

## **Sunita Sharma And Ors. vs State Of H.P. And Ors. on 29 March, 1993**

**Equivalent citations:** [1994(68)FLR1228], JT1993(2)SC547, (1994)IILLJ527SC, 1993(2)SCALE362, 1993SUPP(4)SCC686, 1994(1)SLJ38(SC), (1994)2UPLBEC982, AIRONLINE 1993 SC 505

**Bench:** P.B. Sawant, N. Venkatachala

### ORDER

1. Leave granted.

2. It is the State Government's unjustifiable action of keeping the Recruitment and Promotion Rules of Class II Posts (Gazetted) in the School and Inspection Cadre, in the Department of Education, 1980 ['1980 Rules'], in cold storage, and with no regards to them, entering into ad hoc agreements with its employees from time to time which has been responsible for complicating the present dispute and bringing to this stage. The dispute is between the Headmasters and the School Lecturers with regard to the promotional posts. It is precisely to regulate the claims of the two categories to the promotional posts, that 1980 Rules were framed. Had these rules been faithfully followed, there would have been no occasion for the various litigations between the two categories with one or the other party approaching the Court whenever the State Government in disregard of the Rules, tried to evolve different sets of arrangements which were favourable to one or the other side as the case may be.

3. The admitted facts are that it is the trained graduate teachers who become entitled to the posts of headmasters generally after 20-25 years of service. However, the school lecturers are recruited directly to their posts, the maximum age limit for recruitment being thirty years. The number of the headmasters at present is about 861 whereas that of the school lecturers is about 1806. In the Education Department, there have always been two distinct categories viz., one of the headmasters and another of the school lecturers.

4. One other feature that is worth noting is that when for the first time, the cadre of school lecturers was created on 20th February, 1964, the lecturers were given the pay-scale of Rs. 200-500/-. At that time, the headmasters were in the pay-scale of Rs. 200-350/-. In 1966, both were given the same pay-scale of Rs. 300-600/-. However, from 1st June, 1978, the pay-scales were revised and the school lecturers were placed on a lower pay-scale of Rs. 700-1300/- whereas headmasters were given a higher pay scale of Rs. 700-1600/-. This anomaly was, however, resolved later and both were given the same pay-scale of Rs. 700-1600/- from 1.1.1978. The result was that when 1980 Rules were framed, both were drawing the same scale of pay.

5. The posts of promotions for both the headmasters and school lecturers were as follows:

1. Principals/District Education Officer/Asstt. Director.
2. Deputy Director of Education
3. Joint Director of Education
4. Director of Education

6. The 1980 rules provided for promotion to the posts of Principal/DEO/Asstt. Director, [all Class II posts] from the feeder posts of headmasters and school lecturers according to a roster system as per Rule 11 thereof. The roster system in effect provided 55% of the said promotional posts to the headmasters and 45% of them to the school lecturers.

7. The promotion to the post of Deputy Director of Education is governed by rules which were framed on 31.12.1976 ['1976 Rules']. Rule 11 thereof, provides that promotion to the said post of Deputy Director would be made from among the Class II officers of School and Inspection Cadre having a common seniority list of the said Cases and with five years service as such Class II officer. The 1976 Rules, therefore, require that there should be a common seniority list of Class II officers viz., Principal/DEO/Asstt. Director. This, in turn, means that after promotion to the Class II Officers' posts from the feeder categories of the headmasters and school lecturers, their separate seniority list was to be disregarded and a common seniority list on the basis of their dates of appointment to the Class II posts had to be prepared. It does not appear that any such common seniority list was prepared. After 1980 Rules were made, the State on the representation either from the headmasters or from the school lecturers, resorted to an unwarranted practice of entering into ad hoc agreements with the concerned employees. During the process of arriving at these agreements from time to time [the agreements were entered into at various times between 1984 and 1990], the original two posts of Deputy Director as mentioned in 1960 Rules increased to nine, and it appears that the agreement was that four of the said posts were to be exclusively kept for the school lecturers and five for the headmasters. However, when the question of promotion to the further higher post of Joint Director arose, there was a stalemate since there was only one post of the Joint Director. It was given exclusively to the Deputy Directors who came from the category of the headmasters. This resulted in the inevitable dispute, the Government maintaining that the said post could be given only to the headmasters. We have not understood the arguments advanced on behalf of the State Government in that behalf. In fact, there could exist no separate seniority lists of the headmasters and the school lecturers as such, once they were promoted to the Class II posts of Principal/DEO/Asstt. Director of Education. There could only be a common seniority list of the said Class II employees and of the Deputy Directors who could be promoted from the seniority list of Class II officers on the basis of the recruitment Rules of 1976. As pointed out earlier, the Rules of 1976 themselves envisage a common seniority list of Class II officers, viz., Principal/DEO/Asstt. Director. We have, therefore, no hesitation in setting aside all the agreements entered into by the State Government with the employees after the 1980 Rules were framed, which rules were admittedly made under Article 309 of the Constitution. The State Government could not have entered into the said agreements in contravention of the said Rules. The present stalemate has arisen on account of the said agreements. Had the State Government followed the 1980 Rules, there

would have been no occasion for raising the present dispute. The only remedy, therefore, is to direct the State Government to enforce the 1980 Rules from the date they came into operation and work out the promotions based on the said Rules and also the 1976 Rules, as if no agreements were entered into and they did not in fact exist. The 1980 Rules are of course to be enforced till the Rules of 1992 were framed to replace them.

8. We, therefore, quash all the agreements entered into by the State Government with the employees except those parts of the agreements by virtue of which the additional posts of Deputy Director of Education were created from time to time and which today, admittedly stand at nine. We also direct that the State Government will work out the promotions to the posts of Class II officers, viz., Principal/District Education Officer/Asstt. Director on the basis of the 1980 Rules and prepare a common seniority list of the said class II officers. Thereafter, the State Government will work out the further promotions to the posts of Deputy Directors on the basis of the said common seniority list and on the basis of the strength of the Deputy Directors as it existed from time to time and according to the 1976 Rules. The promotion to the post of Joint Directors will, thereafter, be made from the Deputy Directors on the basis of their common seniority list.

9. This exercise will undoubtedly result in some who were entitled to the posts either of Class II officers or of the Deputy Directors of Education as the case may be on the basis of 1980 and 1976 Rules but did not get the said posts at all or on the due dates because of the agreements, in getting the same or getting them on due dates. Similarly, this would also result in reversions from the respective posts of those who were not entitled to the same when they were promoted. We are informed that some of the headmasters and school lecturers have since retired, we, therefore, direct that the promotions should be effected nationally from the respective dates of their entitlements. However, neither the higher salaries received by those who were not entitled to the said posts should be recovered from them nor the arrears of higher salaries be paid to those who though entitled were not appointed to the higher posts on the due dates. This exercise should be done till the date on which 1992 Rules came into operation and replaced the 1980 Rules. The promotions after the said date will be governed by the 1992 Rules. After the above exercise is carried out, the promotions to the post of Joint Director should be effected. We further direct that the whole exercise should be carried out within a period of four months from today.

10. The appeals are allowed accordingly. In the circumstances of the case, there will be no order as to costs.