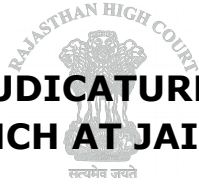




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No.14474/2024

1. Mohan Lal Sharma S/o Prabhu Dayal Sharma, Aged About 39 Years, R/o Kishanpura, Post Padasoli, Tehsil Bassi, District Jaipur, Rajasthan.
2. Shiv Charan Gurjar S/o Om Prakash Gurjar, Aged About 31 Years, R/o Kathmana, District Tonk, Rajasthan.
3. Suman D/o Ram Kumar, Aged About 39 Years, R/o 2125, Sector-1-4, Hisar, Haryana.
4. Arjun Lal Jat S/o Mangu Ram Jat, Aged About 56 Years, R/o Muwalo Kee Dhani, Tehsil Amer, Bilochi, Jaipur, Rajasthan.
5. Vipin Kumar Mamodia S/o Subhash Chand, Aged About 35 Years, R/o Vpo Antela, Tehsil Virat Nagar, District Jaipur, Rajasthan.
6. Priyenka Gurjar D/o Ram Prahlad Gurjar, Aged About 28 Years, R/o Vpo Indergarh, Tehsil Jamwaramgarh, District Jaipur, Rajasthan.
7. Mazhar Khan S/o Abdurrahman, Aged About 33 Years, R/o 25501, Nath Ji Ki Bagichi, Paharganj, Ghatgate, Jaipur, Rajasthan.
8. Deepti Jain D/o Arvind Kumar Jain, Aged About 30 Years, R/o Ward No. 11, Hindaun Road, Kherli Ganj, Alwar, Rajasthan.
9. Chandra Shekhar S/o Om Prakash, Aged About 28 Years, R/o Nayapura, Atpara, District Pali, Rajasthan.
10. Jasoda Kilaka D/o Sugnaram Kilaka, Aged About 30 Years, R/o Ghumanda, Ratangarh, District Churu, Rajasthan.
11. Sangeeta Nagar D/o Hansraj Nagar, Aged About 28 Years, R/o Mundla, Tehsil Chhabra, District Baran, Rajasthan.
12. Sunil Kumar S/o Surjeet Singh, Aged About 36 Years, R/o Ward No. 24, Bishnoi Bass, Khetrapal Mandir Ke Piche, Rawatsar, District Hanumangarh, Rajasthan.
13. Jyoti Chugh D/o Preetam Dass, Aged About 33 Years, R/o Ward No. 5, Village Kundalawala, 6 Lnp, Khayaliwala, Ganganagar, Rajasthan.
14. Kapoor Chand Sain S/o Ghayan Chand Sain, Aged About 32 Years, R/o Sodala, Dausa, Rajasthan.
15. Monika Choudhary D/o Sharwan Kumar, Aged About 27 Years, R/o Ward No. 2, Bambalwas, 2 Bbm, Hanumangarh, Rajasthan.

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, School Education Department, Govt. Of Rajasthan,





Secretariat, Jaipur.

2. The Director, Secondary Education, Rajasthan, Bikaner.
-----Respondents

Connected With

S.B. Civil Writ Petition No.14208/2024

1. Priyanka Yadav D/o Bhag Chand Yadav, Aged About 36 Years, R/o 26, Sushant City-I, Kalwar Road, Jhotwara, Jaipur, Rajasthan.
2. Taresh Chandra Gupta S/o Chandra Kant Gupta, Aged About 38 Years, R/o Plot No. 48, Behind Govt. Iti College, Moti Nagar, Alwar, Rajasthan.
3. Sanjeev Kumar Saini S/o Banwari Lal Saini, Aged About 48 Years, R/o Mohalla Khohara, Near Ashok Circle, Alwar Rajasthan.
4. Richa Sharma D/o Narendra Swaroop Sharma, Aged About 38 Years, R/o 427, Bhatt Bhawan, Shuklapuri, Mangla Marg, Brahmpuri, Jaipur, Rajasthan.

-----Petitioners

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, School Education Department, Govt Of Rajasthan, Secretariat, Jaipur.
2. The Director, Secondary Education, Rajasthan Bikaner.

-----Respondents

S.B. Civil Writ Petition No.14246/2024

1. Puran Mal Swami S/o Prabhu Dayal Swami, Aged About 38 Years, R/o Mohan Das Ki Dhani, Kishor Pura, Sikar, Rajasthan.
2. Arun Sarawat S/o Jagmohan Sarawat, Aged About 42 Years, R/o C-2, Janakpuri, Dhawas, Jaipur, Rajasthan.
3. Vikas Oswal S/o Mali Ram, Aged About 43 Years, R/o 205, Rani Sati Nagar, Shyam Nagar, Ajmer Road, Jaipur, Rajasthan.
4. Nehru Lal Meena S/o Ramshay Meena, Aged About 47 Years, R/o Village Biharipura, Mansar Kheri, Jaipur, Rajasthan.
5. Prabhu Narayan Meena S/o Kalyan Sahay Meena, Aged About 39 Years, R/o Village Hardi, Post Kunthada Khurd, Lahariyo Ki Dhani, Jaipur, Rajasthan.
6. Surendra Kumar Meena S/o Jay Narayan Meena, Aged About 34 Years, R/o Lamba Ki Dhani, Dhamsya, Jhahjwar, Jaipur, Rajasthan.

-----Petitioners

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, School Education Department, Govt. of Rajasthan,





Secretariat, Jaipur.

2. The Director, Secondary Education, Rajasthan, Bikaner.

----Respondents

S.B. Civil Writ Petition No.14276/2024

1. Suman Khambra D/o Girdhari Khambra, Aged About 42 Years, R/o R-225, Narayan Vihar, R-Block, Mansarovar, Jaipur, Rajasthan.
2. Sumna Devi D/o Jai Chand, Aged About 33 Years, R/o Ward No. 9, 34 Rwd, Gandheli, Hanumangarh, Rajasthan.
3. Trapti Chaudhary D/o Gambhir Singh, Aged About 34 Years, R/o 8, Bapu Nagar, Bharatpur, Rajasthan.
4. Anita D/o Dharamvir Singh, Aged About 32 Years, R/o C/o Madhu Sudan, 236, Rewari, Haryana.
5. Neelam D/o Suman Singh, Aged About 29 Years, R/o Punjabi Mohalla, Khoh, Bharatpur, Rajasthan.
6. Rohitash Kumar Meena S/o Badri Prasad Meena, Aged About 29 Years, R/o Village Govindpura, Post Kishori, Tehsil Thanagazi, District Alwar, Rajasthan.
7. Sameem Khan S/o Ruzdar Khan, Aged About 29 Years, R/o Village Niwali, Tehsil Ramgarh, District Alwar, Rajasthan.
8. Sarita D/o Vastu Ram, Aged About 41 Years, R/o Ward No. 6, Nijampura, Jhunjhunu, Rajasthan.
9. Pramod Kumar Sharma S/o Nathu Lal Sharma, Aged About 38 Years, R/o Chomun, Govindgarh, Jaipur, Rajasthan.
10. Tejpal Meena S/o Chhaju Ram Meena, Aged About 33 Years, R/o Village Gopalpura, Post Kishori, Tehsil Thanagazi, District Alwar, Rajasthan.
11. Om Prakash Alwariya S/o Chet Ram Alwariya, Aged About 40 Years, R/o Ward No. 21, Nagaji Ki Gaur, Mohalla Buchahera, Post Kotputli, District Jaipur, Rajasthan.
12. Devendar S/o Lal Chand, Aged About 26 Years, R/o Ward No. 8, Chak 2 Ttd, Thethar, District Sriganganagar, Rajasthan.
13. Amar Singh S/o Hari Singh, Aged About 35 Years, R/o New Abada Bera, Pali, Rajasthan.
14. Ratan Lal Meghwal S/o Bheru Lal Meghwal, Aged About 31 Years, R/o Sangwa, District Udaipur, Rajasthan.
15. Sandeep Kumar S/o Nanu Ram, Aged About 32 Years, R/o Ward No. 07, Ellenabad, Sirsa, Haryana.
16. Saurabh Kumar S/o Gangi Ram, Aged About 26 Years, R/o Petrol Pump Wali Sadak Ke Piche, Kathumar, District Alwar, Rajasthan.
17. Bintosh Kumari Nagar D/o Dwarka Lal Nagar, Aged About 27 Years, R/o Vpo Shahpura, Tehsil Mangrol, District





Baran, Rajasthan.

18. Anjum Parveen D/o Haneef Mohammad, Aged About 31 Years, R/o Ward No. 15, Subhash Colony, Nainwa, District Bundi, Rajasthan.

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, School Education Department, Govt. Of Rajasthan, Secretariat, Jaipur.
2. The Director, Secondary Education, Rajasthan, Bikaner.

----Respondents

For Petitioner(s)

: Mr. R.P. Saini
Mr. Rishi Raj Maheshwari
Mr. Gopesh Kumar
Mr. Aamir Khan

For Respondent(s)

: Mr. Rajendra Prasad, Advocate
General assisted by
Ms. Harshita Thakral

Mr. B.S. Chhaba, AAG assisted by
Mr. Avinash Choudhary

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on

24.10.2024

Pronounced on

11.11.2024

Reportable

1. The law of the land must be enforced in a manner that puts all citizens on the same footing. If the law favours any citizen on any unreasonable ground such as class, status, gender or place of residence etc., the law is unfair and fails to perform its purpose, which is to uphold justice. Every subject of a state must be considered an equal before law and no subject must be treated with some special consideration on an unreasonable ground such



as gender, race, class, religion or place of residence, etc. This concept can be summed up in the phrases "equality before law" and "equal protection of law".

2. This concept can also be found in Article 7 of the Universal Declaration of Human Rights, of which India was a signatory. This provision states that "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

3. The legal issue involved in these writ petitions is "whether 10 additional bonus marks can be granted to the candidates/personnels, for opting their present place of posting?" Whether grant of additional bonus marks to such candidates amounts to violation of the Fundamental Rights of other candidates contained under Articles 14, 15 & 16 of the Constitution of India? It is in this background the issue involved in these writ petitions is required to be considered.

4. Common cause of action and identical question of law and facts are involved in these writ petitions, hence, with the consent of counsel for the parties, final arguments have been heard and the same are being decided by this common order.

5. For the sake of convenience, the facts and prayer pleaded in S.B. Civil Writ Petition No.14474/2024 are taken into consideration.

6. By way of filing of this writ petition, a challenge has been made against condition No.9 of the advertisement issued by the Director, Secondary Education on 11.07.2024 for selection and



appointment on the post of Teachers in the Mahatma Gandhi Government English Medium Schools and Swami Vivekanand Government Model Schools (SVGMS) and all other Government English Medium Schools.

7. Learned counsel for the petitioners submits that as per Condition No.9 of the advertisement, for selection in English Medium Schools, a written examination would be organised by the respondent-department. The said written examination would consist of 100 marks and if the personnel/candidate gives the option of posting to the district where he/she is currently posted, 10 additional bonus marks will be given to him/her for selection/posting in the said district. Learned counsel submits that the aforesaid condition is not in consonance with Rule 10 of the Rajasthan Civil Services (Special Selection and Special Conditions of Service for Appointment of Personnel in the English Medium Schools) Rules, 2023 (for short 'the Rules of 2023'). Learned counsel submits that it is settled proposition of law that a condition in the advertisement cannot be contrary to the Rules and Regulations of Service and Appointment. Learned counsel submits that without there being any provision for grant of bonus marks under the Rules, the impugned Condition No.9 has been incorporated in the advertisement. Learned counsel submits that, under these circumstances, the impugned condition is not sustainable and is liable to be quashed and set aside by this Court. Learned counsel submits that the aforesaid action of the respondents is in violation of Article 14 of the Constitution of India.



8. In support of his submissions, he has placed reliance upon the judgment passed by the Apex Court in the cases of **Kailash Chand Sharma Versus State of Rajasthan & Others** reported in **(2002) 6 SCC 562** and **The Employees' State Insurance Corporation Versus Union of India & Others** reported in **2022 SCC ONLINE SC 70**.

9. *Per contra*, learned Advocate General opposed the arguments raised by learned counsel for the petitioners and submitted that the advertisement in question has been issued in consonance with the Rules of 2023. Learned Advocate General submits that Rule 7 deals with Source of Selection and Rule 8 deals with Eligibility for selection. He submits that the entire selection process is based on these Rules and unless and until legal validity of the same is challenged by the petitioners, they are not entitled to get any relief. He submits that the selection process, arising out of the advertisement in question, is not a general recruitment process rather it is a recruitment procedure adopted by the government to identify suitability of already employed Teachers/other staff members, and as per the Rules, preference is given to the candidates, who opt for the same district where they are currently posted. The condition of awarding 10 additional bonus marks has been put in the advertisement for granting the bonus marks to those Teachers, who are posted in the same district, which they have opted for. He submits that condition No.9 does not suffer from any infirmity, hence, under these circumstances, interference of this Court is not warranted.

10. Heard and considered the submissions made at Bar and perused the material available on record.



11. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of the State of Rajasthan made the Rajasthan Civil Services (Special Selection and Special Conditions of Service for Appointment of Personnel in the English Medium Schools) Rules, 2023 (for short "the Rules of 2023"), wherein Rule 6 provides for determination of vacancies for the post of Teacher in English Medium Schools. Rule 7 provides for Source of Selection. Rule 8 provides for Eligibility for Selection. Rule 10 provides for Criteria for Selection. Rule 11 provides for Procedure for Selection and Rule 14 provides for Other conditions of service. For ready reference, these Rules are extracted as under:-

6. Determination of vacancies.- The Appointing Authority shall determine on 1 st April every year, the number of vacancies anticipated to be filled in English Medium Schools of each district during the year or as and when such contingency arises.

7. Source of selection.- Selection for appointment to the posts as specified in column number 2 of Schedule-I, after the commencement of these rules shall be made on the recommendation of the Selection Committee from amongst the eligible personnel of the department, preferably of the district in which vacancies are to be filled, mentioned in column number 3 of Schedule-I.

8. Eligibility for selection.- Only such persons shall be eligible for consideration for appointment to the posts specified in Schedule-I, who are incumbents of the department, preferably of the district in which vacancies are to be filled, and eligible for



posting/appointment in the English Medium Schools on the posts specified in Schedule-I.

10. **Criteria for selection.**- Selection shall be made by the Selection Committee, concerned after an interview having regard to the personality, character, previous record of service and previous experience in respective services or any other criteria of selection e.g. proficiency in English language communication skill and teaching his/her subject well through English medium or whatever the committee considers to be appropriate. The Director shall be empowered to formulate, amend and issue the further detailed instruction as per the exigency.

11. **Procedure for selection.**- (1) As soon as it is decided that selection is to be made to fill a certain number of vacant posts as specified in column number 2 of the Schedule-I, from amongst the eligible candidate mentioned in column number 3 of the Schedule-I, the Director or any other officer authorized for this purpose shall invite application from all eligible candidates by a stipulated date through a way as he considers to be appropriate.

(2) The eligible candidates may apply for the posts as advertised by the Appointing Authority in accordance with the procedure as decided by the Director.

(3) The candidates may mention as many choices as decided for the time being for posting on the advertised posts/vacancies.

(4) After screening of the applications received, pending departmental inquiries, prosecution reports, other service records or any other information which is considered to be appropriate may be sought. After due consideration over such information, the decision of the Appointing Authority shall be final.





(5) The Appointing Authority shall issue the schedule for interview of the eligible candidates as per their post/subjects. Selection of the candidates shall be done on the basis of merit list prepared in accordance with the performance in the interview and the norms as prescribed by the Director. The selection of the candidates, equal to the number of vacancies likely to be filled in, shall be made as per their suitability and a list of the names of the suitable candidates shall be prepared accordingly:

Provided that the Selection Committee may, if suitable persons are available, keep on reserve list more candidates whose number shall not exceed 50% of the vacancies determined. The name of such candidates may be considered for posting until new selection process is initiated.

14. **Other conditions of service.-** (1) Personnel shall be posted after selection to the post enumerated in Schedule-I generally for a period of one year which shall be extendible by a process specified by the Director after review of the performance of the services rendered. The Appointing Authority shall have right of relieving a personnel for office of the previous Appointing Authority before completion of the such service duration without assigning any reasons. The Appointing Authority other than the Director shall seek approval from the Director before such action.

(2) Annual review of the performance of all personnel posted after selection in the English Medium Schools shall be done by the Appointing Authority by the manner and process specified by the Director, from time to time.

(3) As soon as the personnel posted after selection in the English Medium Schools is promoted to a higher post in the parent cadre, he/ she shall be





deemed reverted for posting on promotion. In case of having the desirable qualifications for posting in the English Medium Schools, the Appointing Authority may take a decision for retention of posting of the promoted personnel in any of the English Medium Schools in accordance with the vacancies and exigency.

(4) Except as provided in these rules, other service conditions to the post as specified in column 2 of Schedule-I, shall be regulated by other rules applicable to the employees of the State Government made under the proviso to Article 309 of the Constitution of India.

(5) An additional allowance may be made admissible as an incentive as per exigency to personnel to be posted in the schools situated in remote rural areas as specified in Schedule-II, if adequate number of candidates does not apply for the post concerned, as specified by the State Government, from time to time.

(6) The personnel working in the English Medium Schools may be posted/transferred to any other English Medium Schools across the state according to their post/subject. The original seniority of the candidate concerned shall remain unaffected due to the said change in posting.

(7) In case of posting of the personnel working on posts whose seniority is maintained at range/district level, even after selection in the English Medium Schools of other range/district jurisdiction, the seniority of the candidate concerned shall be protected in the parent range/district and they shall be entitled to a lien in the parent range/district for further promotion.

(8) In case of the posts where seniority is maintained at range/district level, the probationer





trainees/probationers being posted after selection in the English Medium Schools of other range/district, the confirmation after successful completion of the probation period shall be done by the previous Appointing Authority of parent range/district where his/her seniority is maintained before being posted in the English Medium Schools.

(9) The incumbents of the Rajasthan Voluntary Rural Service Rules, 2010 shall not be eligible for posting in the urban/municipal areas.”

Perusal of the entire scheme of Rules of 2023 nowhere indicates the provision for grant of 10 additional bonus marks to the Teacher/personnel, as provided in the condition No.9 of the advertisement.

12. The Director, Secondary Education, Rajasthan, Bikaner issued an advertisement on 11.07.2024 for selection and appointment of various personnel/Teachers in Mahatama Gandhi Government (English Medium) Schools, Swami Vivekanand Government Model Schools (SVGMS) and all other Government English Medium Schools of the State. Several terms and conditions were imposed, for the purpose of selection and appointment wherein Condition No.9 was incorporated in the advertisement, which is extracted In English Language as under:-

“9. A written examination would be conducted by the department for selection in English Medium Schools, consisting of 100 marks and in case the employee gives option of his/her district of posting, 10 additional bonus marks would be given for selection/posting in the said district.”

13. Feeling aggrieved and dissatisfied by the above condition No.9 of the advertisement, the petitioners have approached this



Court by way of filing of the present batch of writ petitions mainly on two grounds; (1) Condition No.9 is not in consonance and conformity with Rules of 2023; and (2) grant of 10 additional bonus marks causes distinction between two equals, because no particular benefit should be granted to the personnel on the basis of opting their present place of posting and grant of such 10 additional bonus marks amounts to violation of fundamental rights, contained under Articles 14 and 16 of the Constitution of India.

14. Rule 10 of the Rules of 2023 deals with the criteria for selection and the same does not prescribe any provision for granting 10 additional bonus marks to the personnel on the basis of opting the same districts wherein they are presently posted. There cannot be any distinction between the personnel who have opted and personnel who have not opted for posting more particularly when the teaching or working experience acquired by each one of them is same and common. What is required under the Scheme of Rules of 2023 is that the incumbent must have previous record of service and experience e.g. proficiency in English Language & communication skill of teaching his/her subject well through English Medium.

It is worthy to note here that no distinction has been made by the Rule making authority between different personnel, posted in different schools, in different districts of the State of Rajasthan. No provision for grant of 10 additional bonus marks has been kept under the scheme of Rules of 2023. Hence, the act of granting 10 additional bonus marks to personnel of a particular district is arbitrary, wholly unjustified and contrary to the scheme of Rules of



2023. Hence, the condition No.9 of the advertisement is not sustainable in the eye of law.

15. As per the settled principles of service jurisprudence, if there is any conflict between the terms & conditions provided in any advertisement and Rules or Regulations of service and appointment, then the provision contained under the Rules or Regulations shall prevail.

16. The Hon'ble Apex Court in the case of the **Employees' State Insurance Corporation (supra)** has held in para 20 as under:-

"20. The advertisements issued by the appellant mentioned that the DACP Scheme would be applicable for its recruits. However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail. In *Malik Mazhar Sultan v. U.P. Public Service Commission*²³ a two-judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U.P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U.P. Public Service Commission and held:

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if



permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”

17. Similarly in the case of **Ashish Kumar Vs. State of Uttar Pradesh** reported in **2018 (3) SCC 55**, the Hon’ble Supreme Court has held that if any part of the advertisement is contrary to the statutory Rules, then the later would prevail, as has been held in para 27 of the judgment, which reads as under:-

“27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence....”

18. Looking to the proposition of law as laid down by the Hon’ble Apex Court, it can be safely concluded that there is a conflict under the scheme of the Rules of 2023 and Condition No.9 of the advertisement with regard to grant of 10 additional bonus marks to the candidates/personnel, for opting their present place of posting. The Condition No.9 is not in consonance and conformity with the Scheme of Rules of 2023. Hence, the impugned Condition No.9 of the advertisement dated 11.07.2024 is legally not sustainable in the eye of law.

19. Now this Court proceeds to decide the issue “whether the condition No.9 of the advertisement causes any discrimination



between two equals on the basis of giving option to choose their present place of posting for providing them 10 additional bonus marks or not?"

20. The Constitution of India offers all the citizens, individually and collectively various fundamental rights. All these rights are guaranteed under Part III of the Constitution of India.

Article 14 defines Equality before Law. Article 15 deals with Prohibition of Discrimination on the grounds of religion, race, caste, sex or place of birth and Article 16 says that there would be equality of opportunity in the matters of public employment. These Articles of the Constitution of India are extracted as under:-

"14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.



(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.





Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office 1 [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation 3 [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.





(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category."

21. As per Article 16(1) of the Constitution of India, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

22. The argument raised by the respondents justifying the grant of 10 additional bonus marks to the personnel opting the district of their current place of posting is liable to be rejected on the plain terms of Article 16(3) of the Constitution of India. The attempts to



prefer candidates of a local area in the State were nipped in the bud by the Hon'ble Apex Court since long past.

23. Being a resident of a particular area or posted in a particular place itself—be it in a State or in a particular area, cannot be a ground to accord preferential treatment or reservation, save as provided under Articles 14 and 16 of the Constitution of India.

24. The issue of grant of bonus marks to the candidates of particular districts and rural areas came up before the Hon'ble Apex Court in the case of **Kailash Chand Sharma** (supra) and the same was dealt with and decided in Paras 14 to 19 and 28, 31 as under:-

"14. Before proceeding further we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the State and some of the parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio-economic backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself - be it be within a State region,



district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into Districts with a view to offer employment to the residents of that District on a preferential basis. At this juncture it is appropriate to undertake a brief analysis of Article 16.

15. Article 16 which under Clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under Clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Be it noted that in the allied Article 14 Article 15, the word 'residence' is omitted from the opening clause prohibiting discrimination on specified grounds. Clauses (3) and (4) of Article 16 dilutes the rigour of Clause (2) by (i) conferring an enabling power on the Parliament to make a law prescribing the residential requirement within the State in regard to a class or classes of employment or appointment to an office under the State and (ii) by enabling the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The newly introduced Clauses (4-A) and (4-B), apart from Clause (5) of Article 16 are the other provisions by which the embargo laid down in Article 16(2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the Article. Here, we should make note of two things: firstly, discrimination only on the ground of residence (or place of birth) in so far as public employment is concerned is prohibited, secondly, Parliament is empowered to make the law





prescribing residential requirement within a State or Union Territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of parliamentary law, even the prescription of requirement as to residence within the State is a taboo. Coming to the first aspect, it must be noticed that the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression 'only'.

16. Let us now turn our attention to some of the decided cases As far back as in 1969 a Constitution Bench of this Court in A.V.S. Narasimha Rao v. State of A.P.: [1970] 1 SCR 115 declared that the law enacted by the Parliament in pursuance of Clause (3) of Article 16 making a special provision for domicile within the Telegana region of the State of Andhra Pradesh for the purpose of public employment within that region and the rules made thereunder as ultra vires the Constitution. Pursuant to the enabling power conferred under Section 3 of the Public Employment (Requirement as to Residence) Act, Rules were made making a person ineligible for appointment to a post within the Telengana area under the State Government of A.P. or to a post under a local authority in the said area unless he has been continuously residing within the said area for a period of not less than 15 years immediately proceeding the prescribed date. The Government issued an order relieving all non-domicile the persons appointed on or after 1.11.1956 to certain categories of posts reserved for domiciles of Telecngana under the A.P. public employment (Requirement as to Residence) Rules. Such incumbent of post was to be employed in the Andhra region by





creating a supernumerary post, if necessary. This legislative and executive action was struck down by this Court. After referring to Article 16, the Court observed:

"The intention here is to make every office or employment open and available to every citizen, and inter alia to make offices or employment in one part of India open to citizens in all other parts of India. The third clause then makes an exception.....

The legislative power to create residential qualification for employment is thus exclusively conferred on Parliament. Parliament can make any law, which prescribes any requirement as to residence within the State or Union territory prior to employment or appointment to an office in that State or Union territory. Two questions arise here, firstly, whether Parliament, while prescribing the requirement, may prescribe the requirement of residence in a particular part of the State and, secondly, whether Parliament can delegate this function by making a declaration and leaving the details to be filled in by the rule making power of the Central and State Governments."

17. The argument that a sweeping power was given to the Parliament to make any law as regards residential requirement was replied thus :

"By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause there can be no discrimination, among other things, on the ground of residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in Clause (3) was made. Even so, that clause spoke of residence within the State. The claim





of Mr. Setalvad that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words 'any requirement' cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. We accept the argument of Mr. Gupte that the Constitution, as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in Districts, Taluqas, cities, towns or villages. The fact that this clause is an exception and came as un-amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constituent Assembly also seem to indicate."

18. Thus, this Court was not inclined to place too wide an interpretation on Article 16(3), keeping broadly in view the constitutional philosophy.

19. In Pradeep Jam v. Union of India: (1984)IILLJ481SC though the Court was concerned with the question whether residential requirement or institutional preference in admissions to technical and medical colleges can be constitutionally permissible in the light of Article 15(1) and 15(4) Bhagwati, J. speaking for the Court expressed his prima facie opinion thus as regards residential acquirement in the field of public employment :

"We may point out at this stage that though Article 15(2) bars discrimination on grounds, not only of religion, race, caste or sex but also on place of birth, Article 16(2) goes further and provides that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in State





employment. So far as employment under the State or any local or other authority is concerned, no citizen can be given preference nor can any discrimination be practised against him on the ground only of residence. It would thus appear that residential requirement would be unconstitutional as a condition of eligibility for employment or appointment to an office under the State..... But, Article 16(3) provides an exception to this rule by laying down that Parliament may make a law "prescribing, in regard to a class or classes of employment or appointment to an office under the government of or any local or other authority in, a State or Union Territory, any requirement as to residence within that State or Union territory prior to such employment or appointment." Parliament alone is given the right to enact an exception to the ban on discrimination based on residence and that too only with respect to positions within the employment of a State Government. But even so, without any parliamentary enactment permitting them to do so many of the State Governments have been pursuing policies of localism since long and these policies are now quite widespread. Parliament has in fact exercised little control over these policies formulated by the States. The only action, which Parliament has taken under Article 16(3) giving if the right to set a residence requirement has been the enactment of the Public Employment (requirement as to Residence) Act, 1957.....

There is therefore, at present no parliamentary enactment permitting preferential policies based on residence requirement except in the case of Andhra Pradesh, Manupur, Tripura and Himachal Pradesh where the Central government has been given the right to issue directions setting residence requirements in the subordinate services. Yet, in the face of Article





16(2) some of the States are adopting 'sons of the soil' policies prescribing reservation or preference based on domicile or residence requirement for employment or appointment to an office under the Government of a State or any local or other authority or public sector corporation or any other corporation which is an instrumentality or agency of the State. Prima facie this would seem to be constitutionally impermissible though we do not wish to express any definite opinion upon it, since it does not directly arise for consideration in these writ petitions and civil appeal."

28. The justifiability of the plea stemming from the premise that uplifting the rural people is an affirmative action to improve their lot can be tested from the concrete situation which confront us in the present cases. We are here concerned with the selections to the posts of teachers of primary schools, the minimum qualification being SCC coupled with basic training course in teaching. Can the Court proceed on the assumption that the candidates residing in the town areas with their education in the schools or colleges located in the towns or its peripheral areas stand on a higher pedestal than the candidates who had studied in the rural area schools or colleges? Is the latter comparatively a disadvantaged and economically weaker segment when compared to the former? We do not think so. The aspirants for the teachers jobs in primary schools--be they from rural area or town area do not generally belong to affluent class. Apparently they come from lower middle class or poor background. By and large, in the pursuit of education, they suffer and share the same handicaps as their fellow citizens in rural areas. It cannot be said that the applicants from non-rural areas have access to best of the schools and colleges which the well to do class may have. Further, without any data, it is not possible





to presume that the schools and colleges located in the towns-small or big and their peripheral areas are much better qualitatively, that is to say, from the point of view of teaching standards or infrastructure facilities so as to give an edge to the town candidates over the rural candidates.

31. The two grounds pleaded in justification of preferential treatment accorded to rural area candidates found favour with the Division Bench of the High Court in Baljit Kaur's case 1992 WLR Raj. 83 and Arvind Kumar Gochar's case (decided on 6.4.94). Shri Rajeev Dhawan appearing for the selected candidates who have filed SLP (SIC) No. 10780/2001, did his best to support the impugned circular mainly on the second ground, namely, better familiarity with the local dialect. The learned counsel contends that when the teachers are being recruited to serve in Gram Panchayat area falling within the concerned Panchayat Samiti, those hailing from the particular district and the rural areas of that district are better suited to teach the students within that district and the Panchayat areas comprised therein. He submits that the local candidates can get themselves better assimilated into the local environment and will be in a better position to interact with the students at primary level. Stress is laid on the fact that though the language/mother tongue is the same, the dialect varies from district to district and even within the district. By facilitating selection of local candidates to serve the Panchayat run schools, the State has not introduced any discrimination on the ground of residence but acted in furtherance of the goal to impart education. Such candidates will be more effective as primary school teachers and more suitable for the job. It is therefore contended that the classification is grounded on considerations having





nexus with the object sought to be achieved and is not merely related to residence. We find it difficult to accept this contention, though plausible it is. We feel that undue accent is being laid on the dialect theory without factual foundation. The assertion that dialect and nuances of the spoken language varies from district to district is not based upon empirical study or survey conducted by the State. Not even specific particulars are given in this regard. The stand in the counter affidavit (extracted supra) is that "each zone has its distinct language". If that is correct, the Zila Parishad should have mentioned in the notification that the candidates should know particular language to become eligible for consideration. We are inclined to think that reference has been made in the counter to 'language' instead of 'dialect' rather inadvertently. As seen from the previous sentence, the words dialect and language are used as interchangeable expressions, without perhaps understanding the distinction between the two. We therefore take it that what is meant to be conveyed in the counter is that each Zone has a distinct dialect or vernacular and therefore local candidates of the district would be in a better position to teach and interact with students. In such a case, the State Government should have identified the zones in which vernacular dissimilarities exist and the speech and dialect vary. That could only be done on the basis of scientific study and collection of relevant data. It is nobody's case that such an exercise was done. In any case, if these differences exist zone-wise or region-wise, there could possibly be no justification for giving weightage to the candidates on the basis of residence in a district. The candidates belonging to that zone, irrespective of the fact whether they belong to x, y or z district of the zone could very well be familiar with the allegedly different dialect





peculiar to that zone. The argument further breaks down, if tested from the stand point of award of bonus marks to the rural candidates. Can it be said reasonably that candidates who have settled down in the towns will not be familiar with the dialect of that district? Can we reasonably proceed on the assumption that rural area candidate are more familiar with the dialect of the district rather than the town area candidates of the same district? The answer to both the questions in our view cannot but be in the negative. To prefer the educated people residing in villages over those residing in towns-- big or small of the same district, on the mere supposition that the former (rural candidates) will be able to teach the rural students better would only amount to creating an artificial distinction having no legitimate connection to the object sought to be achieved. It would then be a case of discrimination based primarily on residence which is proscribed by Article 16(2)."

25. The issue of grant of weightage of additional marks for candidates belonging to a family, which has no member in the organised employment came before the Hon'ble Apex Court in the case of **Himachal Pradesh Vs. Amar Nath Sharma & Ors.** reported in **1994 (4) SLR 436**, where the Apex Court has held that there is no justification in providing any weightage or incentive to a particular class of citizens, who are not socially and educationally backward. It was held in paras 8 and 9 of the judgment as under:-

"8. So far as the weightage provided for the candidates belonging to a family which has no member in the organised employment, we are of the view that the High Court was justified in holding the same to be





arbitrary. There is no justification for providing any weightage or incentive for a class of citizens which is not socially and educationally backward. An affluent family having education and social status cannot be given any preference in the matters relating to employment or appointment to any office under the State in the scheme of Articles 14 and 16 of the Constitution of India. We, therefore, agree with the High Court and set aside the weightage of 10 marks for a candidate "belonging to a family for whom not even one member is in organised employment." This shall operate prospectively from the date of this judgment. Any selection made prior to the date of this judgment, on the basis of the memorandum shall be considered valid.

9. The High Court, in our view, was not justified in quashing the selection - procedure. The High Court has acted merely on surmises and conjectures. We have not been able to find any material illegality in the conduct of interviews. Simply because a candidate obtained less marks for educational qualifications and more marks in the interview. It is no ground to reach the conclusion that the candidate was favoured. The special selection committees at various district levels adopted their own procedure to hold the interviews. At some places lump sum marks were awarded in respect of general knowledge and personality whereas at other places 20 marks were divided into general knowledge and personality separately. We see no illegality in the manner of holding the interviews. We, therefore, set aside the findings of the High Court and hold that the interviews were held properly."

26. Here, in the present case the respondents have put the condition No.9 in the advertisement for grant of 10 additional



bonus marks in the written examination to the personnel in case they opt for their current district of posting, but this condition is not backed by any Rules framed in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India.

27. This Court is of a clear and specific view that the State has to follow the provisions which are meant for the welfare of the people, but the State cannot create any artificial classification which results in discrimination between two equals and similarly situated persons. All the candidates, who apply for getting appointment, are entitled for selection on the basis of similar criteria of selection, as prescribed under the Rules. Granting additional bonus marks to a particular set of individual is not justified.

28. Hence, this Court finds that granting of 10 additional bonus marks to a particular group of personnel of the district, if they opt their present place/district of posting, is violative of Articles 14, 15 and 16 of the Constitution of India when tested on the anvil of Right to Equality and it creates a class of unequals amongst equals. There is no nexus between the Rules of 2023 and aforesaid condition No.9 of the advertisement as to grant of 10 additional bonus marks in the written examination.

29. It is worthy to note here that last year also, the similar advertisement was issued by the respondents on 17.06.2023, in pursuance of the same scheme of Rules of 2023 for appointment in English Medium Schools but no such condition was put in the said advertisement of granting 10 additional bonus marks. Hence, under such circumstances, there was no occasion or reason





available with the respondents to introduce the impugned Condition No.9 in the advertisement dated 11.07.2024.

30. The above discussions lead this Court to the conclusion that awarding any bonus marks to the personnel who are posted in a particular district and opted for the same place/district of posting, in terms of condition No.9 of advertisement dated 11.07.2024, amounts to impermissible discrimination. There is no rational basis for such preferential treatment, on the material available before this Court. The ostensible reasons put forward to distinguish the candidates by way of awarding 10 additional bonus marks, as provided under Condition No.9 of the advertisement are either non-existent or irrelevant, having no nexus with the object sought to be achieved. The offending part of Condition No.9 of the advertisement dated 11.07.2024 has the effect of diluting merit, without in any way promoting the objective. The impugned condition No.9 of the advertisement is violative of Articles 14, 15 and 16 of the Constitution of India. Hence, the impugned condition No.9 of the advertisement dated 11.07.2024, insofar as the award of 10 additional bonus marks is liable to be and is hereby declared illegal and unconstitutional.

31. In view of the discussions made herein above, these writ petitions are liable to be and are hereby allowed. The Condition No.9 of the advertisement dated 11.07.2024 stands quashed and set aside. The respondents are at liberty to proceed with the selection process on the basis of merit and other criteria, fixed in the Scheme of Rules of 2023 and strictly as per the terms and conditions of the advertisement without giving 10 additional bonus



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marks to any of the candidates, on the basis of the impugned condition No.9.

32. Stay application and all applications (pending, if any) stand disposed of. The parties are left to bear their own costs.

(ANOOP KUMAR DHAND),J

Karan/282-285

