
(2019) 08 GAU CK 0045

Gauhati High Court

Case No: Writ Petition (C) No. 1580 Of 2017

Kripa Sindhu Das

APPELLANT

Vs

State Of Assam And 4
Ors

RESPONDENT

Date of Decision: Aug. 16, 2019

Acts Referred:

- Assam Secondary Education (Provincialised) Service Rules, 2003 - Rule 2(n), 2(v), 3, 7(7), 8(9), 14(2), 14(3), 14(4), 15, 19, 24, 24(1), 24(2), 25
- Constitution Of India, 1950 - Article 14, 16, 16(1), 226, 309

Hon'ble Judges: Manish Choudhury, J

Bench: Single Bench

Advocate: B Purkayastha, G P Bhowmikr

Final Decision: Dismissed

Judgement

''''''

Manish Choudhury, J",,,,,,

1. Heard Mr. B. Purkayastha, learned counsel for the petitioner and Mr. S.K. Ghosh, learned Standing Counsel, Education (Secondary) Department,",,,,,

Government of Assam for the respondent nos. 1 to 4. Also heard Ms. N. Saikia, learned counsel appearing for respondent no. 5.",,,,,

2. By this writ petition, preferred under Article 226 of the Constitution of India, the petitioner has assailed the legality and validity of the provisions of",,,,,

Rule 3, Rule 14(2), Rule 14(3), Rule 24 and Rule 25 of the Assam Secondary Education (Provincialised) Service Rules, 2003 on the grounds that same",,,,,

are unconstitutional, null and void and ultra vires. In the alternative, the petitioner has sought for a direction to the State respondents to take steps to",,,,,,

modify/amend the aforesaid impugned provisions. A prayer has also been made for a direction to the State respondents to insert an appropriate,,,,,

provision in the Assam Secondary Education (Provincialised) Service Rules, 2003 for promotion to the post of Headmaster in a High School only from",,,,,,

the feeder post of Assistant Headmaster in such High School, to the exclusion of the Graduate Teachers in the High School, with further prayers for",,,,,,

directions to the State respondents to prepare and finalise the gradation list of the Teachers in Latu High School, District - Karimganj by placing the",,,,,,

petitioner at the top of the list showing him as the seniormost Graduate Teacher in the cadre of Assistant Headmaster and to promote him to the post,,,,,

of regular Headmaster in the said High School.,,,,,,

3. Before we proceed to the issue of legality and validity of the above legal provisions, mentioned above, of Assam Secondary Education",,,,,,

(Provincialised) Service Rules, 2003, put to challenge in the instant writ petition, we deem it apposite to take note of the relevant and pertinent",,,,,,

background facts, as the said factual background would make it clearer to understand the implication of the issue that has arisen for determination.",,,,,,

4. The petitioner came to be appointed as an Assistant Teacher, also interchangeably known as Graduate Teacher, at Latu High School, District -",,,,,,

Karimganj on ad-hoc basis in the then scale of pay of Rs. 1375-3375/- per month plus other allowances, by an order dated 03.01.1996 passed by the",,,,,,

respondent no. 4 i.e. the Inspector of Schools, Karimganj District Circle (KDC), Karimganj for a period of 3 (three) months from the date of joining in",,,,,,

his service or till the post was filled up on regular basis through Selection Board, whichever was earlier. It is stated that his service was, later on",,,,,,

regularized in the same School with effect from his date of joining by an order dated 29.06.1999 passed by the respondent no. 4. The service of the,,,,,

petitioner was confirmed vide an order dated 29.03.2004 passed by the respondent no. 4. The petitioner, thereafter, obtained B.Ed. Degree on",,,,,,

18.12.2007 from the Assam University, Silchar after being sent on deputation. He was also granted one advance increment for acquiring the B.Ed.",,,,,,

qualification with effect from 01.02.2008 by an order dated 15.03.2008.,,,,,,

5. The respondent no. 5 is also a Graduate Teacher in the same School i.e. Latu High School. The respondent no. 5 joined as such Graduate Teacher,,,,,

in the School at a prior point of time than the petitioner.,,,,,,

6. In the year 2010, the Director of Secondary Education, Assam (i.e. the respondent no.3)-cum-Member Secretary, State Selection Board, Assam",,,,,,

published an advertisement inviting applications from intending and eligible candidates for a number of posts of Principal/Vice-Principal/Headmaster/,,,,,

Assistant Headmaster in Provincialised Higher Secondary/Higher Secondary and Multipurpose/High/High Madrassa Schools of the State, to be filled",,,,,,

up as per the provisions of the Assam Secondary Education (Provincialised) Service Rules, 2003. In so far as the post of Assistant Headmaster in",,,,,,

High School was concerned, it was mentioned that the post would be filled up by promotion from the School-wise seniority list of Assistant Teachers",,,,,,

and the selection shall be based upon seniority and satisfactory Annual Confidential Reports for 3 (three) consecutive years. The minimum,,,,,

qualification shall be Graduate in Arts, Science or Commerce with B.T./B.Ed. and the candidates must possess 7 years of teaching experience as",,,,,,

Graduate Teacher.,,,,,,

7. The petitioner having found himself eligible and qualified, responded to the said advertisement by applying for the post of Assistant Headmaster. On",,,,,,

being called, he appeared before the State Selection Board constituted by the Government for the purpose. On being recommended by the Selection",,,,,,

Board, the petitioner was promoted to the post of Assistant Headmaster of Latu High School in the then pay scale of Rs. 8000-35000/- with Grade",,,,,,

Pay of Rs. 4300/- per month and other allowances as admissible with effect from the date of taking over charge as regular Assistant Headmaster, by",,,,,,

an order dated 21.11.2012 passed by the respondent no. 3. The post of Assistant Headmaster of Latu High School was lying vacant since 01.01.2012.,,,,,,

as the earlier incumbent stood retired on superannuation on 31.12.2011. On being so promoted, the petitioner joined his duty as Assistant Headmaster" ,,,,,,

and since then, he has been serving as the Assistant Headmaster. As the then Headmaster of Latu High School, Md. Abdul Salique Chaudhury was" ,,,,,,

due to retire on 31.12.2016, the petitioner who was then serving as Assistant Headmaster of the School, was allowed to hold the charge of" ,,,,,,

Headmaster In-Charge along with financial powers, in addition to his normal duties, under F.R. 49 (c) w.e.f. 01.01.2017, by an order dated 29.12.2016" ,,,,,,

passed by the respondent no. 3. On being so allowed, the petitioner took over charge from the outgoing Headmaster on 31.12.2016 and since then," ,,,,,,

apart from discharging his normal duties as Assistant Headmaster, the petitioner has also been discharging the duties of Headmaster, Latu High" ,,,,,,

School on charge basis. ,,,,,,

8. The said order dated 29.12.2016, whereby, the petitioner has been allowed to hold the charge of Headmaster of the School, came to be challenged" ,,,,,,

by the respondent no. 5 in a writ petition, W.P.(C) No. 284/2017. In the said writ petition, the petitioner herein has been impleaded as the party-" ,,,,,,

respondent no. 4. While issuing notice in the said writ petition, this Court did not pass any interim order restraining the present petitioner from" ,,,,,,

discharging the duties of Headmaster on charge basis. As a result, it is projected by the petitioner that he has been functioning as the In-Charge" ,,,,,,

Headmaster of the School as on date. It is submitted by the learned counsel for the parties that the said writ petition, W.P.(C) No. 284/2017, is" ,,,,,,

pending adjudication before this court. ,,,,,,

9. The Government of Assam, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, has framed a set of rules," ,,,,,,

the Assam Secondary Education (Provincialised) Service Rules, 2003 (the Rules, 2003 and/or the 2003 Rules, in short), which regulates the" ,,,,,,

recruitment and conditions of service of the persons appointed to the Assam Secondary Education (Provincialised) Service (hereinafter referred to as" ,,,,,,

the Service, for brevity). As per Rule 2(n), "Graduate Teacher", inter-alia, means the category of Assistant Teacher in High/Higher",,,,,

Secondary/Higher Secondary and Multipurpose/High Madrassa Schools for whose appointment the minimum qualification prescribed is a Graduate,,,,,

degree in Arts, Science or Commerce including Demonstrator in Higher Secondary/Higher Secondary and Multipurpose School. The definition of",,,,,

"Teacher", as per Rule 2(v), means all Assistant Teachers, Faculties including Principal, Vice-Principal, Headmaster, Head Mistress",,,,,

Superintendent, Assistant Headmaster, Assistant Head Mistress and Demonstrators.",,,,,

10. As the vires of Rule 3, Rule 14(2), Rule 14(3), Rule 24 and Rule 25 of the Rules, 2003 has been questioned in this writ petition, it is apt to quote the",,,,,

extracts of the afore-mentioned rules, which are relevant for the present purpose, hereunder to have a better understanding about the nature of",,,,,

challenge made :-,,,,,

3. Classes and Cadres - (1) The service in provincialised School shall consist of the teaching and non-teaching staff. The teaching staff,,,,,

shall consist of following classes and cadres, each one of those constituting a distinct and separate cadre as on the commencement of these",,,,,

rules, namely: -",,,,,

(a) Class II (Senior): - It includes the cadres of -,,,,,

(i) Principal;,,,,,

(ii) Vice-Principal;,,,,,

(iii) Post-Graduate Teacher; (iv) Headmaster/Superintendent;,,,,,

(b) Class II (Junior): - It includes the cadres of -,,,,,

(i) Assistant Headmaster/Assistant Superintendent;,,,,,

(ii) (a) Graduate Teacher, (b) Hindi Teacher having Bachelor Degree from any recognized University, (c) Classical Teacher",,,,,

(Sanskrit/Arabic/Language teacher) having Bachelor Degree from any recognized University;,,,,,

(iii) Demonstrator;,,,,,

(iv) Senior Classical Teacher without Bachelor Degree;,,,,,

(v) Music Teacher;,,,,,

(vi) Junior Teacher/Junior Classical Teacher/Junior Hindi Teacher;,,,,,

(vii) Craft Teacher;,,,,,

14. Recruitment to the post of Vice Principal/Head Master/Head Mistress/Superintendent/Asstt. Head Master/Asstt. Head Mistress of,,,,,

High/HS/HS & MP School -(1) The post of Vice-Principal shall be filled up by promotion on the basis of combined seniority in the School,,,,,

among the Graduate and Post-Graduate Teachers with minimum 10 (ten) years of teaching experience in case of Post Graduate teachers,,,,,

and 12 years teaching experience, in case of Graduate teacher subject to satisfactory Annual Confidential Report for 3 (three) consecutive" ,,,,,

years. Selection shall be made on the basis of recommendation of the State Selection Board. The seniority of teachers in the Schools shall be,,,,,

determined as per provision under Rule 24 (1).,,,,,

(2) The post of Head Master/Head Mistress and Superintendent shall be filled up by promotion from the School-wise seniority list on the,,,,,

recommendation of the State Selection Board. The selection of Head Master/Head Mistress/Superintendent shall be based upon seniority,,,,,

and satisfactory Annual Confidential Report for 3 (three) consecutive years.,

The seniority shall be determined from the date of receiving graduate scale as per Rule 24 (2).,

(3) The post of Assistant Head Master/Asstt. Head Mistress/Assistant Superintendent shall be filled up by promotion from the school-wise,,,,,

seniority list of Assistant Teachers on recommendation of the State Selection Board. The selection shall also be based upon satisfactory,,,,,

Annual Confidential Report for last 3 (three) years and seniority of service in graduate scale of pay with a minimum 7 years of teaching,,,,,

experience.,,,,,,

In case of amalgamated High School the Head Master/Head Mistress of the M.E. School is eligible for selection as Assistant Head.,,,,,,

Master/Asstt. Head Mistress subject to condition that -,,,,,,

(i) the incumbent should have at least 5 years of teaching experience in M.E. School if he/she is the founder Head Master/Head Mistress of.,,,,,,

the M.E. School;,,,,,,

(ii) the incumbent should have at least 10 years of teaching experience in M.E. School if he/she is not the founder Head Master/Head.,,,,,,

Mistress of the M.E. School.,,,,,,

The seniority shall be determined as per provision of Rule 24(2).,,,,,,

(4) Eligibility for the post of Head Master/Head Mistress/Superintendent/Assistant Head Master/Asstt. Head Mistress/Asstt.,,,,,,

Superintendent of High/High Madrassa School as the case may be -,,,,,,

(i) the, minimum, qualification, for, the, post, of, Head, Master/Head Mistress/Superintendent/Assistant Head Master/Asstt. Head.,,,,,,

Mistress/Assistant Superintendent shall be graduate in Arts, Science or Commerce with B.T. or B.Ed. degree;" ,,,,,,

(ii) He/She must possess at least 10 years of teaching experience as Graduate Teacher;,,,,,,

(iii) He/She must possess at least seven years of teaching experience as Graduate teacher to be an Assistant Head Master/Head.,,,,,,

Mistress/Asstt. Superintendent.,,,,,,

15. Procedure of Selection - (1) Before the end of each year the Director of Secondary Education, in consultation with the Inspector of",,,,,,

School, shall make an assessment of the number of vacancies occurred in the cadres of Vice-Principal/Head Master/Head Mistress/Asstt." ,,,,,,

Head Master/Asstt. Head Mistress/Asstt. Superintendent to be filled up by promotion in the next year.,,,,,,

(2) The Director of Secondary Education shall call particulars in the prescribed format of the eligible candidates/teachers for filling up of,,,,,

the vacancies through promotion. The Member-Secretary shall hold the process of the applications and submit them to the State Selection,,,,,

Board,,,,,

(3) The State Selection Board shall hold interview category wise and prepare the select list schoolwise. There shall be three names against,,,,,

each vacancy in existence in each school to be recommended by the State Selection Board,,,,,

Sl.No.,Name of the post,Class,Cadre,Scale of post,Strength as on June

1,2,3,4,5,6

1.,Principal,II (Sr),Grade-I,"=5725-175-6600-250-7350-EB-250 8100-

325-15025-400-11,825",579

2.

3.

4.,"Headmaster/Headmistress/

Superintendent

Vice-Principal

Post-Graduate teacher","II (Sr)

-do-

-do",Grade-II,"=4300-90-4480-120-5200-175-5900- EB-

175-6600-250-8100-325-11,025","1908 7962

556

5498

5.,"Asstt. Headmaste

Asstt. Headmistress

Asst. Suptd", "II (Jr.)

II (Jr.)

II (Jr.)", Grade-III, "=3760-90-4480-120-4980-EB-120- 5200-

175-6600-250-8100-325-9400", 449

6., "Graduate Teacher Hindi

teacher having Bachelor

Degree/Classical Teacher

(Sanskrit/Arabic/ Assamese

Language Teacher / Music

teacher)", II (Jr.), Grade-IV, "=3580-90-4480-120-4720-EB-120- 5200-

175-6600-250-8100-235-8750", 22265

7., "Senior Classical teacher

without general Degree", II (Jr.), Grade-V, "=3580-90-4480-120-4720-EB-120- 5200-

175-6600-250-8100-325-8750",

etc. and the same does not provide any provision for placing an incumbent in the promotional post and higher cadre of Assistant Headmaster above,,,,,

the incumbents in the feeder post and feeder cadre of Graduate Teacher. When the post of Assistant Headmaster is to be filled up, by way of",,,,,,

promotion, from the feeder cadre of Graduate Teacher, then the placement of the incumbents of both the feeder cadre post and the promotional cadre",,,,,,

post in the same Gradation List, in Rule 24(2) and Rule 25, are illegal and arbitrary on the touchstone of Article 14 of the Constitution of India.",,,,,,

13. The final plank of the argument is that in a High School, the post of Graduate Teacher, also known as Assistant Teacher, has been made the sole",,,,,,

feeder post for filling up both the promotional posts of Headmaster and Assistant Headmaster. By virtue of promotion, an incumbent in the cadre of",,,,,,

Graduate Teacher comes to the next higher cadre of Assistant Headmaster. Therefore, such an incumbent in the cadre of Assistant Headmaster" ,,,, ,

cannot be equally treated at par with the incumbents in the feeder cadre of Graduate Teacher for the purpose of promotion to the cadre of ,,,, ,

Headmaster in a High School. The impugned 2003 Rules do not provide for any scope of promotion of the Assistant Headmaster to the next higher ,,,, ,

post of Headmaster and, therefore, there is ex-facie violation of Article 14 as unequals are treated as equals." ,,,, ,

14. By making reference to the background facts as obtaining in the present case, it has been submitted that when the promotional exercise for filling" ,,,, ,

up the post of Assistant Headmaster was undertaken in the year 2010, the petitioner had the requisite qualification including the B.Ed. Degree" ,,,, ,

qualification. But as at that point of time, the respondent no. 5, though senior to the petitioner in the cadre of Graduate Teacher in view of his earlier" ,,,, ,

date of joining as such, did not possess the B.Ed. Degree qualification, he could not submit his candidature for promotion to the post of Assistant" ,,,, ,

Headmaster due to his ineligibility. The petitioner in view of his promotion to the higher cadre of Assistant Headmaster, carrying a higher scale of pay, " ,,,, ,

had stolen a march over all the Graduate Teachers including the respondent no. 5, in the said High School. The respondent no. 5 has, in the meantime," ,,,, ,

acquired the qualification of B.Ed. and, thus, become eligible to be considered for promotion to the post of Headmaster. Because of Rule 14(4), the" ,,,, ,

respondent no. 5 is now eligible to be considered for promotion to the post of Headmaster along with the petitioner and because of the seniority of ,,,, ,

respondent no. 5 in the cadre of Graduate Teacher there is a likelihood of his stealing a march over the petitioner in view of criteria for promotion of ,,,, ,

seniority and Annual Confidential Reports for 3 (three) years, thereby, jeopardizing the chances of promotion of the petitioner despite the petitioner" ,,,, ,

being at a higher pedestal than the respondent no. 5 in terms of Grade, pay structure, etc. In support of his submissions, the learned counsel for the" ,,,, ,

petitioner has placed reliance in the decisions in G.R. Luthra vs. Lt. Governor, Delhi and others, reported in (1975) 3 SCC 25 8and Chakradhar",,,,,,

Paswan vs. State of Bihar, reported in (1988) 2 SCC 214. The principle enunciated in U.P. Power Corporation Limited vs. Ayodhya Prasad Mishra",,,,,,

and another, reported in (2008) 10 SCC 139 has also been relied upon.",,,,,,

15. Mr. Ghosh, learned Standing Counsel, Education (Secondary) Department, has submitted that the 2003 Rules have provided that the post of",,,,,,

Headmaster as well as the post of Assistant Headmaster in a High School is to be filled up by way of promotion from the cadre of Graduate Teacher,,,,,

of that School. It is submitted by him that the post of Assistant Headmaster is available only in those High Schools where there are 5 (five) classes. In,,,,,

the High Schools, where there are 2 (two) classes i.e. Class IX and Class X, there is no post of Assistant Headmaster in the staffing pattern. In",,,,,,

support of his submission, he has referred to Schedule-III-(A)-Teaching. Though the post of Assistant Headmaster carries a higher scale of pay than",,,,,,

the post of Graduate Teacher and they are in different cadres, Assistant Headmaster and Graduate Teacher are included in the same Class II (Junior)",,,,,,

in the Service. In so far as academic qualifications for the posts of Headmaster, Assistant Headmaster and Graduate Teacher are concerned, the",,,,,,

2003 Rules have prescribed the same educational qualification. Mere placement of a Graduate Teacher by promotion in the higher cadre of Assistant,,,,,

Headmaster does not make such Assistant Headmaster solely entitled for the post of Headmaster, to the exclusion of all the Graduate Teachers in the",,,,,,

School. If it is held that only the Assistant Headmasters in the Schools are eligible to be promoted to the cadre of Headmaster in their respective High,,,,,

Schools then the promotional exercise to fill up the post of Headmaster would be a mere formality with there being no pool of other candidates,,,,,

available. He has further placed reliance in decision in Viman Vaman Awale vs. Gangadhar Makhriya Charitable Trust and others, reported in (2014)",,,,,,

13 SCC 219.,,,,,,

16. Ms. Saikia, learned counsel appearing for the respondent No. 5, has submitted that as per Rule 3 of the Rules, 2003, the post of Headmaster is",,,,,,

placed in Class II (Senior) and a post of Assistant Headmaster is placed in Class II (Junior). The post of Graduate Teacher is in Class II (Junior),,,,,,

cadre. The post of Assistant Headmaster of a High School is not a feeder post for the post of Headmaster and there is no rule for automatic,,,,,

promotion for the Assistant Headmaster to Headmaster of the School. The petitioner has termed the provisions of the rules, under challenge, of the",,,,,,

2003 Rules as ultra vires without any basis and interpretation of those rules, as projected by the petitioner, is not tenable in law, not to speak of the",,,,,,

violation of Article 14 of the Constitution of India. If the prayers made by the petitioner in the writ petition are accepted, the Graduate Teachers like",,,,,,

the respondent No. 5 will be prejudiced and they will be deprived from their legitimate rights to become Headmaster as per existing rules, despite such",,,,,,

Graduate Teachers being senior to the Assistant Headmaster, promoted in the meantime, in the Schools because of certain fortuitous circumstances." ,,,,,,

It is not a case of unequals being treated equally. The criteria for promotion being the School-wise seniority in the cadre of Graduate Teacher, it does",,,,,,

not lie in the mouth of the petitioner to contend that he has stolen a march over all the Graduate Teachers in the School.,,,,,,

17. Ms. Saikia has further placed reliance upon the decisions of the Hon'ble Supreme Court in Mangalam Organics Ltd. vs. the Union of India," ,,,,,,

reported in (2007) 7 SCC 221; Jagdish Mandal vs. State of Orissa, reported in (2007) 14 SCC 517; Basic Education Board U.P. vs. Upendra Rai," ,,,,,,

reported in (2008) 3 SCC 432; Union of India & others vs. S. Vinodh Kumar & others, reported in (2007) 8 SCC 100; Madras Institute of",,,,,,

Development Studies vs. K. Sivasubramanian, reported in (2016) 1 SCC 454; and D. Sarojakumari vs. R. Helen Thilakom, reported in (2017) 9 SCC",,,,,,

478.,,,,,,

18. We have duly considered the submissions made by the learned counsels for the parties. We have also perused the pleadings and the provisions of,,,,,

the 2003 Rules put to challenge.....

19. Under Article 309 of the Constitution of India, the legislature is empowered to regulate the recruitment and conditions of service of persons".....

appointed to public services and posts in connection with the affairs of the Union or of any State. The proviso to Article 309, inter alia, empowers the".....

Governor, in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and conditions of".....

service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate legislature. It is.....

settled that rules made under the proviso to Article 309 to the Constitution of India are legislative in character and, thus, such rules are constitutional".....

rules, not like rules under a statute. They have the same force as a statute, though made by the executive. It is not a piece of delegated legislation like".....

a rule made under a statute. (see-CMD/Chairman, Bharat Sanchar Nigam Limited and others vs. Mishri Lal and others, (2011) 14 SCC 739).".....

20. As could be seen from the provisions of Rule 3 of the 2003 Rules, the Service in Provincialised Schools consists of the teaching staff and the non-".....

teaching staff. The teaching staff in the Service are classified into 2 (two) Classes i.e Class II (Senior) and Class II (Junior). Each Class consists of a.....

number of distinct and separate cadres. Class II (Senior) comprises of the cadres of (i) Principal; (ii) Vice-Principal; (iii) Post Graduate Teacher; and.....

(iv) Headmaster/Superintendent. As per the Rules, 2003, all these 4 (four) cadres are distinct and separate cadres. The posts of Principal, Vice-".....

Principal and Post Graduate Teacher are in the teaching staff in the Higher Secondary/Higher Secondary and Multipurpose Schools and, thus, the".....

conditions of service related to these posts, though in the Service, are not related to the High Schools. Only the post in the cadre of Headmaster,".....

within Class II (Senior) in the Service, is in the teaching staff of the High Schools. Class II (Junior) consists of 8 (eight) distinct and separate cadres.".....

Out of these 8 (eight) cadres, one of the cadres is that of Assistant Headmaster. In another cadre, within Class II (Junior), (a) Graduate Teacher; (b)".....

Hindi teacher having Bachelor Degree from a recognised University; and (c) Classical teacher (Sanskrit/Arabic/Language teacher) having Bachelor,,,,,

Degree from any recognised University are clubbed together. Thus, as per Rule 3, the cadres of Assistant Headmaster and Graduate Teacher are" ,,,,,

two distinct and separate cadres.,,,,,

21. As per the 2003 Rules, the cadre of Graduate Teacher in a High School is the only feeder cadre to fill up the lone post in the cadre of" ,,,,,

Headmaster, by way of promotion, in that High School and at the same time, the cadre of Graduate Teacher is also the only feeder cadre to fill up the" ,,,,,

lone post of Assistant Headmaster in that High School. There are differences in the pay scale also between the posts of Graduate Teacher and,,,,,

Assistant Headmaster and the same have been maintained in the Assam Services (Revision of Pay) Rules, 2017 (the RoP Rules, 2017)." ,,,,,

22. A visit to Schedule-III-(A)-Teaching goes to show that the post of Headmaster is in Class II (Senior) and in Grade II. Though the cadres of,,,,,

Assistant Headmaster and Graduate Teacher are shown within Class II (Junior), the Assistant Headmaster is in Grade III and the Graduate Teacher," ,,,,,

Hindi Teacher and Classical Teacher, indicated above, are in Grade IV. The post of Headmaster carries a pay scale higher than that of the Assistant" ,,,,,

Headmaster and the post of Assistant Headmaster carries a pay scale higher than that of the Graduate Teacher, Hindi Teacher and Classical" ,,,,,

Teacher.,,,,,

23. In the RoP Rules, 2017, the revised pay structures for Graduate Teacher is in the Pay Band : Rs. 14000-49000/- with Grade Pay : Rs. 8700/-," ,,,,,

corresponding to Pay Band : Rs. 5200-20200/- with Grade Pay : Rs. 3300/- in the RoP Rules 2010. The post of Assistant Headmaster, in the RoP" ,,,,,

Rules 2017, is in the Pay Band of Rs. 22000-87000/-with Grade Pay : Rs. 9100/-, corresponding to the earlier Pay Band, Rs. 8000-35000/-with Grade" ,,,,,

Pay : Rs. 4300/-. As per new classification and new gradation of posts under the RoP Rules 2017, Assistant Headmaster falls in Group B & Grade" ,,,,,

Ã¢â¬â II but Graduate Teacher comes under Group C & Grade Ã¢â¬â III.,,,,,

24. From the above classification and categorisation in terms of Class, cadre and Grade, it is discernible that the Headmaster is at a higher pedestal, in" ,,,, ,

terms of Class, cadre, Grade and pay scale than that of the Assistant Headmaster.

Similarly, it is also discernible that the Assistant Headmaster is at a" ,,,, ,

higher pedestal, in terms of Grade and pay scale, than that of the Graduate Teacher." ,,,, ,

25. A provision of law may be constitutional or unconstitutional. The constitutionality or otherwise of a provision of law can be tested on certain limited ,,,, ,

grounds, firstly, whether the law under challenge suffers from lack of legislative competence?; secondly, whether it violates any Article of Part III of" ,,,, ,

the Constitution of India?; and thirdly, whether the prescribed criteria and classification resulting therefrom is discriminatory, arbitrary, irrational and" ,,,, ,

has no nexus with the object of the legislation, etc. In this petition, the petitioner has not averred that the Rules, 2003 suffer from any lack of legislative" ,,,, ,

competence and, as such, it is not necessary for this Court to dilate further on that aspect." ,,,, ,

26. Violation of a fundamental right itself renders an impugned action void. Thus, in a case where the breach of fundamental right is claimed the Court" ,,,, ,

has to examine as to what factors the Court should examine while determining the constitutionality or otherwise of the legal provision on the ,,,, ,

touchstone of Article 14. Article 14 forbids class legislation but it does not forbid reasonable classification if such classification is based on reasonable ,,,, ,

and intelligible differentia and such differentia is on a rational basis. Such differentia also must have nexus with the object that is sought to be ,,,, ,

achieved. While examining the constitutionality or unconstitutionality of a legal provision in its correct perspective, these fundamental aspects are to be" ,,,, ,

taken into consideration. Article 16 which ensures to all citizens equality of opportunity in matters relating to employment, is also an incident of" ,,,, ,

guarantee of equality contained in Article 14. Both Articles 16 & 16 (1) permit reasonable classification having a nexus to the objects to be achieved. ,,,, ,

Under Article 16, there can be a reasonable classification of the employees in matters relating to employment or appointment. It is settled position of" ,,,, ,

law that there is presumption of constitutionality in favour of a legislation. The burden of proof that the legal provision offends any of the Articles,,,,,

under Part III of the Constitution of India is on the person who questions the constitutionality of the provision and he has to show that despite such,,,,,

presumption in favour of the legislation, it is unjust, discriminatory and irrational. In presuming the constitutionality of legal provision, it is to be",,,,,

presumed that the need of the people has been correctly understood and appreciated and that such classification is based on adequate and justifiable,,,,,

grounds. In order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of",,,,,

common report, history of the time and may assume every state of facts which can be conceived to exist at the time of legislation. These are some of",,,,,

the basic parameters which the Hon'ble Supreme Court has, through its various decisions, laid down to test the constitutionality or",,,,,

unconstitutionality of any legal provision and in view of such settled position of law, it appears not necessary to cite any authority on these aspects.",,,,,

27. In service jurisprudence, promotion usually means advancement in rank, grade or both. Promotion generally means appointment to a different post",,,,,

carrying a higher scale of pay in the service. An element of selection is involved in a case of promotion. From that perspective, a movement from the",,,,,

post of Graduate Teacher to the post of Assistant Headmaster is definitely a promotion, thus, putting the employee at the higher pedestal, in terms of",,,,,

grade and pay scale, than that of the Graduate Teacher in the Service under the 2003 Rules. At first blush, there appears to be a semblance of",,,,,

unconstitutionality in the impugned provisions in the sense that only the cadre of Graduate Teacher has been identified as the feeder cadre for,,,,,

promotion to the higher cadre of Headmaster, leaving out the member in intermediate higher cadre of Assistant Headmaster from consideration. But",,,,,

on a close look, it transpires that an Assistant Headmaster has not been excluded from such consideration by virtue of he being a Graduate Teacher",,,,,

earlier.

28. One of the grounds on which the vires of the afore-mentioned Rules, under reference, has been challenged by the writ petitioner is that due to",,,,,,

inclusion of only the cadre of Graduate Teacher as the feeder cadre for promotion to the cadre of Headmaster in a High School, without making any",,,,,,

reference to the intermediate higher cadre of Assistant Headmaster to that of the cadre of Graduate Teacher, in the 2003 Rules the cadre of",,,,,,

Assistant Headmaster has been totally ignored, thereby, making the incumbent occupying the post of Assistant Headmaster of each High School to",,,,,,

compete with the Graduate Teachers of the School with his seniority in the Graduate cadre, without consideration of his higher grade and pay scale," ,,,,,,

and the same has diminished the chance of promotion of the Assistant Headmaster. The right to be considered for promotion is a fundamental right," ,,,,,,

while a right to promotion is not. By making the cadre of Graduate Teacher as the feeder cadre for promotion to the cadre of Headmaster, the right of",,,,,,

an incumbent in the cadre of Assistant Headmaster is not denied for the fact that an Assistant Headmaster is promoted only from the cadre of",,,,,,

Graduate Teacher and he, in fact, is also eligible to be considered for promotion, along with other Graduate Teachers in the School. He can still be",,,,,,

promoted to the post of Headmaster by taking into account his seniority in the cadre of Graduate Teacher. The chance of an Assistant Headmaster in",,,,,,

getting promoted to the post of Headmaster is not lost. It is no longer res integra that the chance of promotion is not a right, nor a condition of service." ,,,,,,

Thus, the point urged that despite his promotion to the post of Assistant Headmaster earlier due to his fulfilling the conditions of eligibility of such",,,,,,

higher post such person, once again, has to compete with the members in the lower cadre of Graduate Teacher in the School which, in turn, has",,,,,,

diminished his chances of promotion because of the larger zone of consideration is not sustainable to hold the Rules, under reference, as ultra vires." ,,,,,,

That there is reduction in the chances of his promotion does not amount to a change in the conditions of service and such reduction in chances of",,,,,,

promotion is not a term of service.,,,,,,

29. In the State of Assam, there are 2 (two) types of High Schools. The first type of High Schools has 5 (five) classes, from Class VI to Class X. In" ,,,, ,

the second type of High Schools, there is 2 (two) classes i.e. Class IX and Class X. In the first type of High Schools, the cadres of Headmaster," ,,,, ,

Assistant Headmaster and Graduate Teacher are in existence and, accordingly, the persons are appointed to the posts of Headmaster, Assistant" ,,,, ,

Headmaster and Graduate Teacher. In the second type of High Schools, the cadres of Headmaster and Graduate Teacher exist but there is no cadre" ,,,, ,

of Assistant Headmaster. The strength of these cadres, as provided in Schedule-III-(A)-Teaching, reflect that the number of posts in the cadre of" ,,,, ,

Assistant Headmaster is lesser than the number of posts in the cadre of Headmaster in the High Schools in the State. The cadre of Headmaster in" ,,,, ,

both the types of High Schools is a single post cadre. The cadre of Assistant Headmaster in the first type of High Schools is also a single post cadre. ,,,, ,

The cadre of Graduate Teacher which exists in both the types of High Schools, consists of a number of posts, though not large in numbers. The posts" ,,,, ,

of both Headmaster and Assistant Headmaster are to be filled up by promotion from the members of the Service on the basis of School-wise" ,,,, ,

seniority. It means that one Graduate Teacher cannot be promoted either as a Headmaster or an Assistant Headmaster of another High School. ,,,, ,

30. If without adverting to the other aspects, the contention of the petitioner to the effect that the feeder post/cadre for promotion to the post of Head" ,,,, ,

Master be limited to the post/cadre of Assistant Head Master, to the exclusion of the cadre of Graduate Teacher in the concerned School is to be" ,,,, ,

accepted, then the situation that will emerge is that if the vacancy of Headmaster in the first type of High Schools is to be filled up by promotion, only" ,,,, ,

one candidate who, at that point of time, is occupying the post of Assistant Headmaster will be eligible for consideration. There will be no element of" ,,,, ,

selection in such promotion. Additionally, if for some reason, the said incumbent in the post of Assistant Headmaster is not found suitable to be" ,,,, ,

promoted to the post of Headmaster for one reason or the other, then there will be no one else to be promoted in that School. In such a scenario, the",,,,,,

post of Headmaster in the first type of High Schools will remain vacant. In respect of the second type of High Schools, the situation that will emerge",,,,,,

will be a different one. If the cadre of Assistant Headmaster is the sole feeder cadre for the post of Head Master, then in the second type of High",,,,,,

Schools, once there is vacancy in the post of Headmaster there will be no one to fill up the said vacancy in those High Schools because in those",,,,,,

Schools, the cadre of Assistant Headmaster does not exist and the incumbents in the cadre of Graduate Teacher will not be eligible to be promoted.",,,,,

The workability of the entire 2003 Rules will be jeopardized if such contention of inclusion of only the cadre of Assistant Headmaster as the sole,,,,,

feeder cadre is to be accepted.,,,,,,

31. The equality doctrine is attracted not only when equals are treated as unequals but also where unequals are treated as equals. An absolute equality,,,,,

is nothing but an impossibility. However, inequality arising out of a classification made can be said to offend Article 14 only when it is unreasonable,",,,,,

arbitrary and irrational. The concept of equality prescribed by the Constitution would not be violated if the rules operate equally on all persons who are,,,,,

included in the group and the classification is not arbitrary or irrational, but bears a reasonable relation to the objective, which the legislation has in",,,,,,

view. Discrimination is the essence of classification and equality is violated if it rests on unreasonable basis. The decision in U.P. Power Corporation,,,,,

Ltd. (supra) has observed that Article 14 is designed to prevent discrimination and to prohibit a person or class of persons from being singled out from,,,,,

others similarly situated or circumstanced for the purpose of being specially subjected to discrimination by hostile legislation. It also subscribes to the,,,,,

view that Article 14 does not prohibit classification, if such classification is based on legal and relevant considerations. To that extent, it has observed",,,,,,

as under :,,,,,

37. Every classification, to be legal, valid and permissible, must fulfill the twin-test namely," , , , , ,

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from , , , , ,

others left out of the group; and , , , , ,

(ii) such differentia must have a rational relation to the object sought to be achieved by the statute or legislation in question. " , , , , ,

32. Thus, in the present case, the question which is to be considered is whether an incumbent holding the post of Assistant Headmaster in the single" , , , , ,

post cadre of Assistant Headmaster under the Rules, 2003 has been subjected to discriminatory treatment. In other words, whether by putting an" , , , , ,

incumbent in the single post cadre of Assistant Headmaster in a particular High School in one class, wherein the other members are from the cadre of" , , , , ,

Graduate Teacher of the Service, though there are differences between them in terms of grade and pay-scale, for the purpose of promotion to the" , , , , ,

single post cadre of Headmaster in that High School, he has been treated unequally resulting in violation of the fundamental rights guaranteed under" , , , , ,

Part III of the Constitution of India? , , , , ,

33. Schedule II to the 2003 Rules has prescribed the minimum educational qualifications required to be appointed as a Graduate Teacher. Prior to its , , , , ,

substitution by the Assam Secondary Education (Provincialised) Service (Amendment) Rules, 2012, Schedule II prescribed the minimum educational" , , , , ,

qualifications as Graduate in Arts, Science or Commerce with at least 2nd Division either in the H.S.LC. or in the Higher Secondary Examination or" , , , , ,

equivalent examination and 40% aggregate marks in the B.A., B.Sc. or B.Com examination for candidates belonging to the unreserved category. A" , , , , ,

Graduate with Hons./Major, B.Ed. was made automatically eligible for apply. After its substitution, which came into effect from 10.07.2012, Schedule" , , , , ,

It has prescribed the educational qualifications for Graduate Teacher as B.A./B.Sc./B.Com with 50% of marks with B.T./B.Ed. Degree from any , , , , ,

recognized University. As has been indicated above, no further educational qualifications is required to be obtained by a Graduate Teacher, as per the",,,,,,

2003 Rules, to be considered for promotion either as a Headmaster or as an Assistant Headmaster in a High School. After being appointed as a",,,,,,

Graduate Teacher, the only further requirement to be eligible for consideration for promotion to those two posts is gaining of teaching experience of 7",,,,,,

(seven) years, in case of the post of Assistant Headmaster, and of 10 (ten) years, in case of the post of Headmaster. Thus, the State has made no",,,,,,

difference in respect of essential educational qualifications for the posts of Headmaster, Assistant Headmaster and Graduate Teacher.",,,,,,

34. Nothing has been pleaded in the writ petition by the petitioner while questioning the Constitutionality, about the nature of the duties or",,,,,,

responsibilities or regarding any other relevant factor, save and except as indicated above, of the posts of Headmaster, Assistant Headmaster and",,,,,,

Graduate Teacher in a High School in order to prove that it would not be just and rational to club, in essence, the cadres of Assistant Headmaster and",,,,,,

Graduate Teacher as feeder cadres as the zone of consideration by counting their seniority only from their respective date of enjoying Graduate scale,,,,,

of pay. The provisions of 2003 Rules are also silent in this aspect. In the absence of any material to the effect that the post of Assistant Headmaster",,,,,,

apart from carrying a slightly higher pay or being placed in the next higher grade, also carries substantially heavier duties and responsibilities so as not",,,,,,

to club the said post as a feeder post along with Graduate Teachers, for promotion to the post of Headmaster of the High Schools, only receipt of a",,,,,,

slightly higher pay scale and placement in a higher grade do not go to substantiate the plea of the petitioner to the effect that unequals, the Assistant",,,,,,

Headmaster and the Graduate Teacher, are treated equally by treating them as one class for the purpose of considering them in the matter of",,,,,,

promotion to the cadre of Headmaster when there are no substantial differences in respect of the vital and relevant factors. It is not a case that the,,,,,

cadre of Assistant Headmaster is excluded from consideration totally.,,,,,,

35. From the discussions made above, it has already emerged that if the cadre of Assistant Headmaster in the High Schools, which is available in the",,,,,,

first type of High Schools only, is to be taken as the only feeder cadre for the post of Headmaster as contended by the petitioner, a more anomalous",,,,,,

situation will be created rather than removing any anomaly. Rather, it appears just, reasonable and rational that the cadre of Graduate Teacher should",,,,,,

be the feeder cadre for the purpose of considering promotion to both the cadres of Headmaster, in both types of the High Schools, and Assistant",,,,,,

Headmaster in the first type of High Schools, where such post exists. This is more so as the promotion to both the posts of Headmaster and the",,,,,,

Assistant Headmaster are to be made on the basis of School-wise seniority of that particular School and none else. The validity of a rule has to be,,,,,

judged by assessing its over-all effect and the matter is to be examined also from the perspective as to whether the classification made is a just and,,,,,

rational one taking all aspects into consideration. In certain situation, there could be some anomaly while making the classification. But if such anomaly",,,,,,

is not possible to be avoided and does not result in a great deal of injustice then such a classification is permissible depending upon the attending facts,,,,,

situation qua the relevant rule. Thus, it is permissible to take the School-wise seniority in the cadre of Graduate Teacher as the basis for considering",,,,,,

the inter-se seniority, in terms of Rule 24 (2) of the 2003 Rules, for the purpose of considering the cases of the incumbents in the feeder cadre for the",,,,,,

purpose of promotion as has been stipulated in Rule 14 (2) and Rule 14 (3) of the 2003 Rules. In view of the peculiar staffing pattern in the High,,,,,

Schools in the State of Assam due to the existence of two types of High Schools indicated above apart from the Higher Secondary Schools and,,,,,

Higher Secondary & Multipurpose Schools, preparation of a gradation list, in the manner indicated in Rule 25 of the 2003 Rules, does not offend any",,,,,,

kind of fundamental rights to be preserved under Part III of the Constitution of India. The relevant rules have rather ensured fairness to all while also,,,,,

maintaining efficiency in the administration for the fact that if the State had treated the incumbents occupying the lone post in the single post cadre of,,,,,

Assistant Headmaster as being superior to the members in the cadre of Graduate Teacher, thereby, excluding the Graduate Teachers, for the purpose" ,,,,,,

of promotion to the single post cadre of Headmaster, it would have resulted in a great deal of injustice to a large section of Graduate Teachers." ,,,,,,

36. The decision in G.R. Luthra (supra) has been placed for the purpose of explaining that the word "cadre" includes both permanent and,,,,,

temporary post. There is no second opinion on that aspect for the purpose of the present writ petition. The decision in Chakradhar Paswan (supra),,,,,,

pertains to implementation of the policy of reservation on 50 point roster basis in 4 (four) nos. of posts in the Directorate of Indigenous System of,,,,,

Medicines, a part of the Health Department of the Government of Bihar. The posts were of (i) Director (Indigenous Medicines), (ii) Deputy Director" ,,,,,,

(Homeopathic), (iii) Deputy Director (Unani) and (iv) Deputy Director (Ayurvedic). As all these four posts were in Class-I, after having treated the" ,,,,,,

post of Director as unreserved, the post of Deputy Director (Homeopathic) was, by the rotational system, was reserved for a Scheduled Caste" ,,,,,,

candidate. The Hon'ble Supreme Court, on examination, had found that the post of Director and Deputy Directors were posts belonging to" ,,,,,,

different cadres. The pay scale of the Director, Rs. 2225-2675/-, was higher than the pay scale, Rs. 1900-2500/-, of the post of Deputy Director" ,,,,,,

(Homeopathic), Deputy Director (Unani) and Deputy Director (Ayurvedic). The questions that arose for determination was whether the posts of the" ,,,,,,

Director and the three Deputy Directors could be grouped together for purposes of implementing the policy of reservation, according to the 50 point" ,,,,,,

roster and whether the posts of the Director and the three Deputy Directors, although on different grades, would be clubbed together for purposes of" ,,,,,,

reservation merely because they were Class-I posts. It was found that although the pay scales of all the three Deputy Director were identical, the" ,,,,,,

posts were filled up by Doctors belonging to different branches of Indigenous Medicines. It was held that the four Class-I posts, namely, that of the",,,,,,

Director and three Deputy Directors, did not constitute one cadre, though they were members of the same Service. It was, in that context, held that",,,,,,

the word "cadre" is not synonymous with "service". As "cadre" means the strength of a service or part of a service sanctioned as a",,,,,,

separate unit, it was held that the post of Director and the post of Deputy Directors constituted two distinct cadres or grades since the posts were not",,,,,,

interchangeable and the incumbents did not perform the same duties and responsibilities or draw the same pay. For the aforesaid reasons, it was held",,,,,,

that the policy of 50% reservation could not be implemented by clubbing all the four posts in the same cadre. The said decision does not appear to be",,,,,,

relevant to the nature of controversy that has arisen in the instant case",,,,,,

37. The issue involved in Viman Vaman Awale (supra) was interpretation of a rule regarding eligibility for being promoted as "Head of a",,,,,,

School" under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the rules framed thereunder. The",,,,,,

appellant therein although joined the service with the requisite qualification required for the entry-level post at that time, obtained the requisite",,,,,,

qualification for "Head of a School" at a later point of time but prior to the date of consideration for promotion to the post. On the other hand",,,,,,

the respondent although junior to the appellant at the time of initial entry, had acquired the qualification required for "Head of a School" at a prior",,,,,,

point of time than the appellant and, therefore, contended that he had the seniority. While deciding in favour of the appellant, the Hon'ble Supreme",,,,,,

Court was of the opinion that if at the time of consideration for promotion the candidate concerned had acquired the eligibility, then unless the rule",,,,,,

specifically had given an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility. The decision in",,,,,,

Viman Vaman Awale (supra) appears favourable to the respondent no. 5 in the fact situation obtaining in the present case in that the 2003 Rules, " , , , , ,

under reference, do not also give any priority to the candidates acquiring earlier eligibility. As Rule 14 of the 2003 Rules does not specifically mention" , , , , ,

that acquiring B.Ed. qualification earlier by the writ petitioner will not put him at an advantage, the Rule does not contemplate of giving any seniority to" , , , , ,

the writ petitioner over the respondent no. 5 on that count. , , , , ,

38. It is necessary to consider the decisions cited on behalf of the respondent no. 5. The Hon'ble Supreme Court in Madras Institute of , , , , ,

development studies (supra) has reiterated the well-settled legal proposition that a person who consciously takes part in the process of selection, " , , , , ,

cannot turn around and question the method of selection. In D. Sarojakumari (supra) also, the settled proposition has been reaffirmed by holding that" , , , , ,

once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of" , , , , ,

selection. Similarly in Union of India vs. S. Vinodh Kumar (supra), it has been observed that those candidates who had taken part in the selection" , , , , ,

process knowing fully well the procedure laid down therein were not entitled to question the same. Having gone through the proposition of law laid , , , , ,

down in the aforesaid decisions of the Supreme Court, we are of the opinion that the issue that has arisen in the case, in hand, is a different one and" , , , , ,

the principle enunciated in these decisions are not relevant for the purpose of adjudication of the issue involved herein. , , , , ,

39. In Mangalam Organics Ltd. (supra), it is held that where a statute vests a discretionary power in an administrative authority, the Court would not" , , , , ,

interfere with the exercise of such discretion unless it is made with oblique end or extraneous purposes or upon extraneous considerations, or" , , , , ,

arbitrarily, without applying its mind to the relevant considerations, or where it is not guided by any norms which are relevant to the object to be" , , , , ,

achieved. The question that has been raised in the instant case is not with regard to exercise of discretionary power vested in an administrative , , , , ,

authority but on the issue of violation of Article 14 of the Constitution of India in that unequals have been sought to be treated as equals. Therefore," ,,,, ,

the proposition of law observed in Mangalam Organics Ltd (supra) appears to be not relevant. The decision in Jagdish Mandal (supra) pertains to the ,,,, ,

scope of judicial review of administrative action in order to prevent arbitrariness, irrationality, unreasonableness, bias and malafides, more particularly," ,,,, ,

with regard to matters relating to tenders or award of contracts. In Basic Education Board, U.P (supra), the power of judicial review to be exercised" ,,,, ,

by the Court was discussed wherein it was held that a policy decision cannot be interfered by the Court unless it violates Constitutional or statutory ,,,, ,

provision. ,,,, ,

40. Having considered the issue from the point of view of reasonable classification and in the light of the discussions made above in respect of the ,,,, ,

facts attending to the instant case qua the impugned provisions of the 2003 Rules, we are of the considered opinion that the impugned provisions do not" ,,,, ,

offend the equality clause so as to violate any of the fundamental rights contained in Part III of the Constitution of India. By making the provision of ,,,, ,

counting the seniority of the prospective candidates on the basis of their seniority in the cadre of Graduate Teacher in a provincialised High School for ,,,, ,

the purpose of promotion to the single post cadre of Headmaster in the High School in the 2003 Rules, it cannot be said that a hostile discriminatory" ,,,, ,

treatment has been meted out to the member in the Service, occupying the lone post in the cadre of Assistant Headmaster, if any, in such High School," ,,,, ,

wherever such post exists in the teaching staff of that particular High School. It cannot be said that the framers of the Rules did not take into account ,,,, ,

the relevant considerations and took irrelevant considerations into the fold. By such provisions, no fundamental right of any member in the Service to" ,,,, ,

be considered for promotion to the single post cadre of Headmaster in a High School has been extinguished. What has been affected for a member in ,,,, ,

the Service occupying the lone post in a single post cadre of Assistant Headmaster are the chances of promotion, which is not a fundamental right." ,,,, ,

We are of the considered view that the over-all effects and workability of the impugned provisions have not resulted into any kind of unfairness," ,,,, ,

arbitrariness and irrationality to an incumbent in the cadre of Assistant Headmaster in the Service. On the other hand, a larger pool of eligible" ,,,, ,

candidates is available for the purpose of promotion in the Service in view of the impugned provisions, who all are to be considered in terms of the" ,,,, ,

criteria for promotion laid down in the Rules, 2003." ,,,, ,

41. Thus, this writ petition is found to be bereft of merit and, consequently, the same is dismissed. There shall, however, be no order as to cost." ,,,, ,