on the post of UDT as per recommendations of the Departmental Promotion Committee. Even before their promotion to the post of UDT, they have acquired eligibility criteria for promotion on the post of UDT and Lecturer after completion of 12 years and 24 years of service respectively. Thus, they were eligible for consideration for promotion on the post of Lecturer or Headmaster, Middle School, however, due to the impugned Rules, 2008, the petitioners are now required to appear in the departmental limit examination and to compete with their juniors, who have not been promoted on the post of UDT. The impugned Rules restrict their promotional avenues which were earlier open to them. The condition of departmental limit examination for promotion on the post of Headmaster, Middle School is contrary to the provisions of the Rules, 2003, which provides that the promotions are to be made on the basis of seniority cum suitability except in cases of promotion from Class-I to Class-I posts carrying higher pay scale.

6. Shri Anup Majumdar, learned counsel appearing on behalf of the petitioners in

Writ Petition (S) No. 4686/2010 also argued that the post of Headmaster, Primary School is promotional post having higher pay scale. The Assistant Teachers/Assistant Teachers Science having 5 years teaching experience in the Govt./Panchayat School are eligible for promotion on the post of Headmaster, Primary School as per Rules 6 & 13 read with Schedule IV Entry 2 of the Chhattisgarh Non-Gazetted Class III Education Service (School Level Service) Recruitment and Promotion Rules, 2008 (for short the Rules, 2008 (Non-Gazetted)). However, in the impugned Rules, there is no provision for promotion on the post of Headmaster, Middle School whereas the Assistant Teachers having 2nd class graduation with 12 years service are eligible for appearing in the departmental limit examination for promotion on the post of Headmaster, Middle School.

The contention of the respondent/State that the educational qualification prescribed for Headmaster is Higher Secondary along with D. Ed./B.Ed. and thus, they do not fulfill the criteria for appearing in the examination has no justification, as the impugned Rules also exclude graduate Primary School Headmaster from appearing in the examination. The impugned entry further provides that after all the Upper Division Teachers and Assistant Teachers in the State or District are promoted, only thereafter remaining 60% posts would be filled up from Shiksha Karmi Grade-1 having 5 years experience and Shiksha Karmi Grade-II having 7 years experience and 40% posts would be filled up by the Headmaster, Primary School. However, it is not specified whether the Headmaster, Primary School is required to undergo the departmental limit examination or not. In some of the districts, the Headmasters were also permitted to appear in the examination, which is not in accordance with the Rules. Thus, it is clear that the Rules are capable of several interpretations and it suffers from the vice of unreasonableness, arbitrariness and are liable to be struck down. The post of Headmaster, Middle School is a gazetted post and they are class-2 officers under the State Government. However, the appointing authority is prescribed as the District Education Officer, who makes the appointment as per the modalities set by him which varies from district to district. There is no provision in the impugned Rules for maintaining State Level Inter Se seniority amongst the Headmaster whereas the State Level Inter se seniority is required to be maintained. The posts of Lecturer and Upper Division Teacher are 100% promotional posts and the appointment on the said posts are made from Assistant Teachers, Upper Division Teachers and Shiksha Karmis of different grades, however, the Headmaster, Middle School is not a feeder post for promotion on the post of Lecturer whereas, the Upper Division Teachers and the Assistant Teachers and feeder cadre for the post of Headmaster, Middle School are eligible to appear in the departmental limit examination for the post of lecturer. The provision for promotion on the post of Headmaster, Middle School to the "successful candidate" appearing in the departmental limit examination is also being interpreted differently by different District Education Officers. In some districts, minimum qualifying marks in the departmental examination is being

prescribed whereas in other places, the appointment is being made against available vacant posts without prescribing any minimum qualifying marks. The above two procedures being followed for promotion to the post of Headmaster, Middle School cannot be faulted as the language used in the Rules and the Scheme under the Rules allowed space for both interpretation.

7. On the other hand, Shri Yashwant Singh Thakur, learned Deputy Advocate General appearing for the State would argue that the Rules, 2008 have been amended vide notifications dated 28-8-2008, 14-10-2008, 27-11-2008, 3-2-2009, 21-4-2010 and 29-5-2010. Since the above amendments are not under challenge, the Rules of 2008 cannot be declared as ultra vires. The petitioners having participated in the examination conducted as per the Rules cannot be permitted to challenge the constitutional validity of the Rules, 2008.

It is settled law that any statutory rules can be declared ultra vires only when the same have been framed without competency to legislate on the subject; the rules violate the provisions of the Constitution; the rules are in violation of the Principal Act or they are irrational to the extent that it cannot be given effect to.

In the instant case, the State is competent to frame the Rules under Article 309 of the Constitution for recruitment and conditions of service of persons serving the State. The petitioners have failed to prove that the Rules are in violation of any constitutional provision and the Rules, 2008 are irrational.

Schedule II Sr. No. 3 provides for filling up the post of Headmaster Middle School by 100% promotion whereas, Schedule III S. No. 3 Column No. 5 provides for minimum 5 years teaching experience in the school of Government or Panchayat and Schedule IV S. No. 3 again prescribes that the teachers having 5 years experience on the post will be promoted on the post of Headmaster Middle School. The promotions are to be made on the basis of seniority. Since the petitioners do not have minimum 5 years experience as Upper Division Teacher and they have been afforded an opportunity of promotion by relaxing the experience clause under the Rules by permitting them to appear in the departmental limit examination, they cannot claim for promotion on the basis of seniority alone. The opportunity is given to the petitioners only after list of eligible teachers/Upper Division Teachers is exhausted and the post of Headmaster Middle School remains vacant. Therefore, the petitioners cannot claim as of right to be considered for promotion without any competitive examination.

Under Rule 6(1)(a), direct recruitment through competitive examination from amongst Assistant Teachers/Teachers/UDTs, who are otherwise not eligible for promotion, can be made and prescription of eligibility criteria for such limited competitive examination is the prerogative of the State.

The entry level post in the School Education Department is that of Assistant Teacher which has been declared as dying cadre, as no appointment is being made on the aforesaid post after 1998. The post of Assistant Teacher/UDT is now

being filled up by Shiksha Karmis of the Panchayat Department. Since adequate numbers of eligible candidates for promotional posts are not available in the School Education Department, the provision for departmental examination for such posts has been made under the Rules.

Since the Rules, 2008 is a special law for recruitment and promotion in the School Education Department, the same shall prevail over the Rules, 2003, which is a general law. The State Government is a competent authority for appointment in School Education (Gazetted) Services unless the context otherwise requires, whereas in Schedule I, the District Education Officer is appointing authority of Headmaster Middle School and thus conducting of examination for appointment by the District Education Officer is strictly in accordance with the Rules. Under the Rules, there is no provision for qualifying marks for examination and if there is any deviation in implementing the Rules, the same shall be corrected and appointments shall be made strictly in accordance with the Rules.

Schedule II S. No. 3 Column No. 6 provides for filling of remaining posts of Headmaster Middle School after the vacant posts are filled from UDTs/Assistant Teachers. 60% posts shall be filled through competitive examination of Shiksha Karmi Grade-I & Grade-II and rest of the posts by Headmaster Primary School, who shall also be allowed to appear in departmental examination along with Shiksha Karmis.

8. The interveners in their written submissions advancing similar arguments as that of the State have submitted that the petitioners after participating in the examination without any demur or protest have challenged the constitutional validity of the Rules, 2008, which is not permissible. They have also suppressed the above fact and, therefore, the writ petitions deserve to be dismissed on the ground of suppression of material fact.

With regard to cut-off marks mentioned in the advertisements, it has been argued that S. No. 3 of Schedule II does not provide for cut-off marks and the selection is to be made on the basis of merit. However, the impugned Rule in Schedule II cannot be invalidated only on the ground that advertisement for selection prescribes cut-off marks. Any other interpretation of "successful candidate" occurring at Entry 2-b in column No. 7 at S. No. 3 would be inconsistent to the scheme of promotion on the post of Headmaster Middle School, as it is not possible to promote every successful candidate crossing cutoff marks. None of the Headmaster Primary School have approached this Court with a grievance that their forms for appearing in the departmental limit examination have been rejected on the ground of eligibility under the Rules and, therefore, eligibility criteria mentioned in S. No. 3 of Schedule II cannot be struck down on the ground that it discriminates the Headmaster Primary School who are otherwise fulfilling the eligibility criteria.

So far as appointment of Upper Division Teachers having less than 3 years experience in some educational districts is concerned, any illegality or irregularity

committed by any authority cannot be a ground for declaring any rule unconstitutional.

9. Heard learned counsel for the parties.

10. Various grounds urged by learned counsel for the petitioners may be summarized as under:--

(i) The provision of departmental limit examination for Upper Division Teachers/ Assistant Teachers having requisite qualification/experience in Schedule II S. No. 3 is not permissible in view of the provisions contained in the Chhattisgarh Lok Seva (Promotion) Rules, 2003 which provides that seniority is only criteria for promotion for all the classes of services except for promotion from Class-1 to Class-1 carrying higher pay scale.

(ii) Under the Rules, Shiksha Karmis Grade-I and Grade-II are not eligible to participate in the limited departmental examination for promotion though they have been appointed against the vacant posts of UDTs and are possessing the prescribed educational qualification and experience as UDTs.

(iii) The Headmasters Primary School having requisite qualification/experience for the posts have been excluded from appearing in the examination.

(iv) The impugned Rules are capable of several interpretations and it suffers from the vice of unreasonableness and arbitrariness. The post of Headmaster Middle School has been classified as Class-2 gazetted service in the State, however, all the District Education Officers of the Education Districts are appointing authority who have initiated procedure for appointment in their respective districts by interpreting the rules in their own way and by following their own procedure. Since it is a State cadre post, state level inter se seniority is required to be maintained.

11. Before we advert to the aforesaid grounds urged by the petitioners separately, we propose to deal with the procedure adopted by the appointing authorities i.e. the District Education Officers for the purposes of conducting departmental limit examination in their respective districts.

1. In Writ Petition (S) No. 5693/2010, the District Education Officer, Education District Bilaspur vide Annexure-P/2, notified 350 posts of Headmaster Middle School and fixed the date as 27-9-2010 for examination. All Assistant Teachers, Headmasters Primary School and Upper Division Teachers having requisite qualification and experience under the rules were eligible for applying to the post of Education District Bilaspur. Minimum qualifying marks for selection was prescribed as 35 out of 100 and the teachers were to be recruited on the basis of merit.

2. In Writ Petition (S) No. 4239/2010, the District Education Officer, Education District Mahasamund fixed the date of examination as 8-8-2010 for 300 posts of Headmaster Middle School. Upper Division Teachers and Assistant Teachers

having prescribed eligibility criteria under the rules could appear in the examination. Total marks were 100, however, no cut-off marks has been prescribed. Upper Division Teachers and Assistant Teachers posted in Mahasamund district could only apply for the post.

3. In Writ Petition (S) No. 4686/2010, the District Education Officer, Education District Rajnandgaon notified 380 posts of Headmaster Middle School and fixed the date of examination as 1st August, 2010. Assistant Teachers, Headmasters Primary School Upper Division Teachers of Education District Rajnandgaon having prescribed eligibility criteria under the Rules could appear in the examination. The selection and posting was to be made on the basis of merits, however, no cut-off marks has been prescribed. From the documents available in this petition, it appears that selection process has already been completed in Education District Bemetara and appointment orders have been issued on 9th August, 2010. Similarly, result of the examination in Education District Durg has also been declared whereas appointment orders have been issued by the District Education Officer, Education District Bilaspur on 1-5-2010 (Annexure-P/6).

4. In Writ Petition (S) No. 5761/2010, the District Education Officer, Education District Raigarh notified 390 posts of Headmaster Middle School and fixed the date of examination as 19-9-2010. Assistant Teachers and Upper Division Teachers having prescribed eligibility criteria of Education District Raigarh could participate in the examination. Minimum qualifying marks were prescribed as 35 out of 100.

5. In Writ Petition (S) No. 4818/2010, it appears that the applications were invited by the District Education Officer, Raipur from eligible candidates for participating in the departmental limit examination from Assistant Teachers, Upper Division Teachers and Headmasters Primary School having 2nd class graduation degree, however, vide memo dated 29-6-2010, fresh applications from all graduates, D.Ed/B.Ed., Upper Division Teachers and Assistant Teachers were invited.

6. In Writ Petition (S) No. 4819/2010, the District Education Officer, Education District Jashpur notified 25 posts of Headmaster Middle School and fixed the date for examination as 29-8-2010. In this examination, Assistant Teachers/Upper Division Teachers of Education District Jashpur having prescribed eligibility criteria under the rules could participate and minimum qualifying marks of 35 out of 100 were prescribed.

7. In Writ Petition (S) No. 4859/2010, the District Education Officer, Education District Janjgir-Champa notified 500 posts of Headmaster Middle School and fixed 8-8-2010 as the date of examination. All Upper Division Teachers, Headmasters Primary School and Assistant Teachers having prescribed eligibility criteria of Education District Janjgir Champa could appear in the examination. Minimum qualifying marks were prescribed as 35 out of 100.

8. In Writ Petition (S) No. 4581/2010, the District Education Officer, Education

District Durg notified 310 posts of Headmaster Middle School and fixed the date of examination as 20th July 2010. All Assistant Teachers and Upper Division Teachers having prescribed eligibility criteria could participate in the examination and minimum qualifying marks were prescribed as 35 out of 100.

12. On close examination of the advertisements, we find that the dates of examination are different in different districts. In some of the districts, result has been declared whereas in two Education Districts i.e. Bemetara and Bilaspur even appointment orders have been issued. In some districts, only Assistant Teachers and Upper Division Teachers having prescribed eligibility criteria were eligible to participate in the examination under the advertisements whereas in other districts, even Headmasters Primary School having prescribed eligibility criteria could appear in the departmental limit examination. Similarly, minimum qualifying marks have been prescribed in some districts whereas no such cut-off marks have been prescribed in other districts and it is mentioned that the selection shall be made in accordance with comparative merit.

13. The Rules 2008 have been made in exercise of powers conferred under proviso to Article 309 of the Constitution of India. Rule 2 (a) defines appointing authority for the services under the Rules as State Government unless the context otherwise requires whereas Service has been defined as the Chhattisgarh School Education Gazetted Service (School Level Service) under Rule 2(i). Rule 6 deals with procedure of recruitment. Rule 6(1)(a) provides for direct recruitment by selection through departmental examination whereas under Rule 6(1)(b) by promotion of member of the service. Sub-rule (2) of Rule 6 specifically provides that recruitment under clause (a) or clause (b) or clause (c) of sub rule (1) of Rule 6 would not exceed the percentage as shown in Schedule II whereas Schedule I contains class and number of posts and pay scale. The District Education Officer has been prescribed as appointing authority of Headmaster Middle School under Schedule I. Similarly, S. No. 3 of Schedule II made under Rule 6 prescribes that 100% posts of Headmaster Middle School are to be filled by promotion. Relevant entry in Schedule II is reproduced as under:--

Schedule-II

[Vide Rule 6]

14. By notification dated 3rd February 2009 in Schedule-II "After vide Rule 6" "Rule 13" has been added. By the same notification in column No. 7 sub heading "Appointing Authority" has been substituted by word "Eligibility". By notification dated 21st April 2010, in Schedule II under column 7, in Sr. No. 2(a) & (b), the word "Second Division" has been deleted and in (a) & (b) of Sr. No. 2 of column 7 of Sr. No. 3 of Schedule II the word "less than" has been substituted by the word "minimum". By the same notification, in (b) of Sr. No. 2 of Column 7 of Sr. No. 3 of Schedule-II, by amending existing provisions of the rules, the word "The Department of Panchayat/Local Self Administration and Development Department of 2a" has been substituted by the word "School Education

Department is established".

15. On close comparison of the then existing Rules and amendment made in Rules as described above, we observe that amendment has been made casually without checking the provisions under the existing Rules and amendment made.

16. Rule 8 provides for eligibility for direct recruitment. S. No. 3 of Schedule III framed under Rule 8 and Rule 13 (amended vide notification dated 3rd February 2009) prescribes Graduate or D.Ed./B.Ed. with 5 years teaching experience of feeder cadre i.e. Upper Division Teacher.

17. Under Rule 11 direct recruitment in service is to be made by holding competitive examination at such intervals as the Government may determine in consultation with Chhattisgarh Public Service Commission. For the purposes of appointment by promotion under Rule 13, a Committee consisting of members mentioned in Schedule IV for making preliminary selection by promotion of eligible candidates is to be constituted and by notification dated 3rd February 2009, sub-rule (5) has been added which provides that eligibility for promotion would be the same as prescribed in Schedule-III. Under Schedule IV, for promotion on the post of Headmaster Middle School, a committee under the Chairmanship of District Education Officer is to be constituted. The State Government vide notification dated 28th August, 2008, has added under Schedule IV and clarified that "Teacher" means Upper Division Teacher and Headmaster Middle School and they shall be of same category.

GROUND (i) & (ii)

The provision of departmental limit examination for Upper Division Teachers/ Assistant Teachers having requisite qualification/experience in Schedule II S. No. 3 is not permissible in view of the provisions contained in the Chhattisgarh Lok Seva (Promotion) Rules, 2003 which provides that seniority is only criteria for promotion for all the classes of services except for promotion from Class-1 to Class-1 carrying higher pay scale.

And

Under the Rules, Shiksha Karmis Grade-I and Grade-II are not eligible to participate in the limited departmental examination for promotion though they have been appointed against the vacant posts of UDTs and are possessing the prescribed educational qualification and experience as UDTs.

18. Indisputably, Schedule II Sr. No. 3 column No. 5 provides for filling of 100% posts of Headmaster Middle School by promotion whereas column No. 5 of Sr. No. 3 of Schedule HI prescribes minimum 5 years teaching experience in Government/Panchayat School. In view of the above eligibility criteria, the petitioners, who do not have minimum teaching experience as Teacher/UDT and who are not even teachers/UDT, have been given chance of promotion by way of relaxation as mentioned in Schedule II Sr. No. 3 Column 7 and in these circumstances, opportunity of promotion through departmental limit examination

cannot be faulted and the petitioners cannot claim promotion only on the basis of seniority. Schedule II has been made under Rule 6 and 13 of the Rules, 2008. Sub-rule (4) of Rule 6 empowers the State Government to adopt such method of recruitment to the service other than those specified in sub-rules where the exigency at the service so require.

19. From perusal of the provisions contained in Rule 6 of the Rules 2008 and S. No. 3 of Schedule II made under Rule 6 & 13, it is manifestly clear that vacant posts of "Headmaster" are to be filled in firstly by 100% promotion from amongst teachers/UDT having 5 years teaching experience. Only after the list of teachers/UDT having 5 years experience is exhausted, the remaining vacant posts are to be filled firstly by teachers/UDT having less than 3 years experience and graduate assistant teachers having 12 years experience by conducting departmental limit examination. Therefore, in our considered opinion, conducting of departmental limit examination for filling remaining posts of Headmaster Middle School as provided in S. No. 3 of Schedule II cannot be faulted on the ground that the same is in contravention of the Rules, 2003, as the Rules, 2003 deals with the basis of promotion on the public service, as the posts are to be filled in from the candidates possessing prescribed eligibility under the Rules.

20. The stand of the State is that entry level post in the School Education Department of the State Government i.e. Assistant Teacher has been declared as dying cadre and there has been no appointment on the post after 1998. As stated above, 100% post of Headmaster Middle School is to be filled by promotion, however, since adequate number of UDTs having requisite teaching experience of 5 years are not available, the Rules have been relaxed and even UDTs having less than 3 years experience and graduate Assistant Teachers having 12 years experience have been permitted to appear in the departmental limit examination. However, the process of recruitment of Shiksha Karmi Grade-I, II & III is made under the Chhattisgarh Panchayat Shiksha Karmi (Recruitment and Condition of Service) Rules 1997 by the Panchayat Department and, therefore, under the Rules, 2008, they cannot claim parity with UDTs and the Assistant Teachers working in the School Education Department.

Considering the peculiar situation that sufficient number of eligible Assistant Teachers/UDTs may not be available for being promoted on the post of Headmaster Middle School, a provision has been made to allow Shiksha Karmi Grade-II having 7 years experience for filling up the posts of Headmaster Primary School which remained vacant after all the UDTs/Assistant Teachers are promoted.

Keeping in view that Shiksha Karmis have been recruited by different rules of recruitment and the present provisions are transitory in nature, we are of the considered opinion that the impugned Rules can also not be faulted on the ground that Shiksha Karmi Grade-I & II, who are appointed against the vacant posts of UDTs having prescribed educational qualification and experience are not allowed to participate in the departmental limit examination under the impugned

Rules.

GROUND (iii)

The Headmasters Primary School having requisite qualification/experience for the posts have been excluded from appearing in the examination.

21. From bare reading of column No. 7 of S. No. 3 of Schedule-II, it is evident that in case of non-availability of teachers having 3 years experience, graduate teachers/UDT with less than 3 years experience and graduate Assistant Teachers having 12 years experience are eligible for appearing in the departmental limit examination for promotion on the post of Headmaster Middle School. However, under the Rules 2008 (Non-Gazetted), the post of Headmaster Primary School forms a separate category under Schedule-I. It is 100% promotional post from amongst assistant teachers of School Education Department though minimum educational qualification prescribed for the aforesaid post is Higher Secondary Pass with D.Ed./B.Ed. trained, however, the impugned Rules do not make any provision which allows the Headmasters having prescribed experience of assistant teachers and educational qualification to appear in the departmental limit examination for promotion on the post of Headmaster.

22. From the advertisements issued by the District Education Officers of various districts also, it is seen that in some of the districts Headmasters Primary School were eligible for applying for the post of Headmaster Middle School whereas in education districts Mahasamund Raigarh, Jashpur and Durg, there is no mention that Headmasters Primary School having prescribed eligibility criteria could participate in the examination.

23. The arguments advanced on behalf of the State that Headmasters Primary School are promoted from amongst assistant teachers having passed higher secondary along with D.Ed./B.Ed. whereas for promotion on the post of UDT, assistant teachers having graduation and D. Ed./B.Ed./Bl.Ed., is fallacious, as for promotion on the post of Headmaster Primary School as well as teacher/UDT, 5 years teaching experience with the aforesaid minimum qualification has been prescribed as eligibility criteria whereas, for the post of Headmaster Middle School, 12 years teaching experience as graduate assistant teachers is prescribed minimum qualification.

24. That apart, at S. No. 2(b) of column 7 of Sr. No. 3 of Schedule II, it is provided that when all the UDTs and assistant teachers having prescribed qualification and experience are promoted, then Panchayat/Urban Administration and Development Department shall fill in the posts. It further provides that Shiksha Karmi Grade-I having 5 years experience and Shiksha Karmi Grade-II having 7 years experience would be eligible for examination. 60% posts would be filled in by Shiksha Karmis and 40% posts would be filled in by the Headmasters Primary School. However, Headmasters Primacy School having minimum educational qualification and experience have been excluded from participating in the departmental limit examination in the event of non-availability of UDTs

having 3 years experience and on account of aforesaid exclusion in the advertisement, the District Education Officers of the Districts have not mentioned that Headmasters Primary School having prescribed eligibility criteria could participate in the examination.

It is not the case of the respondent/State that none of the Headmasters Primary School possesses prescribed educational qualification and experience for the post of Headmaster. Therefore, we are of the opinion that exclusion of Headmaster Primary School at entry No. 2 of column 7 of Sr. No. 3 of Schedule-II is arbitrary and discriminatory and the same deprives the eligible Headmasters Primary School from participating in the departmental limit examination.

GROUND iv

The impugned Rules are capable of several interpretations and it suffers from the vice of unreasonableness and arbitrariness. The post of Headmaster Middle School has been classified as Class-2 gazetted service in the State, however, all the District Education Officers of the Education Districts are appointing authority who have initiated procedure for appointment in their respective districts by interpreting the Rules in their own way and by following their own procedure. Since it is a State cadre post, state level inter se seniority is required to be maintained.

25. We have already held that non-inclusion of Headmaster Primary School having requisite qualification in entry No. 2(a) and (b) of Column 7 of Sr. No. 3 of Schedule II is discriminatory, as the same deprives eligible Headmasters Primary School from participating in the departmental limit examination. It further provides that only "successful candidates" appearing in the departmental limit examination will be promoted to the post of Headmaster Middle School. Keeping in view the aforesaid provisions, some of the District Education Officers of the education districts have prescribed minimum qualifying marks as 35% whereas in other districts, no such minimum qualifying marks has been prescribed (Mahasamund & Rajnandgaon). Though under the Rules it is provided that only successful candidates in the examination shall be promoted, however, no minimum qualifying marks has been prescribed. It is also not provided that where successful candidates are not available in sufficient number to fill in the entire available posts of Headmasters Middle School, whether remaining posts could be filled by Panchayat/Urban Administration and Development Department by conducting examination from amongst eligible Shiksha Karmi Grade-I & II and Headmaster Primary School. On the contrary, it provides that this exercise is to be undertaken only in contingency when all the teachers are promoted.

Learned counsel for the State argued that the Rules do not provide for any qualifying marks for examination, however, if there is any clause in the advertisement, the same shall be corrected and the appointments will be strictly made on the basis of merit.

It is true that no minimum qualifying marks has been prescribed under the Rules

for departmental limit examination, however, the rule specifically provides that only successful candidates would be eligible for promotion and thus, under the Rules, some minimum proficiency is expected from eligible candidates in the departmental limit examination.

We also find substance in the arguments advanced by learned counsel for the petitioners that Headmaster Middle School is a Gazetted post whereas, under the rules, recruitment is to be made at the level of each and every district of the State by the District Education Officers whereas, for promotion on the post of Principal, High/Higher Secondary School, Headmaster of Middle School is a feeder cadre as per entry No. 1 of Schedule II and, therefore, State Level Seniority of Headmaster of Middle School would be required to be maintained.

26. We have already pointed towards the arbitrariness, absurdities and inconsistencies in various provisions of the Rules, which is capable of different interpretations by the authorities who are entrusted with the responsibility of recruitment. The above deficiency in the Rules could not be cured even after several amendments made by the State Government by various notifications as detailed above. Learned counsel for the State in its written submissions has admitted that there are reports of irregularities in promotion and selection and the State would enquire into the same and all irregular promotions and appointments will be cancelled. However, the infirmities which have been underlined in this order can be corrected only by framing unambiguous rules capable of only one interpretation. Any other remedial measure by the authorities would only result in multiplicity of litigation.

27. On the basis of aforesaid discussion, we quash Entry No. 2 of Column No. 7 of Sr. No. 3 of Schedule-II appended with the Chhattisgarh School Education Gazetted Service (School Level Service) Recruitment and Promotion Rules, 2008. Consequently, the advertisements issued by the respective District Education Officers of the concerned Education Districts for the post of Headmaster Middle School also stand quashed. In the result, the writ petitions are allowed to the extent indicated above.