

Before Permod Kohli, J.

SANTOSH KUMARI,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 17450 of 2010

31st May, 2011

Constitution of India, 1950 - Art. 309 - Punjab Education Service (School & Inspection) Group-A Service Rules, 2004 - Rl. 5, 5(2), (3), 8 - Punjab Civil Services (General & Common Conditions of Service) Rules 1994 - Rl. 2(g) 6, 18, 18(B), 20 - Petitioners working as Head Masters and Lecturers - Service Conditions regulated by Service Rules 2004 - Sub Rule (3) of Rule 5 provides for appointment to service by promotion adopting Rule of seniority-cum-merit - Though seniority alone not be the basis for promotion - Petitioners not promoted to the post of Principals on account of not achieving minimum required Bench Mark as prescribed by Govt. Instructions dated 6.9.2001 - Juniors promoted - Challenge thereto - Held that introduction of minimum Bench Mark while applying principle of seniority-cum-merit is not contrary to any rule, thus, cannot be faulted with - Writ petition dismissed.

Held, That in so far the introduction of minimum bench marks while applying the principle of seniority-cum-merit is concerned is not contrary of any rule, thus, cannot be faulted with. This is in particular reference to the Education Department, where the teachers are to produce the students, who are the future of the nation. The education in any country is necessary for the development of the country as a whole as the education has great role to play in personality development of an individual, irrespective of the field to which he belongs or may ultimately join.

(Para 26)

Further held, That to support their contentions, petitioners have relied upon a judgement of Hon'ble Supreme Court reported as J.T 2008 (7) SC 463 titled as Dev Dutt Vs. Union of India & others. In this case the Hon'ble Supreme Court issued directions for making available all the entries in the A.C.Rs of a public servant.

(Para 24)

Further held, That this judgment was delivered on 12.5.2008. Prior to the aforesaid judgment, the only concept known to service jurisprudence was communication of adverse A.C.Rs. However, by virtue of the directions contained in the aforesaid judgment, it has become obligatory upon the authorities/public employer to communicate all A.C.Rs. This judgment is, however, prospective in nature and cannot be applied retrospectively for the period prior to the judgment.

(Para 25)

Kapil Kakkar, Advocate.

R.K. Arora, Advocate.

Puneet Gupta, Addl. A.G., Punjab.

PERMOD KOHLI.J (ORAL)

(1) In view of the identical facts and common questions of law, these petitions are being disposed of by this common order.

(2) All the petitioners are working in the Education Department of the State of Punjab. Petitioners in CWP Nos. 17450 of 2010 and 16723 of 2010 are working as Head Masters, whereas all other petitioners are working as Lecturers in different disciplines. All the petitioners are aggrieved of their non-promotion to the post of Principal. In some of the cases the claims of the petitioners have been rejected/ignored solely on the ground that they did not achieve the minimum required bench marks for promotion to the post of Principal. It is admitted case of the parties that persons junior to the petitioners from the cadre of Head Masters as also Lecturer have been promoted to the post of Principal, hence, the grievance of the petitioners in these petitions.

(3) Since the legal issues predominantly decide the controversy in these petitions, hence the facts of each case are not being dealt with in details.

(4) Indisputed facts are that there are more than 1500 sanctioned posts of Principals in Govt. Schools in the State of Punjab and hundred of posts are lying vacant, some even for a decade. The State-respondent

had earlier expressed its inability to make promotions in view of some directions from this Court for a considerable period. Later the State was permitted to make promotions.

(5) Promotion to the post of Principal is governed and regulated by the statutory rules framed under proviso to Article 309 of the Constitution of India namely Punjab Education Service (School & Inspection) Group-A Service Rules, 2004 (hereinafter referred to as the 2004 Rules). These rules were notified vide notification dated 22.12.2004. Rule 5 deals with the method of appointment etc. and reads as under:-

“5. Method of appointment, qualifications and experience-

(1) Appointment to a post in the service shall be made in the manner as specified against that post in Appendix ‘B’.

Provided that if, no suitable candidate is available for appointment by promotion and by direct appointment, then appointment to the Service shall be made by transfer of a person holding a similar or an identical post under a State Govt. of Govt. of India.

(2) No person shall be appointed to a post in the service unless he possesses the qualifications and experience as specified against that post in Appendix ‘B’.

(3) Appointment to the service by promotion shall be made on seniority-cum-merit basis, but no person shall have any right to claim promotion on the basis of seniority alone:

Provided that promotion to the post of Director shall be made on merit-cum-seniority basis.”

(6) The post of Principal is one of the posts borne on the cadre of the 2004 Rules. By virtue of sub rule (2) of Rule 5, appointment to a post in the service is to be made in accordance with the qualifications and experience as specified against that post in Appendix ‘B’. Post of Principal finds mention at Sr. No.3 of Appendix ‘B’ and is equivalent to some other

posts of the service. These posts are to be filled up 100% by promotion from three feeding channels. Relevant extract from Appendix 'B' is reproduced hereunder:-

Sr. No.	Designation of the post	Percentage for appointment by		Qualification and experience for appointment by	
		Direct appointment	Promotion	Direct appointment.	Promotion
1	2	3	4	5	6
3	District Education Officer (Secondary Education), District Education Officer (Elementary Education), Principal, District Institute of Education and Training, Principal, Secondary Schools, Assistant Director, Evaluation Officer, Subject Matter Expert (State Council of Education Research & Training), Survey Officer, Deputy Circle Education Officer, Deputy District Education Officer, District Science Supervisor, Senior Lecturer, Senior Guidance Counsellor, Agricultural Advisor, Coordinator (Population Education), Officer on Special Duty (Works and Planning), Officer on Special Duty (Scholarship) and Coordinator.	-	Hundred percent	-	(a) Fifty-five percent from amongst the Lecturers, working under the control of the Director who have an experience of working as such for a minimum period of seven years; (b) Thirty percent from amongst the Head Masters/Mistresses, working under the control of the Director, who have an experience of working as such for a minimum period of seven years; and (c) Fifteen percent from amongst the Vocational Lecturers/ Masters/ Mistresses,

1	2	3	4	5	6
					working under the control of the Director, who have an experience of working as such for a minimum period of seven years.

(7) For purposes of the present petitions only two channels of promotion are relevant i.e. Lecturer and Head Master/Mistress. 55% of promotional posts of Principal are to be filled up from amongst the Lecturers working under the control of the Director, who have an experience of working as such for a minimum period of 7 years, whereas 35% of such posts are required to be filled up from amongst the Head Masters/Mistresses with experience for a minimum period of 7 years

(8) All the petitioners are eligible for such promotion being possessed of requisite experience. They are also under the zone of consideration on the basis of their seniority as admittedly persons junior to them have been promoted to the post of Principal. The petitioners have been denied promotion only on the ground of not achieving the minimum bench marks as prescribed under the Govt. Instructions dated 6.9.2001 (Annexure P-14) in CWP No.17450 of 2010. The relevant Govt. Instructions are relied upon by the respondents in the reply filed in CWP Nos. 12225, 12903 and 13027 of 2010. These instructions relate to setting up of departmental promotion committees for considering cases of promotion to Class-I and Class-II posts (now Group A and Group B posts). The extract relevant for purposes of the present petitions is reproduced hereunder:-

“(c) It has been decided to retain the numbering systems of evaluation of A.C.Rs as contained in the instructions dated 29.12.2000 which is as under:-

Outstanding : 4 marks
 ‘Very Good’ : 3 marks
 ‘Good’ : 2 marks
 ‘Average’ : 1 mark

A.C.Rs for the last 5 years are to be taken into consideration for promotion. The criteria for promotions will be as under:-

1. The case pertaining to the promotion of Head of Departments would be decided strictly on the basis of merit-cum-seniority. The minimum marks for promotion for such posts would be 'very good'. The marking system adopted earlier in instructions dated the 29th December, 2000 would be followed and a minimum of 15 marks, would be required to be considered as Very Good. The Officer who is graded as outstanding would supersede the officer graded as Very Good.
 2. For promotion to posts falling in Group 'A' other than Head of Departments the minimum bench mark will be very good with at least 12 marks. Amongst those meetings this criteria, there would be no supersession.
 3. In the case of promotion to posts falling in Group 'B' the minimum bench mark will be 'Good' and there would be no supersession i.e. Promotions would be made strictly on seniority-cum-merit.
 4. For making promotion in all the categories there should not be any adverse remarks in the A.C.Rs under consideration.
2. As a consequence of this decision of the Govt. the appropriate changes in the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 would be made separately.
 3. These instructions would be applicable prospectively."

(9) Apart from the above instructions, respondents have heavily relied upon the Punjab Civil Services (General & Common Conditions of Service) Rules 1994 (hereinafter referred to as the 1994 Rules) in particular reference to Rules 18 and 20 thereof. Rules 18 and 20 relied upon by the respondents are reproduced hereunder:-

- "18. Promotion to Group A and Group B services-(1) (a) For promotion to the post as Head of Department would be decided strictly on the basis of merit-cum-seniority as per the instructions issued by the Govt. from time to time. The minimum bench

mark for promotion for such post would be 'Very Good'. The officer who is graded as 'Outstanding' would supersede the officer graded as 'Very Good'.

- (b) For promotion to post falling in Group 'A' other than Head of Department the minimum bench mark will be 'Very Good' as per the instructions issued by the Govt. from time to time. There shall be no supersession on the basis of merit.
- (c) For promotion to post falling in Group 'B' the minimum bench mark will be 'Good' and there shall be no supersession on the basis of merit. Rule 20 reads as under:-

“20. Over riding effect- The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the state.”

(10) The short grievance of the petitioners in these petitions is that the service conditions of the petitioners are regulated by the 2004 Rules. Sub Rule (3) of Rule 5 provides for appointment to the service by promotion by adopting the rule of seniority-cum-merit, though, seniority alone cannot be basis for promotion. Based upon aforesaid provision, it is contended that the petitioners are entitled to promotion on the basis of their seniority except disqualification on account of any adverse entries or disciplinary proceedings etc. It is further submitted that introduction of the minimum bench marks for promotion by virtue of Govt. Instructions dated 6.9.2001 is totally illegal and amounts to supplanting the statutory rules. By applying the instructions the rule of seniority-cum-merit has been changed to merit-cum-seniority, which is impermissible in law. In support of their contention, the petitioners have relied upon a judgement of this Court reported as **Ravi Dutt Mehra (Dr.) versus State of Punjab & others (1)**, wherein the implication of same very Govt. Instructions dated 6.9.2001 was considered. Relevant observations are as under:-

“6. The statutory rules i.e. Ayurvedic (Group 'A') Service Rules, 2008 clearly provides for promotion to be made on the principle of seniority-cum-merit. Petitioner's seniority over

and above respondent no.5 is not in dispute. The expression “Seniority-cum-merit” has been considered and interpreted by various judicial pronouncements. In the case of Haryana State Electricity Development Corpn. Ltd. Vs. Rameshwar Dass, 2001 (4) SCT 328, it has been held that the junior person cannot be promoted unless something is shown adverse to senior or disciplinary proceedings are pending against him. The seniority cannot be ignored applying the aforesaid principle. It is equally settled proposition of law that once the recruitment is regulated by statutory rules and procedure, the criteria of qualification is prescribed therein and administrative instructions to the extent the statutory rules are altered/modified or made redundant cannot be taken into consideration. Admittedly, there was nothing adverse against the petitioner nor any disciplinary or criminal or other kind of proceedings were pending against him at the time of consideration for his promotion to the post in question. The Govt. instructions dated 6.9.2110 does not in any manner take away the right of the petitioner for consideration for promotion on the basis of senioritycum- merit. If the contention of the respondents regarding the so-called benchmark is accepted then it amounts to changing the principle/rule from “Seniority-cum-merit to Merit-cum-seniority”. Such a recourse is impermissible in law.”

(11) The petitioners have also referred to the latest judgement of Hon’ble Apex Court reported as **Haryana State Warehousing Corporation and others versus Jagat Ram and another (2)**. In the aforesaid judgement the Hon’ble Supreme Court examined the similar issue of promotion on the basis of seniority-cum-merit, where an identical provision i.e. Regulation 8(2) framed by the Haryana State Warehousing Corporation (Officers & Staff) Regulations, 1994 which is similar to Rule 5 (3) of the above service rules came up for consideration. Regulation 8(2) reads as under:-

“8(2). All promotions unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions.”

(2) 2011(3) SCC 422

(12) Interpreting the aforesaid regulation the Hon'ble Supreme Court while following earlier judgements titled as **State of Mysore versus Syed Mahmood (3)**, **B.V. Sivaiah and others versus K. Addanki Babu and others (4)**, **K. Samantaray versus National Insurance Company Ltd. (5)**, **Sant Ram Sharma versus State of Rajasthan (6)**, **Hargovind Yadav versus Reva Sidhi Gramin Bank (7)**, held as under:-

“There is nothing on record to indicate that Jagat Ram was not capable of discharging his functions in the promoted post of Assistant Manager (Administration). He was denied promotion only on the ground of the superior assessment that had been made in favour of Ram Kumar, which, in our view, runs contrary to the concept of seniority-cum-merit.

(13) Controverting the contentions raised on behalf of the petitioners, the State has relied upon amended Rule 18 of the 1994 Rules. Reliance is placed upon Clause B of Rule 18 introduced vide amendment notification dated 18.12.2001, however, this amended rule was made applicable w.e.f. 6.9.2001. Clause B of Rule 18 deals with the promotion to the posts falling in Group-A other than Head of the Department. By virtue of the amended Rule 18 the concept of minimum bench marks was introduced for promotion to Group-A posts other than the Head of Department and the minimum bench mark provided was 'Very Good' as per the Govt. Instructions issued by the Govt. from time to time. The Rule further provides that there will be no supersession on the basis of merit. The purpose for introduction of amendment in Rule 18 retrospectively from 6.9.2001 is to adopt the Govt. Instructions dated 6.9.2001, earlier issued by the Govt., whereby the concept of minimum bench mark was introduced without any statutory backing. Rule 6 of 1994 Rules which is also relevant, is reproduced hereunder:-

“6. **Qualifications etc.**- Subject to the provisions of these rules, the number and character of posts, method of recruitment and educational qualifications and experience for appointment to a

(3) AIR 1968 SC 1113

(4) 1998 (6) SCC 720

(5) 2004 (9) SCC 286

(6) AIR 1967 SC 1910

(7) 2006 (6) SCC 145

post or posts in a Service and the departmental examination, if any, shall be such as may be specified in the Service Rules made for that service.

Original rules were amended vide Notifications No. G.S.R. 115/Const./Art.309/Amd.(6) 2001 and No.G.S.R.117/Const./Art.309/Amd. (7)/2001. Vide these notifications, following amendments have been introduced:-

“The 18th December, 2001

NO.G.S.R.115/Const./Art.309/Amd. (6)2001.

2. In the preamble of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 for the figures, sign and words “Class I, Class II and Class III, the sign and words “Group ‘A’, Group ‘B’ and Group ‘C’ shall be substituted.

The 18th December, 2001

No.G.S.R.117/Const./Art.309/Amd. (7)/2001)

- (ii) They shall be deemed to have come into force on and with effect from the 6th day of September, 2001.”

(14) This rule clearly provides that character of post, method of recruitment and educational qualifications and experience for appointment to a post in a service etc. shall be as may be specified in the service rules. The service rules further defined in 1994 Rules means a Class-I, Class-II and Class-III service constituted in connection with the affairs of the State under Rule 2(g) of 1994 Rules. However, the application of service rules is again made subject to the provisions of 1994 Rules as Rule 6 starts with the expression “subject to the provisions of these rules”. This means that even in the matter of qualification, experience and method of recruitment as may be provided in the service rules will again be subject to the 1994 Rules. In addition to Rules 6 and 18, referred to above, Rule 20 further gives overriding effect to 1994 Rules in respect to the recruitment and conditions of service for appointment to public service.

(15) It is also noticed that Rule 8 of the 2004 Rules further makes 1994 Rules applicable to the extent not specifically provided for in the service rules. Rule 8 reads as under:-

“8. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994-(1) In respect of the matters, which are not specifically provided in these rules, the members of the service shall be governed by the provisions of the Punjab Civil Services (General & Common Conditions of Service) Rules, 1994 as amended from time to time.”

(16) Thus, from the conjoint reading of Rules 6, 18 and 20 of the 1994 Rules and Rule 8 of 2004 Rules, it appears that in all those matters, where there is no provision in the service rules of 2004 and there is any specific/additional provision under 1994 Rules, predominantly 1994 Rules will operate and service rules will remain subservient to the 1994 Rules, though, these rules generally deal with the conditions of service. It is in the light of the aforesaid statutory provision the applicability of Govt. Instructions dated 6.9.2001 is to be construed. By virtue of amended Rule 18 the concept of minimum bench marks has been introduced and Rule 18 further refers to the Govt. Instructions issued from time to time. Thus, the Govt. Instructions issued, form part of the Rule 18 of the 1994 Rules.

(17) In the given scenario of the statutory provisions particularly by virtue of Rule 18 (b) minimum bench mark could be provided particularly in absence of any challenge to Rule 18 (b). It is not a case, where by issuing the executive instructions simplicitor the statutory rules are being over ruled or altered. When the judgement in Ravi Dutt Mehra's case (supra) was delivered by this Court, it was not brought to the notice of the Court that Rule 18 was made applicable w.e.f. 6.9.2001 when the Govt. Instructions were issued and thus the validity of the Govt. Instructions was examined considering the same to be in the realm of simply executive instructions. This was particularly in view of condition no.2 of instructions dated 6.9.2001 which required amendment of statutory rules. However, in view of the fact that amended Rule 18 itself adopts the Govt. Instructions dated 6.9.2001 the notification dated 6.9.2001 ceases to be a simplicitor executive instruction but attain the status of statutory provision by virtue of amended Rule 18 (b). Thus, the judgement in Ravi Dutt Mehra's case (supra) does not help the petitioners in the present case.

(18) Even if, it is presumed that the Govt. Instructions dated 6.9.2001 cannot be pressed into service to introduce minimum bench marks, Rule 18 (b) is self sufficient to introduce the concept of minimum bench marks as the Rule 18 itself speaks of minimum bench mark i.e. 'Very Good'. Govt. Instructions dated 6.9.2001 has only introduced grading of the A.C.Rs and nothing more. The minimum bench marks are introduced by virtue of Rule 18(b) itself. Even in absence of the Govt. Instructions the concept of bench marks does exist under Rule 18 (b) i.e. 'Very Good'. Grading of A.C.Rs is prerogative of employer and is well within its right to adopt any grading method for introduction of the bench marks contemplated by Rule 18(b).

(19) I have no hesitation in saying that all the relevant aspects and statutory provisions were not thoughtfully considered while deciding the case of Ravi Dutt Mehra (*supra*).

(20) The concept of rule of seniority-cum-merit has also been considered by the Hon'ble Supreme Court in some recent judgements in case of **Rajendra Kumar Srivastava and others versus Samyut Kshetriya Gramin Bank and others (8)**. In this case, Hon'ble Supreme Court considered the principle of seniority-cum-merit as distinct from seniority alone and merit-cum-seniority. While considering the principle of seniority-cum-merit, following observations have been made:-

"11. It is also well settled that the principle of seniority-cum-merit, for promotion, is different from the principle of 'seniority' and principle of merit-cum-seniority'. Where promotion is on the basis of seniority alone, merit will not play any part at all. But where promotion is on the principle of seniority-cum-merit, promotion is not automatic with reference to seniority alone. Merit will also play a significant role. The standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority. The minimum merit

necessary for the post may be assessed either by subjecting the candidates to a written examination or an interview or by assessment of their work performance during the previous, or by a combination of either two or all the three of the aforesaid methods. There is no hard and fast rule as to how the minimum merit is to be ascertained. So long as the ultimate promotions are based on seniority, any process for ascertaining the minimum necessary merit, as a basic requirement, will not militate against the principle of seniority-cum-merit.

13. *Thus it is clear that a process whereby eligible candidates possessing the minimum necessary merit in the feeder posts is first ascertained and thereafter, promotions are made strictly in accordance with seniority, from among those who possess the minimum necessary merit is recognised and accepted as complying with the principle of 'seniority-cum-merit'. What would offend the rule of seniority-cum-merit is a process where after assessing the minimum necessary merit, promotions are made on the basis of merit (instead of seniority) from among the candidates possessing the minimum necessary merit. If the criteria adopted for assessment of minimum necessary merit is bona fide and not unreasonable, it is not open to challenge, as being opposed to the principle of seniority-cum-merit. We accordingly hold that prescribing minimum qualifying marks to ascertain the minimum merit necessary for discharging the functions of the higher post, is not violative of the concept of promotion by seniority-cum-merit."*

(21) In case of **Haryana State Warehousing Corporation (supra)** the Hon'ble Mr. Justice Cyriac Joseph while concurring with the conclusion of Hon'ble Mr. Justice Altamas Kabir separately considered the principle of seniority-cum-merit and observed as under:-

- "22. *Thus it is the settled position that the criterion of seniority-cum-merit is different from the criterion of merit and also the criterion of merit-cum-seniority. Where the promotion*

is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone. If he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted. Seniority-cum-merit means that, given the minimum necessary merit required for efficiency of administration, the senior, though less meritorious, shall have priority in the matter of promotion and there is no question of a further comparative assessment of the merit of those who were found to have the minimum necessary merit required for efficiency of administration. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employees. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be considered for promotion on the basis of seniority-cum-merit. The concept of “seniority-cum-merit” postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed and, subject to fulfilling the said requirement, promotion is based on seniority. There is no further assessment of the comparative merits of those who fulfil such requirement of minimum merit or satisfy the benchmark previously fixed. On the other hand, the principle of “merit-cum-seniority” puts greater emphasis on merit and ability and seniority plays a less significant role. Seniority is given weightage only when merit and ability are more or less equal among the candidates considered for promotion.”

(22) The above principle laid down by the Hon’ble Supreme Court even emanate from Rule 5 (3) of 2004 Rules which inter alia mentions that seniority alone will not be basis for promotion. Thus, even when the principle of seniority-cum-merit applies, there is some element of merit which the officer may be required to possess for bringing efficiency in the service. It is in this view of the matter that seniority alone has not been considered as the sole basis for promotion even under Rule 5 (3). A distinction is to

be drawn between principle of seniority alone and seniority-cum-merit as observed by the Hon'ble Supreme Court in the above mentioned judgement. There is another relevant aspect, even Rule 18 of 1994 Rules whereby the minimum bench marks have been introduced clearly provides that there shall be no supersession on the basis of merit. The concept of this expression is that where the employees are required to achieve minimum bench marks, there cannot be any further comparison of merit between such employees who acquire minimum bench marks. After the employee achieved the minimum bench marks then rule of seniority has to prevail which is the objective and logical principle underlining the rule of seniority-cum-merit and perhaps could be the only realistic purpose of this principle. This view has been adopted by this court in **CWP No. 14309 of 2010** titled as **Dr. Darshan Singh vs. State of Punjab & others** decided on 11.5.2011.

(23) It is lastly contended on behalf of the petitioners that they have been deprived of their right of consideration by not communicating their adverse reports and thus all such adverse reports cannot be relied upon to deny them the promotion.

(24) As a matter of fact, there are no adverse reports against the petitioners. They have not been graded below 'Good'. Though, some of them have been graded as 'Very Good' also for some years. To support their contentions, petitioners have relied upon a judgement of Hon'ble Supreme Court reported as **Dev Dutt versus Union of India & others (9)**. In this case the Hon'ble Supreme Court issued directions for making available all the entries in the A.C.Rs of a public servant. The relevant directions read as under:-

"14. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when

(9) J.T 2008 (7) SC 463

comparative merit is being considered for promotion (or some other benefit) a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry.

15. *In most services there is a gradation of entries, which is usually as follows:*

- (i) Outstanding
- (ii) Very Good
- (iii) Good
- (iv) Average
- (v) Fair
- (vi) Poor

A person getting any of the entries at items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the concerned authority.

16. *If we hold that only 'poor' entry is to be communicated, the consequences may be that persons getting 'fair', 'average', 'good' or 'very good' entries will not be able to represent for its upgradation, and this may subsequently adversely affect their chances of promotion (or get some other benefit)."*

(25) Relying upon the aforesaid observations, it is contended that the petitioners have been deprived of making a representation against their A.C.Rs and on account of no communication, they have not been able to improve, thus, there has not been fair consideration of their claims for promotion. This judgement was delivered on 12.5.2008. Prior to the aforesaid judgement, the only concept known to service jurisprudence was communication of adverse A.C.Rs. However, by virtue of the directions contained in the aforesaid judgement, it has become obligatory upon the authorities/public employer to communicate all A.C.Rs. This judgement is, however, prospective in nature and cannot be applied retrospectively for

the period prior to the judgement. However, where the A.C.Rs of petitioners after delivery of the judgement have been taken into consideration for determining the bench marks without communicating the same to them, perhaps they may have a grievance of non-communication of their A.C.Rs. This aspect shall be examined by the respondents and where the A.C.Rs have not been communicated for the period under consideration for promotion, such of the petitioners will be communicated their all A.C.Rs irrespective whether there is anything adverse or not and after seeking their explanation, after providing them an opportunity to represent and on consideration of such representations, their cases may be re-considered.

(26) In so far the introduction of minimum bench marks while applying the principle of seniority-cum-merit is concerned is not contrary of any rule, thus, cannot be faulted with. This is in particular reference to the Education Department, where the teachers are to produce the students, who are the future of the nation. The education in any country is necessary for the development of the country as a whole as the education has great role to play in personality development of an individual, irrespective of the field to which he belongs or may ultimately join. The relevance and importance of the education has been considered by the Hon'ble Supreme Court in a recent judgement reported as 2011 (3) SCC 436 titled as State of Orissa and another Vs. Mamata Mohunty. While dealing with the significance and importance of education the Hon'ble Supreme Court observed as under:-

“33. In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Govt. provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.”

(27) Similarly dealing with the experience of teaching staff the Hon'ble Supreme Court observed as under:-

“34. Article 21-A has been added by amending our Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most suitable persons is essential in order to maintain excellence and the standard of teaching in the institution. It is not permissible for the State that while controlling the education it may impinge the standard of education. It is, in fact, for this reason that norms of admission in institutions have to be adhered to strictly.”

(28) The post of Principal is a significant post for variety of reasons. The Principal is not only an administrative head of an institution but also is concerned with the academic excellence in the institution. It is with this objective that the post of Principal has been brought under Group-A post not merely for purpose of salary but for bringing efficiency and excellence in the institution itself. Thus, higher standards of excellence is demanded from an incumbent who occupies the post of Principal, who heads the institution for its overall monitoring, supervision and academic excellence. Introduction of minimum bench marks in Group-A post is not only needed but in fact is imperative.

(29) In the above factual and legal background, action of the respondents to introduce minimum bench marks cannot be interfered with. In any case Rule 18 of 1994 Rules is not under challenge. These writ petitions are, accordingly, disposed of with a direction to the State respondents to re-consider the cases of such of the petitioners who have not been communicated their A.C.Rs for the period in question, if, such period falls after 12.5.2008 i.e the date of delivery of judgement in Dev Dutt's case (supra). However, wherever the petitioners have been communicated their A.C.Rs for the period under consideration for purposes of their promotion, the writ petitions shall stand dismissed.

(30) Copy of this judgement be placed on each connected file.

J.S. Mehndiratha