



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 2147 OF 2023

PETITIONERS

- : 1. Chaya Tulshiram Kharat, Age 54 Years, Occu. Anganwadi Sevika, R/o. C-38, Akruti Nagar, Post: Gandhi Nagar, Malkapur, Tq. & District. Akola.
2. Usha Prabhakar Mahale, Age 47 Years, Occu. Anganwadi Sevika, R/o. Bhendimahala, Tq. Barshitakli, District Akola.
3. Laxmi W/o. Shrirang Zate, Age 48 Years, Occu. Anganwadi Sevika, R/o. Chondhi, Tq. Patur, District Akola.
4. Smt. Savita Manoharrao Deshmukh, Age 50 Years, Occu. Anganwadi Sevika, R/o. Charangaon, Tq. Patur, District Akola.
5. Nanda Vasantrao Chauvan, Age 54 Years, Occu. Anganwadi Sevika, R/o. Khadki, Tq. Barshitakli, Dist. Akola.
6. Anita Chandraprakash Bhagwat, Age 50 Years, Occu. Anganwadi Sevika, Aagar No.1, Post Aagar, Tq. & District Akola.
7. Sharda Vinayak Wankhade, Age 50 Years, Occu. Anganwadi Sevika, R/o. Umri Aarab, Kinkheda, Tq. Murtizapur, District Akola.
8. Surekha Motiram Lunge, Age 48 Years, Occu. Anganwadi Sevika, R/o. Kanheri Saraf, Tq. Barshitakli, District Akola.

9. Jyoti Onkar Sultane, Age 48 Years,
Occu. Anganwadi Sevika, R/o. Ugwa,
Tq. & District Akola.
10. Sulbha Dattatray Tarale, Age 49 Years,
Occu. Anganwadi Sevika, R/o. Ugwa,
Tq. Barshitakli & Dist. Akola.

//VERSUS//

RESPONDENTS

Respondent No.1 is deleted as
per Hon'ble Court's Order dt:
03.04.2023

- : 1. Hon'ble Governor, State of
Maharashtra, Raj Bhavan, Malabar
Hills, Mumbai 400035.
2. State of Maharashtra, through its
Principal Secretary, Women and Child
Development Department, Mantralaya,
Mumbai – 32.
3. The Commissioner, Integrated Child
Development Services Scheme
Commissionerate, State of Maharashtra,
Navi Mumbai.
4. Chief Executive Officer, Zilla Parishad,
Akola, Tq. & Dist. Akola.

Mr. Ved. R. Deshpande, Advocate for the Petitioners.
Mr. A.V. Palshikar, AGP for the Respondents/State.
Ms. Deeplata C. Pandey, Advocate for Respondent No.4.

CORAM : ANIL S. KILOR AND
RAJ D. WAKODE, JJ.

DATE : 8th MAY, 2026.

ORAL JUDGMENT (PER : RAJ D. WAKODE, J.)

Heard Mr. Ved R. Deshpande, learned counsel for the petitioners, Mr. A.V. Palshikar, learned AGP for the respondents/State, and Ms. Deeplata Pandey, learned counsel for respondent No.4.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

3. The petitioners have approached this Court seeking challenge to the Rule 7(1)(c) of the Service Entry Rules, 2021 (hereinafter referred to as “the aforesaid Rules” for the sake of brevity), formulated vide Government Resolution dated 04.06.2021 issued by the Women and Child Development Department, State of Maharashtra (respondent No. 2), and seek a declaration that the aforesaid Rule is unconstitutional. The petitioners further seek challenge to the consequential communication dated 22.09.2021 issued by respondent No. 3 – Commissioner, as well as the impugned communication dated 19.12.2022 issued by respondent No. 4, directing appropriate action for filling the posts of Supervisors in accordance with the aforesaid Rules, as notified vide Government Notification dated 04.06.2021.

4. The brief facts leading to the filing of the present writ petition are as follows:

4.1. The petitioners are appointed as Anganwadi Sevikas in respective villages under Zilla Parishad, Akola, and have rendered more

than 22 years of unblemished service on the said post. The petitioners are graduates and possess rich experience in the work related to the Integrated Child Development Services Scheme (ICDS). On 02.10.1975, the ICDS Scheme came to be formulated by the Government of India with the aim of providing early childhood care and development. The said scheme came to be adopted by the respective States under the guidelines of the Government of India and has been implemented for more than 30 years. The ICDS Scheme aims to improve the nutritional and health status of children in the age group of 0 to 6 years. ICDS services are provided through a vast network of ICDS centres, better known as “Anganwadis”. The Anganwadi centre is operated by an “Anganwadi Worker” assisted by an Anganwadi Helper or Sahayika.

4.2. Across the State of Maharashtra, Anganwadi Centres have been established under the ICDS Scheme. For the smooth functioning of the ICDS Scheme at the grassroots level, Anganwadi Helpers, Anganwadi Sevikas, Supervisors, and Child Development Project Officers are appointed in each district. At each beat level, to ensure the smooth functioning of all Anganwadi Centres, Supervisors are appointed. One Supervisor manages and supervises the work of approximately 25 Anganwadi Centres.

4.3. The State of Maharashtra, vide various Government Resolutions, has stipulated the conditions of service of the aforesaid posts. In the aforesaid resolutions, it is stipulated that the age of retirement of Anganwadi Sevikas shall be 65 years, whereas the age of retirement of Supervisors is 58 years. The post of Supervisor is a managerial post bestowed with the responsibility of coordinating the implementation of the ICDS Scheme at the grassroots level by ensuring proper functioning of Anganwadis in the concerned region.

4.4. The State of Maharashtra, vide Government Resolution dated 17.11.2001, directed that 25% of the posts of Supervisors are to be filled by way of promotion from candidates working as Anganwadi Sevikas who possess a matriculation certificate and have completed 10 years of honorary service on the said post. It was directed that a Selection Committee shall be established for effecting the aforesaid appointments by way of promotion. It was further stipulated in the said Resolution that candidates up to the age of 45 years shall be eligible for appointment to the post of Supervisor by way of promotion.

4.5. The State of Maharashtra further issued a Corrigendum dated 07.12.2001 to the aforesaid Resolution and thereby modified paragraph 2(3)(b) of the said Resolution dated 17.11.2001. By way of the said modification, it was directed that candidates up to the age of 55

years shall be eligible for appointment to the post of Supervisor by way of promotion.

4.6. Vide Government Notification dated 04.06.2021, respondent No.1 formulated Service Entry Rules for Class III posts under the ICDS Commissionerate. Rule 7(1)(c) thereof stipulates that 50% of the vacant posts of Supervisors shall be filled by way of promotion from candidates working as Anganwadi Sevikas and Mini Anganwadi Sevikas possessing a minimum of 10 years' experience on the said post. It is directed therein that 50% of the posts shall be filled by way of promotion from candidates working as 'Mini Anganwadi Sevika' and 'Mansevi Anganwadi Sevika'. It is further directed therein that the maximum age for a candidate to be eligible for appointment to the post of Supervisor by way of promotion would be 45 years instead of 55 years, as stipulated in the previous Government Resolution dated 07.12.2001.

4.7. It is in compliance of the said Government Notification dated 04.06.2021 that the consequential impugned communication dated 22.09.2021 was issued by respondent No.3, and the impugned communication dated 19.12.2022 was issued by respondent No.4, thereby seeking appropriate action for filling the posts of Anganwadi Supervisors in accordance with law and the Service Entry Rules

declared vide the impugned Government Notification dated 04.06.2021.

5. The petitioners, being aggrieved by the impugned Rule 7(1) (c) of the aforesaid Rules, have approached this Court by way of the present writ petition.

6. In response to the notice issued by this Court, respondent No.2 – State of Maharashtra filed its reply, wherein, in paragraph 11, the State Government has supported its decision for the reasons enumerated below:

“11. Say that according to the Government decision dated 7/12/2001 (page 48) the age of selection can be up to 55 years while selecting the post of Supervisor. But if appointed as supervisor at the age of 55 years, retirement at the age of 58 years gives only 3 years' service. Thus, selection is done at the last stage of age and it will be difficult to supervise the huge work of 25 Anganwadis in a Beat. Similarly, reporting of each Anganwadi to the higher office is required. It is going to be very difficult to complete the said work at this age even after taking training for it. Therefore, in view of the above situation and for the reason mentioned hereinabove the age limit is kept up to 45 years.”

7. Mr. Deshpande, learned counsel for the petitioners, has vehemently argued that the impugned Government Notification dated 04.06.2021, and more particularly the impugned Rule 7(1)(c) of the aforesaid Rules, is unconstitutional as it is in clear violation of Articles 14 and 16 of the Constitution of India. It is submitted that the said Rule is arbitrary and creates unreasonable discrimination between

Anganwadi Sevikas possessing the same qualifications, and that such Rule is in contravention of the basic principle of seniority.

8. Learned counsel for the petitioner further highlighted the fact that the conduct of the respondents has not only violated the doctrine of legitimate expectation but also the doctrine of rational nexus with the object which the aforesaid Rules seek to achieve.

9. Per contra, Mr. Palshikar, learned AGP, relying upon the reply submitted by respondent No.2 – State of Maharashtra, supported the impugned Rule 7(1)(c) of the aforesaid Rules for the reasons stated above.

10. It is pertinent to mention here that the Government of Maharashtra, vide Corrigendum dated 07.12.2001, had modified paragraph 2(3)(b) of the Government Resolution dated 17.11.2001 and had directed that candidates up to the age of 55 years shall be eligible for appointment to the post of Supervisor by way of promotion.

11. The aforesaid Corrigendum was issued on 07.12.2001. The petitioners, in paragraph 7 of the present writ petition, have specifically deposed on oath that even after issuance of such Corrigendum dated 07.12.2001, no appointment to the post of Supervisor was made for the Anganwadis under Zilla Parishad, Akola. The posts were kept vacant

even after issuance of such clear guidelines by the Government of Maharashtra.

12. The petitioners have further stated that they became duly qualified for the post of Supervisor during the years 2004 to 2008 respectively, in accordance with their dates of appointment. According to the Government Resolution dated 17.11.2001, they had acquired ten years of experience as Anganwadi Sevikas and also possessed the requisite academic qualifications for the said post.

13. However, since no appointments were made in accordance with the aforesaid Government Resolution, the respondents deprived the present petitioners of their legitimate expectation of being promoted in view of the right created by the Government Resolution dated 17.11.2001. Thus, the petitioners were deprived of their rightful promotion to the post of Supervisor without there being any justifiable reason for the same.

14. It is worth to mention here that respondent Nos.2, 3, and 4, in their replies, have neither controverted nor denied the aforesaid contention of the petitioners and have thus admitted the same. In our considered opinion, such conduct on the part of the respondents is in clear violation of the doctrine of legitimate expectation.

15. The Hon'ble Supreme Court of India, in the case of ***State of West Bengal and another Vs. Confederation of State Government Employees, West Bengal and others (Civil Appeal Nos.792-794 of 2026 arising out of SLP (C) Nos.22628-22630 of 2022 decided on 05.02.2026)***, has dealt with the aforesaid doctrine of legitimate expectation in paragraph 40, which reads thus:

"40. Next, we now deal with the issue of legitimate expectation.

(a) The modern origins of this doctrine have authoritatively been traced to a judgment of the House of Lords, penned by Lord Denning in ***Schmidt v. Secretary of State for Home Affairs***⁶⁰. The doctrine has, over time become well recognised in India also. ***Sivanandan C T v. High Court of Kerala***⁶¹ in reference to ***Union of India v. Hindustan Development Corporation***⁶² culled out the following factors to be considered for application of the doctrine:

"25....(i) legitimate expectation arises based on a representation or past conduct of a public authority;

(ii) legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular or natural sequence;

(iii) legitimate expectation provides locus standi to a claimant for judicial review;

(iv) the doctrine is mostly confined to a right of a fair hearing before a decision and does not give scope to claim relief straightaway;

(v) the public authority should justify the denial of a person's legitimate expectation by resorting to overriding public interest; and

(vi) the Courts cannot interfere with the decision of an authority taken by way of policy or public interest unless such decision amounts to an abuse of power."

(b) In ***Ram Pravesh Singh v. State of Bihar***⁶³ the doctrine was explained as under:

"15. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice"

refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority."

(Emphasis Supplied)

(c) In **Jitendra Kumar v. State of Haryana**⁶⁴ this Court observed:

"58. Application of doctrine of legitimate expectation or promissory estoppel must also be considered from the aforementioned viewpoint. A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. [See *Chanchal Goyal (Dr.) v. State Rajasthan* [(2003) 3 SCC 485; 2003 SCC (L&S) 322] and *Union of India v. Hindustan Development Corpn.* [(1993) 3 SCC 499]] It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters."

(Emphasis Supplied)

(d) In **Punjab State Coop. Agricultural Development Bank Ltd. v. Coop. Societies**⁶⁵, it was observed:

"46. This Court, after taking note of the earlier view on the subject further held in *Railway Board [Railway Board v. C.R. Rangadhamaiah, (1997) 6 SCC 623 : 1997 SCC (L&S) 1527]* as under: (SCC pp. 637-38 & 640, paras 20, 24-25 & 33)

"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

24. In many of these decisions [*K.C. Arora v. State of Haryana, (1984) 3 SCC 281: 1984 SCC (L&S) 520*] [*P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622: 1987 SCC (L&S) 310*] [*K. Narayanan v. State Karnataka, 1994 Supp (1) SCC 44: 1994 SCC (L&S) 392*] [*T.R. Kapur v. State of Haryana, 1986 Supp SCC 584*], [Union

of India v. Tushar Ranjan Mohanty, (1994) 5 SCC 450: 1994 SCC (L&S) 1118], [K. Ravindranath Pai v. State Karnataka, 1995 Supp (2) SCC 246: 1995 SCC (L&S) 792] the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon [Roshan Lal Tandon v. Union of India, (1968) 1 SCR 185: AIR 1967 SC 1889], B.S. Vadera [B.S. Vadera v. Union of India, (1968) 3 SCR 575: AIR 1969 SC 118] and Raman Lal Keshav Lal Soni [State of Gujarat v. Raman Lal Keshav Lal Soni, (1983) 2 SCC 33: 1983 SCC (L&S) 231]"

We have also perused various other judgments concerning the doctrine of legitimate expectation viz. **State of Jharkhand v. Brahmaputra Metallica**⁶⁶, **Navjyoti Coop. Group Housing Society v. Union of India**,⁶⁷; **Food Corporation of India v. Kamdhenu Cattle Feed Industries**⁶⁸.

Once it is established that a right exists, the following observation in **G.C. Mandawar** (supra) becomes relevant:

"5....Under this provision, it is a matter of discretion with the Local Government whether it will grant dearness allowance and if so, how much. That being so, the prayer for mandamus is clearly misconceived, as that could be granted only when there is in the applicant a right to compel the

performance of some duty cast on the opponent. Rule 44 of the Fundamental Rules confers no right on the government servants to the grant of dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion, and no mandamus can issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced."

(Emphasis Supplied)

(e) We are of the view that in light of the principles referred to above, legitimate expectation on the part of the respondents did arise in view of the change of law i.e., enactment of RoPA Rules and its recognition of AICPI as the determinative factor for the computation of DA."

16. In the present case also, a legitimate expectation on the part of the petitioners to be promoted had arisen in view of the Government Resolution dated 17.11.2001 and the Corrigendum dated 07.12.2001, which was not fulfilled by the respondents for a period of almost twenty years.

17. Not only that, respondent No.2, by issuing the Government Notification dated 04.06.2021 and more specifically the impugned Rule 7(1)(c) of the aforesaid Rules, has arbitrarily reduced the maximum qualifying age to 45 years and has thereby deprived the petitioners of their rightful promotion to the post of Supervisor. Thus, in our considered opinion, the impugned Rule 7(1)(c) of the aforesaid Rules is in violation of the doctrine of legitimate expectation as enunciated by the Hon'ble Supreme Court of India.

18. Respondent No.2 – State of Maharashtra, in view of a specific query raised by this Court vide order dated 16.10.2024, filed an additional affidavit on 04.12.2024. In the said affidavit, respondent No.2 has specifically stated that the reduction in age from 55 years to 45 years by virtue of the impugned Government Notification dated 04.06.2021 for Anganwadi Sevikas is applicable to all Anganwadi Sevikas, including those who have already been recruited.

19. Thus, the impugned Rule 7(1)(c) of the aforesaid Rules has been made applicable retrospectively even to those Anganwadi Sevikas who were already appointed. The petitioners have already crossed the age of 45 years and, therefore, the retrospective application of the aforesaid impugned Rule has caused serious prejudice to the petitioners, who were awaiting their promotion in view of the Corrigendum dated 07.12.2001 since 2004, when they became eligible for promotion in view of the existing parameters prevailing at the relevant time.

20. Learned counsel for the petitioners has rightly argued that the impugned Rule 7(1)(c) of the aforesaid Rules is also in breach of the principle of seniority. If the aforesaid impugned Rule is sustained and brought into effect, candidates up to the age of 45 years would be eligible for appointment to the post of Anganwadi Supervisor, whereas candidates like the present petitioners, who are beyond 45 years of age

and possess greater experience, would remain stagnant at the subordinate level. As a result, Anganwadi Sevikas junior to the petitioners and similarly situated candidates, who are below 45 years of age and possess lesser experience, would act as Supervisors despite being less trained, less qualified, and less experienced as compared to the senior Anganwadi Sevikas who are above 45 years of age. Such a Rule, if permitted to operate, would result in an unreasonable alteration in the conditions of service of candidates similarly placed as the petitioners, and the action on the part of the respondents would be arbitrary, which cannot be permitted.

21. We have already reproduced above the reasons given by the Government of Maharashtra in support of the decision contemplated in the impugned Government Notification dated 04.06.2021. The State Government has justified its decision by stating that it would be difficult for Anganwadi Sevikas aged about 55 years to perform the duties attached to the post, as they would be required to supervise the extensive work of 25 Anganwadi Centres in a beat. In our considered opinion, such a reason given by the Government of Maharashtra bears no rational nexus with the object sought to be achieved. As stated above, as per the service conditions, the age of retirement of Anganwadi Sevikas is 65 years, whereas the age of retirement of Anganwadi Supervisors is 58 years. Thus, the petitioners are considered eligible to

discharge duties as Anganwadi Sevikas till the age of 65 years; however, the respondents have deprived them of an opportunity to serve as Supervisors till the age of 58 years.

22. For the aforesaid reasons, we are at a loss to understand how an Anganwadi Sevika, who is considered fit for rendering services till the age of 65 years, is not considered fit for serving as an Anganwadi Supervisor, whose age of retirement is 58 years. Thus, in our considered opinion, such age restriction as imposed by the impugned Rule 7(1)(c) of the aforesaid Rules has no logical justification and treats similarly placed persons differently. The aforesaid Rule, in our considered opinion, is arbitrary and creates unreasonable discrimination between Anganwadi Sevikas possessing the same qualifications and therefore deserves to be declared unconstitutional.

23. The Hon'ble Supreme Court of India, in a catena of judgments, has held that the recruitment rules and conditions of service framed by the State under Article 309 of the Constitution of India should not violate Articles 14 and 16 of the Constitution of India and should not be arbitrary or discriminatory. Further, such Rules should have a rational nexus with the object sought to be achieved by formulating such Rules. In the present case, the petitioners, who are more experienced and capable and possess the requisite eligibility

criteria and qualifications for appointment to the post of Supervisors, are being excluded from the selection process solely on the basis of age.

24. In our considered opinion, such classification creates an unreasonable discrimination between Anganwadi Sevikas who are otherwise similarly situated and has no rational nexus with the effective discharge of duties attached to the supervisory post. The petitioners, who are considered fit to discharge duties as Anganwadi Sevikas till the age of 65 years, are being held unfit to serve as Supervisors till the age of 58 years. Such discrimination by respondent No.2 – State of Maharashtra while formulating the impugned Rule 7(1)(c) of the aforesaid Rules is in clear violation of Articles 14 and 16 of the Constitution of India.

25. The Hon'ble Supreme Court of India, in the case of *Indravadan H. Shah Vs. State of Gujarat and another [1986 (Supp) SCC 254]*, has held that imposing an age restriction for promotion to the post of Assistant Judge was arbitrary and violative of Articles 14 and 16 of the Constitution of India. The Hon'ble Supreme Court rejected the reasoning that candidates above a certain age lack physical or mental capacity, observing that the experience gained with age enhances suitability for higher responsibilities. It further noted that while an age bar was imposed for promotion to the post of Assistant Judge, no such

restriction existed for the higher post of District Judge, thereby rendering the classification irrational and lacking any nexus with the object sought to be achieved. Paragraphs 10 to 12 of the aforesaid judgment are extracted below:

“10. The posts of Assistant Judge as well as of District Judge are included in senior branch of Gujarat Judicial Service. It is incomprehensible how those two cadres of Assistant Judges and District Judges can be treated as two different classes altogether, thereby justifying the introduction of age restriction in regard to selection and appointment by promotion to the post of Assistant Judge while doing away with any such sort of age limit or restriction in respect of appointment to the post of a District Judge by promotion from amongst the members of the junior branch who have served as Assistant Judges. Articles 14 and 16 of the Constitution ensure that there should not be any discrimination in the matter of appointment in service, nor there will be any arbitrariness or unreasonableness in the rules of recruitment providing for appointment to the service either by promotion or by direct recruitment. There is no nexus to the object sought to be achieved by introducing the age restriction as regards the promotion by appointment to the post of Assistant Judge from amongst the members of the Gujarat Judicial Service (Junior Branch), as provided in Rules 6(4)(i) and 6(4)(iii)(a) of the said Rules. But in respect of appointment to the higher post of a District Judge by promotion from amongst the members of the junior branch who have served as Assistant Judges, no such restriction of age has been provided in Rule 6(2)(i)(a) and (b) of the said Rules. There is obviously no rationale, nor any reasonableness for introduction of this age bar in regard to appointment by promotion to the post of an Assistant Judge. The rule, is, therefore, arbitrary and it violates the salutary principles of equality and want of arbitrariness in the matter of public employment as guaranteed by Articles 14 and 16 of the Constitution. It is pertinent to refer in this connection to the observations of this Court in the case of E.P. Royappa v. State of T. N.1 which are in the following terms: [SCC p. 38, para 85, SCC (L & S) p. 200, para 85]

Though enacted as a distinct and independent fundamental right because of its great importance as a

principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species, Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination.... Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law. . .

11. *Similar observations have been made in the case of Maneka Gandhi v. Union of India². It has been observed that : (SCC pp. 283-4, para 7)*

Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence...

12. *The reach and ambit of Article 14 has been very succinctly reiterated again by this Court in the case of R. D. Shetty v. International Airport Authority³ of India as follows: (SCC p. 511, para 21)*

It is now well settled... that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action whether it be under authority of law or in exercise of executive power without making of law."

26. Similar was the view endorsed by the Hon'ble Supreme Court of India in the case of *D.S. Nakara and others Vs. Union of India [(1983) 1 SCC 305]*. In the said case, the Hon'ble Supreme Court of India emphasized that Article 14 is not confined merely to classification but fundamentally strikes at arbitrariness in State action. Equality and arbitrariness are opposites, and any arbitrary action is inherently unequal and violative of Articles 14 and 16 of the Constitution of India. The Hon'ble Supreme Court held that while the Constitution permits reasonable classification, such classification must satisfy the twin tests as mentioned therein and reproduced below:

"12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in In re Special Courts Bill, 1978³ restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are: (SCC pp. 424-25, para 72)

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(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges

conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

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(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

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13. *The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi case¹ in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in E.P. Royappa v. State of T.N.⁴, it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under : (SCC p. 38, para 85)*

From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is

also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

14. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi case¹ as under at SCR p. 728 (SCC p. 342, para 94)

That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory dictats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses' - if we may use current cliché - can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: Be you ever so high, the law is above you.¹

Affirming and explaining this view, the Constitution Bench in Ajay Hasia v. Khalid Mujib Sehravardi⁵ held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in Air India v. Nergesh Meerza⁶ the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

16. As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded

*correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved. This approach is noticed in *Ramana Dayaram Shetty v. International Airport Authority of India*⁷ when at SCR page 1034 (SCC p. 506), the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable discriminatory.”*

27. The above judgments of the Hon’ble Supreme Court of India support our considered opinion in the present case that the classification sought to be achieved by respondent No.2 through impugned Rule 7(1)(c) of the aforesaid Rules is arbitrary and creates unjust discrimination amongst similarly situated persons, thereby

violating Articles 14 and 16 of the Constitution of India. The State action must be fair, non-arbitrary, and based on a justifiable principle, especially in matters affecting the rights and benefits of similarly situated employees, which is utterly lacking in the present policy adopted by respondent No.2 – State of Maharashtra while formulating Rule 7(1)(c) of the aforesaid Rules.

28. Thus, for the reasons stated above, we are of the considered opinion that the impugned Rule 7(1)(c) of the aforesaid Rules, as formulated by respondent No.2 – State of Maharashtra vide Government Notification dated 04.06.2021, is unconstitutional and deserves to be set aside. Hence, we pass following order:

ORDER

- (i) Writ petition is **allowed**.
- (ii) We declare that the impugned Rule 7(1)(c) of the aforesaid Rules, as formulated by respondent No.2 – State of Maharashtra vide Government Notification dated 04.06.2021, is unconstitutional and is hereby set aside.
- (iii) Needless to mention that the impugned communication dated 22.09.2021 issued by respondent No.3 and the communication dated 19.12.2022 issued by respondent No.4, being consequential to the impugned Rule 7(1)(c) of the aforesaid Rules, are also unsustainable in law and are hereby set aside.

29. Rule is made absolute in the above terms. No order as to costs.

(RAJ D. WAKODE, J.)

(ANIL S. KILOR, J.)

Vijaykumar