

**THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

W.P.(C) 609(A.P.) OF 2016

Shri Gyamar Gagung & 8 Ors. ... Petitioners

-Versus-

The State of Arunachal Pradesh & 4 Ors. ... Respondents

BEFORE

**HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

Advocates for the Petitioners	: Mr. T.T. Tara.
Advocates for the Respondents	: Mr. S. Tapin (R-1, 2 & 3) : Ms. N. Danggen (R-4) : Mr. R.B. Yadav (R-5)
Date of hearing	: 26.09.2019.
Date of judgment and order	: 05.11.2019.

JUDGMENT AND ORDER (CAV)

(K.R. Surana, J.)

Heard Mr. T.T. Tara, the learned counsel for the petitioners. Also heard Mr. S. Tapin, the learned Senior Govt. Advocate, appearing for the State respondents No. 1, 2 and 3, Ms. N. Danggen, learned counsel for the respondent No.4 and Mr. R.B. Yadav, the learned counsel for respondent No.5.

2) By this writ petition filed under Article 226 of the Constitution of India, the 9 (nine) petitioners herein, who are all serving as Child Development Project Officers ('CDPO' for short) under the Directorate of Women and Child Development, Govt. of Arunachal Pradesh, have prayed that (1) a writ of mandamus be issued, declining Column 11(1)(ii) of the Deputy Director (Women and Child Development) Group A Non Ministerial Recruitment Rules, 2013 (hereinafter referred to as "2013 Recruitment Rules") by which the Programme Officer/ Principal have been given 8% reservation for promotion to the post of Deputy Director, Integrated Child

Development Services ('ICDS' for short), (2) for a writ of mandamus, directing the official respondent to provide for appropriate avenues for promotion to the grade of Deputy Director, ICDS for the CDPO's by enacting / reformulating appropriate provisions in the 2013 Recruitment Rules, (3) for quashing/ setting- aside order dated 24.04.2015 issued by the Commissioner, ICDS, Govt. of India, whereby the representation submitted by the petitioners has been disposed of.

3) The learned counsel for the petitioner has submitted that ICDS is a 100% centrally sponsored scheme dedicated to providing nutrition and education to the children. The Department of Women and Child Development, Govt. Of A.P. is the nodal department that looks after the implementation of ICDS in the State level. At the basic grassroots level, the Anganwadi Workers (AWWs) and Anganwadi Helpers (AWHs) are responsible for the implementation of the scheme. At the Block level, which is identified as ICDS projects, the CDPOs look after the implementation and supervision of ICDS services and at the district level, the Deputy Director (ICDS) is responsible for the implementation, monitoring, supervision and reporting of ICDS services. The CDPO and Deputy Director (ICDS) are also responsible for carrying out effective co-ordination and co-operation with the other allied department like education, health and family welfare, PHE, General Administration, etc at their respective levels. It is also submitted that at different point of times, various Rules were brought in force for regulating the service in the field of Child Development Schemes, In this regard, the learned counsel for the appellant has relied on the following Rules in force from time to time:-

- a. Vide notification dated 17.12.1986, in exercise of power under Article 309 of the Constitution of India, the Govt. of Arunachal Pradesh, Deputy Director ICDS Recruitment Rules, 1986 (Group-A Gazetted) was made, wherein the CDPOs and the Programme Officer ('PO' for short) were the feeder posts for filling up the post of Deputy Director (ICDS) on promotion in the Rural Development Department. It is projected that at that relevant time, the scale of pay of PO was in the scale of Rs.650-1200, which was higher than that of CDPOs, having a scale of Rs.550-900/-.
- b. Vide notification dated 23.11.1992, the Recruitment Rules for the post of Assistant Director (ICDS) in the Department of Social Welfare, Govt. of Arunachal Pradesh was made under Article 309 of the Constitution of

India, by which it was envisaged that 100% posts would be filled-up on promotion from the post of CDPO (ICDS) and Principal Training having 5 (five) year's regular service in the grade for graduate and 10 years regular service in case of under-graduate on the basis of seniority- cum-fitness. Accordingly, it is submitted that the post of PO was no longer the feeder post for promotion to the post of Assistant Director (ICDS).

- c. Vide a notification dated 23.07.1993, issued under Article 309 of the Constitution of India, Programme Officer (WCS) (Group 'B') Recruitment Rules, 1993 was made, envisaging that 100% posts would be filled-up from the grade of Superintendent of Social Welfare Department with 3 (three) years of regular service in the grade failing which on transfer/ deputation from Arunachal Pradesh Govt. Official holding analogous post with 3 (three) years of regular service in any post in the scale of Rs.1640-2900/- or equivalent possessing the following; (a) Degree in Arts/ Science or Commerce, (b) experience in planning/ programming evaluation and monitoring.
- d. Vide a notification dated 10.02.1995, issued under Article 309 of the Constitution of India, Child Development Project Officer (Group 'B' Post) Recruitment Rules, 1995 was made for regulating the service of CDPOs in the Directorate of Social Welfare. By the said Rules, it was envisaged that 50% by promotion from ACDPO/EO (WCS)/Supervisor (ICDS)/ Statistical Asstt. as per terms laid down at column 12 failing which by transfer/ deputation for a maximum period of 4 years as per terms laid down at column 12 of the schedule. 50% by direct recruitment by conducting written competitive examination in following syllabus. (1) General English (Degree Standard)-100 Marks. (2) General Knowledge (Degree Standard)-100 Marks. (3) Viva Voce-50 Marks. Promotion from amongst ACDPO (Rs.1400-2600) Extension Officer (WCS)/NHF/ Supervisor (ICDS) and Statistical Assistant in the scale of Rs.1400-2300/- under Social Welfare Deptt. having 7 years regular service in the grade. Transfer/ Deputation. Central/ State Govt. employees having analogous post of ACDPO/EC(WCS)/ Supervisor(ICDS) and Statistical Assistant in the pay scale from Rs.1400-2300/- with 7 years' service with a degree in any discipline.

- e. Vide a notification dated 10.02.1997, issued under Article 309 of the Constitution of India, the Govt. of Arunachal Pradesh had made the Principal (WCDTC) (Group 'B') Recruitment Rules, 1997 in the Directorate of Social Welfare to provide for recruitment to the post of the Principal. The post of Principal was envisaged to be filled up 100% by promotion from the post of Instructress (Sr) having 5 (five) years continuous service in the grade failing which by transfer on deputation/ transfer from CDPOs.
- f. Vide a notification dated 09.01.2004, issued under Article 309 of the Constitution of India, the Govt. of Arunachal Pradesh had amended the CDPO (Group 'B' Gazetted) Recruitment (Amendment) Rules, 2004 was made, envisaging that out of 50% promotion quota; (a) 70% by promotion from amongst the serving Supervisor/ Extension Officer of the department who have rendered 8 (eight) years of regular service in the grade and (b) 30% by promotion from amongst the serving Statistical Assistant of the department who have rendered 8 (eight) years of regular service in the grade".
- g. Vide order dated 30.03.1998 issued by the Chief Secretary to the Govt. of Arunachal Pradesh, the post of Assistant Director (ICDS) in the scale of Rs.8000/- to Rs.12,500/- under the Directorate of Social Welfare was re-designated as Deputy Director (ICDS), further providing that all the posts of Deputy Director (ICDS) will constitute an integrated cadre of Deputy Director (ICDS) under the Department of Social Welfare, Govt. of Arunachal Pradesh.
- h. Vide a notification dated 05.02.2008, issued under Article 309 of the Constitution of India, the Govt. of Arunachal Pradesh had further amended the Child Development Project Officer (Group 'B' Post) Recruitment Rules, 1995 in the Directorate of Social Welfare. The post of CDPO was upgraded and the Rules was amended to be called the Child Development Project Officer (Group 'A' Post) Recruitment Rules, 1995. Certain amendments were also made in respect of entries in column 2, 4 and 12.

4) It is submitted that there are about 98 CDPOs for 98 ICDS projects in the State and the senior-most CDPOs have stagnated in the same post for last

about 25 years of continuous service. It is also submitted that there is only one sanctioned post of Principal, WCDTC (i.e. Women and Child Development Training Centre) under Social Welfare, Women and Child Development Department, Govt. of Arunachal Pradesh, which is held by respondent No.4. It is also submitted that there is only one sanctioned post of Programme Officer under the Social Welfare, Women and Child Development Department, Govt. of Arunachal Pradesh, which is held by respondent No.5. It is also submitted that there are 14 posts of Deputy Director under the Social Welfare, Women and Child Development Department, Govt. of Arunachal Pradesh.

5) The learned counsel for the petitioners has submitted that different sets of recruitment rules are in force for the recruitment of CDPOs, Principal (WCDTC) and PO. It is submitted that if the respondents No.4 and 5 are permitted to be appointed to the post of Deputy Director (ICDS) on promotion, they would jump six grade pay from Rs.4600/- to Rs.6600/- and, as such, it is submitted that not only the petitioners would be deprived of their promotion, but the same would have demoralizing effect on all CDPOs. It is further submitted that while the respondent No.4 has already got promoted twice, the respondent No.5 has been promoted three times, but on the contrary, the senior-most CDPOs have stagnated in the same post for last about 25 years of continuous service.

6) It is also submitted that the Principal was excluded under notification dated 17.12.1986 while CDPO was made the feeder grade for promotion to the post of Deputy Director. Moreover, the PO was excluded under notification dated 23.11.1992 while CDPO was made as feeder grade for promotion to the post of Assistant Director. Thereafter, by notification dated 05.02.2008, the pay scale of the CDPO was upgraded to Rs.8000/- - Rs.275/- – Rs.13,500/-, which is the pay scale of Assistant Director, and enjoyed by the CDPOs for the last 11 years, which has not been challenged till date. Therefore, the Principal (WCDTC) and PO being unequal to the CDPOs, drawing the lesser pay scale of Rs.4,600/- per month as Group 'B' Officer, cannot be treated as equals for considering promotion to the post of Deputy Director.

7) In support of his submissions, the learned counsel for the petitioners has placed reliance on the case of (i) *E.P. Royappa Vs. State of T.N. & Anr., (1974)*

4 SCC 3, (ii) Ramesh Prasad Singh Vs. State of Bihar & Ors., (1978) 1 SCC 37, (iii) Shakuntala Sharma Vs. High Court of H.P. at Shimla & Anr., (1994) 2 SCC 411, (iv) State of Karnataka Vs. C. Lalitha, (2006) 2 SCC 747, and (v) State of Odisha & Anr. Vs. Anup Kumar Senapati & Anr., C.A.No. 7295/2019 decided on 16.09.2019.

8) Per contra, the learned Senior Govt. Advocate has submitted that it is the prerogative of the State administration to decide what would be the feeder post for filling up the post of Deputy Director (ICDS) in the Social Welfare, Women and Child Development Department, Govt. of Arunachal Pradesh, which is a purely administrative decision. Accordingly, it is submitted that the petitioners, being 9 (nine) out of 98 (ninety eight) CDPOs do not have the competence to claim that CDPOs would be the only feeder post for filling up the post of Deputy Director (ICDS) on promotion. It is submitted that previously, the ratio of promotion to the post of Deputy Director (ICDS) was 50% from the CDPOs, and the rest of 50% posts would be filled up from Principal (WCDTC) and PO. However, at present, the said ratio has been amended to 92% from the CDPO, and the rest of 8% posts would be filled up from Principal (WCDTC) and PO. It is submitted that Article 14 of the Constitution of India has no application when the feeder cadres are different. By referring to the documents annexed to the affidavit- in- opposition filed by the State respondents No.1, 2 and 3, it is submitted that keeping in view the organizational structure of the Department, it has been provided in the OM dated 18.03.1998 issued by the Department of Personnel and Training, Govt. of India as amended in 1993, it is provided that where there are two or more feeder grades, a separate percentage of promotion may be prescribed to each of the feeder cadre and accordingly, separate percentage was earmarked for PO and Principal in the Recruitment Rule of Deputy Director (ICDS). It is also submitted that based on the recommendations by the Sixth Pay Commission, in terms of OM dated 24.03.2009 by the Ministry of Personnel Public Grievances and Pension, Department of Personnel and Training, Govt. of India, the minimum length required for considering promotion from Grade Pay of Rs.4600/- to Rs.6600/- is 7 years and from Grade Pay of Rs.5400/- to Rs.6600/- is 5 years and, as such, there has been no anomaly in the amendment Rules for promotion to the post of Deputy Director (ICDS). It is also submitted that Rs.6600/- is the starting pay grade of the post of Deputy Director, which is the next higher grade than the Principal (WCDTC) and the PO. It is also submitted that notwithstanding that in the year 2007, the pay of CDPO was

enhanced, but still the 1986 Rules was in force, whereby the Principal (WCDTC) and the PO remained senior, there was no reason or occasion for the Principal (WCDTC) and the PO to challenge the enhancement of pay of the CDPO.

9) The learned counsel for respondent No.4 has referred to the affidavit-in-opposition filed by the respondent No.4 and it is submitted that by an order dated 25.06.2002, she was released from the charge of Principal (WCDTC) and by transferring her, she was allowed to function as CDPO, Khagom ICDS Project with headquarter Miao. Accordingly, it is submitted that it cannot be successfully claimed by the petitioners that the Principal (WCDTC) cannot be equated to a CDPO. It is further submitted that pay is not the only criteria to determine seniority or hierarchy and in this regard, she has relied on the case of *Indian Railway SAS Staff Association Vs. Union of India, AIR 1998 SC 805: (1998) 2 SCC 651*. It is also submitted merely because that can be a reduction in the chance of promotion, would not make the recruitment rules, envisaging filling up of a particular promotional post by various feeder cadres and such possibility cannot be a relevant factor for striking down the recruitment rules in question as being violative of Article 14 of the Constitution of India. She also reiterates the submission made by the learned Senior Govt. advocate that the principles of Article 14 is not attracted when feeder cadres are different for filling up of a promotion post.

10) It is further submitted that the recruitment rule to the post of then Assistant Director (ICDS), the Principal (Trg) was one of the feeder post for promotion to the post of Deputy Director (ICDS). As per the said Recruitment Rule 1992, promotion to the post of Assistant Director (ICDS) was made from amongst CDPOs and Principal (Trg) having 5 years regular service in the grade for graduate and 10 years regular service in the grade for under graduate. On the basis of seniority cum fitness. But there was no inherent defect in the said recruitment rule due to non fixation of percentage/ ratio for the other feeder grades. It is submitted that the Department had earlier filled up 7 posts of Deputy Director (ICDS) from the CDPO cadre only and again ignoring the feeder post of Principal (Trg) filled up the remaining 7(seven) posts from the CDPO out of the total Nos. of 14(fourteen) posts of Deputy Director (ICDS) vide order No. WCD-24-92 (ICDS) dated 17.06.2009. On the other hand for the post of Deputy Director (ICDS) there was a different set of recruitment rule, namely the Deputy Director (ICDS) Recruitment Rules, 1986

(Group A Gazette), according to which for promotion to the post of Deputy Director, the feeder cadre were the Programme Officer and CDPO. However, by order dated 30.03.1998 the post of Assistant Director has been re-designated as Deputy Director.

11) Accordingly, it is submitted that even if at one point of time they were equal opportunity for the CDPO and the Principal (WCDTC) to be promoted, the authorities had only promoted CDPO to the post of Deputy Director (ICDS) by ignoring the claim of the Principal (Trainee/ WCDTC). In support of her submissions, the learned counsel for the respondent No.4 placed reliance on the cases of (i) *Indian Railway SAS Staff Association Vs. Union of India*, (1998) 2 SCC 651, (ii) *Shayma Charan Dash Vs. State of Orissa*, (2003) 4 SCC 218, (iii) *Indian Airlines Officers Association Vs. Indian Airlines Ltd*, (2007) 10 SCC 684, and (iv) *State of H.P. Vs. Padam Devi*, (2002) 4 SCC 510.

12) The learned counsel for the respondent No.5 has adopted the submissions made by the learned Senior Govt. advocate and by the learned counsel for respondent No.4 in order to avoid repetition.

13) It is seen that an Office Memorandum No. AB.14017/61/2008-Estt. (RR) dated 24.03.2009 was issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training on subject of 6th Central Pay Commission's Recommendations. It appears from the annexure appended thereto that as per Sl. No. 14, posts having pay band of Rs.4600-6600 should have seven years of minimum qualifying service for promotion to the next higher post and that the private respondents belong to this category. As per Sl. No. 17 thereof posts with pay band of Rs.5400-6600 should have minimum five years of qualifying service for promotion to the next higher post and the petitioners belong to this category. Accordingly, with different qualifying years of service, it is quite permissible for the authorities to consider the case of the private respondents from the feeder cadre of Principal (WCDTC) and PO to the post of Deputy Director (ICDS) on promotion. Therefore, this Court is of the considered opinion that what would be the feeder cadre/ post for considering to fill-up the post of Deputy Director (ICDS) on promotion is a purely administrative prerogative of the State. As per the projection

made by the learned Senior Govt. advocate, previously 50% of the post of Deputy Director (ICDS) was filled up from CDPOs and balance 50% to be filled up from the post of Principal (WCDTC) and PO. However, the said ratio was, at present, amended to 92% from the CDPO and the rest of 8% post of Deputy Director (ICDS) is to be filled up from Principal (WCDTC) and PO. Therefore, as the Government has the prerogative to decide as to which post should be the feeder cadre of a particular promotional post, this Court does not find any reason to take a view that the petitioners have suffered any hostile discrimination. It is seen that in the present case in hand, it is not the case projected by the petitioners that by permitting the post of Principal (WCDTC) and PO would be the feeder cadre/ post to fill up the post of Deputy Director (ICDS), we are unable to accept that the petitioners have suffered any hostile discrimination or that rights throwing under Article 14 of the Constitution has been infringed.

14) Notwithstanding that the pay of CDPOs was enhanced in the year 2007, the Court finds force in the submission made by the learned Senior Govt. advocate that at the said point of time, notification dated 17.12.1986 was in force and column 11 of the schedule placed the PO (WCS) at Sl. No. 1 whereas the CDPO (RD Department) was placed at Sl. No. 2. In this context, it is seen that in the case of *Indian Railway SAS Staff (supra)*, it has been held by the Supreme Court of India that pay is not the criteria to determine seniority. Therefore, the Court is unable to accept that in the present case in hand, merely because the petitioners are drawing a higher scale of pay, they are senior in rank to the private respondents No. 4 and 5 who are respectively holding the post of Principal (WCDTC) and PO respectively. Moreover, the petitioners as well as the private respondents belong to different cadre.

15) The feeder cadres of CDPOs, Principal (WCDTC) and PO are different and in the absence of any law or recruitment rules in force for bringing parity in this three posts/ cadres, it is quite possible for one cadre to have various promotional scope for reaching that cadre/ post. Therefore, merely because the private respondents No.4 and 5 have received promotions for two or three times before reaching the cadre/ post of Principal (WCDTC) and PO and that the petitioners as CDPO did not have that promotional avenue, that itself do not lead to a conclusion

there is hostile discrimination against the petitioners by permitting further promotions, the Principal (WCDTC) and PO.

16) The learned counsel for the petitioner had cited the case of *E.P. Royappa (supra)*. In that case the petitioner was a member of the Indian Administrative Service in the cadre of the State of Tamil Nadu. On 11.07.1969, he was posted to act as Additional Chief Secretary temporarily created in the grade of Chief Secretary for one year. On 13.11.1969, he was posted to act as Chief Secretary. On 07.04.1971, he was appointed Deputy Chairman of the State Planning Commission. That post was created temporarily for a period of one year in the grade of Chief Secretary to Government. The petitioner did not join the post and he went on leave from 13.04.1971 to 05.06.1972. On 06.06.1972, he returned from leave and he was again posted as Deputy Chairman, State Planning Commission. The petitioner did not join that post. He pointed out that the post of Deputy Chairman which was created for one year did not exist after 13 April, 1972. By an order dated 27.06.1972, the Government of Tamil Nadu accorded sanction to the creation of a temporary post of Officer on Special Duty in the grade of Chief Secretary to Government for a period of one year from the date of appointment or till the need for it ceased whichever was earlier and by the same order the petitioner was transferred and appointed as Officer on Special Duty in the post sanctioned aforesaid, but he did not join that post. In the month of July, 1972 the petitioner had filed a writ petition under Article 32 of the Constitution of India seeking writ, direction or order directing the respondent to withdraw and cancel the order dated 27.06.1972. Under the said fact situation, the relevant part of paragraph 22, 30, 32 and 82 of the case of *E.P. Royappa (supra)* cited by the learned counsel for the petitioner, are quoted below:-

"22. *Rule 9 speaks of declaration that the post is equivalent in status and responsibility to a post specified in Schedule III to those Rules. Sub-rule (4) of Rule 9 states that where equation of posts is not possible the State Government or the Central Government may, for sufficient reasons to be recorded in writing appoint a member of a service to such a post without making a declaration. It is, therefore, said on behalf of the petitioner that a declaration in writing is necessary where a post is declared to be equivalent in status and responsibility just as reasons are to be recorded in writing where it is not possible to have a post equivalent in status and responsibility. In other words it is said that in one case it is a declaration in positive terms that the post is equivalent in status and responsibility and in the other case the declaration is negative*

in content that through the post is not equivalent in status and responsibility yet a cadre officer of the Service is appointed to such a post. It is not in dispute that the posts of Deputy Chairman, Planning Commission and the Officer on Special Duty carried the same pay as that of the Chief Secretary. It cannot be said that equal pay will by itself alone be decisive of the equation of status and responsibility of the post. But pay scale will primarily show status and responsibilities of equal nature.

30. *It was contended on behalf of the petitioner that there should be a declaration in writing the purpose of the declaration that the post is equivalent in status and responsibility to Cadre post specified in the Schedule to the Indian Administrative Service (Pay) Rules is to ensure that members of the Cadre are not taken to posts beneath their status and responsibility. These measures are intended to preserve respectability and responsibility of the Cadre Officers. The declaration is not one of mere form. It is of substance. A declaration in writing is desirable. The absence of a declaration will not be an impediment in ascertaining the equivalent status and responsibility. Similarly the presence of a declaration may not be conclusive if the declaration is a mere cloak. The facts and circumstances will be looked into in order to find out whether there is in real substance equality in status and responsibility.*

32. *The posts of the Deputy Chairman, Planning Commission and the Officer on Special Duty were created for cadre officers to discharge duties and responsibilities of a high order. These posts were not created all of a sudden with any oblique purpose. The Planning Commission had been in contemplation for some time. Similarly, the post of Officer on Special Duty was created after consideration and evaluation of serious problems of State Revenue. Each one of the posts carried specific functions and responsibilities. Comparisons between functions, duties and responsibilities of posts at the apex of different departments are not always possible. The status of the post would also depend on the incumbent, because a brilliant officer can so augment the opportunities of public service in the post that others may cover it. The posts were created under the inherent executive powers of the State Government. These posts were not additions to posts specified in the Cadre Schedule of the Indian Administrative Service (Cadre) Rules, 1954. These were posts outside the cadre.*

82. *... Once the declaration of equivalence is made on a proper application of mind to the nature and responsibilities of the functions and duties attached to the non-Cadre post, sub-rule (2) says that the pay of the member of the Indian Administrative Service appointed to such non-cadre post shall be the same as he would have been entitled to, had he been appointed in the Cadre post to which such non-Cadre post is declared equivalent. He is thus assured the pay of the equivalent Cadre post and his pay is protected. Now this declaration of equivalence, though imperative, is not conclusive in the sense that it can never be questioned. It would be open to a member of the Indian Administrative Service to contend, notwithstanding the declaration of equivalence, that*

the non-Cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-Cadre post is in violation of Art. 311 or Arts. 14 and 16. The burden of establishing this would undoubtedly be very heavy and the Court would be slow to interfere with the declaration of equivalence made by the Government. The Government would ordinarily be the best judge to evaluate and compare the nature and responsibilities of the functions and duties attached to different posts with a view to determining whether or not they are equivalent in status and responsibility and when the Government has declared equivalence after proper application of mind to the relevant factors, the Court would be most reluctant to venture into the uncharted and unfamiliar field of administration and examine the correctness of the declaration of equivalence made by the Government. But where it appears to the Court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of equivalence is mala fide or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a Cadre post which he is occupying, the Court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant."

17) It is seen that the facts of the case of *E.S. Royappa (supra)* is quite distinguishable from the facts of the present case in hand, because in that case, the Supreme Court of India was not dealing with the point involved in this case that whether a particular post/ cadre could be one of the feeder post/ cadre to fill-up a particular promotional post. Moreover, from the above quoted paragraphs of the said judgment, it is apparent that the "equal pay" would alone be decisive of the equation of status and responsibility of the post. Hence, the case of *E.P. Royappa (supra)* does not help the petitioner in any manner.

18) In the case of *C. Lalitha (supra)*, the Supreme Court of India had observed that "*Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well-settled that the question of seniority should be governed by the rules. Justice demands that a person should not be allowed to derive any undue advantage over other*

employees." It was further observed that "*The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates.*" In light of the said context, it is seen that the present case in hand is not a case where the petitioners, being similarly situated persons like the respondents No.4 and 5 were not treated equally or that the private respondents No.4 and 5 were allowed to derive any undue advantage. Thus, the said cited case of *C. Lalitha (supra)* does not help to espouse the cause of the petitioners.

19) The facts of the case of *Shakuntala Sharma (supra)* cited by the learned counsel for the petitioners is that by overlooking the claim of the appellant, the Respondent 2 in the case was promoted as Superintendent. The High Court relied upon the High Court of Himachal Pradesh Recruitment (Conditions of Service) Rules, 1992 for effecting the said promotion. Rule 10 of the 1992 Rules which provides for the appointment to the post of Superintendent reads as follows: "*By promotion from amongst graduate Deputy Superintendents/ Revisors with minimum 3 years of service as such in the ratio of 4:1, failing which by promotion from amongst Sr. Assistants/Translators with minimum 6 years' service as such in the same ratio. Explanation. After promoting 4 Deputy Superintendents/ Senior Assistants as Superintendents from general category.... One Revisor/ Translator shall be promoted as Superintendent from amongst Revisors/ Translators' category.*" The substance of the rule was that the appointment to the post of Superintendent is to be made by promotion from amongst the graduate Deputy Superintendents and Revisors with a minimum of three years of service, in the ratio of 4:1, i.e., four from Deputy Superintendents and one from Revisors. The appointment from Revisor to the post of the Superintendent is to be made only after four from Deputy Superintendents are promoted to the said post. If none from the Deputy Superintendents and Revisors with the minimum of three years' service is available, the appointment is to be made from amongst the Senior Assistants and Translators with minimum service of six years in the said posts. The result of the rule was that since the appellant had not put in three years' service as Revisor, she was disentitled to the post of Superintendent. The position further was that on the relevant date, i.e., 03.12.1992, there was no Deputy Superintendent or Revisor with minimum three years' service in the respective posts. Hence the post was given to Respondent 2, as he was Senior Assistant with more than six years' service. The

consequence of the rule was that had she continued as Translator, being senior to Respondent 2, she would have got the post of the Superintendent. She lost the same because she was promoted to the post of the Revisor only a few days earlier to the appointment of Respondent 2 to the post of the Superintendent which in effect was a double promotion to him. Since the two events, viz., her promotion to the post of Revisor and that of Respondent 2 to the post of Superintendent were close in proximity, a legitimate contention was advanced on her behalf that she was "kicked up" to the post of the Revisor only to facilitate the promotion of Respondent 2 to the post of the Superintendent and thus to deny her the said post. Thus, under the said facts, the Supreme Court of India had held that the basic weakness in Rule 10 was that it places two unequal sets of posts on a par with each other and also prescribes qualifying service for the higher post as well. It was held that the posts of Deputy Superintendents and Revisors were posts higher than those of Senior Assistants and Translators respectively and that if the incumbents of both the sets of posts are to be made eligible for promotion to the post of Superintendent, no qualifying period of service can be prescribed for the incumbents of the posts of Deputy Superintendents and Revisors. Hence, it was held that if Senior Assistants and Translators are to be provided with promotional avenue, more posts of Deputy Superintendents and Revisors which are above the posts of Senior Assistants and Translators respectively, should be created, and first the Senior Assistants and Translators have to be promoted to the said posts. Thus, on facts, the present case in hand is distinguishable and, as such, the ratio laid down in the said case does not help the petitioners.

20) The case of *Anup Kumar Senapati (supra)* was cited by the learned counsel for the petitioners to fortify his submissions regarding the principle of negative equality. On the facts of the present case in hand, we are unable to accept that any wrong benefit has been conferred upon the respondents No.4 and 5 in any manner and the benefits that flows from the 2013 Recruitment Rules are not found to be hit by the well settled principle of law that Article 14 does not envisage negative equality.

21) The facts of the case of *Ramesh Prasad Singh (supra)* cited by the learned counsel for the petitioner is that in 1962, the appellant was appointed as Assistant Engineer by Bihar State Electricity Board. He was thereafter sent abroad

for special training in tele-communication. On his return, he was appointed as Executive Engineer in the Telecommunication Division which was specially created. The respondents No.3 to 28, who were appointed as Assistant Engineer in 1960 had challenged the appointment by filing writ petition before High Court on the ground that the appointment of the appellant was mala fide, and that they were unreasonably discriminated against in violation of Articles 14 and 16 of the Constitution of India. On such facts, the Supreme Court of India held that "*In the instant case, the qualifications required for the post of Executive Engineer (Tele-Communication) as demonstrably reflected in the proposal for creation of that post and the aforesaid recommendation of the Selection Committee setting out various factors which went in favour of the promotion of the appellant appear to be founded on reasonable classification having an intelligible differentia which distinguished the appellant from respondents 3 to 28 and the differentia had a reasonable relation to the object sought to be achieved. It is, therefore, crystal clear that respondents 3 to 28 did not stand at par with the appellant and had not legal right which they could claim to have been denied to them by an authority which had a legal duty to do something. With all respect the High Court was in our judgment, therefore, not right in issuing the writ of mandamus.*" Accordingly, The Supreme Court of India was unable to hold on the material before it that the criterion employed by the concerned authority in promoting the appellant was arbitrary or capricious or was not intended to increase the efficiency in the functioning of the department or was based on extraneous or irrelevant considerations or suffered from any other vice. In the facts and circumstances of the present case in hand, there is absolutely no materials before us from which we can arrive at an opinion that the 2013 Recruitment Rules is arbitrary or capricious or that for any extraneous reasons the Principal (WCDTC) and PO are sought to be made the feeder post for filling-up the promotional post of Deputy Director (ICDS) or that such appointment would be detrimental to the functioning of the Department. Thus, the ratio laid down in the case of *Ramesh Prasad Singh (supra)* does not come to the aid of the petitioners.

22) Therefore, when in the wisdom of the Government, the posts of Principal (WCDTC) and PO was considered to be the feeder post/ cadre for filling-up the post of Deputy Director (ICDS), the Court should be slow in quashing the extant Recruitment Rules which is a policy decision providing that the post/ cadre of

Principal (WCDTC) and PO would also be the feeder post/ cadre for filling- up the post of Deputy Director (ICDS) as this is not a case where any hostile discrimination is found to have been suffered by the petitioners. The petitioners have not been able to show that the impugned 2013 Recruitment Rules is capricious or arbitrary or that it infringes any statute or provisions of the Constitution of India.

23) As the learned counsel for the respondent No.4 has been able to demonstrate from the order dated 25.06.2002 (i.e. Annexure-1 to Affidavit- in- opposition filed by the said respondent No.4) that the respondent, who was then the Principal (WCDTC) was allowed to function as CDPO, for which the post of Principal (WCDTC) cannot be declared by the Court to be in any manner inferior to or below in status than the post/ cadre of CDPO.

24) Moreover, in the present case in hand, it is seen that it is not the pleaded case of the petitioners that if the case of the respondents No.4 and 5 is not considered for promotion then any of the 9 (none) petitioners would be the one promoted to the post of Deputy Director (ICDS). Thus, even if the candidature of the respondents No.4 and 5 are excluded, the petitioners are not the immediate beneficiaries, as such, the mere possibility of delay in the petitioners getting promotion cannot be a reason to interfere with the 2013 Recruitment Rules. The petitioners herein have not filed a class litigation and that the present writ petition has not been filed in a representative capacity to espouse the cause of persons senior to the petitioners as CDPOs. Thus, no case is made out by the petitioners for this Court to interfere with the said 2013 Recruitment Rules.

25) It would be of profit to quote paragraph 6 of the case of *Ramesh Prasad Singh (supra)*, wherein the Supreme Court of India had held as under:-

"6. *The doctrine of equality before law and equal protection of laws and equality of opportunity in the matter of employment and promotion enshrined in Arts. 14 and 16 of the Constitution which is intended to advance justice by avoiding discrimination is attracted only when equals are treated as unequals or where unequals are treated as equals. (See Md. Usman v. State of Andhra Pradesh (1971) 2 SCC 188 : AIR 1971 SC 1801). The guarantee of equality does not imply that the same rules should be made applicable to all persons in spite of differences in their circumstances and conditions. (See Chiranjit Lal Chowdhuri v. The Union of India, (1950 SCR 869 at page 911): (AIR 1951 SC 41 at pages 57. 58)). It is also well recognized that although Arts. 14 and 16 of the Constitution forbid hostile discrimination, they do not forbid reasonable*

classification and equality of opportunity in matters of promotion means equality as between members of the same class of employees and not equality between the members of separate and independent classes. (See All India Station Masters' and Assistant Station Masters' Association v. General Manager, Central Railway (1960) 2 SCR 311 at p. 316: (AIR 1960 SC 384 at p. 386)). It must always be remembered that though the concept of equal protection and equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension, it has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals, that is to say, those who are similarly circumstanced are entitled to an equal treatment but the guarantees enshrined in Arts. 14 and 16 of the Constitution cannot be carried beyond the point which is well settled by a catena of decisions of this Court.

26) In view of the discussions above, the present writ petition fails and stands dismissed, leaving the parties to bear their own cost.

JUDGE

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