



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



S.B. Civil Writ Petition No. 4255/2015

Smt. Rajani Bhardwaj D/o Sh. N.R. Bhardwaj, 187, Guru Jambeshwar Nagar-A, Gandhipath, Vaishali Nagar, Jaipur Rajasthan



-----Petitioner

Versus

1. Director, Secondary Education, Lalgarh Palace, Bikaner
2. Sh. Neeraj Kumar Sharma, At Present Performing As Principal, Govt. Senior Secondary School, C/o Director, Secondary Education, Lalgarh Palace, Bikaner

-----Respondents

For Petitioner(s) : Dr.Vikram Singh Nain
For Respondent(s) : Ms.Anjum Parveen Salawat for
Ms.Namita Parihar, Dy.G.C.

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on : 11/03/2025
Pronounced on : 27/03/2025
Reportable

For convenience of exposition, this judgment is divided in the following parts:-

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"Equality Knows No Gender. We cannot all succeed when half of us are held back."

Prelude:-

1. The 21st century has seen a global rise in women empowerment movements. The Universal Declaration of Human Rights, established in 1948, reaffirms the belief in the fundamental rights and equal dignity of all individuals, emphasizing freedom without any form of discrimination, including based on sex.

2. In the contemporary epoch, the discourse surrounding women's empowerment and gender equality has transcended from mere rhetoric to a dynamic movement that has gained momentum across the globe. Women empowerment, at its core, refers to the process of enabling women to exercise their rights, make autonomous decisions and partake fully in the socio-political, economic and cultural spheres of life. It is a multi-dimensional concept that encompasses the dismantling of structural impediments that stifle women's potential and promotion of policies that enable their holistic growth. The global rise in gender equality reflects a paradigm shift towards recognizing women as equal stakeholders in the pursuit of prosperity, peace and sustainable development.

3. In response to these principles, the Indian Constitution, adopted in 1950, enshrines several fundamental rights that aim to protect and promote gender equality. The framers of the Constitution were acutely aware of the historical discrimination faced by women and thus, laid down provisions to ensure their upliftment. A comprehensive reading of Articles 14, 15, 16 and 21





of the Constitution of India clearly indicates that no laws can be created or enforced so as to cause discrimination against women. Though aspirational at the time of their drafting, such laws have paved the way for transformative changes in womens' rights over the decades. The legislature has enacted numerous laws aimed at achieving gender equality, fulfilling both international obligations and constitutional mandates.



4. Article 14 under Constitution of India, guarantees the Right to Equality for Women, while Article 15(1) specifically prohibits discrimination based on sex. Furthermore, Article 15(3) allows for positive and affirmative action to benefit women. Article 16 ensures equal opportunities in public employment and forbids discrimination on various grounds including sex. Our obligation to reject practices that undermine women's dignity is elevated to a fundamental duty under Article 51-A. The Directive Principles of State Policy (Part IV of the Indian Constitution), although non-justiciable (i.e., they are not enforceable in a Court of law), provides essential guidelines to the government in promoting social and economic equality and further provides direction to the State to protect women human rights, including equal pay for equal work, health rights and maternity benefits. The 73rd and 74th Constitutional Amendments Act, enacted in the year 1993, marked a significant advancement in women participation in governance by providing 33% reservation for women at various levels.

5. Throughout history, women have played a vital role in nation-building, yet they have often faced barriers to equal participation in socio-economic activities. Gender bias has impacted many aspects of their lives. To address this, the



Constitution of India takes significant steps to ensure gender justice as a fundamental principle. The Preamble promises justice—social, economic, and political—along with equality of status and opportunity and fraternity that upholds individual dignity. It explicitly recognizes women as a distinct group and prohibits all forms of discrimination against them, paving the way for equal opportunities in education, employment and advancement.

6. Furthermore, the legal framework supporting women's rights has evolved significantly. Legislative reforms in the areas such as reproductive rights, domestic violence laws, equal pay for equal work, etc. have been instrumental in protecting women from discrimination and violence. Global conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), have provided a legal foundation for governments to pursue gender-sensitive policies and ensure protection of women's rights on the international stage.

7. The instant case is yet another example of gross discrimination between female and male Lecturers. While the less qualified male lecturers were promoted to the position of Principal, the much deserving petitioner has been denied promotion solely due to her gender and placement in the cadre of girls' institutions.

8. By way of filing this writ petition, a challenge has been made to the impugned order dated 22.10.2014 passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur (for short, "the Tribunal") against the petitioner whereby the appeal preferred by her seeking promotion from the post of Lecturer to Principal has been rejected.

**Submissions by counsel for petitioner:-**

9. Learned counsel for the petitioner submits that the petitioner was appointed on the post of Lecturer, after participating in the process for selection, initiated by the Rajasthan Public Service Commission (for short, "the RPSC"). Counsel submits that merit No.4 was allotted to the petitioner and on the basis of her merit, she was given posting in boys institutions and throughout her service career, she remained posted in Government Senior Secondary School, Ramgarh, which is a boys institution. Counsel submits that when the seniority list was prepared by the respondents for the purpose of promotion to the post of Principal, the name of the petitioner was not there, while the names of less meritorious candidates, i.e., Neeraj Kumar Sharma and Ashok Kumar Joshi were taken into account for the purpose of granting promotion from the post of Lecturer to Principal. Counsel submits that Neeraj Kumar Sharma held the 8th merit position and Ashok Kumar Joshi held the 31st, while the petitioner was ranked 4th in the order of merit. Despite being more meritorious than the aforementioned individuals, the petitioner has been denied promotion to the post of Principal, overlooking her merit. Counsel submits that as per Rules 28(3) of the Rajasthan Educational Service Rules, 1970 (for short, "the Rules of 1970."), the inter se seniority of the persons, appointed to posts in a particular category by direct recruitment, on the basis of one and same selection process is required to be seen for the purpose of promotion. But here in the instant case, the petitioner has been denied promotion to the said post, in utter violation of the mandate provided under Rule 28(3) of the Rules of 1970 and





misinterpreting the provisions, outlined in Rule 4 of the said Rules. Counsel submits that as per Rule 4(4) of the Rules of 1970, separate cadres in each group of service are specified in Schedule-I to Schedule-VI whereby Schedule-I deals with Boys Institutions and Schedule-II deals with Girls Institutions. Counsel submits that the petitioner never posted in girls institution, instead she has always been posted in boys institution and even then, she was denied promotion, simply for the reason that she is a female. Counsel submits that the aforesaid action of the respondents amounts to violation of the Fundamental Rights of the petitioner, contained under Article 14 of the Constitution of India. Hence, under these circumstances, interference of this Court is warranted.

Submissions by counsel for respondents:-

10. *Per contra*, learned counsel for the respondent-State opposes the arguments raised by counsel for the petitioner and submits that as per the provisions contained under Rule 4(4) of the Rules of 1970, different schedules have been prescribed for different cadres, where Schedule-I deals with Boys Institutions and Schedule-II deals with Girls Institutions. Counsel submits that the petitioner is a female Lecturer and that is why, her case for promotion and seniority would be confined to Schedule-II, i.e, Girls Institutions only. Hence, under these circumstances, the case of less meritorious candidates who are male were considered for promotion, irrespective of their merit position. Counsel submits that validity of the Rules of 1970 has not been challenged by the petitioner and unless and until the provisions contained under





Rules of 1970 are struck down, the petitioner is not entitled to get any relief.

Discussions & Analysis:

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

12. The material available on record indicates that the petitioner secured merit No.4 when she was selected by the RPSC for her appointment on the post of Lecturer. She was given posting on the said post in various boys institutions and remained posted in boys institution throughout her service career. The problem evolved before the petitioner, when the seniority list was prepared by the respondents for promotion to the post of Principal and her higher position in merit was discarded and less meritorious candidates, i.e., Neeraj Kumar Sharma (Merit No.8) and Ashok Kumar Joshi (Merit No.31) were granted promotion on the post of Principal.

13. Feeling aggrieved by the aforesaid action of the respondents, the petitioner approached the Tribunal by way of filing appeal, but the same was rejected by the Tribunal vide impugned order dated 22.10.2014 while referring to Rule 6 of the Rules of 1970, which reads as under:-

“(6) that direct recruitment and promotion relating to the posts in each group of the service included in Schedule-I and II shall be made separately for Boys and Girls Institutions, but if the appointing authority is satisfied in consultation with Commission that the suitable persons are not available for promotion on any post included in Schedule-I or Schedule-II, as the case may be, in a particular year, than promotion may be made from the other Schedule.”



The sole reason for denying relief by the Tribunal is that the respondents had no occasion to consider the petitioner's case, as she is a female Lecturer, classified under Schedule-II, which is designated for Girls Institutions whereas suitable persons (male) were available for promotion to the post of Principal under Schedule-I, which is designated for Boys Institutions.

14. Rule 4 of the Rules of 1970 deals with composition and strength of service and the same is reproduced as under:-

"4. Composition and strength of the Service-

- (1) The service shall consist of the posts as arranged in the various groups specified in the Schedules.
- (2) The nature of posts included in each group of the Service shall be specified in column 2 of the Schedules.
- (3) The Strength of posts in each groups 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,
 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 any Schedule, provided such posts carry identical time scale of pay.

Provided that Government may from time to time-

- (a) create any post, permanent or temporary as may be found necessary; and



(b) leave unfilled or held in abeyance or abolish or allow to lapse any post, permanent or temporary, without thereby entitling any person to any claim or compensation."

15. Likewise Rule 28 of the Rules of 1970 deals with seniority and the same reads as under:-



"[**28. Seniority-** Seniority of persons appointed to the lowest post of the Service of lowest categories of post 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 for the date of their regular selection to such posts.

Provided – (1) that the seniority inter se of the persons appointed to the service before the commencement of these rules and/or in the process of integration of the services of the pre-reorganised State of Rajasthan or the services of the new State of Rajasthan established by the State Re-organisation Act, 1956 shall be determined, modified or altered by the appointing authority on an adhoc basis;

(2) that if two or more persons are appointed to posts in the same category in the same year, a person appointed by promotion shall be senior to a person appointed by direct recruitment;

(3) that the seniority inter se of persons appointed to posts in a particular category by direct recruitment on the basis of one and the same selection, except those who do not join service when a post is offered to them, shall follow the order in which they have been place in the list prepared by the Commission under rule 20;

(4) that the seniority inter se of persons appointed to posts in a particular category by promotion shall follow the order in which they



have been placed in the lists prepared under rules 24 and 25;

(5) that the seniority inter se of the teacher in grade II and teachers in grade I on promotion to the post in Group 'F' of Schedules I, II and III shall be determined in the ratio of 4:1 respectively and that these posts will be filled in the following cyclic order, that is:-

- A. First four: teachers in grade II.
- B. Fifth: teachers in grade I on promotion as mentioned above.
- C. Next four: teachers in grade II
- D. Next: teachers in grade I on promotion as in B
- E. Cycle to be repeated.

(6) that the seniority of persons appointed to posts in group 'F' and the post of Lecturer of Government Teachers Training Collage, Deputy Inspector of Physical Education and Senior Lecturers, College of Physical Education after selection by the Committee under proviso 4 to rule 6, shall reckon from the date of their selection by the Screening Committee in the relevant Groups, Inter se seniority of these persons shall be as fixed by the committee.

(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 interse seniority of persons selected by the Commission or Committee shall be as indicated by the Commission or Committee. Interse seniority of persons selected against departmental promotion quota shall be determined under rules 24 and 25;

(8) that the seniority inter se of officers in each group of the service specified in Schedule I and II for promotion to the posts included in Schedule III shall be determined with reference to the date of their substantive appointment on a post in such group. The inter se seniority of officers selected by the Departmental Promotion Committee unless determined earlier will be





determined on the basis of length of continuous officiation on the post from which promotion is made, except adhoc and fortuitous provided further that the seniority of members of the service for general institutions included in schedule III shall be determined from the date they would have been promoted to the posts included in schedule III irrespective of their earlier promotion to the posts included in Schedule I or Schedule II.

(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.

(10) Deleted.

(11) that the seniority of the persons absorbed as a result of taking over of private institutions shall be determined with reference to the year of absorption of such persons and they shall rank junior to the persons appointed by direct recruitment or by promotion if the post is to be filled in by promotion only in the relevant category during the year of their appointment. The inter-se seniority of such persons will, however, be fixed according to date of continuous appointment in the same grade under such management/agency; provided that any predetermined seniority shall not be disturbed. The service rendered by the employees of private institutions on an equated posts shall be counted as experience or service required for promotion or direct recruitment under these rules as the case may be.

(12) that the Seniority of Head Masters, Secondary/ Higher Secondary Schools taken over by the Government from Municipal Board/ Councils/ Corporation, shall be determined from the date of their continuous appointment in the same grade in Municipal Board/ Council/ Corporation, if they are qualified to hold the





posts, otherwise seniority shall be fixed in the lower grade, for which they were qualified.

(13) That if a candidate belonging to the Scheduled Caste/ Scheduled Tribe is promoted to an immediate higher post/ grade against a reserved vacancy earlier than his senior general / O.B.C. candidate who is promoted later to the said immediate higher post/ grade, the general/O.B.C. candidate will regain his seniority over such earlier promoted candidate of the Scheduled Caste/ Scheduled Tribe in the immediate higher post/ grade."



Perusal of Rule 28(3) of the Rules of 1970 clearly indicates that the seniority inter se of persons appointed to the post in a particular category by direct recruitment on the basis of one and same selection shall follow the order in which they have been placed in the list, prepared by the Commission under Rule 20.

It is worthy to note here that no distinction has been made between male or female Lecturers. Likewise there is no bar in getting promotion to the higher post on the basis of Rule 4(4) of the Rules of 1970. Rule 4(4) similarly deals with two Schedules, i.e., Schedule-I for Boys Institutions and Schedule-II for Girls Institutions. Therefore, a female should not be placed at a disadvantage simply because of her gender, especially when she is more meritorious than the other candidates (male).

Hence, making a discrimination between male and female candidates on the basis of their gender, for the purpose of promotion in Boys or Girls Institutions, amounts to violation of the provisions of Articles 14, 15, 16 and 21 of the Constitution of India. Such an action on the part of the respondents is quite arbitrary, unjustified and the same is liable to be deprecated.



16. In India, discrimination based on sex, has always been regarded as a violation of fundamental rights, as outlined in Part-III of the Constitution of India. Article 14 ensures equality for all individuals, while Article 15(1) prohibits the State from discriminating against anyone on the ground of sex, among other factors. It also forbids any classification of citizens based on sex for any purpose. Furthermore, Articles 16(1) and (2) guarantee equal opportunity in the matters of public employment. These prohibitions are absolute and unconditional.

Judgments referred:-

17. One of the landmark judgments of the Hon'ble Supreme Court with regard to discrimination against women in promotions, came up in the year 1979 in the case of **C.B Muthamma v. Union of India**, reported in **(1979) 4 SCC 260**. This case revolved around gender discrimination within the Indian Foreign Service, wherein CB Muthamma, the first woman to be appointed as an Indian Foreign Service Officer, had alleged discriminatory practices prevalent in the service, because of which she was denied the benefit of Grade-I promotion of Indian Foreign Service. Before the Hon'ble Supreme Court, she had contended that the provisions of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, violated her constitutional rights under Articles 14 and 16 since the Rules, as they stood at that time, restricted women officers from serving in certain foreign posts and imposed conditions on their eligibility. It also disentitled them to promotion if they were to get married. The Court acknowledged the blatant gender-based discrimination and held that the Rules were indeed violative of the constitutional principles of equality. The Hon'ble



Apex Court emphasized that the Constitution guarantees equal opportunities to both men and women in the matters of public employment and that gender cannot be a valid criterion for differential treatment. The Hon'ble Supreme Court thus observed:



"5. Discrimination against women, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of government before she marries, the same risk is run by the Government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the Service are likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member. In these days of nuclear families, inter-continental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species. Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, runs in the same prejudicial strain:

"(1)-(3) * * *

(4) No married woman shall be entitled as of right to be appointed to the service."

6. At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thraldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity viz. our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate of Parliament, makes rules in the teeth of Part III especially when high political office, even diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.

7. We do not mean to universalise or dogmatise that men and women are equal in all occupations and all



situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter-affidavit, it is stated that Rule 18(4) (referred to earlier) has been deleted on November 12, 1973. And, likewise, the Central Government's affidavit avers that Rule 8(2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinise or strike down these rules.

8. The petitioner has, after the institution of this proceeding, been promoted. Is it a case of post hoc ergo propter hoc? Where justice has been done, further probe is otiose. The Central Government states that although the petitioner was not found meritorious enough for promotion some months ago, she has been found to be good now has been upgraded and appointed as Ambassador of India to the Hague, for what it is worth. Her surviving grievance is only one. During the interval of some months between her first evaluation and the second, some officers junior to her have gone above her. In the rat race of Indian official life, seniority appears to be acquiring a religious reverence. Since the career ahead of the petitioner may well be affected by the factum of prior birth into Grade I of the Service, her grievance turning on seniority cannot be brushed aside. Her case, with particular focus on seniority, deserves review vis-a-vis those junior to her who have been promoted in the interval of some months. The sense of injustice rankles and should be obliterated so that every servant in strategic position gives of his or her best to the country. We have had the advantage of the presence of the learned Solicitor General, appearing for the Union of India. With characteristic fairness he has persuaded his client to agree to what we regard as a just gesture viz. that the respondent — Union of India — will shortly review the seniority of the petitioner, her



merit having been discovered and her seniority in Grade II being recognised. We direct accordingly.

9. Subject to what we have said above, we do not think it necessary to examine the averments of mala fides made in the petition. What we do wish to impress upon the Government is the need to overhaul all Service Rules to remove the stain of sex discrimination, without waiting for ad hoc inspiration from writ petitions or gender charity.

10. We dismiss the petition but not the problem."

(emphasis supplied)

18. In the case of **Anuj Garg & Ors v. Hotel Association of India & Ors**, reported in **(2008) 3 SCC 1**, the Hon'ble Supreme Court struck down a law which barred women's employment in premises where liquor was consumed. Such law was held to be suffered by "incurable fixations of stereotype morality and conceptions of sexual role". The Hon'ble Supreme Court held that legislations impinging upon individual autonomy should be subject to deeper judicial scrutiny, to ensure that no law, in its ultimate effect, perpetuates the oppression of women. It went on to observe that "personal autonomy is inherent in the grounds mentioned in Article 15" and is a "fundamental tenet which cannot be compromised", requiring a "heightened level of scrutiny" in cases of a measure infringing on autonomy. The Court noted:

"26. When a discrimination is sought to be made on the purported ground of classification, such classification must be founded on a rational criteria. The criteria which in absence of any constitutional provision and, it will bear repetition to state, having regard to the societal conditions as they prevailed in early 20th century, may not be a rational criteria in the 21st century. In the early 20th century, the hospitality sector was not open to women in general.



In the last 60 years, women in India have gained entry in all spheres of public life. They have also been representing people at grassroot democracy. They are now employed as drivers of heavy transport vehicles, conductors of service carriages, pilots, et. al. Women can be seen to be occupying Class IV posts to the post of a Chief Executive Officer of a multinational company. They are now widely accepted both in police as also army services.

...

Stereotype roles and right to options

41. Professor Williams in *The Equality Crisis : Some Reflections on Culture, Courts and Feminism* published in 7 Women's Rts. L. Rep., 175 (1982) notes issues arising where biological distinction between sexes is assessed in the backdrop of cultural norms and stereotypes. She characterises them as "hard cases". In hard cases, the issue of biological difference between sexes gathers an overtone of societal conditions so much so that the real differences are pronounced by the oppressive cultural norms of the time. This combination of biological and social determinants may find expression in popular legislative mandate. Such legislations definitely deserve deeper judicial scrutiny. It is for the court to review that the majoritarian impulses rooted in moralistic tradition do not impinge upon individual autonomy. This is the backdrop of deeper judicial scrutiny of such legislations world over.

42. Therefore, one issue of immediate relevance in such cases is the effect of the traditional cultural norms as also the state of general ambience in the society which women have to face while opting for an employment which is otherwise completely innocuous for the male counterpart. In such circumstances the question revolves around the approach of the State.

43. Instead of prohibiting women employment in the bars altogether the State should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. It is the State's duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance to the requirements of the profession





they choose to follow. Any other policy inference (such as the one embodied under Section 30) from societal conditions would be oppressive on the women and against the privacy rights.

44. The description of the notion of "romantic paternalism" by the US Supreme Court in Sharron A. Frontiero v. Elliot L. Richardson [411 US 677 : 36 L Ed 2d 583 : 93 S Ct 1764 (1973)] makes for an interesting reading. It is not to say that Indian society is similarly situated and suffers from the same degree of troublesome legislative past but nevertheless the tenor and context are not to be missed. The Court noted in this case of military service : (US pp. 684-85)

"There can be no doubt that our nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage. ...

As a result of notions such as these, our statute books gradually became laden with gross, stereotyped distinctions between the sexes...."

The Court also maintained the strict scrutiny standard for review and repelled the administrative convenience argument in the following terms : (Frontiero case [411 US 677 : 36 L Ed 2d 583 : 93 S Ct 1764 (1973)], US pp. 690-91)

"In any case, our prior decisions make clear that, although efficacious administration of governmental programs is not without some importance, 'the Constitution recognizes higher values than speed and efficiency'.... And when we enter the realm of 'strict judicial scrutiny', there can be no doubt that 'administrative convenience' is not a shibboleth, the mere recitation of which dictates constitutionality. ... On the contrary, any statutory scheme which draws a sharp line between the sexes, solely for the purpose of achieving administrative convenience, necessarily commands 'dissimilar treatment for men and women who are ... similarly situated', and therefore involves the 'very kind of arbitrary legislative choice forbidden by the [Constitution] We





therefore conclude that, by according differential treatment to male and female members of the uniformed services for the sole purpose of achieving administrative convenience, the challenged statutes violate the Due Process Clause of the Fifth Amendment...."



45. In another similar case wherein there was an effective bar on females for the position of guards or correctional counselors in the Alabama State penitentiary system. The prison facility housed sexual offenders and the majority opinion on this basis inter alia upheld the bar. Marshall, J.'s dissent captures the ranges of issues within a progressive paradigm. Dissent in *Dothard v. Rawlinson* [433 US 321 : 53 L Ed 2d 786 : 97 S Ct 2720 (1977)] serves as useful advice in the following terms:

"It appears that the real disqualifying factor in the Court's view is 'the employee's very womanhood'. The Court refers to the large number of sex offenders in Alabama prisons, and to 'the likelihood that inmates would assault a woman because she was a woman'. In short, the fundamental justification for the decision is that women as guards will generate sexual assaults. With all respect, this rationale regrettably perpetuates one of the most insidious of the old myths about women that women, wittingly or not, are seductive sexual objects. The effect of the decision, made I am sure with the best of intentions, is to punish women because their very presence might provoke sexual assaults. It is women who are made to pay the price in lost job opportunities for the threat of depraved conduct by prison inmates. Once again, 'the pedestal upon which women have been placed has upon closer inspection, been revealed as a cage'. It is particularly ironic that the cage is erected here in response to feared misbehavior by imprisoned criminals."

He also notes the nature of protective discrimination (as garb) in the following terms:

"The Court points to no evidence in the record to support the asserted 'likelihood that inmates would assault a woman because she was a woman'. Perhaps the Court relies upon common sense, or 'innate recognition'. But the



danger in this emotionally laden context is that common sense will be used to mask the 'romantic paternalism' and persisting discriminatory attitudes that the Court properly eschews. To me, the only matter of innate recognition is that the incidence of sexually motivated attacks on guards will be minute compared to the 'likelihood that inmates will assault' a guard because he or she is a guard. The proper response to inevitable attacks on both female and male guards is not to limit the employment opportunities of law-abiding women who wish to contribute to their community, but to take swift and sure punitive action against the inmate offenders. Presumably, one of the goals of the Alabama prison system is the eradication of inmates' antisocial behavior patterns so that prisoners will be able to live one day in free society. Sex offenders can begin this process by learning to relate to women guards in a socially acceptable manner. To deprive women of job opportunities because of the threatened behavior of convicted criminals is to turn our social priorities upside down."

46. It is to be borne in mind that legislations with pronounced "protective discrimination" aims, such as this one, potentially serve as double-edged swords. Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. The impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means.

47. No law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until and unless there is a compelling State purpose. Heightened level of scrutiny is the normative threshold for judicial review in such cases."

(emphasis supplied)

**Ratio Decidendi:-**

19. It is in this background, the present writ petition is required to be adjudicated. The petitioner herein, a female Lecturer, posted in Boys institution, has been denied promotion to the post of Principal, only because she is a female, falling in Schedule-II attached to Rule(4) of the Rules of 1970. Since No discrimination has been caused under the provisions of Rule 28 (3) of the Rules of 1970 for preparing a different seniority list for female Lecturer, the so called classification made by the respondents on the basis of Schedules-I & II, has no legal bearing.

20. A traditional and formalistic interpretation of Article 14 of the Constitution of India, as seen from catena of judgments makes it clear that for a reasonable classification under Article 14 of the Constitution, two criteria must be met: (i) the classification must be founded on an intelligible differentia; and (ii) the differentia must have a rational nexus to the objective sought to be achieved by the legislation. **[State of W.B. v. Anwar Ali Sarkar reported in (1952) 1 SCC 1]** There must, in other words, be a causal connection between the basis of classification and the object of the statute. If the object of the classification is illogical, unfair and unjust, the classification will be unreasonable. **[Deepak Sibal v. Punjab University reported in (1989) 2 SCC 145].**

21. However, the Hon'ble Supreme Court went one step ahead in **Navtej Singh Johar v. Union of India** reported in **(2018) 10 SCC 1**, to recognize the evolving nature of liberty and substantive



equality and the limitation that the formalistic interpretation of Article 14 poses. It noted:

"409. Equating the content of equality with the reasonableness of a classification on which a law is based advances the cause of legal formalism. The problem with the classification test is that what constitutes a reasonable classification is reduced to a mere formula : the quest for an intelligible differentia and the rational nexus to the object sought to be achieved. In doing so, the test of classification risks elevating form over substance. The danger inherent in legal formalism lies in its inability to lay threadbare the values which guide the process of judging constitutional rights. Legal formalism buries the life-giving forces of the Constitution under a mere mantra. What it ignores is that Article 14 contains a powerful statement of values—of the substance of equality before the law and the equal protection of laws. To reduce it to a formal exercise of classification may miss the true value of equality as a safeguard against arbitrariness in State action. As our constitutional jurisprudence has evolved towards recognising the substantive content of liberty and equality, the core of Article 14 has emerged out of the shadows of classification. Article 14 has a substantive content on which, together with liberty and dignity, the edifice of the Constitution is built. Simply put, in that avatar, it reflects the quest for ensuring fair treatment of the individual in every aspect of human endeavour and in every facet of human existence.

...

428. When the constitutionality of a law is challenged on the ground that it violates the guarantees in Part III of the Constitution, what is determinative is its effect on the infringement of fundamental rights. [Kerala Education Bill, 1957, In re, AIR 1958 SC 956 at para 26; Sakal Papers (P) Ltd. v. Union of India, AIR 1962 SC 305 at para 42; Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248 at paras 43, 49; Bennett Coleman and Co. v. Union of India, (1972) 2 SCC 788 at para 39; Maneka Gandhi v. Union of India, (1978) 1 SCC 248 at para 19.] This affords the guaranteed freedoms their true potential against a claim by the State that





the infringement of the right was not the object of the provision. It is not the object of the law which impairs the rights of the citizens. Nor is the form of the action taken determinative of the protection that can be claimed. It is the effect of the law upon the fundamental right which calls the courts to step in and remedy the violation. The individual is aggrieved because the law hurts. The hurt to the individual is measured by the violation of a protected right. Hence, while assessing whether a law infringes a fundamental right, it is not the intention of the lawmaker that is determinative, but whether the effect or operation of the law infringes fundamental rights.

...

438. A discriminatory act will be tested against constitutional values. A discrimination will not survive constitutional scrutiny when it is grounded in and perpetuates stereotypes about a class constituted by the grounds prohibited in Article 15(1). If any ground of discrimination, whether direct or indirect is founded on a stereotypical understanding of the role of the sex, it would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex. If certain characteristics grounded in stereotypes, are to be associated with entire classes of people constituted as groups by any of the grounds prohibited in Article 15(1), that cannot establish a permissible reason to discriminate. Such a discrimination will be in violation of the constitutional guarantee against discrimination in Article 15(1). That such a discrimination is a result of grounds rooted in sex and other considerations, can no longer be held to be a position supported by the intersectional understanding of how discrimination operates. This infuses Article 15 with true rigour to give it a complete constitutional dimension in prohibiting discrimination.

440. A provision challenged as being ultra vires the prohibition of discrimination on the grounds only of sex under Article 15(1) is to be assessed not by the objects of the State in enacting it, but by the effect that the provision has on affected individuals and on their fundamental rights. Any ground of



discrimination, direct or indirect, which is founded on a particular understanding of the role of the sex, would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex."

(emphasis supplied)



22. Thus, from the aforementioned judgments it is clear that a discrimination will not survive constitutional scrutiny when it is grounded in, and perpetuates stereotypes about a class constituted by the grounds prohibited in Article 15(1). If any ground of discrimination, whether direct or indirect, is founded on a stereotypical understanding of the role of the sex, it would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex. A provision challenged as being ultra vires the prohibition of discrimination on the grounds only of sex under Article 15(1) is to be assessed not by the objects of the State in enacting it, but by the effect that the provision has, on affected individuals and their fundamental rights.

23. In the considered opinion of this court, this is a clear case of discrimination, which not only falls within the perview of Article 14 of the Constitution but is also specifically prohibited by Article 15(1) and Article 16(2) of the Constitution. The directive to the State, prohibiting discrimination against any citizen on the grounds of sex and ensuring equality of opportunity in public employment, is a fundamental principle that demands strict adherence. Unlike the freedoms outlined in Article 19 of the Constitution, there is no room to restrict the absolute nature of



the rights guaranteed under Article 15(1) and 16(2) of the Constitution. There would be no scope whatever to justify differentiating between the male and female sexes in the matter of appointment and promotion. The right of women should not be denied on fanciful assumptions of what work the woman could do and could not do.

24. The Hon'ble Supreme Court, in the case of **Ajay Kumar Shukla v. Arvind Rai & Ors**, reported in **(2022) 12 SCC 579**, has unequivocally, while relying on numerous precedents, held that though right to promotion is not considered to be a fundamental right but consideration for promotion has now been evolved as a fundamental right. It observed:

"40. It is also admitted by the parties that the next promotion of Junior Engineers in the higher grade is to the post of Assistant Engineer. In the cadre of Assistant Engineer, there are no separate streams but only one cadre of Assistant Engineers. It is the seniority list of the cadre of Junior Engineers which would be the feeder cadre for the post of Assistant Engineers. The Junior Engineers of Agricultural stream of the selection of the year 2001, would have direct march over the Junior Engineers selected in the same selection of the Mechanical and Civil streams, even though the overall merit of some or many of Agricultural stream Junior Engineers could be lower than some or many of the Engineers of the Mechanical and Civil streams. The appointing authority ought to have prepared a combined merit list based upon the performance or the proficiency on the basis of the marks received in the selection test as prepared by the Commission. Otherwise, it would amount to denial of the right of consideration for promotion to a more meritorious candidate as against a candidate having lesser merit. Right to promotion is not considered to be a fundamental right but consideration for promotion has now been evolved as a fundamental right.

41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy,





J., in Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty [Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty, (1991) 2 SCC 295 : 1991 SCC (L&S) 472] in para 4 of the report which is reproduced below : (SCC p. 299)

"4. ... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified."

42. A Constitution Bench in Ajit Singh (2) v. State of Punjab [Ajit Singh (2) v. State of Punjab, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239], laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27 : (SCC pp. 227-28)

"Articles 14 and 16(1) : is right to be considered for promotion a fundamental right

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the 'State shall not deny to any person equality before the law or the equal protection of the laws'. Article 16(1) issues a positive command that:

'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State'.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word "employment"





being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1)

27. In our opinion, the above view expressed in Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and followed in Jagdish Lal [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] and other cases, if it is intended to lay down that the right guaranteed to employees for being "considered" for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be "considered" for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta [Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] right from 1950."

43. This Court in H.M. Singh v. Union of India [H.M. Singh v. Union of India, (2014) 3 SCC 670 : (2014) 1 SCC (L&S) 649], again reiterated the legal position i.e. right to be considered for promotion as a fundamental right enshrined under Article 14 and Article 16 of the Constitution of India. The relevant



extract from para 28 is reproduced below : (SCC p. 686)

“28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the seniormost serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities





in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary."

44. If the seniority list is allowed to be sustained then the Engineers who are more meritorious in the Mechanical and Civil streams than the Junior Engineers of the Agricultural stream would be deprived of their right of being considered for promotion and in fact their right would accrue only after all the Junior Engineers of the Agricultural stream selected in the same selection are granted promotion. For these reasons also the seniority list in question must go."

(emphasis supplied)

Conclusion & Direction:

25. Accordingly, the act and action on the part of the respondents in not considering the case of the petitioner for promotion to the post of Principal is violative of the Fundamental Rights of the petitioner, contained under Articles 14, 15, 16 & 21 of the Constitution of India.

26. In view of the discussions made hereinabove, the impugned order dated 22.10.2014 passed by the respondent-Department is not sustainable in the eyes of law and the same is liable to be and is hereby quashed and set-aside.

27. The respondents are directed to consider the case of the petitioner for promotion to the post of Principal, as per her seniority, with effect from the date on which the male lecturers, junior to her, have been granted promotion to the post of Principal and also provide her all the consequential benefits.



28. The instant writ petition stands allowed. Stay application and all application(s), pending if any, also stands disposed of.

29. Needless to observe that the respondents would comply with the order passed by this Court within a period of three months from the date of receipt of the certified copy of this order.

30. Before parting with this order, this Court feels pain to observe that gender bias is still prevailing in the social world. Discrimination with women and girls still persists in many ways through policies, social norms and practices. An equal world is one where males and females, boys and girls enjoy similar resources, treated and rewarded equally. By giving them their equal rights and making their voices heard, we are one step closer to an enabled world. By supporting efforts to promote gender equality, men can help in creating an inclusive and equitable society for everyone.

Time has come to give equal rights to everyone be he/ she may a male or female or third gender.

31. A general mandamus is hereby issued to the State of Rajasthan, directing to take immediate policy decision and action to address and rectify the existing irregularities and deficiencies in various Rules, Regulations, and Policies, inasmuch as, such shortcomings have led to discriminatory practices against females who perform the same work and duties as their male counterparts, yet do not receive the equivalent benefits, provided to males.

32. Let a copy of this order be sent to Chief Secretary, Government of Rajasthan for necessary action.

(ANOOP KUMAR DHAND),J