

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR.**

**SINGLE BENCH:**      **JUSTICE SUJOY PAUL**

**W. P. No. 21972/2015**

*Ashok Kumar Sharma*

*Vs.*

*State of M.P. & others*

**W. P. No. 732/2016**

*Prakash Kumar Pandey*

*Vs.*

*State of M.P. & others*

**W. P. No. 1215/2016**

*Ajay Kumar Pandey*

*Vs.*

*State of M.P. & others*

**W. P. No. 2222/2016**

*Mukesh Nema*

*Vs.*

*State of M.P. & others*

**W. P. No. 2542/2016**

*Mohan Lal Panika*

*Vs.*

*State of M.P. & others*

W.P. No. 21972 of 2015 & connected

**W. P. No. 5747/2016**

*Pushpendra Kumar Pathak*

*Vs.*

*State of M.P. & others*

**W. P. No. 6949/2016**

*Vinod Kumar Mishra*

*Vs.*

*State of M.P. & others*

**W. P. No. 8409/2016**

*Subhash Daharwal*

*Vs.*

*State of M.P. & others*

**W. P. No. 9506/2016**

*Vijay Pratap Singh*

*Vs.*

*State of M.P. & others*

**W. P. No. 9541/2016**

*Mahendra Kumar Gupta*

*Vs.*

*State of M.P. & others*

**W. P. No. 9613/2016**

*Shankar Patel*

*Vs.*

*State of M.P. & others*

**W. P. No. 10400/2016**

*Lok Singh Marko*

*Vs.*

*State of M.P. & others*

**W. P. No. 10492/2016**

*Bheemrao Dhote*

*Vs.*

*State of M.P. & others*

**W. P. No. 10712/2016**

*Parvez Khan*

*Vs.*

*State of M.P. & others*

**W. P. No. 10774/2016**

*Vinay Kumar Pandey*

*Vs.*

*State of M.P. & others*

**W. P. No. 11836/2016**

*Vivek Singh*

*Vs.*

*State of M.P. & others*

**W. P. No. 12090/2016**

*Vinod Vaid*

*Vs.*

*State of M.P. & others*

**W. P. No. 12426/2016**

*Ramyash Sahu*

*Vs.*

*State of M.P. & others*

**W. P. No. 12567/2016**

*Jaipal Jhariya*

*Vs.*

*State of M.P. & others*

**W. P. No. 13273/2016**

*Devi Singh Kewat*

*Vs.*

*State of M.P. & others*

**W. P. No. 13404/2016**

*Raj Kumar Chadhar*

*Vs.*

*State of M.P. & others*

**W. P. No. 14813/2016**

*Shankar Prasad Kushwaha*

*Vs.*

*State of M.P. & others*

**W. P. No. 17410/2016**

*Lokram Jaitwar*

*Vs.*

*State of M.P. & others*

W.P. No. 21972 of 2015 & connected

**W. P. No. 17613/2016**

*Prakash Chandel*

*Vs.*

*State of M.P. & others*

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Shri S.K. Dubey, learned counsel for the petitioners in WP. No.21972/15 & 1215/16.

Shri Siddharth Gulatee, learned counsel for the petitioners in WP. No.732/15 & 2542/16.

Shri V.D.S. Chouhan, learned counsel for the petitioners in WP. No.9506/16, 10400/16 & 10774/16.

Shri Rajesh Prasad Dubey, learned counsel for the petitioners in remaining W.Ps.

Shri Pushpendra Yadav, learned Government Advocate for the respondents/State.

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**(Order)**  
**09/12/2016**

These batch of petitions were analogously heard on the joint request of parties and disposed of by this common order. The facts are taken from WP. No.13404/16.

2. The petitioners are Adhyapaks and are presently working on the post of Jan Sikshak and Block Academic Coordinator (BAC). The petitioners are aggrieved by the offending portion of the advertisement whereby the respondents have deprived them from consideration for the post of Jan Shikshak and BAC.

3. Shri R.P. Dubey, Shri S.K. Dubey, Shri Siddharth Gulatee and Shri V.D.S. Chouhan, learned counsel for the petitioners advanced singular contention. By taking this Court to the advertisement/instructions dated 30-10-2015 (Annexure P/2), they submit that the petitioners are eligible for consideration for the post of Jan Shikshak and BAC. The decision of the

respondents to deprive such Jan Shikshaks and BACs, who have already worked on the said post is arbitrary and violative of Article 14 of the Constitution. Reliance is placed on Jan Shiksha Niyam, 2003 brought into force by invoking the provision of M.P. Jan Shiksha Adhiniyam, 2002. It is the common ground that there is no justification in depriving the petitioners from right of consideration when they are otherwise eligible.

4. Shri Pushendra Yadav, learned Government Advocate supported the offending portion of the order dated 30-10-2015. Shri Yadav submits that the petitioners were already appointed as Jan Shikshak/BAC. At that point of time also, there was a condition that a candidate who has earlier worked as Jan Shikshak/BAC cannot be appointed. He submits that the action of the respondents is in consonance with law and such a policy decision cannot be interfered with.

5. No other point is pressed by the parties.

6. I have heard the parties at length and perused the record.

7. Before dealing with rival contentions, it is apt to quote Rule 13 of Jan Shiksha Niyam, 2003 which reads as under:-

*“(1) Each Jan Shiksha Kendra shall have two Jan Shikshak to act as co-ordinator between Kendra and its schools. The Upper Division Teacher or Adhyapak shall be selected for the post of Jan Shikshak. A committee shall be formed to select Jan Shikshak.*

*(2) Jan Shikshak shall be selected from amongst Upper Division Teachers and Adhyapaks.*

*(3) The Jan Shikshak shall be nominated for a minimum period of 3 years. After the stipulated period of 3 years the Jan Shikshak may continue to hold the post till the nomination of his successor.*

*(4) The Janpad Shiksha Kendra can remove the Jan Shikshak with the permission of the Zila Shiksha Kendra if he/she is irresponsible towards his/her duties, found incompetent to perform the expected activities and due to other administrative reasons.*  
*(Emphasis supplied)*

8. The eligibility conditions and selection procedure (relevant portion) mentioned in the impugned order reads as under:-

“पद की अर्हता

- उच्च श्रेणी शिक्षक/अध्यापक
- आयु—दिनांक 1.1.2016 को 49 वर्ष से अधिक न हो।
- संबंधित के विरुद्ध कोई विभागीय जॉच, अपराधिक प्रकरण एवं लम्बे समय से लगातार अनुपस्थिति की शिकायत आदि प्रचलित न हो।
- प्रतिनियुक्ति/निर्देशन अवधि—अधिकतम चार वर्ष।

चयन प्रक्रिया

- चयन हेतु प्राचार्य, डाईट, जिला परियोजना समन्वयक, जिला शिक्षा अधिकारी/सहायक आयुक्त, आदिवासी विकास विभाग द्वारा नामांकित प्रतिनिधि एवं सहायक परियोजना समन्वयक (अकादमिक) की चयन समिति गठित की जाए। समिति में जिले के कलेक्टर द्वारा भी अपना प्रतिनिधि नामांकित किया जाएगा।
- जिला शिक्षा अधिकारी/सहायक आयुक्त आदिवासी विकास विभाग/मुख्य कार्यपालन अधिकारी जिला पंचायत/मुख्य नगरपालिका/नगर पंचायत अधिकारी/आयुक्त नगर निगम से उपरोक्तानुसार अर्हतायें पूर्ण करने वाले ऐसे उच्च श्रेणी शिक्षक/अध्यापक की सूची दिनांक 18.11.2015 तक प्राप्त की जाए।
- समिति द्वारा जिले में स्कूल शिक्षा विभाग/आदिवासी विकास विभाग में कार्यरत गणित/विज्ञान विषय समूह तथा कला विषय समूह के ऐसे उच्च श्रेणी शिक्षक/अध्यापक जिनके विरुद्ध कोई गंभीर अनियमितता की कार्यवाही प्रचलित न हो तथा जो पूर्व में विकासखण्ड अकादमिक समन्वयक एवं जनशिक्षक के पद पर कार्यरत न रहे हो, की पृथक-पृथक विषय समूहवार उच्च श्रेणी शिक्षकों हेतु वरिष्ठता के आधार पर एवं अध्यापक संवर्ग हेतु एजुकेशन पोर्टल द्वारा नियुक्ति दिनांक के आधार पर वरीयता सूची तैयार की जावे। सूची में उच्च श्रेणी शिक्षक वरीयता क्रम में ऊपर रखे जावे तथा जिले में विकास खण्ड अकादमिक समन्वयक एवं जनशिक्षक के पदों की संख्या की तिगुनी संख्या की सूची तैयार की जावे। यह सूची जिला शिक्षा केन्द्र कार्यालय के सूचना पटल पर दिनांक 27/11/2015 को चरपा की जावे। वरीयता सूची में विकास खण्ड अकादमिक समन्वयक एवं जनशिक्षक के पदों की संख्या की दोगुनी संख्या तक शामिल उच्च श्रेणी शिक्षकों/अध्यापकों को 10/12/2015 को काउंसलिंग हेतु जिला स्तर पर स्थल नियत कर आमंत्रित किया जाए।”

*(Emphasis supplied)*

9. The pivotal question before this Court is whether the respondents are justified in inserting the condition that the persons who have earlier worked as Jan Shikshak/BAC are not entitled for consideration. The Rule 13 of Jan Shiksha Niyam, 2003 does not debar such Jan Shikshaks or BACs who have earlier worked in the said capacity. In other words, as per Rule 13 aforesaid, UDCs and Adhyapaks who are eligible as per rule can submit their candidature. By way of executive instruction dated 30-10-2015, the

respondents have put a condition that the persons who have earlier worked as Jan Shikshak or BAC cannot be considered.

10. This is settled in law that a policy decision can be taken by the government and scope of judicial review on such policy decision is limited. The policy can be interfered with, if it violates any statutory provision or infringes any fundamental right of a citizen. A policy decision can be declared as unconstitutional/illegal, if it is arbitrary and has no rationale or justification.

11. The petitioners and other candidates, who are eligible as per the scheme can submit their candidature for the post of Jan Shikshak/BAC. However, the respondents classified the present persons in a different category on the ground that they earlier worked as Jan Shikshak/BAC. The question is whether such a classification is permissible. A Constitution Bench of Supreme Court in *AIR 1954 SC 191 ( Budhan Choudhry & others vs. State of Bihar)* opined that Article 14 of the Constitution forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the provision in question. It is further held that what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. If the classification made in the present case is tested on the anvil of said acid test laid down by Supreme Court, it will be clear that impugned classification is unreasonable and has no nexus with the object sought to be



achieved. The respondents have completely failed to show any justification in making such classification. Thus, in my view, the respondents have created a class within the class. In other words, they have divided a homogenous class of eligible candidates without there being any justification for it. This action of the respondents in depriving the petitioners from their right of consideration cannot be upheld.

13. In view of aforesaid analysis, the offending portion of the advertisement which deprives the petitioners from right of consideration as Jan Shikshak cannot be countenanced. The same is hereby set aside. In these batch of petitions pursuant to interim orders, the petitioners have already participated in the selection. Their fate was kept in the sealed cover. Accordingly, the respondents are directed to declare the result of the petitioners who are otherwise eligible and pass appropriate order thereupon.

14. The petitions are allowed. Registry shall keep photocopy of this order in all connected matters. No cost.

**(Sujoy Paul)**  
**Judge**