(W.P.(S)No.1243/2020)

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.1243 of 2020

Order reserved on: 02/02/2024

Order delivered on: 20/03/2024

1. Anil Chhari, S/o Late Ramswaroop Chhari, Aged about 48 years, R/o Qr.No. A/10, Veshnvi Vihar, Phase II, Ameri, Uslapur, Bilaspur (C.G.) Pin 495001

2. Deepak Kumar, S/o Tribhuwan Das, Aged about 38 years, R/o Qr.No. 4/16, Ispat Nagar, Risali, Bhilai, Tah. Durg, Distt. Durg (C.G.) Pin 496001

3. Sukhsagar Tandey, S/o Shri G.R. Tandey, Aged about 49 years, R/o F-01, Contingency Quarter, South Chakradhar Nagar, Ward No.28, Raigarh, Distt. Raigarh (C.G.) Pin 496001

---- Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Ministry of Public Works Deptt., Mahanadi Bhavan, Atal Nagar, Naya Raipur, Distt. Raipur (C.G.)

2. State of Chhattisgarh, Through Chief Secretary, Mahanadi Bhavan, Mantralaya, Atal Nagar, Naya Raipur, Distt. Raipur (C.G.)

3. State of Chhattisgarh, Through Addl. Chief Secretary, Ministry of Public Works Deptt., Mahanadi Bhavan, Mantralaya, Atal Nagar, Naya Raipur, Distt. Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Tribhuwan Das and Mr. Harshal Chouhan, Advocates.

For Respondents / State: -
Mr. Rahul Tamaskar, Government Advocate.

Division Bench: -
Hon'ble Mr. Sanjay K. Agrawal and
Hon'ble Mr. Sanjay Kumar Jaiswal, JJ.

C.A.V. Order

Sanjay K. Agrawal, J.

1. The petitioners three in number have called in question the constitutional validity of the Chhattisgarh Public Works Engineering (Gazetted) Services Recruitment Rules, 2015 (for short, 'the Rules of 2015') in general and in particular, Column 7 of Serial No.9 of Schedule – II enacted under Rule 6 of the said Rules by which separate quota has been fixed for Sub-Engineer and Draftsman by repealing the old Rules namely, the Madhya Pradesh Public Works Engineering (Gazetted) Service Recruitment Rules, 1969 (for short, 'the Rules of 1969'), in which separate quota for Sub-Engineer (Degree Holder) to the extent of 20% had been prescribed, branding the above-stated rule to be unconstitutional, and taking away the fundamental right of the petitioners to be promoted on the post of Assistant Engineer (Civil).

2. The aforesaid challenge has been made on the following factual backdrop:-

Petitioners' Case: -

3. It is the case of the petitioners that the petitioners are Sub-Engineers (Civil) and they are degree holders and are responsible for designing, constructing and maintaining buildings, flood-control projects, highways, sewage facilities and other kinds of large construction project of the State and National level turn key projects. They had acquired degree from the State Engineering College and National Engineering College of the recognised

University. Degree holders are recruited to the post of Assistant Engineer (Civil) which is a Class-II post, by direct recruitment and by promotion in the establishment. It is the further case of the petitioners that at the time of recruitment, they are governed by the M.P. General Administration Department (Vetan Aayog Cell), Bhopal vide letter No.F-3-14/1/veaapra/98 dated 9-9-1998 and the Public Works Engineering (Gazetted) Service Recruitment Rules, 1969 and as per their pleadings, for next promotional post, minimum 8 years of service was required to be promoted as Assistant Engineer (Civil) and as per the Rules of 1969, though separate quota to the extent of 20% for promotion to the post of Assistant Engineer (Civil) was prescribed, but by the impugned Rules of 2015, the aforesaid quota prescribed for promotion to the post of Assistant Engineer (Civil) from the post of Sub-Engineer (Civil) has been amended and separate quota has been allotted to all the Sub-Engineers to the extent of 70%. As such, by introduction of the impugned Rules, promotional quota system i.e. separate quota allotted for Degree Holders & Diploma Holders has been done away and both the classes of Sub-Engineers have been clubbed altogether irrespective of their qualification which is not based on intelligible differentia and it has taken away their vested right to be promoted on the post of Assistant Engineer and therefore the rule is violative of their fundamental right to be promoted on the post of Assistant Engineer. Thus, the rule is liable to be quashed as it will

jeopardize the promotion of Sub-Engineers (Civil) degree holders for whom 20% quota was separately fixed in the Rules of 1969.

Respondents' Case: -

4. Return has been filed on behalf of the State / respondents stating inter alia that the power to frame rules to regulate the conditions of service under proviso to Article 309 of the Constitution of India carries it with the power to amend or alter the said rules. It has been further stated that any rules which affect the right of person to be considered for promotion is a condition of service, although mere chance of promotion may not. Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service, but the right to be considered for promotion is a term of service, but mere chances of promotion are not. It has also been pleaded that fixation of quotas or different avenues and ladders for promotion in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer, mainly pertaining to the policy-making field and the power of the State to fix quota for promotion cannot be said to be violative of the Constitutional Scheme of equality as contemplated under Articles 14 & 16 of the Constitution of India. The petitioners are aggrieved of their reduction of chances of promotion which is not the condition of service / their fundamental right and as such, they cannot claim

that they be promoted ignoring the Rules of 2015. Therefore, the writ petition deserves to be dismissed.

5. Rejoinder has been filed controverting the statement made in the return stating that the respondents have failed to consider that the right which was created in favour of degree holder Sub-Engineers cannot be taken away by making an amendment in the rules or by promulgating a new set up of rules prejudicial to the interest of the petitioners and other similarly situated persons. Any legislation or amendment having retrospective operation having the effect of taking away a benefit already available to the employees under the existing rules is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 & 16 of the Constitution of India. As such, the writ petition deserves to be allowed.

Submissions of the learned counsel for the parties: -

6. Mr. Tribhuwan Das, learned counsel appearing for the petitioners, would submit that in the previous Rules of 1998, there was a clear bifurcation of the quota of Degree Holder and Diploma Holder Sub-Engineer which was based upon the intelligible differentia as there was substantial difference in the qualification of both the categories of Sub-Engineer, but the reasonable classification which was present in the previous rule has been done away by merging / clubbing of the candidates emerged from different sources which is contrary to the decision rendered by the Supreme Court in the matter of **Andhra Pradesh**

Dairy Development Corporation Federation v. B. Narasimha Reddy and others[1]. He would further submit that in the Rules of 1969, separate quota was kept for both the types of Sub-Engineers i.e. Degree Holder and Diploma Holder which was based upon the reasonable classification, but the said classification has been wiped-out from the Rules of 2015 which also runs contrary to the decision of the Supreme Court in the matter of **Chandan Banerjee and others v. Krishna Prosad Ghosh and others**[2]. He would also submit that in the matter of **State of Uttarakhand and others v. S.K. Singh and others**[3], their Lordships of the Supreme Court have held that equality is the very bulwark of the provisions of the Constitution, in service jurisprudence, classifications are a matter of necessity. He would further contend that the petitioner's right to promotion which had already accrued by the Rules of 1969 has been taken away. He would rely upon the decision of the Supreme Court in the matter of **Chairman, Railway Board and others v. C.R. Rangadhamaiah and others**[4] to buttress his submission that the amendment having retrospective operation which takes away the already available benefit of the employee is arbitrary and violative of Articles 14 and 16 of the Constitution of India.

7. Mr. Rahul Tamaskar, learned Government Advocate appearing for the State / respondents, would submit that the petitioners

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1 (2011) 9 SCC 286
2 2021 SCC OnLine SC 21
3 (2019) 10 SCC 49
4 AIR 1997 SC 3828

have no vested right of promotion and such right is limited to being considered for promotion and therefore it is inappropriate on the part of the petitioners to submit that by introduction of the new impugned Rules, their vested right has been taken away. He would rely upon the decision of the Supreme Court in the matter of **Union of India and others v. Krishna Kumar and others**[5] to demonstrate that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. He would also rely upon the decision of the Supreme Court in the matter of **Dilip Kumar Garg and another v. State of Uttar Pradesh and others**[6] to demonstrate that a similar case challenging a clause obliterating the difference between Junior Engineer Diploma and Degree holders has been upheld by the Supreme Court. As such, the writ petition deserves to be dismissed.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

Principles for Examining Constitutional Validity of Statute / Rule: -

9. A Statute is construed so as to make it effective and operative on the principle expressed in the maxim "*ut res magis valeat quam pereat*". Therefore, a presumption that the Legislature does not

5 (2019) 4 SCC 319
6 (2009) 4 SCC 753

exceed its jurisdiction, and the burden of establishing that the Act is not within the competence of the Legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its *vires*. (See ***Principles of Statutory Interpretation*** *by Justice G.P. Singh, 12th Edition, page 592*.)

10. It is a settled principle of law that the Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provisions under challenge cannot stand.

11. The Constitution Bench of the Supreme Court in the matter of **Shayara Bano v. Union of India and others (Ministry of Women and Child Development Secretary and others)**[7] held that legislation can be struck down if it is manifestly arbitrary and manifest arbitrariness is the ground to negate legislation as well under Article 14 of the Constitution of India. It has been observed by their Lordships as under: -

> "101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*[8] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid

7 (2017) 9 SCC 1
8 (1985) 1 SCC 641 : 1985 SCC (Tax) 121

> judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

12. Very recently, in the matter of **Dr. Jaya Thakur v. Union of India and others**[9], it has been held by three-judge Bench of the Supreme Court that judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive by observing as under: -

> "68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and Executive function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits."

13. Thereafter, in **Dr. Jaya Thakur** (supra), their Lordships of the Supreme Court relying upon their earlier judgment in the matter of **Binoy Viswam v. Union of India and others**[10] and reviewing their earlier decisions, speaking through B.R. Gavai, J., have held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly, and observed as under: -

> "70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature

9 2023 SCC OnLine SC 813
10 (2017) 7 SCC 59

cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad.

71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated

> in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment."

14. Furthermore, in the matter of **Dental Council of India v. Biyani Shikshan Samiti and another**[11], their Lordships of the Supreme Court have held that there is always a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. B.R. Gavai, J., speaking for the Supreme Court, held in paragraphs 27 & 28 of the report as under: -

> "27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.
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> 28. It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

15. Similarly, in the matter of **PGF Limited and others v. Union of India and another**[12], their Lordships of the Supreme Court have laid down certain guidelines by taking note of certain precautions

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11 (2022) 6 SCC 65
12 (2015) 13 SCC 50

to be observed whenever the vires of any provision of law is raised before the Court and cautioned the Courts in paragraph 37 as under: -

> "37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the abovestated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time-bound basis, so that the legal position is settled one way or the other."

Legal Analysis and Discussion: -

16. After having considered the principles for examining the constitutional validity of an Act or the Rules, it would bring us to the facts of the case.

17. The impugned Rule which is sought to be challenged as unconstitutional and violative of the petitioners' fundamental right of being promoted on the post of Assistant Engineer (Civil) has been enacted by the Governor of Chhattisgarh in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Serial No.9 of Schedule – II enacted under Rule 6 of the Rules of 2015 deals with promotion to the post of Assistant Engineer (Civil) by which separate quota has been fixed for Sub-Engineer and Draftsman by repealing the Rules of 1969, by virtue of Rule 22 of the Rules of 2015. Serial No.9 of Schedule – II of the Rules of 2015 states as under: -

SCHEDULE – II
(See rule 6)

S.No.	Name of service	Number of posts	Percentage of number of post to be filled			Remarks
			By direct recruitment {See rule 6(1)(a)}	By promotion of members of the service {See rule 6(1)(b)}	By transfer of persons from other services {See rule 6(1)(c)}	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
9.	Assistant Engineer (Civil)	259	27%	73%	-	70% posts out of 73% posts shall be filled by Sub Engineers and remaining 3% posts shall be filled by Head Draftsman/ Draftsman cadre.

18. Prior to coming into force of the Rules of 2015 with effect from 14th May, 2015, as per the Rules of 1969, the Rule applicable was as under: -

SCHEDULE–II
(See Rule 7)

Name of Department	Name of service	Total No. of duty posts	Percentage of number of duty post to be filled in			Remarks
			By direct recruitment	By promotion of the members of service	By transfer of persons from other service	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Public Works Department	(1) Class-I (2) Class-II	319 828	- 25 Percent	100 Percent 75 Percent	- -	for 75 percent (1) 50% from sub-engineers who are Diploma holders. (2) 20% from sub-engineers who obtained Engineering Degree during service and those sub-Engineers who possess engineering degree prior to the entrance in the service (3) 5% from the Draughtsman cadre

Chances of promotion, whether fundamental right: -

19. Whether an employee has a right to be promoted or not depends on the statutory rules governing his service or the terms of the contract of service or executive instructions as the case may be. If the rules or the contract of service etc. provide or indicate that promotion is to be made on an assessment of the merits of the candidate, then the candidate has only a right to be considered for promotion as distinguished from the right to be promoted.

20. In the instant case, as per the Rules of 2015, appointment by promotion has to be made by Rule 13 of the Rules of 2015 for

which there shall be a Committee consisting of the members mentioned in Schedule IV for making a preliminary selection for promotion of eligible candidates and it has to be done on the basis of assessment of the merit of the candidate as per Rule 14 of the Rules of 2015. As such, the petitioners have no fundamental right to be promoted, but they have only a right to be considered for promotion as per the prevalent rules at the time of consideration.

21. It is well settled that while promotion is a normal incidence of service and not a fundamental right, but an employee has a right to be considered for promotion. In **Krishna Kumar's** case (supra), their Lordships of the Supreme Court have clearly held that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place, and observed in paragraphs 10, 11 & 12 as under: -

> "10. In considering the rival submissions, it must, at the outset, be noted that it is well settled that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This Court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision of this Court in *Y.V. Rangaiah* v. *J. Sreenivasa Rao*[13] has been construed in subsequent decisions as a case where the applicable Rules required the process of promotion or selection to be completed within a stipulated time-frame. Hence, it has been held in *H.S. Grewal* v. *Union of India*[14] that the creation of an intermediate post would not amount to an interference with

13 (1983) 3 SCC 284 : 1983 SCC (L&S) 382
14 (1997) 11 SCC 758 : 1998 SCC (L&S) 420

the vested right to promotion. A two-Judge Bench of this Court held thus: (*H.S. Grewal case*, SCC p. 769, para 13)

> "*13.* ... Such an introduction of an intermediate post does not, in our opinion, amount to interfering with any vested rights cannot be interfered with, is to be accepted as correct. What all has happened here is that an intermediate post has been created prospectively for future promotions from Group B Class II to Group A Class I. If, before these Rules of 1981 came into force, these officers were eligible to be directly promoted as Commandants under the 1974 Rules but before they got any such promotions, the 1981 Rules came in obliging them to go through an intermediate post, this does not amount to interfering with any vested rights."

11. In *Deepak Agarwal* v. *State of U.P.*[15], this Court observed thus: (SCC p. 735, paras 26-27)

> "*26.* It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "Rules in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in *Y.V. Rangaiah case*[13] lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.
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> *27.* The judgments cited by the learned counsel for the appellants, namely, *B.L. Gupta* v. *MCD*[16], *P. Ganeshwar Rao* v. *State of A.P.*[17] and *N.T. Devin Katti* v. *Karnataka Public Service Commission*[18] are reiterations of a principle laid down in *Y.V. Rangaiah case*[13]."

15(2011) 6 SCC 725 : (2011) 2 SCC (L&S) 175]
16 (1998) 9 SCC 223 : 1998 SCC (L&S) 532
17 1988 Supp SCC 740 : 1989 SCC (L&S) 123
18 (1990) 3 SCC 157 : 1990 SCC (L&S) 446

12. Recently, in *State of Tripura* v. *Nikhil Ranjan Chakraborty*[19], another two-Judge Bench of this Court held thus: (SCC pp. 650-51, para 9)

> "*9.* The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, "rules in force on the date" the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in *Deepak Agarwal*[15], in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24-11-2011.""

22. As such, the petitioners have only a right to be considered fairly, but no right of promotion. However, in the matter of **State of Maharashtra and another v. Chandrakant Anant Kulkarni and others**[20], it has been held by their Lordships of the Supreme Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. It has been further held that a right to be considered for promotion is a term of service, but mere chances of promotion are not. Furthermore, in the matter of **Air Commodore Naveen Jain v. Union of India and others**[21], their Lordships of the

19 (2017) 3 SCC 646 : (2017) 1 SCC (L&S) 718
20 (1981) 4 SCC 130
21 (2019) 10 SCC 34

Supreme Court have affirmed the view relying upon various judicial pronouncements that power of the State to fix quota for promotion cannot be said to be illegal, arbitrary or discriminatory so as to attract violation of either Article 14 or 16 of the Constitution, and it was observed in paragraphs 13 & 15 as under: -

> "13. In *State of Mysore* v. *G.B. Purohit*[22], this Court held that a right to be considered for promotion, is a condition of service but mere chances of promotion are not. The rule which merely affects the chances of promotion cannot be regarded as varying a condition of service. The said judgment was quoted with approval in later judgment reported as *Ramchandra Shankar Deodhar* v. *State of Maharashtra*[23], wherein this Court held as under: (SCC p. 329, para 15)
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> "*15*. ... All that happened as a result of making promotions to the posts of Deputy Collectors division wise and limiting such promotions to 50 per cent of the total number of vacancies in the posts of Deputy Collector was to reduce the chances of promotion available to the petitioners. It is now well settled by the decision of this Court in *State of Mysore* v. *G.B. Purohit*[22] that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. In *Purohit case*[22] the district wise seniority of sanitary inspectors was changed to Statewise seniority, and as a result of this change the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115, sub-section (7). This contention was negatived and Wanchoo, J. (as he then was), speaking on behalf of this Court observed: (SLR para 10)
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> '*10*. ... 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

22 1967 SLR 753 (SC)
23 (1974) 1 SCC 317 : 1974 SCC (L&S) 137

> this argument because chances of promotion are not conditions of service.' "

15. In *A. Satyanarayana* v. *S. Purushotham*[24], this Court held that the power of the State to fix quota for promotion cannot be said to be violative of the constitutional scheme of equality as contemplated under Articles 14 and 16 of the Constitution of India. The Court held as under: (SCC p. 426, paras 23 & 25-26)

> "*23.* We, however, are of the opinion that the validity or otherwise of a quota rule cannot be determined on surmises and conjectures. Whereas the power of the State to fix the quota keeping in view the fact situation obtaining in a given case must be conceded, the same, however, cannot be violative of the constitutional scheme of equality as contemplated under Articles 14 and 16 of the Constitution of India. There cannot be any doubt whatsoever that a policy decision and, in particular, legislative policy should not ordinarily be interfered with and the superior courts, while exercising their power of judicial review, shall not consider as to whether such policy decision has been taken mala fide or not. But where a policy decision as reflected in a statutory rule pertains to the field of subordinate legislation, indisputably, the same would be amenable to judicial review, inter alia, on the ground of being violative of Article 14 of the Constitution of India. (See *Vasu Dev Singh* v. *Union of India*[25] and *State of Kerala* v. *Unni*[26].)
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> * * *
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> *25.* While saying so, we are not unmindful of the legal principle that nobody has a right to be promoted; his right being confined to right to be considered therefor.
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> *26.* Similarly, the power of the State to take a policy decision as a result whereof an employee's chance of promotion is diminished cannot be a subject-matter of judicial review as no legal right is infringed thereby."

23. As such, reduction in chances of promotion, if any, on account of change or amendment in the rules would not affect his fundamental right, as the Government servant has only a right to

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24 (2008) 5 SCC 416 : (2008) 2 SCC (L&S) 279
25 (2006) 12 SCC 753
26 (2007) 2 SCC 365

be considered for promotion in accordance with the relevant rules and therefore challenge to this effect is hereby rejected.

24. In the matter of **Dwarka Prasad and others v. Union of India and others**[27], their Lordships of the Supreme Court have held that fixation of quotas or different avenues and ladders for promotion in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer, mainly pertaining to the policy-making field, and observed in paragraph 16 as under: -

> "16. Fixation of quotas or different avenues and ladders for promotion in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer, mainly pertaining to the policy-making field. The relevant considerations in fixing a particular quota for a particular post are various such as the cadre strength in the feeder quota, suitability more or less of the holders in the feeder post, their nature of duties, experience and the channels of promotion available to the holders of posts in the feeder cadres. Most important of them all is the requirement of the promoting authority for manning the post on promotion with suitable candidates. Thus, fixation of quota for various categories of posts in the feeder cadres requires consideration of various relevant factors, a few amongst them have been mentioned for illustration. Mere cadre strength of a particular post in the feeder cadre cannot be a sole criterion or basis to claim parity in the chances of promotion by various holders of posts in feeder categories."

25. Similarly, in **Dilip Kumar Garg** (supra), it has been held by their Lordships of the Supreme Court that the administrative authorities are in the best position to decide the prescription of requisite qualifications for promotion from Junior Engineer to Assistant Engineer and the decision of the Government to treat

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27 (2003) 6 SCC 535

all Junior Engineers, whether degree-holders or diploma-holders, as equals for the purpose of promotion is a policy decision, which the Court should not ordinarily interfere, and observed as under in paragraphs 15 & 16: -

> "15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a court of appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. (See *Union of India* v. *Pushpa Rani*[28] and *Official Liquidator* v. *Dayanand*[29].)
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> 16. The decision to treat all Junior Engineers, whether degree-holders or diploma-holders, as equals for the purpose of promotion is a policy decision, and it is well settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case."

26. In the case in hand, the petitioners, who are Sub-Engineers working in the Public Works Department, are only aggrieved that their chances of promotion are reduced by introduction of the new Rules in which degree-holders and diploma-holders have been treated alike and joint quota has been fixed for them to the extent of 70%. This decision is a policy decision of the Government which this Court would not like to interfere being a considered policy decision of the Government for which the Government is the competent authority to prescribe considering the relevant facts and furthermore, prescription of quota for

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28 (2008) 9 SCC 242 : (2008) 2 SCC (L&S) 851
29 (2008) 10 SCC 1

promotional post is the sole prerogative of the Government which this Court declines to interfere. However, the decisions cited by learned counsel for the petitioners namely, **B. Narasimha Reddy's** case (supra), **Chandan Banerjee** (supra), **S.K. Singh's** case (supra) and **C.R. Rangadhamaiah's** case (supra), are quite distinguishable to the facts of the present case, as it has already been held that the petitioners have no vested right of promotion and reduction in chances of promotion would not per se amount to taking away their alleged right and further, decision of the Government to treat Sub-Engineers whether diploma-holders or degree-holders alike has already been upheld by the Supreme Court in **Dilip Kumar Garg** (supra). Furthermore, the recent decision in **Chandan Banerjee** (supra), wherein their Lordships of the Supreme Court have upheld the constitutional validity of the rules prescribing qualification amongst the Engineers on the basis of degree and diploma, would not help the present petitioners in any manner.

27. In view of the aforesaid discussion, we are of the considered opinion that Column 7 of Serial No.9 of Schedule – II enacted under Rule 6 of the Rules of 2015 is constitutionally valid and does not suffer any vice of arbitrariness, illegality or discriminatory. Challenge made to the said Rule is hereby declined. Consequently, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge

Soma

Head Note

Reduction in chances of promotion, if any, on account of change or amendment in the rules would not affect his fundamental right, as the Government servant has only a right to be considered for promotion in accordance with the relevant rules.

चूंकि शासकीय सेवक केवल प्रासंगिक नियमों के अनुसार पदोन्नति के लिए विचार किए जाने का अधिकार रखता है, नयमों में परिवर्तन या संशोधन के कारण पदोन्नति के अवसरों में कमी यदि कोई हो तो, यह उसके मूलभूत अधिकार को प्रभावित नहीं करेगा।