

NET RAM YADAV

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v.

THE STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 5237 of 2022)

AUGUST 11, 2022

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[INDIRA BANERJEE AND J. K. MAHESHWARI, JJ.]

Service Law – Downgradation in Seniority of disabled person – Challenge to – Appellant, a handicapped, was working as a Government senior teacher – He was posted 550km away from his place of residence – The State issued circular directing to post person with disabilities at or near the place for which they opt at the time of appointment – Appellant made representation – He was transferred near his permanent residence – As a consequence, he was downgraded in his seniority – Aggrieved, appellant filed writ petition, which was dismissed – On appeal, held: The reduction of seniority of the Appellant in the State List is totally arbitrary, unreasonable and discriminatory – In the impugned judgment of the High Court, reference was made to the Explanation to Sub-Rule (10) of Rule 29 of the Rajasthan Educational Subordinate Service Rules, 1971 – On perusal of the said explanation, it appears that the same applies to employees in general to discourage transfers on request – Those candidates who makes transfers on request are to incur loss of seniority in the transferee district and/or zone – However, the handicapped candidates were conferred a special benefit by a circular issued by the State Government – Exclusion of the benefit of the circular to handicapped employees already in employment at the time of its issuance, would violate the fundamental right of those employees to equality u/Arts. 14 and 16 of the Constitution of India – The respondents directed to restore the seniority of the appellant in the State to its original position.

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Allowing the appeal, the Court

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HELD: 1. On a perusal of the Explanation, it appears that the same applies to employees in general to discourage transfers on request. Those candidates who make transfers on request are to incur loss of seniority in the transferee district and/or zone.

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- A The seniority of the existing employees of the transferee district and/or zone would be protected. The aforesaid Explanation does not authorise any alteration in the State level seniority. The forfeiture of seniority is restricted to the transferee at district/zone and cannot have application for all time to come, even after transfer out of that District and/or zone. Even otherwise,
- B handicapped candidates who have been conferred a special benefit by the Circular being Sl. No. P.15(3) Pr.Su/Even/1/2000 dated 20th July 2000 referred to above, cannot, for all practical purposes, be deprived of the opportunity to avail the benefit of the Circular dated 20th July 2000, by making transfer in terms of
- C the said Circular conditional upon downgradation in seniority. It is true that the Appellant was appointed in 1993, long before the Circular dated 20th July 2000 for appointment/posting of persons with disability at or near the place of their choice was issued. However, having regard to the object of issuance of the Circular,
- D which is to enable handicapped employees to opt for posting at a convenient place, may be near the place where the employee ordinarily resides with the members of his family, or at or near a place where the handicapped employee may get assistance, *inter alia*, of family members, relatives, friends, or may be institutional support, the benefit of the circular has to be extended even to
- E those candidates appointed before issuance of the Circular, subject of course to availability of posts and other relevant factors. Exclusion of the benefit of the Circular to handicapped employees already in employment at the time of its issuance, would violate the fundamental right of those employees to equality under Articles 14/16 of the Constitution of India. [Paras 22-24][110-E-
- F H; 111-A-D]

2. One of the hindrances/disadvantages faced by the physically disabled persons is the inability to move freely and easily. In consideration of the obstacles encountered by persons with disabilities, the State has issued the said notification/circular
- G dated 20th July 2000 for posting disabled persons to places of their choice, to the extent feasible. The object of this benefit to the physically disabled is to, *inter alia*, enable the physically

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disabled to be posted at a place where assistance may readily be available. The distance from the residence may be a relevant consideration to avoid commuting long distances. The benefit which has been given to the disabled through the Circular/ Government Order cannot be taken away by subjecting the exercise of the right to avail of the benefit on such terms and conditions, as would render the benefit otiose. The High Court should have been more sensitive and empathetic to the plight of a physically disabled. The High Court erred in law in overlooking the difference between physically disabled persons impaired in their movement and normal able-bodied persons. The High Court failed to appreciate that treatment of unequals as equals ignoring their special needs violates Article 14 of the Constitution. [Paras 31, 33][112-F-H; 113-A, C-D]

Sub-Inspector Rooplal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Ors. (2000) 1 SCC 644 : [1999] 5 Suppl. SCR 310 – relied on.

Case Law Reference

[1999] 5 Suppl. SCR 310 relied on Para 19

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5237 of 2022.

From the Judgment and Order dated 28.02.2018 of the High Court of Rajasthan at Jaipur Bench in D. B. Civil Special Appeal (Writ) No. 2027 of 2017.

Rahul Shyam Bhandari, Akash Sinha, Advs. for the Appellant.

Ashish Kumar, AAG, Sushil Kumar Singh, Jordan R., Sandeep Kumar Jha, Advs. for the Respondents.

The Judgment of the Court was delivered by

INDIRA BANERJEE, J.

1. Leave granted.

2. This appeal filed by the Appellant is against a judgment and order dated 28th February 2018 passed by a Division Bench of the Jaipur Bench of the High Court of Judicature for Rajasthan, dismissing the D.B. Special Appeal Writ No. 2027 of 2017 and affirming an order dated

A 13th December 2017 passed by a Single Bench, whereby the Single Bench had dismissed a Writ Petition being W.P. (C) No. 7392 of 2017 filed by the Appellant, challenging his downgradation in seniority.

3. The Appellant, a handicapped candidate of the “OBC” category with the educational qualifications B.A., B.Ed, was selected Senior Teacher under the Education Department of the Government of Rajasthan, through a direct competitive examination.

4. By an Office Order being Sl. No. UNishi/Bika/Churu/Sanstha-B/1233/69/92-93 dated 30th July 1993 of the Office of the Deputy Director (East) Education Department, Bikaner Zone, Churu, the Appellant was appointed Senior Teacher and allotted Ganganagar Zone. The terms and conditions of the service of the Appellant were governed by the Rajasthan Educational Subordinate Service Rules, 1971.

5. By an Office Order being Sl. No. Nishia/Ganga/Sanstha=1/93-94/1071 dated 10th August 1993 issued by the Office of the District Education Officer (Students Associations) Sriganganagar, the Appellant was appointed Senior Teacher of the Government Secondary School, Deeplana, in Hanumangarh, District Bikaner.

6. From the aforesaid Government orders, it is patently clear that the Appellant was appointed in category of handicapped candidates. Deeplana, where the Appellant was posted is located at a distance of about 550 kms away from Behror, the place of residence of the Appellant in Alwar District.

7. Under the Rajasthan Employment of Physically Handicapped Rules, 1997, 3% posts in Subordinate Ministerial and Class-IV service have been reserved for the disabled. The reservation of posts is also applicable to the appointment of teachers of government schools.

8. By a Circular being Sl. No. P.15(3) Pr.Su/Even/1/2000 dated 20th July 2000 issued by the Finance Department of the Rajasthan Government, all appointing authorities were directed to consider the appointment/posting of persons with disabilities at or near the place for which they opt at the time of appointment/posting.

9. After issuance of Circular, the Appellant made a representation that the Appellant be transferred to his home district Alwar, considering his physical disability.

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10. By a communication being Sl. No. F16(1) () Aamij/01/6705 Jaipur dated 21st September 2001, the Additional Commissioner, Disabled Person drew the attention of the Director, Secondary Education, Bikaner, Rajasthan, to the difficulties faced by the Appellant as a handicapped candidate posted at a distance of about 550 kms from his residence and requested the Director, Secondary Education to get the Appellant transferred to Government Secondary School, Giglana (Alwar) so that he could discharge his responsibilities without any impediment.

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11. Thereafter, by an order dated 19th October 2002, the Deputy Director of Education (Secondary) transferred the Appellant as Senior Teacher of the Government Secondary School, Goonti, Alwar.

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12. By an order dated 12th November 2002, the Principal, Government Secondary School, Deeplana in Hanumangarh released the Appellant to enable him to join the Government Secondary School at Goonti in Alwar. It appears that the Appellant joined the Government Secondary School, Goonti, Alwar on 13th November 2002 at 10.30 a.m. The Appellant contends that at no point of time was the Appellant informed that transfer to his home district would entail the consequence of downgradation in his seniority.

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13. On 17th July 2016, the Appellant was promoted to the post of Junior Lecturer and posted at the Government Aadarsh Senior Secondary School at Nangalkhodia, Behror, Alwar. Thereafter, on 24th April 2017, the temporary eligibility list of qualified teachers for promotion to the post of Head Master was published on the website of the Department. The name of the Appellant did not feature in the aforesaid list. The Appellant came to learn that the State Level seniority of the Appellant had been changed from 870 to 1318.

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14. It appears that, by an Office Order No. Shivira/Ma/Sanstha/Vari/K-1/11968(2)/Diwesh/ Purush/ Ra.Star/ Naman-Vilo/ Jodhpur/2004/15 dated 11th September 2007, the Commissioner, Secondary Education, Bikaner, Rajasthan deleted the name, *inter alia*, of the Appellant from the State and Divisional level seniority list.

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15. The Appellant made a representation to the Director of Secondary Education, Rajasthan to restore his seniority. No action, however, was taken to restore his seniority. Being aggrieved, the Appellant filed a Writ Petition before the Single Judge of the High Court challenging the downgrading of his seniority.

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A 16. By an order dated 13th December 2017, the learned Single Bench dismissed the Writ Petition by a cryptic order, the relevant part whereof is extracted hereinbelow for convenience :-

B *“3. The petitioner challenges his seniority position in the order dated 17/07/2016 whereby he has been denied the period of service, which he rendered at Ganganagar Division, for the purpose of seniority. It is his case that he was appointed in the year 1993 and the entire period of service should be counted for the purpose of seniority.*

C *4. On perusal of the documents, it is revealed that the petitioner was appointed on 18/08/1993 at Ganganagar Division of the Education Department and posted at Hanumangarh. On the basis of policy of the State Government dated 20/07/2000, a request was made to transfer him to his home district and accordingly he was transferred to Alwar. In view of the provisions contained under Rule 29 of the Rajasthan Educational Service Rules, 1970, seniority of an employee is re-fixed from the date of joining in a new division if his transfer is at his own request.*

D *5. Accordingly, the State Government has denied the earlier period of service for the purpose of seniority. The order is in accordance with Rules and no interference is called for.”*

E 17. Being aggrieved, the Appellant appealed to the Division Bench. The Division Bench dismissed the appeal upon reference to the Explanation to Sub-Rule (10) of Rule 29 of the Rajasthan Educational Subordinate Services Rules, 1971, extracted hereinbelow :-

F *“29. Seniority-.....*

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G *(10) that the persons referred to in proviso (8) and proviso (9) are appointed on the same date, seniority inter-se of such persons shall be determined on the basis of their length of continuous service rendered in the same grade/equated posts in the private institution or Local Body, as the case may be.*

H **Explanation** : *A person working on the post of Senior Teacher/Teacher or equivalent posts when transferred from one district/range to another district/range on his own request*

shall be placed just below the junior most person in seniority list of the new district/range from the date of taking over the charge in the new district/range and will cease to have any right of this seniority in the district/range from which he has been transferred.”

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18. The Division Bench observed :

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“Learned counsel for the petitioner-appellant could not show that the Circular dated 20th July, 2000 provides for transfer of disabled persons and, in that case, it would be treated to be on administrative grounds and not a transfer on request. The Circular dated 20th July, 2000, referred by the Commissioner, Disabilities indicates it only for the posting of the candidates appointed in service. The Circular provides for posting of a disabled person on appointment as per his/her desire or to a nearest place to his hometown. The arrangement aforesaid was brought in the year 2000 for the posting on appointment and not for transfer of those, who were posted prior to it and, in the instant case, almost seven years back. Rule 29 of the Rules 1971 cannot be ignored. The petitioner appellant sought transfer at his own thus he has rightly been assigned the seniority by placing him below the last candidate in the district/zone.

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The position of the fact would have been different if the Circular issued by the Government would have provided transfer of the disabled persons on their desire and to be taken towards administrative side. In that case, Rule 29 of the Rules of 1971 would not have been violated. No such Circular exists, rather, it is only for posting at the time of appointment thus we do not find any ground to cause interference, in the order dated 13th December, 2017 passed by learned Single Judge.”

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19. The reduction of seniority of the Appellant in the State List is totally arbitrary, unreasonable and discriminatory. In ***Sub-Inspector Rooplal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Ors¹***, this Court frowned upon Government of India’s O.M. dated

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¹ (2000) 1 SCC 644

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- A 29th May 1986 which denied benefit of previous service and declared the same unconstitutional. This Court held :-

B *“17. In law, it is necessary that if the previous service of a transferred official is to be counted for seniority in the transferred post then the two posts should be equivalent. One of the objections raised by the respondents in this case as well as in the earlier case of Antony Mathew is that the post of Sub-Inspector in BSF is not equivalent to the post of Sub-Inspector (Executive) in the Delhi Police. This argument is solely based on the fact that the pay scales of the two posts are not equal. Though the original Bench of the Tribunal rejected this argument of the respondent, which was confirmed at the stage of SLP by this Court, this argument found favour with the subsequent Bench of the same Tribunal whose order is in appeal before us in these cases. Hence, we will proceed to deal with this argument now. Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than “pay” will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of Union of India v. P.K. Roy [AIR 1968 SC 850 : (1968) 2 SCR 186] . In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are: (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different would not in any way make the post “not equivalent”. In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore,*

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it should be held that the view taken by the Tribunal in the impugned order that the two posts of Sub-Inspector in BSF and Sub-Inspector (Executive) in the Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay scale, is necessarily to be rejected.”

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20. This Court, considering Government of India’s O.M. dated 29th May 1986, observed and held :-

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“A perusal of clause (iv) of the memorandum shows that the author of this memorandum has taken inconsistent views in regard to the right of a deputationist to count his seniority in the parent department. While in the beginning part of clause (iv) in clear terms he says that if a deputationist holds an equivalent grade on regular basis in the parent department, such regular service in the grade shall also be taken into account in fixing the seniority. In the latter part the author proceeds to say—

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“... subject to the condition that he will be given seniority from the date he has been holding the post or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.”

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The use of the words “whichever is later” negatives the right which was otherwise sought to be conferred under the previous paragraph of clause (iv) of the memorandum. We are unable to see the logic behind this. The use of the words “whichever is later” being unreasonable, it offends Article 14 of the Constitution. It is also argued on behalf of the appellants that this memorandum is further violative of Articles 14 and 16 of the Constitution inasmuch as it arbitrarily takes away the service rendered by the deputationist when he is absorbed in the Delhi Police which right of a civil servant cannot be taken away without the authority of law.

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23. *It is clear from the ratio laid down in the above case that any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting*

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A *his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the memorandum, as has been prayed in the writ petition, the rights of the appellants*
 B *could be preserved, we agree with the prayer of the appellant-petitioners and the offending words in the memorandum “whichever is later” are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned memorandum. Consequently,*
 C *the right of the appellant-petitioners to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored.”*

21. In ***Sub-Inspector Rooplal (Supra)***, this Court clearly held
 D that any rule, regulation or executive instruction, which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution of India, and, hence, liable to be struck down. The explanation to Sub-Rule (10) of Rule 29 interpreted in the manner done by the Respondent-Authorities
 E would *ex facie* violate Articles 14 and 16 of the Constitution of India.

22. On a perusal of the Explanation, it appears that the same applies to employees in general to discourage transfers on request. Those candidates who make requests for transfers, do so knowing that they would incur loss of seniority in the transferee district and/or zone. The
 F explanation is also intended to protect the seniority of the existing employees of the transferee district and/or zone. The aforesaid Explanation does not authorise any alteration in the State level seniority. The loss of seniority is restricted to the transferee district/zone and cannot have application for all time to come, even after transfer out of that
 G District and/or zone.

23. Even otherwise, handicapped candidates who have been conferred a special benefit by the Circular being Sl. No. P.15(3) Pr.Su/Even/1/2000 dated 20th July 2000 referred to above, cannot, for all practical purposes, be deprived of the opportunity to avail the benefit of

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the Circular dated 20th July 2000, by making transfer in terms of the said Circular conditional upon downgradation in seniority. A

24. It is true that the Appellant was appointed in 1993, long before the Circular dated 20th July 2000 for appointment/posting of persons with disability at or near the place of their choice was issued. However, having regard to the object of issuance of the Circular, which is to enable handicapped employees to opt for posting at a convenient place, may be near the place where the employee ordinarily resides with the members of his family, or at or near a place where the handicapped employee may get assistance, *inter alia*, of family members, relatives, friends, or may be institutional support, the benefit of the circular has to be extended even to those candidates appointed before issuance of the Circular, subject of course to availability of posts and other relevant factors. Exclusion of the benefit of the Circular to handicapped employees already in employment at the time of its issuance, would violate the fundamental right of those employees to equality under Articles 14/16 of the Constitution of India. B
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25. The said Circular has been applied to teachers in service in government institutions at the time of issuance of the Circular, as will appear from the aforesaid communication being Sl. No. F. 16(1)() Aamij/01/6705 Jaipur dated 21st September 2001 issued by the Additional Commissioner, Disabled Persons, to the Director, Secondary Education, Bikaner requesting him to get the Appellant transferred to a Government Secondary School in Giglana (Alwar), drawing his attention to the said Circular dated 20th July 2000. E

26. The marginalization of the disabled/handicapped is a human rights issue, which has been the subject matter of deliberations and discussions all over the world. There is increasing global concern to ensure that the disabled are not sidelined on account of their disability. F

27. A series of meetings, discussions and deliberations on the issue of human rights of persons with disabilities, led to adoption by the General Assembly of the United Nations, of the United Nations Convention on the Rights of Persons with Disability (UNCRPD), aimed at protecting the human rights and dignity of persons with disability. Adopted in 2006, the UNCRPD came into force in May 2008. About 177 countries including India have ratified the UNCRPD. G

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A 28. The UNCRPD consists of 50 Articles, which outline the inherent rights and liberties of persons with disabilities. The Articles of the UNCRPD are based on certain general principles, the most important of which is respect for inherent dignity and individual autonomy of persons with disability. Equally important is the right of non-discrimination, which would include reasonable accommodation and/or concessions for full and effective participation and inclusion in society. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity lies at the core of the dignity of persons with disability.

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C 29. UNCRPD has been ratified by India. The State is obliged to give effect to the UNCRPD. All Statutes, Rules, Regulations, Bye-laws, Orders and Circulars for the benefit of the Physically Disabled necessarily have to be given a purposive interpretation in harmony with the principles of UNCRPD.

D 30. Even otherwise, human rights are rights inherent in civilized society, from the very inception of civilization, even though such rights may have been identified and enumerated in international instruments such as the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10th December 1948, or other international conventions and instruments including UNCRPD. Furthermore, the disabled are entitled to the fundamental right of equality enshrined in Articles 14 to 16 of the Constitution of India, the fundamental freedoms guaranteed under Article 19 including the right to carry out any occupation, profession, the right to life under Article 21, which has now been interpreted to mean the right to live with dignity, which has to be interpreted liberally in relation to the disabled.

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F 31. One of the hindrances/disadvantages faced by the physically disabled persons is the inability to move freely and easily. In consideration of the obstacles encountered by persons with disabilities, the State has issued the said notification/circular dated 20th July 2000 for posting disabled persons to places of their choice, to the extent feasible. The object of this benefit to the physically disabled is to, *inter alia*,
G enable the physically disabled to be posted at a place where assistance may readily be available. The distance from the residence may be a relevant consideration to avoid commuting long distances. The benefit which has been given to the disabled through the Circular/Government Order cannot be taken away by subjecting the exercise of the right to

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avail of the benefit on such terms and conditions, as would render the benefit otiose. A

32. Since there is no challenge in the Writ Petition to the *vires* of the Explanation, we do not deem it necessary to interfere with the same in this appeal. We hold that the said Explanation can have no manner of application to handicapped candidates who seek transfer to a place near their ordinary residence in terms of a beneficial Office Order/Circular issued for their benefit. B

33. With the greatest of respect, both the Single Bench as also the Division Bench of the High Court have overlooked the scope and ambit of the Explanation which cannot and does not affect seniority at the State level. In our view, the High Court should have been more sensitive and empathetic to the plight of a physically disabled. The High Court erred in law in overlooking the difference between physically disabled persons impaired in their movement and normal able-bodied persons. The High Court failed to appreciate that treatment of unequals as equals ignoring their special needs violates Article 14 of the Constitution. C D

34. The appeal is, accordingly, allowed. The judgments and orders of the Division Bench and the Single Bench are set aside. The Office Order No. Shivira/Ma/Sanstha/Vari/K-1/11968(2)/Diwesh/Purush/Ra.Star/ Naman Vilo/Jodhpur/2004/15 dated 11th September 2007 whereby the seniority of the Appellant has been downgraded is set aside and quashed. The Respondents are directed to restore the seniority of the Appellant in the State to the original position, taking into account the past service rendered by him in Hanumangarh. E

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal allowed F