

**Mahesh Chand Bareth & Anr.**

v.

**State of Rajasthan & Ors.**

(Civil Appeal No. 7906 of 2010)

08 July 2024

**[Surya Kant and K. V. Viswanathan,\* JJ.]**

#### **Issue for Consideration**

Is Rule 13(v) of the Rajasthan Panchayati Raj Prabodhak Service Rules, 2008 , insofar as it provides age relaxation to the persons serving under educational projects discriminatory and contrary to Article 14 of the Constitution of India; Was the award of bonus marks to the project employed applicants discriminatory and ultra vires the Rules; Were the guidelines sanctioning the award of bonus marks on a differential basis for applicants with project experience and other applicants invalid for any other reason.

#### **Headnotes<sup>†</sup>**

**Rajasthan Panchayati Raj Prabodhak Service Rules, 2008 – r.13(v) – Age relaxation – Selection to the post of Prabodhak (Teacher) – Constitution of India – Article 14 – r.13(v), if discriminatory and contrary to Article 14:**

**Held:** Validity of r.13(v) is upheld – The relaxation provided for in r.13(v) is not arbitrary or unreasonable – Fixing of minimum and maximum age requirement is a policy decision – r.13 reveals that the minimum age required was 23 years and the maximum outer limit was 35 years – In the proviso there were several categories to which relaxation was granted – The challenge of the appellants is only to sub clause (v) – Insofar as the clause (v) is concerned, the historical background leading to the enactment of the Rules itself provides a justification for granting relaxation to the persons serving under the educational project, if they fulfil the condition that they were within the age limit when they were initially engaged – The projects were designed to deal with absentee teachers in the far flung areas which was causing a serious jeopardy to the education of the rural children – The para teachers worked under difficult circumstances – They had the advantage of interacting personally with the children of the far-flung areas – They only received an honorarium – The projects themselves played a large

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part in uplifting the elementary education programme in the State of Rajasthan – The para teachers motivated the children to come to school – It was in this background that the grade of ‘Prabodhak’ (teacher) and Senior ‘Prabodhak’ were encadred and separate rules enacted – Those who served in projects formed a separate class – There was a valid classification based on intelligible differentia which distinguished applicants with project experience and those who lacked project experience – The differentia had a rational relation to the object sought to be achieved by the Rules – The job of a Prabodhak was exactly the job that the para teachers carried out in the projects and if the Government felt that the experience gained by them should not be lost and in that regard granted them age relaxation, provided they fulfil the condition of being within the age limit at the time of their initial appointment in the project, no fault can be found with the same – No error, perversity or mala fide in the criterion adopted on the peculiar facts of the present case – Also, there is no illegality in the prescription of additional marks for those applicants who had experience of working in projects, while recruiting Prabhodhaks – The statutory rules in r.13(v) recognize that project employed applicants were a class apart with the idea being that their experience should not be wasted Before the advertisement was issued, the guidelines setting out various aspects including the aspect of bonus marks were issued and no infirmity can be found with the same – Opportunity was given to all, with the only difference being that by an executive instruction additional marks were granted for project experience – The executive guidelines only supplemented the Rules and did not supplant them – No illegality in the award of bonus marks. [Paras 20, 22-25, 28, 29, 37]

**Case Law Cited**

*Union of India & Ors v. Shivbachan Rai (2001) 9 SCC 356; Srinivas K. Gouda v. Karnataka Institute of Medical Sciences and Others [2021] 6 SCR 1144 : (2022) 1 SCC 49 – relied on.*

*Satya Dev Bhagaur & Ors. Vs. The State of Rajasthan & Ors. (2022) 5 SCC 314 – held applicable.*

*Bedanga Talukdar vs. Saifudaullah Khan & Ors. [2011] 11 SCR 635 : (2011) 12 SCC 85; State of Maharashtra vs. Raj Kumar (1982) 3 SCC 313; Kailash Chand Sharma vs State of Rajasthan & Ors. [2002] Supp. 1 SCR 317 : (2002) 6 SCC 562; Official Liquidator vs. Dayanand & Ors. [2008] 15 SCR 331 : (2008) 10*

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**SCC 1; State of Rajasthan vs. Archana (2017) 11 SCC 421; Manoj Kumar Acharya vs. State of Rajasthan & Ors. (Civil Appeal 12335 of 2016 dated 18.01.2022) – held inapplicable.**

### List of Acts

Rajasthan Panchayati Raj Prabodhak Service Rules, 2008; Constitution of India; Rajasthan Panchayati Raj Act, 1994.

### List of Keywords

Rule 13(v) of the Rajasthan Panchayati Raj Prabodhak Service Rules, 2008; Service Rules; Prabodhak; Senior Prabodhak; Teachers; Advertisement; Recruitment; Service conditions; Age relaxation not discriminatory and contrary to Article 14; Age relaxation to persons serving under educational projects; Educational projects; Fixing of minimum and maximum age requirement; Within the age limit at the time of initial appointment; Direct recruitment; Policy decision; Project employed applicants; Bonus marks; Bonus marks to project employed applicants; Bonus marks for teaching experience; Far flung areas; Children of the far-flung areas; Encouraging/motivating children to attend schools; Absentee teachers; Education of rural children; Para teachers; Difficult circumstances; Honorarium; Dropouts; Drop out of students; Dropouts from schools; Elementary education programme; Separate class; Valid classification; Valid classification based on intelligible differentia; Intelligible differentia; Project experience; Guidelines sanctioning the award of bonus marks on differential basis; Lack of Project experience; Differentia had a rational relation to the object sought to be achieved; Executive instruction; Executive guidelines; Executive guidelines supplemented the Rules and did not supplant them; Rajiv Gandhi Pathshala; Shiksha Karmi Board; Lok Jumbish Pariyojana; Sarva Shiksha Abhiyan; District Primary Education Programme; Guidelines in public domain; Rules of the game were not changed after the match had begun; Error; Perversity; Mala fide.

### Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7906 of 2010

From the Judgment and Order dated 21.05.2010 of the High court of Rajasthan at Jaipur in DBSAW No. 402 of 2009

With

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Civil Appeal No. 7250 of 2024, Civil Appeal Nos. 8656-8668, 9618, 10709, 10712, 10711 and 10710 of 2011, Civil Appeal Nos. 6898, 1668 and 1038 of 2012, Civil Appeal Nos. 11332, 11442 and 11407 of 2011, Civil Appeal Nos. 4559, 6096-6104 and 8661 of 2012, Civil Appeal Nos. 7251-7252 of 2024, Civil Appeal No. 322 of 2013, Civil Appeal Nos. 9328-9331 and 10281 of 2010, Civil Appeal Nos. 2800-2802, 2806-2808, 2803, 2804-2805, 2980, 2978, 2979, 2976, 2977, 4569, 3732, 5180, 5183, 3731, 5182 and 7646 of 2011, Civil Appeal No. 1210 of 2012, Civil Appeal No. 8302 of 2010, Civil Appeal Nos. 2982, 2981, 2921, 3730, 4688, 4745 and 5258 of 2011 and Civil Appeal No. 8215 of 2013

**Appearances for Parties**

Sushil Kumar Jain, Ms. Archana Pathak Dave, Dr. Manish Singhvi, Sr. Advs., Puneet Jain, Mrs. Christi Jain, Ms. Akriti Sharma, Mann Arora, Ms. Lisha Bhati, Ms. Pratibha Jain, Ms. Chitrangda Rastravara, Aishwary Mishra, Dhananjai Shekhwati, Dashrath Singh, Anirudh Singh, Rakesh Dahiya, Aditya Dahiya, Kapil Dahiya, Satyavan Kudalwal, Praveen Swarup, Sarad Kumar Singhania, P. K. Jain, Ajay Choudhary, Rameshwar Prasad Goyal, Abhijeet Singh, Anjali Saxena, Gp. Capt. Karan Singh Bhati, Bankey Bihari Sharma, Ajit Kumar Thakur, R N Verma, Sanjay Misra, Mukul Kumar, H. D. Thanvi, Rishi Matoliya, Nikhil Kumar Singh, Raghuvir Pujari, Ms. Sumati Sharma, Ms. Parul Shukla, Udayaditya Banerjee, Ms. Tanvi Chuphal, Ms. Shubhangi Pandey, Abhishek Kumar, Ms. Deeksha Saggi, Rituparn Uniyal, B Tyagi, Nayyar Siddiqui, Ram Lal Roy, Milind Kumar, Ms. Shubhangi Agarwal, Apurv Singhvi, Rohan Darade, Nikilesh Ramachandran, Ms. Ruchi Kohli, Sandeep Kumar Jha, Ranbir Singh Yadav, Prateek Yadav, Puran Mal Saini, Pati Raj Yadav, Ms. Akansha Singh Yadav, Ankit Yadav, Dr. Nirmal Chopra, Ms. Pragati Neekhra, Ram Nath, Ms. Kalpana Kumari, Dr. Sushil Balwada, R.K. Rathore, Sandeep Singh Dingra, Amit Kumar Chawla, Ms. Tanishka Grover, Niharika Dewivedi, Mahi Pal Singh, Ms. Manisha Chawla, T.R. Meena, Vijay Rathore, Satpal Singh, Advs. for the appearing parties.

**Judgment / Order of the Supreme Court****Judgment**

**K.V. Viswanathan, J.**

- Leave granted in SLP (Civil) No. 34742 of 2013 and SLP (Civil) No. 34663 of 2013.

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2. This batch of 47 appeals involves common questions of law. They arise from the judgments of the Division Bench of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur. The main appeal, namely, Civil Appeal 7906 of 2010 (*Mahesh Chand Bareth & Anr. Vs. State of Rajasthan & Ors.*) (hereinafter referred to as '**Mahesh Chand Bareth**') arises out of a judgment of the Division Bench of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Civil Special Appeal No. 402 of 2009 dated 21.05.2010. The other matters arise out of the same batch as Mahesh Chand Bareth or out of the judgments relying on Mahesh Chand Bareth or based on the judgments which, in turn, relied on Mahesh Chand Bareth. By virtue of the said judgments, the appellants were denied relief. The appellants challenged the selection of candidates to the post of "Prabodhak" (teacher) by virtue of advertisement issued on 31.05.2008. Recruitment and other service conditions for the post of Prabodhak are governed by the Rajasthan Panchayati Raj Prabodhak Service Rules, 2008 (hereinafter referred to as the '**Rules**').
3. About 20060 vacancies were advertised and the vacancies came to be filled up soon thereafter. The grievance of the appellants is that their candidature should also be considered for the appointment on the post of 'Prabodhak', by adopting similar criteria in the grant of bonus marks for teaching experience as was done in the case of the applicants who had experience of working in Government educational projects. Their further grievance is that Rule 13(v) of the Rules insofar as it provides for age relaxation to those persons serving under educational projects is a provision which is unconstitutional and invalid.

**Background facts:**

4. A brief narration of the background facts is essential for appreciating the issues involved in this case. The Shiksha Karmi Project was a unique initiative launched in the State of Rajasthan in 1987 with assistance from the Swedish International Development Cooperation Agency (SIDA). The object was to seek to reach out to children in remote rural areas where the formal primary schools are either not in existence or dysfunctional. Local youth with some basic educational qualifications were identified, trained and provided continuous educational support to teach children in Shiksha Karmi Day Schools, Prehar Pathshalas (Schools of convenient timings) and Angan Pathshalas (Courtyard Schools).

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5. The concept of Shiksha Karmi Project (as is clear to us from the document containing a study, placed on record by the appellants) indicates that the Shiksha Karmi Project rested on the assumption that barefoot teachers belonging to the local community, who enjoy local community support if intensively trained, can overcome lack of formal educational qualification.
6. They were selected through an established procedure laid out in the manuals and once the Gram Sabha voted on the creation of a Shiksha Karmi School, spot tests were held to identify Shiksha Karmis. The Shiksha Karmi Project had significant overlaps with the Lok Jumbish Project and the District Primary Education Programme (DPEP).
7. The Shiksha Karmi Project was fairly successful in reaching out to children from disadvantaged communities. A person serving in various educational projects possessed rich experience of teaching and motivating people for education in rural areas. The workers were engaged in the name of Shiksha Karmis to address the problem of teacher absenteeism, poor enrolment, high dropout trends and inadequate access to education. The workers were to get only a fixed honorarium. The projects were introduced to accelerate universalization of elementary education. After the passage of the 83<sup>rd</sup> Constitutional Amendment and the setting up of an elected Panchayat structure, the project worked in tandem with the elected representative members of the Panchayat.

**Formulation of Rules:**

8. When matters stood thus, a Cabinet note was prepared which set out that to provide access to education to children living in far-flung areas/difficult terrain/small villages (Hamlet) called Dhanis, a new regular cadre in the name of Prabodhak and Senior Prabodhak be created. As a first step, Section 89 of the Rajasthan Panchayati Raj Act, 1994 was amended and in 89(2)(v) 'Prabodhak' and 'Senior Prabodhak' were added as one of the grades. Section 89(2)(v), (5) & 6B reads as under:

**"89. Constitution of the Rajasthan Panchayat Samiti and Zila Parishad Service.**

(2) The Service may be divided into different categories, such category being divided into different grades, and shall consist of -

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- (v) Prabodhak and Senior Prabodhak.
- (5) All appointed to posts in the service shall be made-
- by direct recruitment; or
  - By promotion ; or
  - by transfer.

6B. Appointed on the posts specified in clause (v) of Sub-section (2) Shall be made by additional Chief Executive Office-cum-District Education officer (Elementary-Education) of the District concerned in accordance with the rules made in this behalf by the State Government, from out of persons selected for the posts by the recruitment committee constituted by the Government in accordance with the rules made by the State Government in this Behalf:

9. Thereafter, in accordance with Section 102 of the Rajasthan Panchayati Raj Act, 1994 were framed the Rajasthan Panchayati Raj Prabodhak Service Rules, 2008. Certain relevant clauses of the Rules are extracted hereunder:

**“2. Definitions.**

In these rules unless the context otherwise requires,-

- “Direct recruitment” means recruitment made in accordance with Part IV of these rules;
- “Teaching Experience” for the purpose of direct recruitment includes the experience gained in supervisory capacity in any recognized educational institution or project;

**6. Methods of Recruitment.**

Recruitment to the service after the commencement of the rules shall be made by the following methods:-

- by direct recruitment in accordance with Part IV of these rules,
- by promotion in accordance with Part V of these rules.

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A candidate for direct recruitment to a post enumerated in the Schedule must have attained the age of 23 years and must not have attained the age of 35 years on the first day of January following the last date fixed for receipt of applications:

Provided

(v) that the person serving under the educational project in the State viz Rajiv Gandhi Pathshala/Shiksha Karmi Board/Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/ District Primary Education Programme shall be deemed to be within age limit, had they been within the age limit when they were initially engaged even though they may have crossed the age limit at the time of direct recruitment.

**14. Academic and Professional Qualifications.**

A candidate for direct recruitment to the posts specified in the Schedule shall, in addition to such experience as is required shall possess –

- (i) the qualification and experience given in column 6 of the schedule, and
- (ii) working knowledge of Hindi written in Devnagri Scripts and knowledge of Rajasthani culture.

**25. Recommendation of the Committee:-**

The committee shall prepare a list of the candidates whom, they consider suitable for appointment to the posts concerned, arranged in the order of merit and forward the same to the Appointing Authority:

Provided that the Committee may, to the extent of 50% of the advertised vacancies, keep names of suitable candidates on the reserve list. The names of such candidates may, on requisition, be recommended in the order of merit to the Appointing Authority within 6 months from the date on which the Committee forwards the original list to the Appointing Authority.

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### **Schedule**

S. No.	Name of Post	Method of Recruitment with percentage	Post from which promotion is to be made	Qualifications and experience for Promotion	Qualification and experience for direct Recruitment	Remarks
2	Prabodhak (4500-7000)	100% by Direct Recruitment	-	-	Senior Secondary School Certificate or Intermediate or its equivalent, with Diploma or certificate in basic teachers training of a duration of not less than two years of Diploma or certificate in elementary teachers training of a duration of not less than two years. OR Bachelor of Elementary Education (B. El. Ed.) OR Graduation with Bachelor of Education (B. Ed.) or its equivalent AND Must have at least 5 years continuous teaching experience without any break in any recognized educational institution/ educational project.	

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10. Before the advertisement was issued on 31.05.2008, appropriate guidelines were formulated on 27.05.2008 for the purpose of selection of Prabodhak. The guidelines dealt with various aspects including award of bonus marks. Among the matters dealt with apart from educational qualifications and emoluments were also matters pertaining to disqualification if the applicant had more than two children on or after 01.06.2002; disqualification with regard to persons having more than one spouse and of persons who had obtained dowry during their weddings. The guidelines also dealt with the requirements with regard to community certificate; reservation of 30% for women of which 5% was to be for widows; requirements of age limit and relaxation. One of the clauses provided as under :

“Selection Process: -

Selection will be done entirely through interview for which a total of 100 marks have been allotted.

The classification of these numbers is as follows: -

General Knowledge – maximum 40 marks

Personality – maximum 35 marks

Experience - maximum 25 marks

A maximum of 10 marks will be given according to 2 marks per year for a maximum of 5 years of teaching/supervision experience. If the experience is for the employee receiving honorarium under the projects run by the state government, then he will be given 5 marks for each academic session, maximum 25 marks.”

11. Thereafter, on 31.05.2008, advertisement for district-wise recruitment for the post of Prabodhak was issued and selection came to be made. The appellants, who are teachers in recognized educational institutions filed writ petitions aggrieved by the award of excess bonus marks for the candidate with project experience. In some writ petitions, the age relaxation granted to the project employed applicants were also challenged.

**Digital Supreme Court Reports****Contentions of Appellants:**

12. The appellants contend that Rule 13 (v) of the Rules providing age relaxation only to a few categories of teachers of certain government projects and denial of the same to other similarly situated teachers is discriminatory and violative of Article 14 of the Constitution of India. Insofar as the award of bonus marks is concerned, learned counsels relying on Rule 2(k) which deals with teaching experience, point out that granting additional marks to para teachers having teaching experience from government projects is ultra vires the Rules.
13. Learned counsels also contend that the advertisement of 31.05.2008 did not sanction the grant of bonus marks and the administrative guidelines dated 27.05.2008 were not brought in public domain. It was argued that the rules of the game have been changed after the match has begun. It was contended that if the intention of the legislature was to create the said post only for para teachers working in project, the same would not have been offered to private and other teachers at all. Learned counsels further contend that the Rules do not provide for grant of any bonus marks. Learned counsels for the appellants argued that the effect of awarding extra bonus marks for project experience has the effect of an indirect absorption of all the project appointees and this, according to learned counsels, was contrary to the Rules. Learned counsels for the appellants relied on the judgment in *Bedanga Talukdar vs. Saifudaullah Khan & Ors., (2011) 12 SCC 85* to argue that the selection process should be strictly in accordance with the stipulated selection procedure. Learned counsels also cited *State of Maharashtra vs. Raj Kumar,* (1982) 3 SCC 313.

**Contentions of the State:**

14. The State contended that there was a historical background to the introduction of the Rules; that there was a laudable objective of achieving the universalization of elementary education and such educational projects initiatives had led to significant increase in literacy rate in Rajasthan from 38% to 66% between 1991 to 2011; that persons who had worked in the aforesaid educational projects were having valuable experience working in far flung areas and had direct interaction and connection with children. That the projects were started to mitigate the absenteeism of teachers in the rural areas especially in small villages. Added to this, there were dropouts

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from schools and to tackle all these several initiatives in the form of educational projects were introduced.

15. According to the State, 'Prabodhak' was to facilitate and encourage children to attend schools. The State contended that as part of the selection process guidelines for the purpose of giving marks for experience can always be legally prescribed. All the Prabodhaks who were recruited possessed the minimum educational qualification and according to the State that was clear from the advertisement, which contained a specific clause with regard to the minimum qualification of Basic School Teaching Certificate (BSTC) for primary and Bachelor of Education (B.Ed) for imparting education for middle school students.
16. The State contended that the experience gained in the projects has reasonable nexus with the concept of Prabodhak for which the newly framed Prabodhak Rules and Cadre were created. Insofar as age relaxation was concerned, it was contended by the State that it was meant for persons who worked in the projects after joining within the age limit but have now become over age. According to the State, the idea was not to oust from consideration these persons who had worked in the education projects for significant number of years. Hence age relaxation was provided to them. According to the State, there was nothing discriminatory about it. In support of the submission, learned counsels for the State relied on **Satya Dev Bhagaur & Ors. Vs. The State of Rajasthan & Ors., (2022) 5 SCC 314.**
17. The learned Single Judge and the Division Bench declined relief to the appellants. Aggrieved the appellants are before us. We have also heard the learned counsels for the parties proposing to implead or intervene.

**Questions for consideration:**

18. The two questions that arise for consideration are:
  - i. Is Rule 13(v) of the Rules, insofar as it provides age relaxation to the persons serving under educational projects discriminatory and contrary to Article 14 of the Constitution of India?
  - ii. Is the award of bonus marks to the project employed applicants discriminatory and ultra vires the Rules? Are the guidelines of 27.05.2008 sanctioning the award of bonus marks on a differential basis for applicants with project experience and other applicants invalid for any other reason?

**Digital Supreme Court Reports****Question No. 1:**

19. To answer this, a full look at Rule 13 is essential:

“13. Age.

A candidate for direct recruitment to a post enumerated in the Schedule must have attained the age of 23 years and must not have attained the age of 35 years on the first day of January following the last date fixed for receipt of applications :

Provided -

- (i) that the upper age limit mentioned above, shall be relaxed by 5 years in the case of male candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward classes.
- (ii) that the upper age limit mentioned above shall be relaxed by 5 years in case of women candidates belonging to General Category.
- (iii) that the upper age limit mentioned above shall be relaxed by 10 years in the case of women candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward classes.
- (iv) that the upper age limit mentioned above shall be 50 years in the case of Ex-service personnel and the reservists, namely the Defence Service Personnel who were transferred to the reserve.
- (v) that the person serving under the educational project in the State viz Rajiv Gandhi Pathshala/Shiksha Karmi Board/Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme shall be deemed to be within age limit, had they been within the age limit when they were initially engaged even though they may have crossed the age limit at the time of direct recruitment.
- (vi) that the upper age limit mentioned above shall be relaxed by a period equal to the service rendered in the NCC in the case of Cadet instructors and if

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the resultant age does not exceed the prescribed maximum age limit by more than three years, they shall be deemed to be within the prescribed age limit.

- (vii) that the Released Emergency Commissioned Officers and Short Service Commissioned Officers after release from the Army shall be deemed to be within the age limit even though they have crossed the age limit when they appear before the Committee had they been eligible as such at the time of their joining the Commission in the Army.
  - (viii) that there shall be no upper age limit in the case of widows and divorced women.”
20. Fixing of minimum and maximum age requirement is a policy decision. In this case, the said decision is engrafted in Rule 13. A careful perusal of the Rule reveals that the minimum age required was 23 years and the maximum outer limit was 35 years. In the proviso there are several categories to which relaxation has been granted. Under clause (i) of the proviso, a relaxation of 5 years is granted to male candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward classes. Under clause (ii) of the proviso, the upper age limit is relaxed by 5 years in case of women candidates belonging to General Category and under clause (iii) it is relaxed by 10 years in the case of women candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward classes. Under Clause (iv), the age relaxation is of 50 years in the case of Ex-service Personnel and the reservists, namely the Defence Service Personnel who were transferred to the reserve.
21. Thereafter, we have clause (v) which states that the person serving under the educational project in the State, namely, Rajiv Gandhi Pathshala/Shiksha Karmi Board/Lok Jumbish Pariyojana/Sarva Shiksha Abhiyan/District Primary Education Programme shall be deemed to be within age limit, had they been within the age limit when they were initially engaged even though they may have crossed the age limit at the time of direct recruitment. Thereafter, we have clause (vi) which states that the upper age limit mentioned above shall be relaxed by a period equal to the service rendered in the NCC in the case of Cadet instructors and if the resultant age does not exceed the prescribed maximum age limit by more than three

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years, they shall be deemed to be within the prescribed age limit. In clause (vii) the Released Emergency Commissioned Officers and Short Service Commissioned Officers after release from the Army shall be deemed to be within the age limit even though they have crossed the age limit when they appear before the Committee had they been eligible as such at the time of their joining the Commission in the Army. So finally in clause (viii) it is provided that there shall be no upper age limit in the case of widows and divorced women.

22. The challenge of the appellants is only to sub clause (v). We find that the provisions generally including sub clause (v) are not arbitrary or discriminatory. Insofar as the clause (v) is concerned, as has been mentioned hereinabove, the historical background leading to the enactment of the Rules itself provides a justification for granting relaxation to the persons serving under the educational project, if they fulfil the condition that they were within the age limit when they were initially engaged.
23. As the counter affidavit of the State indicates that the projects were designed to deal with absentee teachers in the far flung areas which was causing a serious jeopardy to the education of the rural children. The para teachers, as they were called, worked under difficult circumstances. They had the advantage of interacting personally with the children of the far-flung areas. They only received an honorarium. The projects themselves played a large part in uplifting the elementary education programme in the State. The para teachers motivated the children to come to school. It was in this background that the grade of 'Prabodhak' and Senior 'Prabodhak' were encadred and separate rules enacted.
24. No doubt, under the Rules, opportunity to apply was also given to all those who possess the essential qualifications and who had teaching experience in any recognized educational institutions apart from the educational projects. This, however, does not mean that those who served in projects did not form a separate class. There was a valid classification based on intelligible differentia which distinguished applicants with project experience and those who lacked project experience. Further the differentia had a rational relation to the object sought to be achieved by the Rules. In fact, the job of a Prabodhak was exactly the job that the para teachers carried out in the projects and if the Government felt that the experience gained

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by them should not be lost and in that regard granted them age relaxation, provided they fulfil the condition of being within the age limit at the time of their initial appointment in the project, no fault can be found with the same.

25. Dealing with the similar challenge in ***Union of India & Ors v. Shivbachan Rai, (2001) 9 SCC 356***, this Court held that the prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given to the said age limit are essentially matters of policy. It was further held that it was open for the Government while framing the rules to prescribe such age limits or to prescribe the extent to which any relaxation can be given. Applying the said principle to this case, we find that the relaxation provided for in Rule 13(v) is not arbitrary or unreasonable.

**Question No.2:**

26. Insofar as the award of bonus marks is concerned, a careful perusal of the guidelines indicates that it was issued before the advertisement and all that it provided was out of the allotted maximum marks of 25 for the experience, ordinarily 2 marks were to be given for every year with a cap of 10 marks. However, if the experience is for the employee receiving honorarium under the projects run by the State Government, then he was to be given 5 marks for each academic session with the maximum of 25 marks. Even if part of the experience was in a project to that extent extra marks were provided to all the applicants.
27. In the application form, there was a specific column, namely, column fourteen which asked about details of the experience. The form also asked for the name of the employer and the address of the institution employed. Thereafter, there was another column asking for the post in which they were employed and the period during which the emoluments were received.
28. Apart from this, the justification offered for defending the age relaxation is also available for the grant of excess bonus marks. In fact, as is clear from the background set out above, the creation of the post of 'Prabodhak' and 'Senior Prabodhak' was to get the advantage of the benefits that the projects gave to the State. At the same time, opportunity was given to all, with the only difference being that by an executive instruction additional marks were granted for project

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experience. The executive guidelines only supplemented the Rules and did not supplant them.

29. Moreover, intrinsically from Rule 13(v) the validity of which we have upheld, evidence is available to show that the Rule recognized the experience gathered from project work stood on a higher pedestal because it was in tune with the nature of the work of Prabodhak. Further, under Rule 25, the Committee was to prepare a list of candidates whom they consider suitable for appointment.
30. In ***Srinivas K. Gouda v. Karnataka Institute of Medical Sciences and Others (2022) 1 SCC 49***, a notification was issued inviting applications for the post of Junior Lab Technician. Eligibility and requirements were prescribed. At the time of selection, the Selection Committee decided that out of the 15% marks for interview, 10% of the marks were to be set apart for the length of work experience and/or additional training in teaching hospitals of the medical college, with special preference to those who had worked in teaching hospitals of Government/autonomous medical colleges and the remaining 5% marks were to be assigned to the personality of the candidates based on viva voice. In the minutes, it was set out as under:

*"4. .... It was decided that in order to select the most suitable candidates, proportionate weightage based on the length of experience and/or additional training to the extent of 10 marks be given to those candidates who had work experience and/or additional training in medical college teaching hospitals and especially those who had worked in government/autonomous medical college teaching hospitals. It was agreed that the type of work in these institutions most closely resembled the working conditions at Karnataka Institute of Medical Sciences, Hubli and hence the candidates who had experience in such institutions would be the most suitable. It was also decided to set apart a maximum of 5 marks for the personality of the candidate and his/her presentation and performance...."*

(Emphasis supplied)

31. The appellant in that case was selected and the selection had been set aside by the Division Bench of the High Court. The appellant secured 9.5 marks in the experience category while the

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writ petitioner who had challenged his appointment had secured one (1) mark under the component of experience. On appeal, the appellant contended that the selection committee, an expert body, was entitled to apportion marks, and that the appellant had experience in Government/Autonomous medical institutions. The writ petitioner had contended that no explanation was furnished for dividing the marks and bifurcating the same. This Court while allowing the appeal in para 19 held as under:

“19. It is in this background that we need to determine whether the marks allotted to the appellant in the category of experience and personality are arbitrary. The appellant at the time of submitting the application had a one year work experience in Bapuji Medical College, Devanagere (a private institution) and three years of work experience with the first respondent. On the other hand, the respondent at the time of the application, had six months’ experience of working under a doctor who was undertaking private practice. Not only did the appellant have more years of work experience, he had work experience in a governmental institution. Hence, the marks awarded to the third respondent and the appellant bore a nexus to the yardstick determined by the Selection Committee. It is not the case of the third respondent that the appellant was given more marks for experience despite having less work experience. On a comparison of the marks allotted to both the candidates with reference to the yardstick determined by the Selection Committee, no mala fides could be imputed to the Selection Committee. Nor is there an obvious or glaring error or perversity. The Court does not sit in appeal over the decision of the Selection Committee.”

32. In the present case too, we find no glaring error or perversity in the criterion adopted on the peculiar facts of the present case. No mala fide could also be attributed to the State and the Selection Committee.
33. ***Satya Dev Bhagaur (supra)*** was a case wherein the State of Rajasthan had issued a notification providing that such of the candidate who had worked under the Government, Chief Minister BPL Life Saving Fund, NRHM Medicare Relief Society, AIDS Control

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Society, National TB Control Program, Jhalawar Hospital and Medical College Society, Samekit Rog Nirgrani Pariyojna or State Institute of Health Family Welfare would be entitled to bonus marks as per the experience attained. It was provided that for one year of experience, the bonus marks will be 10, for two years of experience the bonus marks will be 20 and for three years of experience it will be 30. This notification was challenged by certain persons who had experience of working in NRHM Scheme on contract basis in States other than Rajasthan. They sought a direction to accept their experience certificate so as to entitle them to obtain the bonus marks. While the Single Judge allowed the Writ Petitions, the Division Bench reversed the same and the aggrieved Writ Petitioners were in Appeal. Examining the question whether bonus marks would be available to employees of NRHM Scheme in other States, this Court while repelling the contention held that in matters of policy, Courts should be slow in interfering, unless the policy is found to be palpably discriminatory and arbitrary. It was further held that the court would not interfere with the policy decision when the State was in a position to point out that there was an intelligible differentia in the application of the policy and that such intelligible differentia had a nexus with the object sought to be achieved. On the facts of that case, the Court held as follows:

“20. It could thus clearly be seen that the Division Bench in Jagdish Prasad [Jagdish Prasad v. State of Rajasthan, 2016 SCC OnLine Raj 646] after considering the record, has come to the finding that the Government of Rajasthan has conducted several training programmes for the persons working with it on contractual basis, as well as under different schemes. The training programmes mainly pertain to the peculiar working pattern in the rural areas of the State of Rajasthan including tribal and arid zones. The Division Bench has further come to a finding that participation in such a training is mandatory and non-joining of the same would result in non-renewal of service contracts. It has been held that persons having special knowledge in working in the State of Rajasthan form a class different than the persons not having such experience of working in the State. It was found that the benefit extended by the State policy was only that of giving a little more weightage on the

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basis of experience and all the candidates were required to undergo the rigor of selection process. The Division Bench has clearly held that the experienced candidates in other States cannot be compared with the candidates working in the State of Rajasthan, as every State has its own problems and issues and the persons trained to meet such circumstances, stand on a different pedestal."

34. We find that the ratio laid down in the said judgment is applicable to the facts of the present case also to uphold the action of the State.
35. The judgment of this Court in ***Raj Kumar (supra)*** cited by the learned counsel for the appellants is clearly distinguishable. That case dealt with the Rule which provided that any person who has passed the SSC examination and is supposed to be a rural candidate was to be given weightage by the Public Service Commission by awarding 10% marks in each subject for such a candidate. It was also provided that the Viva Voce Board was to put relevant questions to judge the suitability of the candidate for working in rural areas and to test whether or not they had sufficient knowledge of rural problems. Rural candidate was defined to mean a candidate who comes from the rural area and who has passed SSC examination which is held from a village or a town having only a 'C' type Municipality. The purported object of the Rule was to take officers who had full knowledge of rural life, its problems, aptitudes and working of the people in villages. This Court held that the Rule did not fulfil or carry out the object sought to be achieved since as the Rules stood any person who may not have lived in a village at all can appear for SSC Examination from a village and yet become eligible for selection. The Court found that there was no nexus between the classification and the object sought to be achieved. The Court also faulted the weightage marks given by holding that since in the viva voce questions to judge the suitability of the candidate for working in rural areas were anyway being put, there was absolutely no occasion for giving weightage which would convert demerit into merit and merit into demerit. On the facts of that case, the Court found the rule of weightage to be manifestly unreasonable and wholly arbitrary. The said case has no application to the facts of the present case.
36. Equally the judgment in ***Kailash Chand Sharma vs State of Rajasthan & Ors., (2002) 6 SCC 562*** has also no application.

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This Court in that case held that the award of bonus marks to the residents of the district and residents of the rural areas of the district amounts to impermissible discrimination. The Court found that there was no rational basis for such preferential treatment on the material placed before the Court. The Court found that the ostensible reasons advanced by the State were non-existent or irrelevant, having no nexus with the object sought to be achieved. It also found that no criteria was set out for determining as to residents in rural areas. The Court in *Kailash Chand Sharma (supra)* followed the judgment in *Raj Kumar (Supra)*.

37. The judgment in *Official Liquidator vs. Dayanand & Ors. (2008) 10 SCC 1* cited by the appellants has no connection at all with the issues raised in the present case. Yet another case cited by the appellants is *Bedanga Talukdar (supra)*. The appellants relied on the said judgment to contend that there could be no relaxation in the terms and conditions contained in the advertisement and even if there was power of relaxation the same will have to be specifically indicated in the advertisement. The case is wholly inapplicable. In this case, before the advertisement was issued, the guidelines setting out various aspects including the aspect of bonus marks were issued and, as discussed earlier, no infirmity can be found with the same.
38. Similarly, the judgment in *State of Rajasthan vs. Archana (2017) 11 SCC 421* and the judgment in *Civil Appeal 12335 of 2016 dated 18.01.2022 in Manoj Kumar Acharya vs. State of Rajasthan & Ors.*, cited by the State have no application to the facts of the present case.
39. The argument that the guideline was not in public domain was not an argument canvassed either before the learned Single Judge or before the Division Bench. In any event, the contention does not impress us on the facts of the present case. The guideline setting out the selection process was issued before the advertisement and it was applied uniformly and across the board to all the applicants. No prejudice has been caused to the applicants even assuming that the guideline was not in the public domain. It was a procedure adopted by the recruiting Authority and endorsed by the Selection Committee. The appellants have had the opportunity to assail the validity of the prescription of the award of bonus marks and as such have had a fora to ventilate their grievance. They have failed in the

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process. Hence, we cannot jettison the guideline on the alleged ground that it was not in public domain. Equally, since the guidelines of 27.05.2008 preceded the advertisement of 31.05.2008, there is no merit in the argument feebly advanced that the rules of the game had been changed after the match had begun.

40. On the special facts of this case, considering the peculiarity that obtained in the State of Rajasthan with regard to absentee teachers and drop out of students and the introduction of the projects with para legals to address the situation, we find no illegality in the prescription of additional marks for those applicants who had experience of working in projects, while recruiting Prabhodhaks. The statutory rules itself in Rule 13(v) recognize that project employed applicants were a class apart and the idea being that their experience should not be wasted. In view of the above, we find no illegality in the award of bonus marks.
41. In view of the above, we find no merit in the appeals and all the appeals are dismissed with no order as to costs. All applications for impleadment and intervention are closed.

*Result of the case:* Appeals dismissed.

<sup>†</sup>Headnotes prepared by: Divya Pandey