
(2024) 10 SHI CK 0020

High Court Of Himachal Pradesh

Case No: CWP No. 9042 Of 2023 a/w CWP Nos. 9334 and 10780 Of 2023

Dr. Gulshan Kumar Dhiman

APPELLANT

Vs

State of H.P. & Anr

RESPONDENT

Date of Decision: Oct. 29, 2024

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 143

Hon'ble Judges: Tarlok Singh Chauhan, ACJ

Bench: Division Bench

Advocate: Sanjeev Bhushan, Sohail Khan, K. S. Banyal, Uday Singh Banyal, Anup Rattan, Rakesh Dhaulta, Pranay Pratap Singh, Arsh Rattan, Priyanka Chauhan, Vikrant Thakur

Final Decision: Disposed Of

Judgement

1,"Whether it should be appropriate and justified to prescribe essential qualification of a master's degree with at least 55% marks provided that the candidate must have studied the concerned subject at the graduation level for recruitment to the post of Principal (College Cadre) to maintain Education standard in the State

though? "no" such qualification
stand notified in the UGC Regulation,
2010?" "Yes," for

direct recruitment of

Principal

(College

Cadre) minimum

essential education

quantification must be

Master's Degree with at

least 55% marks

provided that the

candidate must have

studied the concerned

subject at the graduation level

and have obtained 55% in his

subject with aggregate 55%

marks at graduation level.

2, "Whether non-Ph.D. Assistant

Professor /Associate

Professors with 20 years service shall

be eligible for promotion to the

post of Principal (College

Cadre) or not?" "No. non-Ph.D. Assistant

Professor/Associate

Professor shall not be

considered for direct

recruitment to the posts of

Principal (College Cadre).

3, "Whether the candidates belonging to S.C./S.T./Differently abled (Physical and Visually differently-abled) categories shall be eligible for grant of relaxation of 5% at the graduate and Master's level or the Ph.D. Degree holders who have obtained their Master's Degree period to 19th September, 1991 or not?", "Yes, only the candidates

Belonging to

S.C./S.T./Differently abled

(Physical and Visually differently-abled)

categories shall

be eligible for grant of relaxation of 5% at the graduate and Masters level or the Ph.D. Degree holders who have obtained their Masters Degree prior to September, 1991. This provision has already been included in the R&P Rules of Assistant

ProfessorÂ Â Â Â Â)College

Cadre) dated 29.10.2011.

4. It is well settled that it is for the rule making authority or the appointing authority to prescribe the mode of selection and minimum qualification for,,
any recruitment. The Courts and Tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as,,
the qualifications prescribed by the employer are reasonably relevant and has a rational nexus with the functions and duties attached to the post and,,
are not violative of any provision of the Constitution, statute and rules. (See- J. Ranga Swamy vs. Government of A.P. (2011) 9 SCC 645 and P. U.",,
Joshi vs. Accountant General (2003) 2 SCC 632),,,

5. Equally settled is the proposition that while Article 14 is designed to prevent a person or class of persons from being singled out from others,,
similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an ""abstract symmetry"" in the",,
sense that every piece of legislation must have universal application. All persons, by nature, attainment or circumstances, are not equal and the varying",,
needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against",,
discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This,,
classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not",,
enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on",,
some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or,,
characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1)",,
that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that,,
differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the,,

object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class",,

legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large,,

number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid",,

classification for the purpose of legislation, provided such classification is not arbitrary. (Ref.: Seven-Judge Constitution Bench of the Hon'ble",,

Supreme Court in *State of W.B. vs. Anwar Ali Sarkar*, 1952 SCR 284).",,

6. The Hon'ble Supreme Court in *Special Courts Bill, 1978*, In re, (1979) 1 SCC 380, dealt with a reference by the President of India for considering",,

the constitutional validity of the *Special Courts Bill, 1978*. The Court undertook an exhaustive review of decisions dealing with the scope, content and",,

meaning of Article 14 [See: *Budhan Choudhry v. State of Bihar*, (1955) 1 SCR 1045; *Ram Krishna Dalmia v. S.R. Tendolkar*, 1959 SCR 279; C.I.",,

Emden v. State of U.P., (1960) 2 SCR 592; *Kangsari Haldar v. State of W.B.*, (1960) 2 SCR 646; *Jyoti Pershad v. Administrator for Union Territory*",,

of Delhi, (1962) 2 SCR 125 and *State of Gujarat v. Shri Ambica Mills Ltd.*, (1974) 4 SCC 656] and reiterated the test for reasonable classification in",,

the following words:,,

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in",,

all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the,,

legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which",,

distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.,,

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between,,

them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of",,

other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the",,, purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.",,

*** (12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be,, determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the",,, particular circumstances is necessary."""",,,

(emphasis supplied),,,

7. In Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, the Hon'ble Supreme Court while dealing with a",,,

reference by the President of India under Article 143 of the Constitution was considering the validity of the policy of having auctions as the only,,

permissible method for disposal of all natural resources across all sectors and in all circumstances. The Court in its decision discussed the mandate of,,

Article 14, including the test of ""classification"" and reiterated that Article 14 permits reasonable classification. The following excerpt from the",,,

judgment is of relevance:,,

183. The parameters laid down by this Court on the scope of applicability of Article 14 of the Constitution of India, in matters where the State, its instrumentalities",,,

and their functionaries, are engaged in contractual obligations (as they emerge from the judgments extracted in paras 159 to 182, above) are being briefly paraphrased.",,

For an action to be able to withstand the test of Article 14 of the Constitution of India, it has already been expressed in the main opinion that it has to be fair",,,

reasonable, non- discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable",,,

treatment. The judgments referred to, endorse all those requirements where the State, its instrumentalities, and their functionaries, are engaged in contractual",,,

transactions. Therefore, all ""governmental policy"" drawn with reference to contractual matters, it has been held, must conform to the aforesaid parameters. While",,,

Article 14 of the Constitution of India permits a reasonable classification having a rational nexus to the object sought to be achieved, it does not permit the power of,, pick and choose arbitrarily out of several persons falling in the same category. Therefore, criteria or procedure have to be adopted so that the choice among those",,,

falling in the same category is based on reason, fair play and non-arbitrariness. Even if there are only two contenders falling in the zone of consideration, there should",,,

be a clear, transparent and objective criteria or procedure to indicate which out of the two is to be preferred. It is this, which would ensure transparency."",,,

(emphasis supplied),,,

8. From the aforementioned decisions of the Hon'ble Supreme Court, it is clear that Article 14 permits reasonable classification and State action which",,,

satisfies the test for reasonable classification would not be in violation of Article 14. The twin requirements of the test of reasonable classification are,,

reiterated as follows:,,

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. The differentia must have a rational relation to the object sought to be achieved.,,,

9. The principle of equality enshrined under Article 14 of the Constitution is based upon the treatment of equals equally or treating likes as alike. This,,

has been held to mean that even among likes, if a classification has been made on real and intelligible criteria, then they can be treated differently. The",,,

principles governing reasonable classification which have been stated hereinabove are thus also applicable to sub-classes which have been created,,

within a class.,,,

10. The Hon'ble Supreme Court in State of W.B. v. Rash Behari Sarkar, (1993) 1 SCC 479 was dealing with a challenge to a notification issued under",,,

the Bengal Amusements Tax Act, 1922. The notification exempted from payment of entertainment tax, any performance by a bona fide group theatre,",,

amateur theatre or amateur jatra, formed exclusively for purposes of cultural activities and not for monetary gains. This tax exemption was not given",,,

to theatre groups which performed for monetary gains. Even though both groups were theatre groups, the Hon'ble Supreme Court in this case held",,,

that this classification was reasonable, not arbitrary and thus not in violation of Article 14. The Honâ€™ble Supreme Court stated as under:-",,,

4. Equality means equality in similar circumstances between same class of persons for same purpose and objective. It cannot operate amongst unequals. Only likes",,,

can be treated alike. But even amongst likes the legislature or executive may classify on distinction which are real. A classification amongst groups performing shows,,

for monetary gains and cultural activities cannot be said to be arbitrary. May be that both the groups carry out the legislative objective of promoting social and,,

educational activities and, therefore, they are likes but the distinction between the two on monetary gains and otherwise is real and intelligible. So long the",,,

classification is reasonable it cannot be struck down as arbitrary. Likes can be treated differently for good and valid reasons.,,,

11. A three-Judge Bench of the Honâ€™ble Supreme Court in Chandan Banerjee & Ors. vs. Krishna Prasad Ghosh & Ors. AIR 2021 SC 4611,",,

after referring to the case law in detail, culled out the following principles regarding classification:-",,,

26. The principles which emerge from the above line of precedents can be summarised as follows:-,,

(i) Classification between persons must not produce artificial inequalities. The classification must be founded on a reasonable basis and must bear nexus to the object,,

and purpose sought to be achieved to pass the muster of Articles 14 and 16;,,

(ii) Judicial review in matters of classification is limited to a determination of whether the classification is reasonable and bears a nexus to the object sought to be,,

achieved. Courts cannot indulge in a mathematical evaluation of the basis of classification or replace the wisdom of the legislature or its delegate with their own;,,

(iii) Generally speaking, educational qualification is a valid ground for classification between persons of the same class in matters of promotion and is not violative of",,,

Articles 14 and 16 of the Constitution;,,

(iv) Persons drawn from different sources and integrated into a common class can be differentiated on grounds of educational qualification for the 3 PART C purpose,,

of promotion, where this bears a nexus with the efficiency required in the promotional post;,,

- (v) Educational qualification may be used for introducing quotas for promotion for a certain class of persons; or may even be used to restrict promotion entirely to,, one class, to the exclusion of others;,,
- (vi) Educational qualification may be used as a criterion for classification for promotion to increase administrative efficiency at the higher posts; and,,
- (vii) However, a classification made on grounds of educational qualification should bear nexus to the purpose of the classification or the extent of differences in,, qualifications.,,

12. Adverting to the facts of the case, it needs to be noticed that the UGC has framed regulations on minimum qualification for appointment of",,,

teachers and other academic staff in universities and colleges and measure for the maintenance of standards in higher education, 2010, wherein the",,,

qualifications prescribed for the "Principal" are as under:-,,

4.2.0. Principal,,

- i. A Master's Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) by a recognized University,,
- ii. A Ph.D. Degree in concerned/allied/relevant discipline(s) in the institution concerned with evidence of published work and research guidance.,,
- iii. Associate Professor/Professor with a total experience of fifteen years of teaching/research/administration in Universities, Colleges, and other institutions of higher education.,,
- iv. A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS) as set out in this Regulation in,, Appendix III for direct recruitment of Professors in Colleges.,,

13. It is more than settled that the UGC Guidelines and Regulations are binding on the respondents. (Ref: Praneeth K. & Ors. vs. University Grants,,

Commission & Anr. AIR 2020 SC 5510).,,

14. Once the UGC guidelines are binding, then normally the University could not have provided for different qualification for the post of",,,

"Principal", than the one prescribed by the UGC.",,,

15. Further, it is not that the State by prescribing the impugned qualification of having studied the concerned subject at graduation level has anywhere",,,

tried to improve the quality or efficiency in the working of the Principal, rather it has no nexus with the object whatsoever sought to be achieved given",,,

the fact that the job of the Principal normally is only administrative where the impugned qualification of having studied the concerned subject at,,

graduation level would be of no practical assistance. Clearly, introduction of this qualification is misconceived and the same could have been",,,

mischievously introduced to benefit some person(s),,,

16. In addition to the above, prescribing such qualification for the post of Principal at this stage, when one is required to be considered for the post",,,

which requires one to be Associate Professor with total experience of 15 years of teaching/research/administration, would be virtually asking too",,,

much of the candidate to have graduation in the concerned level after one has already taught for minimum period of 15 years.,,,

17. Clearly, the impugned qualification is discriminatory and violative of the Articles 14 and 16 of the Constitution, as the classification produces",,,

artificial inequality and is not founded on reasonable basis and does not bear nexus to the object and purpose sought to be achieved.,,,

18. The educational qualification, as observed above, does not achieve the criteria for classification for promotion to increase administrative efficiency",,,

at the higher post. The classification made on the ground of educational qualification does not bear nexus to the purpose of classification and the,,

extent of difference in qualification.,,,

19. The question as formulated is accordingly answered by holding that the provisions providing for the candidate(s) to have studied the concerned,,

subject at graduation level for the post Principal (College Cadre) is illegal, arbitrary and unconstitutional. It is not founded on intelligible differentia and",,,

has no nexus to the object and purpose sought to be achieved.,,,

20. Accordingly, all the writ petitions are allowed. The rejection of the candidature of the petitioner(s) for the post of Principal (College Cadre) Class-I",,,

(Gazetted) is quashed and set aside and the respondents are directed to allow the petitioner(s) to participate in the selection process for the post of,,

Principal (College Cadre) in furtherance to the advertisement issued by the respondents. The proviso added to the essential qualification, which reads",,,

as "Provided that the candidate must have studied the concerned subject at graduation level" is quashed and set aside as being illegal,"

arbitrary, discriminatory and violative of the provisions of the UGC as also the Articles 14 and 16 of the Constitution of India."

21. All these writ petitions are disposed of accordingly, so also pending applications, if any."

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