

PETITIONER:
STATE OF RAJASTHAN AND ANR. ETC. ETC.

Vs.

RESPONDENT:
RAJENDRA KUMAR GODIKA AND ORS. ETC. ETC.

DATE OF JUDGMENT 18/02/1993

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
YOGESHWAR DAYAL (J)
VENKATACHALA N. (J)

CITATION:
1993 SCR (1) 1087 1993 SCC Supl. (3) 150
JT 1993 (4) 52 1993 SCALE (1) 637

ACT:
Service Law.
Education Service:
Rajasthan Educational Service Rules, 1970 : rr. 23, 24, 25, 25(11) Explanation; Circulars dated 11.9.1978, 28.4.1979 and 30.11.1991: Rajasthan Education Service. Promotion-Group 'D' Section II, Principal Higher Secondary School-Appointment to-100% by promotion from Group 'E' Headmaster, Senior Secondary School and Group 'F' Headmaster, Secondary School-Held consideration of all persons in Group 'E' and moving to Group 'F' for filling only remaining vacancies by selecting outstanding amongst them on merit base ensures fairness while maintaining efficiency in administration-Provisions not violative of Articles 14 and 16 of Constitution. Government suggested to lay down more clearly its policy for promotion.

HEADNOTE:
Rajasthan Educational Service Rules, 1970 provides for appointment to Group 'DI, Section 11 of the Rajasthan Education Service, consisting of the posts of Principal of Higher Secondary School/BSTC/RTC (Boys), 100 per cent by promotion from qualified members of Group 'EI comprising the posts of Headmaster of Higher Secondary School for boys and from those of Group IF' representing the posts of Headmasters of Secondary School of boys. Appointment to Group 'EI posts is made 100 per cent by promotion of the members of Group IF'.

The persons belonging to Group 'EI, who were not selected for promotion to Group 'DI, Section II, filed writ petitions before the High Court challenging the constitutional validity of the provisions in the Rules clubbing together Groups EI and IF' for the purpose of promotion to Group 'DI, Section 11.

The High Court held the provisions as violative of Articles 14 and

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16 of the Constitution, allowed the writ petitions and quashed the orders promoting members of Groups IF' to the posts in Group ID', Section II. The State and the affected members of Group 'F' of the Rajasthan Education Service

filed the appeals by special leave.

It was contended on behalf of members of Group IF' and the State that the provision clubbing groups IF' and 'E' as feeder cadre for promotion to Group 'D' Section 11, is in consonance with Articles 14 and 16 of the Constitution inasmuch as the Rules require preparation of a combined seniority list of all eligible members of Groups 'E' and IF' placing the former en bloc above the latter, and among those selected for promotion to Group 'DI Section 11, all those from Group 'E' are to rank above those from Group IF'; and as no person belonging to Group 'E' found suitable for promotion to Group ID' was left out, filling the remaining vacancies from amongst suitable and qualified persons belonging to Group 'F' cannot be violative of rights, if any, of the writ petitioners inasmuch as qualitatively those promoted from Group 'F' were not inferior to the petitioners and the principle of equation adopted was fair to all.

Allowing the appeals, this Court,

HELD: I.1. The manner in which the Rule is worked, that is, consideration first of all persons in Groups 'E' for promotion to Group 'D', Section 11, and moving to Group IF', if necessary, for filling only the remaining vacancies by selecting outstanding amongst them who satisfy the requirement of Explanation to Rule 25(11) (i.e. who have 5 outstanding/'very good' annual Confidential Reports in the immediate preceding 7 years), ensures fairness to all while also maintaining efficiency in the administration.
[pp.1109E-F; 1111B-C]

1.2. The total number of posts in Group 'DI, Section II is nearly the same as the total number of posts in Group 'E', while the total number of posts in Group IF' is about five times thereof. Since appointment to Group 'D', Section If is 100 per cent by promotion, it is a distinct possibility as. in the instant case, that the requisite number of suitable candidates from Group 'E' may not be available to fill all the existing vacancies in Group 'D' Section 11. In such a situation, the only available option is to fill the remaining vacancies by selection of outstanding persons from Group 'F'. This is more so because the nature of duties and functions of the posts in

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Group 'E' and 'F' is similar and so is that of the posts in Group 'D' Section 11. The High Court overlooked this fact.
[pp.1110G-H; 1111A-B]

13. If the need arises to look to Group IF' for filling the remaining vacancies on account of want of suitable person in Group 'E', those found unsuitable in Group 'E' cannot complain of discrimination if persons duly qualified and more suitable performing similar functions are selected, purely on the basis of merit, since the unsuitable left out in Group 'E' are excluded from the competition on the ground of unsuitability and cease to remain contenders for the remaining posts. [pp.1111C-E, G-H]

1.4. The provisions made in the Rules for promotion to Group ID' Section II, from Group 'E' as well as Group IF' are therefore, not in any manner violative of Articles 14 or 16 of the Constitution. [pp.1111B-E]

Chiranjit Lal Chowdhuri v. The Union of India and Ors., [1950] S.C.R. 869; Mohd Hanif Quareshi & Ors. v. The State of Bihar, [1959] S.C.R. 629 and Md. Usman & Ors. v. State of Andhra Pradesh & Ors., [1971] Supp. S.C.R. 549, relied on.

Constitutional Law by Prof. Willis; cited.

2. From the affidavit of a senior officer giving all the relevant particulars alongwith a chart indicating the

comparative position of persons in Group 'E' not found suitable for promotion to Group ID' Section [with those in Group IF' who were found fit for promotion on the basis of merit, it was established that the principle adopted and followed was fair and reasonable and does not result in any injustice to the persons not found fit in Group 'E' for promotion; the duties of the office of Principal as well as Headmaster are of a similar nature and there is no qualitative difference in the duties performed by persons belonging to Groups 'E' and IF'; and that the standard of annual performance appraisal of the members of the two groups is also on par. [pp.1107G-H; 1108A-D]

3. It would be advisable for the State Government to lay down more clearly its policy for the future to avoid even the semblance of treating unequals as equals for the purpose of promotion, in consonance with the well-known maxim that 'justice should not only be done but should also be seen to be done'. [p.1093A-B]

4. The judgment of the High Court* is set aside with the result that
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the writ petitions filed in the High Court stand dismissed.
[p.1112A]

* Miss Kusum Tandon v. State of Rajasthan, etc., etc., D.B. Civil Writ Petition No. 2221 of 1990 on the file of Rajasthan High Court, decided on 3.9.1991.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 691-97 of 1993.

From the Judgment and Order dated 3.9.1991 of the Rajasthan High Court in D.B. Civil Writ Petition Nos. 2221, 2353 and 3222 of 1990.

P.P. Rao, V.M. Tarkunde, Sushil K. Jain, A.P. Dhamija, Sudhanshu Atreya, Aruneshwar Gupta, Ms. Mamita Naroola and Pushpandra Singh Bhatia for the Appellants.

P. Chidambaram, Pallay Shishodia, A.P. Medh and R.M. Tahija for the Respondents.

The Judgment of the Court was delivered by
VERMA, J. Leave granted.

These appeals by special leave are by the State of Rajasthan and certain candidates whose promotions are adversely affected by the impugned judgment of the Rajasthan High Court. The dispute in the writ petitions filed in the High Court was between members of the Rajasthan Educational Service belonging to Group 'E' and Group 'F' pertaining to their rival claims for promotion to the posts of principal Higher Secondary School, which posts are in Group 'D', Section-II of the Rajasthan Educational Service. The dispute between these two groups arises from the fact that in the Rajasthan Educational Service Rules, 1970 (hereinafter referred to as 'the Rules'), the aforesaid two groups-'E' and 'F'-are clubbed together as the feeder cadre for promotion to Group 'D', Section-II, even though in the service hierarchy the lowest is Group 'F', above which is Group 'E' and then comes Group 'D'. In the writ petitions filed in the High Court, the writ petitioners challenged the constitutional validity of this provision in the Rules clubbing together Group 'E' and Group 'F' for the purpose of promotion to Group 'D'. Section-II on the ground that unequals had been equated. The High Court has allowed these writ petitions and held that item no. 1(a) in column 5 under the head "Group 'D' Section-II" of

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Schedule-1 to the Rules as also Item No. 1 in Schedule-11 under the head 'Group 'D' Section-11" in column 5 are unconstitutional, being violative of Articles 14 and 16 of the Constitution. Accordingly, the High Court has quashed the orders promoting members of Group 'F to posts in the Group 'D'. It is this judgment dated 3.9.1991 of the Rajasthan High Court which is challenged in these appeals by special leave by the State of Rajasthan and members belonging to Group 'F of the Service whose promotions are quashed.

Before we refer to the relevant provisions, mention may be made of the rival contentions before us Shri P.P. Rao, learned counsel for the aggrieved Group 'F teachers, advanced several arguments. He submits that the Rules require preparation of a combined seniority list of an eligible members of Group 'E' and 'F and prescribed the placing of those in Group 'E' en bloc above the persons belonging to Group 'F; and it is also prescribed that amongst those selected for promotion to Group 'D', the pre-existing inter se seniority within the Group and also between the two groups is to be maintained, that is, all those from Group 'E' are to rank above those from Group 'F. He submits that the interpretation and working of the Rules in this manner, which is the case of the State Government, is in consonance with Articles 14 and 16 of the Constitution. His next submission is that reservation of a percentage of the promotion quota to be filled exclusively on the basis of merit does not violate the guarantee of equality since it promotes the object of greater efficiency as those considered in the merit quota are all qualified and eligible for promotion. His further submission is that Rule 25(5) applies to promotion to the next higher grade from the lowest grade while Rule 25 (6) applies to promotions to all other higher grades. In other words, for promotion from Group 'F to Group 'E', Rule 25(5) applies while for promotion from Group 'F directly to Group 'D': Rule 25(6) applies. He also submitted that Rule 23A does not apply where promotion to a higher grade is from more than one grade. Shri Aruneshwar Gupta, appearing for the State of Rajasthan, adopted the arguments of Shri Rao. He also submitted that the writ petitioners having appeared for interview before the D.P.C. and taken their chance, they are precluded from making the challenge when they failed to get selected. Shri V.M. Tarkunde, who appeared for one of the aggrieved appellants, supported Shri Rao and made some more submissions. Shri Tarkunde submitted that the difference between members of Group 'F and Group 'E' is not substantial since both of them had been

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functioning as Headmasters and discharging similar duties so that they were equally suitable and qualified for promotion as Principal of a Higher Secondary School. Shri Tarkunde submitted that no person belonging to Group 'E' found suitable for promotion to Group 'D' was left out and, therefore, filling the remaining vacancies from amongst suitable and qualified persons belonging to Group 'F' cannot be violative of the rights, if any, of those in Group 'E' who were not promoted because they were not found suitable for promotion. Learned counsel also submitted that qualitatively those promoted from Group 'F' were, according to the service record, not inferior to persons lower down in Group 'E' who had not been selected and the principle of equation adopted was fair to all. It was also shown with reference to the particulars of those not selected for

promotion from Group 'E' and those found suitable for promotion in Group 'F' that the principle adopted and applied was fair and reasonable, with no element of arbitrariness.

In reply, Shri Pallay Shishodia, learned counsel for the respondents, who are persons not selected for promotion from Group 'E' to Group 'D', attempted to support the impugned judgment. In all, there were 14 such persons who filed the three writ petitions in the High Court. The main argument of Shri Shishodia is that ex-facie clubbing of Group 'F', a lower cadre, with Group 'E' for promotion to Group 'D', Section-II, violates the equality clause. Shri Shishodia contended that the explanation now given by the State Government to justify the promotions made is not based on a policy adopted and followed, but on the fortuitous circumstances which have emerged from the results of the promotions. Shri Shishodia also submitted that the yardstick was applied equally rigidly to members of Group 'E' as to those from 'F' when it should have been more stringent for those in Group 'F' which was a lower grade.

In order to satisfy ourselves that the policy adopted by the State Government was fair in its application to members of both Group 'E' and Group 'F', we directed the State Government to produce the relevant material including the particulars of candidates selected for promotion and those not found fit for promotion in Group 'E', as also the guidelines followed. On examination of those details, we are satisfied that the net result of the working of the Rules in accordance with the principle adopted has been fair and it cannot be held that those not selected for promotion in Group 'E' have been dealt with unfairly, in any manner, to justify

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quashing the promotions made at this selection.

We may, however, observe that it would be advisable for the State Government to lay down more clearly its policy for the future to avoid even the semblance of treating unequals as equals for the purpose of promotion, in consonance with the well-known maxim that 'justice should not only be done but should also be seen to be done. We do hope that the State Government would take advantage of the experience gained from this litigation to dispel the misapprehension from the minds of a section of its employees who think that the State's action is not fair. Obviously the High Court was denied the benefit of the material which the State Government placed before us, on our directions, which enabled us to remove the gloss of seeming inequality in the policy adopted under the Rules read with the guidelines for its working.

We may first refer to the relevant parts of the Rajasthan Educational Service Rules, 1970.

"PART II
CADRE

4. Composition and strength of the Service
 - (1) The Service shall consist of the posts as arranged in the various groups specified in the Schedule.
 - (2) The nature of posts included in each group of the Service shall be as specified in Column 2 of the Schedules.
 - (3) The strength of posts in each group of the service shall be such as may be determined by the Government from time to time.
 - (4) There shall be separate cadres in each Group of Service specified in the Schedules I

to VI such as
Schedule I for Boys Institutions.
Schedule II for Girls Institutions.
Schedule III for Science and General
Institutions.

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Schedule IV for Institutions of Language
Studies.

Schedule V for Institutions of Physical
Education, and

Schedule VI for Institutions of Arts, Music
and others.

The posts mentioned in each Group of service
in a particular Schedule shall be
interchangeable within the same Group of an),
Schedule provided such posts carry identical
time scale of pay.

5. Initial Constitution of the Service

The Service shall consist of

- (a) all persons holding substantively the
posts specified in the Schedule;
- (b) all persons recruited to the Service
before the commencement of these rules; and
- (c) all persons recruited to the Service in
accordance with the provisions of these rules.

PART III RECRUITMENT

6. Methods of Recruitment

Recruitment to the Service after the
commencement of these rules shall be made by
the following methods in the proportion
indicated in column 3 of the Schedule, namely-

- (a) by direct recruitment in accordance with
provisions of Part IV of the rules; and
- (b) by promotion in accordance with the
provisions of Part V of these rules:

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8C Power to remove difficulties :

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The State Government may for the purpose of
removing any difficulty in regard to other
matters regarding recruitment, probation,
confirmation, promotion etc. and in im-
plementation of provisions of rules 6A and 6B,
make any general or specific order as it may
consider necessary or expedient in the
interest of fair dealing or in the public
interest in consultation with the Commission
where necessary. "

PART V

PROCEDURE FOR RECRUITMENT BY PROMOTION

23. Eligibility and Criteria for Selection:

- (1) The persons holding the posts enumerated
in Column 5 of the Schedules, shall be
eligible, on the basis of merit and seniority-
cum-merit, for promotion to posts specified in
column 2 thereof subject to their possessing
the qualifications and experience on the first
day of the month of April of the year of
selection as specified in column 6 thereof-
Provided that a member of the Service shall
not be debarred from promotion for want to
training qualifications.

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23A:

No officer shall be considered for promotion unless he is substantively appointed and confirmed on the next lower post. If no officer substantive in the next lower post is eligible for promotion, officers who have been appointed on such post on officiating basis after selection in accordance with one of the methods of recruitment or under any Service Rules promulgated under proviso to Article 309 of the Constitution of India may be considered for promotion on officiating basis only in the order of seniority in which they would have been. had they been

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substantive on the said lower post.

24. Procedure for selection on the basis of seniority cum merit:

(1) As soon as it is decided that a certain number of posts shall be filled by promotion, the Director shall prepare a correct and complete list containing names not exceeding five times the number of vacancies, out of the senior most persons as mentioned in column 5 of the Schedule, who are qualified under the rules for pro-motion to the posts concerned. He shall forward this list alongwith their confidential rolls and personal files to th

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Secretary to the Government in the Education Department.

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(2)(a) For the posts, appointments whereto are to be made

by Government, a Committee consisting of the Chairman of the Commission or his nominee being a member thereof nominated by him, the Secretary to Government in the Education Department or the Special Secretary concerned nominated by him and the Special Secretary to Government in the Department of Personnel or his representative not below the rank of Deputy Secretary as member and the Director as Member-Secretary, and for the posts, appointments whereto are to be made by the Director, a Committee consisting of a Member of the Commission nominated by the Chairman of the Commission, Deputy Secretary to Government in the Education Department and Deputy Secretary to Government in the Department of Personnel as members and the Director as Member Secretary shall consider the cases of all persons included in the list interviewing such of them as it may deem necessary and shall prepare a list containing names of suitable candidates upto twice the number of such posts as are indicated in sub-rule (1).

Provided that in case any Member-Secretary, as the case may be, constituting the Committee has not been appointed

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to the post concerned, the officer holding charge of the post for the time-being shall be the Member or Member-Secretary, as the case may be, of the Committee.

(b) The Chairman or the Member of the

Commission shall preside at all meetings of the Committee at which he is present.

(3) The Committee shall prepare a separate list containing names of persons who may be considered suitable to fill temporary or permanent vacancies already existing or are likely to occur till the next meeting of the Committee on a temporary or officiating basis and the list so prepared shall be reviewed and revised every year and shall remain in force until it is so reviewed or revised.

(4) The Committee may coopt an expert from outside to assist the Committee for selection of candidates for such posts as are to be filled by promotion.

(5) The names of the candidates selected as suitable shall be arranged in the order of seniority.

(6) The list prepared by the Committee shall be sent to the appointing authority together with the confidential rolls and personal files of the candidates included in them as also of those superseded, if any.

(7) Where consultation with the Commission is necessary the lists prepared in accordance with the sub-rules (2) and (3) shall be forwarded to the Commission by the Appointing Authority alongwith

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(8) The Commission shall consider the lists prepared by the Committee alongwith the other documents received from the Appointing Authority and unless it considers any change to be necessary to be made shall approve the lists but if the Commission considers such change as aforesaid to be necessary it shall inform the appointing authority of

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the new changes proposed by it and after taking into account the comments, if any, of the Commission the Appointing Authority may approve the list finally with such modifications, as may in its opinion, be just and proper.

25. Revised Criteria, Eligibility and Procedure for promotion to Junior, Senior and other posts encadred in the Service:

(1) As soon as the Appointing Authority determines the number of vacancies under rule regarding determination of vacancies of these rules and decides that a certain number of posts are required to be filled in by promotion, it shall, subject to provisions of sub-rule (9), prepare a correct and complete list of the senior-most persons who are eligible and qualified under these rules for promotion on the basis of seniority-cum merit or on the basis of merit to the class of posts concerned.

(2) The persons enumerated in column 5 or the relevant column regarding "posts from which promotion is to be made", as the case may be, of the relevant Schedule shall be eligible for promotion to posts specified against them in Column 2 thereof to the extent indicated in

Column 3 subject to their possessing minimum qualifications and experience on the first day of the month of April of the year of selection as specified in Column 6 or in the relevant column regarding "minimum qualification and experience for promotion", as the case may be.

(3) No person shall be considered for first promotion in the Service unless he is substantively appointed and confirmed on the lowest post in the Service. After first promotion in the Service, for subsequent promotions to higher posts in the Service, a person shall be eligible if he has been appointed to such post from which promotion is to be made after selection in accordance with one of the methods of recruitment under any Service Rules promulgated under proviso to Article 309 of the Constitution of India.

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Explanation In case direct recruitment to a post has been made earlier than regular selection by promotion in a particular year, such of the persons who are or were eligible for appointment to that post by both the methods of recruitment and have been appointed by direct recruitment first, shall also be considered for promotion.

(4).....

(5) Subject to the provisions of sub-rule (7), selection for promotion from the lowest post or category of post in the State Service to the next higher post or category of post in the State Service and for all posts in the Subordinate Services and in the Ministerial Services shall be made strictly on the basis of seniority-cum-merit from amongst the persons who have passed the qualifying examination, if any prescribed under these rules, and have put in at least five years' service, unless a different period is prescribed elsewhere in these rules, on the first day of the month of April of the year of selection on the post of category of post from which selection is to be made:

Provided that in the event of non-availability of the persons with the requisite period of service of five years, the Committee may consider the persons having less than the prescribed period of service, if they fulfil the qualifications and other conditions for promotion prescribed elsewhere in these rules, and are found otherwise suitable for promotion on the basis of seniority-cum-merit.

(6) Selection for promoting to all other higher posts or higher categories of posts in the State Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50

Provided that if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these rules.

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Explanation If in a Service, in any category of post, number of post available for promotion is an odd number then for purposes of determining the vacancies for selection by promotion on the basis of seniority-cum-merit and merit in the proportion of 50:50 the following cyclic order shall be followed
The first vacancy by seniority-cum-merit,
The subsequent vacancy by merit,
The cycle to be repeated.

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(10) Except as otherwise expressly provided in this rule, the conditions of eligibility for promotion, constitution of the Committee and procedure for selection shall be the same as prescribed elsewhere in these rules.

(11) (a) The Committee shall consider the cases of all the senior most persons who are eligible and qualified for promotion to the class of posts concerned under these rules, and shall prepare a list containing names of the persons found suitable on the basis of seniority-cum-merit and/or on the basis of merit, as the case may be, as per the criteria for promotion laid down in these rules, equal to the number of vacancies determined under rule relating to "Determination of vacancies" of these rules. The list so prepared on the basis of seniority-cum-merit and/or on the basis of merit as the case may be, shall be arranged in the order of seniority on the category of posts from which election is made.

(b) The Committee shall also prepare a separate list on the basis of seniority-cum-merit and/or on the basis of merit, as the case may be, as per the criteria for promotion laid down in the rules containing names of persons equal to the number of persons selected in the list prepared under (a) above to fill temporary or permanent vacancies,

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which may occur subsequently. The list so prepared on the basis of seniority-cum-merit and/or on the basis of merit shall be arranged in the order of the seniority in the category of posts from which selection shall be made. Such a list shall be reviewed and revised by the Departmental Promotion Committee that meets in the subsequent year and that such list shall remain in force till the end of the last day of the next year or till the Departmental Promotion Committee meets, whichever is earlier.

(c) Such lists shall be sent to the Appointing Authority together with annual Confidential Reports/Annual Performance Appraisal Report and other Service Record of all the candidates included in the lists as also of those not selected, if any.

Explanation For the purpose of selection for promotion on the basis of merit, officers with "outstanding" or consistently "Very Good" record shall only be selected and their names

arranged in the order of seniority."

PART VI

APPOINTMENT, PROBATION AND CONFIRMATION

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28. Seniority :

Seniority of persons appointed to the lowest post of the Service or lowest categories of posts in each of the Group/Section of the Service, as the case may be, shall be determined from the date of confirmation of such persons to the said post but in respect of persons appointed by promotion to other higher posts in the Service or other higher categories of posts in each of the Group/Section in the Service, as the case may be, shall be determined from the date of the- if regular selection to such posts.

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Provided

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(7) that the common seniority of persons appointed to posts mentioned in Group 'E' and 'F' for promotion to the posts in the Group 'D' shall be determined with reference to the date of their substantive appointment. The inter se seniority of person selected by the Commission or Committee shall be as indicated by the Commission or Committee. Inter se seniority of person-, selected against departmental promotion quota shall be determined under rules 24 and 25;

(8).....

(9) that the persons selected and appointed as a result of a selection, which is not subject to review and revision, shall rank senior to the persons who are selected and appointed as a result of subsequent selection. Seniority inter se of persons selected on the basis of seniority-cum-merit and on the basis of merit in the same selection shall be the same as in the next below grade.

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"SCHEDULE-1"

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Group 'D' Section-II

S.No. (Col. 1)	1 (a)
Name of post	Principal, Higher
Sec.	

(Col. 2) Sclioo1/BSTC/RTC (Boys)

Method of recruitment 100% by promotion

with percentage (Col. 3)

Post or posts from which Group 'E' &
promotion is to be made 'E' posts

(Col. 5)"

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"SCHEDULE-11"

xxx xxx xxx

Group 'D' Section-II

S.No. (Col. 1)	I (a)
Name of post:	Principal, Higher
Sec.	

(Col. 2) School/BSTC/RTC

(Girls)

Method of recruitment 100% by promotion
with percentage (Col. 3)

Post or posts from which Group 'E' &
promotion is to be made 'F' posts

(Col. 5)"

Reference may be made also to the Circular dated 11.9. 1978 (Department of Personnel and Administrative Reforms Department of Personnel-A-Group II No. F.7(10)DOP/A-107-1 dated 11th September, 1978) relating to sub-rule (6) of Rule 25; and the Circular dated 28.4.1979 (Department of Personnel (A-II) No. F.7(10) DOP/A-II/77 dated 28th April, 1979) and the Notification dated 30.11.1991 (Department of Personnel & Administrative Reforms-Department of Personnel-A-II No. F.7(10)DOP/A-II/77 dated 30th November, 1991), providing guidelines for selection on the basis of merit, relating to Explanation to sub-rule (11) of Rule 25, issued by the State Government, wherein it was stated as under:-

Circular dated 11.9.1978

"Subject Promotion to certain categories of posts to be filled in on the basis of "Merit" and "Seniority-cum-Merit".

The existing sub-rule (6) of the relevant rules regarding revised procedure for promotion, provides for promotion to certain categories of posts on the basis of "seniority-cum-merit" and "merit" in the ratio of 50:50. These rules do not clearly indicate whether selections for such categories of post shall be made first on the basis of "seniority-cum-merit" or on the basis of "merit".

The matter has been considered by the Government and

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the following procedure should be followed -

"The number of posts to be filled separately on the basis of seniority-cum-merit and merit should be determined in accordance with the Explanation below sub-rule (6) of the rule laying down the revised criteria of eligibility, promotion etc. Selection should first be made for filling up vacancies to be filled on the basis of seniority-cum-merit. Thereafter persons should be selected on the basis of merit for filling up merit quota vacancies."

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Circular dated 28.4.1979

" xxx xxx xxx

It will-be observed that henceforth officers with consistently "Very Good" or "Outstanding" record shall be considered for promotion on the basis of merit. There will be only one category for the purpose of selection on the basis of merit."

Notification dated 30.11.1991

"AMENDMENT"

For the existing "Explanation below sub-rule..... or sub-rule (11),..... shall be substituted by the following, namely:-

"Explanation:- For the purpose of selection for promotion on the basis of merit no person shall be selected if he does not have "Outstanding" or "Very Good" record in at least five out of the 7 years preceding the

year for which D.P.C. is held."

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The High Court examined the scheme of these Rules and pointed out that even though the writ petitions before it concerned Schedule- I to the Rules relating to the boys' institutions, yet the principle was enually

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applicable for Schedule-II relating to the girls' institutions, since the hierarchy of the grades in both the Schedules is the same. The lowest grade in Schedule-I is Group 'F'. Item 1(a) of Group 'F' is the post of Headmaster. Secondary School for boys. It is to be filled 50 per cent by direct recruitment and 50 per cent by promotion from the lower grade. The minimum qualifications are prescribed in column 4 and the post or posts from which promotion is to be made is shown in column 5 which is teachers in grade 1, 11 and teachers grade I in Sections C, D, E, F of the Schedule appended to the Rajasthan Education Subordinate Service Rules, 1971. The next higher grade is Group 'E' which are posts of Headmaster, Higher Secondary School for boys under item 1(a) to be filled 100 per cent by promotion from Group 'F' posts. The minimum qualification and experience required for this grade is Master's degree in addition to those prescribed for Headmasters Secondary School. Accordingly, only such of the Headmasters of Secondary School for boys belonging to Group 'F' who possess Master's degree in addition to the qualifications prescribed for that post are eligible for promotion as Headmaster, Higher Secondary School for boys under Groups 'E'. The next higher grade is Group 'D', Section-II of Schedule-I and in item 1(a) there under are the posts of Principal, Higher Secondary School/BSTC/RTC (Boys). These posts are to be filled 100 per cent by promotion from Groups 'E' and 'F' posts; and the qualifications prescribed are the same as those for Headmaster of Higher Secondary School. Above this grade is Group 'D', Section-I, in item 1 of which is the post of Inspector of Schools, which is to be filled 100 per cent by promotion from Group 'D', Section-II posts. Then comes Group 'C', above which is Group 'B' which is the highest post of Joint Director of Education Range in Schedule-I to be filled 100 per cent by promotion from Group 'C'. From the hierarchy of posts in Schedule-I indicated above, it is clear that the lowest grade of Group 'F' in Schedule-I is filled 50 per cent by direct recruitment and 50 per cent by promotion, while all the higher grades are filled entirely by promotion from the next lower grade, except for Group 'D', Section-II, which is filled by promotion for Groups 'E' and 'F' taken together. In other words, the posts of Principal, Higher Secondary School in Group 'D', Section-II are filled 100 per cent by promotion from Groups 'E' and 'F' together, that is, Headmaster, Higher Secondary School

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and Headmaster, Secondary School; and those from Group 'F' are considered only if they have the minimum qualifications prescribed for appointment to Group 'D', Section- II. It is this clubbing of Groups 'E' and 'F' for promotion to Group 'D', Section-II which was successfully challenged in the writ petitions filed before the High Court.

The High Court has taken the view that clubbing of Groups 'F' and 'E' together for promotion to the next higher post in Group 'D' section-II, amounts to clubbing of unequals and the Rule to this extent is invalid. The contention of the State has been rejected wherein it was indicated that a common seniority list was prepared of persons in Groups 'E'

and 'F' with those in Group 'E' being placed en bloc above those in Group 'F'; that persons in Group 'F' were considered for promotion only after every one in Group 'E' had been considered and vacancies remained to be filled on account of suitable persons not being found in Group 'E' to fill those vacancies; persons from Group 'F' were considered only then, subject to the prescribed qualifications for appointment to Group 'D'. Section-II; and the nature of functions of both the categories of Headmasters being similar, their equation for this purpose was considered to be reasonable. The High Court did not accept this as sufficient justification to consider persons in Group 'F' for filling the remaining vacancies in Group 'D' Section-II even when the remaining persons of Group 'E' were not found suitable for promotion. The High Court also appears to have overlooked the fact that all posts in Group 'D', Section-II being required to be filled by promotion, there was no other avenue to fill the remaining vacancies in Group Section-II except the next lower cadre of Group 'F' for want of adequate number of suitable person in Group 'E' for appointment to Group 'D'.

The question really is : Whether the policy adopted by the State Government of first considering all the persons in Groups 'E' for promotion to Group 'D', Section-II and promoting all found suitable, and then only considering the qualified persons in Group 'F' for appointment to the remaining vacancies for want of suitable persons in Group 'E' for promotion, when the posts in Group 'D' Section-II are required to be filled 100 per cent by promotion, is invalid for any reason? It is in this perspective that the dispute between members of Group 'E' and Group 'F' of the Service raised in the present case has to be decided. Obviously, the grievance of members of Group 'E' can arise only if those in Group 'F' are

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treated on par with Group 'E' which is a higher grade or members of Group 'F' get appointments by promotion in Group 'D' which would otherwise have gone to those in Group 'E' but for the rule making Group 'F' also eligible for promotion to Group 'D' by clubbing Groups 'E' and 'F' together for this purpose. There can be no legitimate grievance to members of Group 'E' in case vacancies remain to be filled in Group 'D' which can be filled only by promotion, after every one in Group 'E' has been considered and only those not found fit for promotion therein are left unpromoted. The appointment to the remaining vacancies by promotion of members of Group 'F', the next lower cadre, possessing the prescribed qualifications and found suitable for promotion cannot result in inequality or injustice to those remaining in Group 'E' on account of their unsuitability. There is no other available avenue to fill the remaining posts in Group 'D' by promotion. There can be no legitimate claim of an unsuitable person for promotion to provide foundation for the challenge so made.

It is for this reason that we required the State Government to place before us the material indicating the procedure followed for making the selection for promotion to the posts in Group 'D' Section-II from Groups 'E' and 'F' of the Service. It has been shown with reference to full particulars that it is only the vacancies in Group 'D' remaining unfilled for want of suitable persons in Group 'E' which are filled by appointment of persons found suitable in Group 'F' who possess the prescribed qualifications and are also found outstanding. It does appear to be the only feasible manner in which the remaining vacancies in Group

'D' can be fined since promotion from the services is the only prescribed mode of filling of the posts in Group 'D'. Moreover, the nature of duties and functions of the post of Principal, Higher Secondary School in Group 'D', Section-II is similar to that of Headmaster of a Higher Secondary School or Secondary School, which are the posts held by persons in Groups 'E' and 'F' respectively. That apart, an unsuitable person in Group 'E' cannot claim placement above a qualified and suitable person in Group 'F', when the nature of duties of both are alike and so is that of the higher post in Group 'D'.

In order to assure ourselves that the principle adopted was fair and reasonable and so was its application in making the promotions to Group 'D', Section-II from Groups 'E' and 'F', we also directed the filing of an affidavit by a senior officer giving all the relevant particulars in addition to

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production of a chart which would enable comparison of persons in Group 'E' who were not found suitable for promotion to Group 'D', Section-II with those in Group 'F' who were found fit for promotion on the basis of merit. On a scrutiny of these particulars along with the facts stated in the affidavit of M.R. Advani, Deputy Legal Remembrancer, Education Department, Government of Rajasthan. We are satisfied that the principle adopted and followed was fair and reasonable and does not result in any injustice to the persons not found fit in Group 'E' for promotion. The affidavit of M.R. Advani shows that the duties of the office of Principal as well as Headmaster are of a similar nature and there is no qualitative difference in the duties performed by persons belonging to Groups 'E' and 'F'. It has also been stated that the Reporting Officer for the purpose of annual performance appraisal of persons in Group 'E' is the Principal and their Reviewing Officer is the District Education Officer, while in the case of persons belonging to Group 'F', the Reporting Officer is the District Education Officer and the Reviewing Officer is the Deputy Director/Joint Director. Prior to introduction of 10 + 2 Scheme, the Reporting Officer for Group 'E' persons also was the District Education Officer and the Reviewing Officer was the Deputy Director/Joint Director. This shows that the standard of their annual performance appraisal is also on par, being made in this manner. Paras 10 and 11 of this affidavit dated 15.10.1992 read as under:

"10. It is respectfully submitted that pursuant to the subrule (11) of Rule 25 of the 1970 Rules while considering the merits of candidates the Departmental Promotion Committee first considered all the candidates of category 'E.' who were in the zone of consideration and every candidate who had 5 or more 'very good' or 'outstanding' report and not having any adverse report was selected on merit.

11. After considering all the candidates of category 'E' the posts which were left unfilled were filled by considering the merits of candidates of category 'F'. While considering the merits of category 'F' candidates, first of all candidates having 5 or more 'outstanding' and 'very good' ACR were selected. If the number of vacancies are less, the merit list

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is prepared on the basis of those having 6 or

an 7 ACRs to be 'outstanding' or 'very good'. For the year 1989-90 as sufficient vacancies were available in D-11 category all E and F category candidates were promoted who had required minimum merit."

Along with the particulars relating to all the candidates from Groups 'E' and 'F' considered for promotion to Group 'D'. Section-II, an additional affidavit dated 21.10.1992 was filed on behalf of the State Government by B.C. Bairathi wherein para 4 is as under:

"4. It is respectfully submitted that it is evident from the statement that all candidates of category 'E' who were in the zone of consideration and had 5 or more 'outstanding' and 'very good' reports and did not have any adverse reports have been selected on merits. The leftout candidates in group 'E' are only those who had less than 5 'outstanding' or 'very good' reports and they could not have been selected on merits pursuant to the express provisions of Rule 25(11) of the 1970 Rules. It is also evident from the said statements that all candidates of category 'F' who have been appointed had 5 or more 'outstanding' and 'very good' ACRs and none of them had less than 5 'outstanding' or 'very good' ACRs."

The Explanation to Rule 25(11) as amended vide Notification dated 30.11.1991 prescribes that for such promotion no one having less than 5 outstanding/very good annual confidential reports in the immediate preceding 7 years is to be considered fit for promotion. The facts clearly show that every one in Group 'E' satisfying this criterion has been selected and those not found suitable in Group 'E' are persons who do not satisfy this criterion. Vacancies remained in Group 'D'. Section-II which could not, therefore, be filled from persons in Group 'E' since suitable persons amongst them were not available. The only manner in which the remaining vacancies in Group 'D', Section-II could be filled, since all vacancies were to be filled by promotion according to the Rules, was by promoting the outstanding persons from Group 'F'. The duties and functions of persons in Groups 'E' and 'F' being of a similar nature, consideration of persons

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from Group 'F' for filling the remaining vacancies in this situation was neither unreasonable nor arbitrary but the only available mode left for filling the remaining vacancies. It also appears that the outstanding persons selected from Group 'F' were qualitatively found superior to those remaining unselected in Group 'E', particularly in view of the express requirement of the Explanation to Rule 25(11) which the unsuitable persons in Group 'E' did not satisfy.

In Chiranjit Lal Chowdhuri v. The Union of India and Others, [1950] S.C.R. 869, while dealing with the right to equality, Fazil Ali. J. indicated that a doctrinaire approach is not warranted and a passage from Constitutional Law by Prof. Willis was cited as a correct proposition of the principle underlying this guarantee where in it was stated as under:

"..... Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of

that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis." (p.877)

In Mohd. Hanif Quareshi & Others v. The State of Bihar, [1959] S.C.R. 629, while dealing with the meaning, scope and effect of Article 14, it was reiterated that 'in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assumed every state of facts which can be conceived existing at the time of legislation'.

The validity of the impugned Rules has to be adjudged in this background. The challenge to the validity, upheld by the High Court, was on the only ground that clubbing of Groups 'E' and 'F' for promotion to Group 'D', Section-II was invalid, since unequals had been equated for the purpose of promotion. From the undisputed facts, it is clear that the total number of posts in Group 'D', Section-II is nearly the same as the total number of posts in Group 'E', while the total number of posts in Group 'F' is about five times thereof. Since appointment to Group 'D', Section-II is 100 per cent by promotion. It is a distinct possibility, as in the present case, that the requisite number of suitable candidates from Group 'E' may

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not be available to fill all the existing vacancies in Group 'D', Section-II. In such a situation, all appointments to Group 'D', Section-II posts being by promotion, the only available option is to fill the remaining vacancies by selection of outstanding persons from Group 'F'. This is more so because the nature of duties and functions of the posts in Groups 'E' and 'F' is similar and so is that of the posts in Group 'D' Section-II. In such a situation, the provision made in the Rules for promotion to Group 'D', Section-II from Group 'E' as well as Group 'F' does not in any manner offend the guarantee of equality in the Constitution.

The manner in which the Rule is worked, that is, consideration first of all persons in Group 'E' for promotion to Group 'D', Section-II and moving to Group 'F', if necessary, for filling only the remaining vacancies by selecting outstanding amongst them who satisfy the requirement of Explanation to Rule ensures fairness to all while also maintaining efficiency in the administration. If the need arises to look to Group 'F' for filling the remaining vacancies on account of want of suitable persons in Group 'E', those found unsuitable in Group 'E' cannot complain of discrimination if persons duly qualified and more suitable performing similar functions are selected, since the unsuitable left out in Group 'E' are excluded from the competition on the ground of unsuitability, and cease to remain contenders for the remaining posts. These provisions in the Rules are, therefore, not in any manner violative of Articles 14 or 16 of the Constitution.

Reference may also be made to Md. Usman & Ors. v. State of Andhra Pradesh & Ors., [1971] Supp. S.C.R. 549, wherein clubbing of UDCs and LDCs for recruitment to posts of Grade-II Sub-Registrars was upheld as valid. The contention there was that the rule permitting the clubbing violated Article 14 of the Constitution by treating unequals as equals. The High Court struck down the rule as violative of Article 14, but this Court reversed that decision and upheld validity of the rule. It was held by this Court that the promotion based on the principles of seniority-cum-merit, even though

the position of UDC is superior to that of LDC, satisfies the guarantee of equality. In the present case, this decision applies with greater force since the selection from Group 'F' is based purely on merit and it is only the outstanding from the Group who are promoted.

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For the aforesaid reasons, we allow the appeals and set aside the impugned judgment of the High Court with the result that the writ petitions filed in the High Court stand dismissed. No costs.

R.P.

Appeals allowed.

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JUDIS