

SUPREME COURT OF INDIA

S.Sivaguru

Vs.

State of Tamil Nadu

C.A.Nos.4483-4485 of 2013

(Surinder Singh Nijjar and H.L.Gokhale JJ.)

07.05.2013

JUDGMENT

SURINDER SINGH NIJJAR,J.

1. Leave granted in all the Special Leave Petitions.
2. These appeals are directed against the common judgment and final order dated 23rd July, 2010 passed by the High Court of Judicature at Madras in Writ Petition Nos. 23893 of 2006, 34401 of 2007, 8339, 12654, 14592, 17578, 25844 and 27982 of 2008 and Writ Appeal No.312 of 2008 and connected misc. petitions. By this order, the High Court dismissed the Writ Petition Nos. 23893 of 2006 and 34401 of 2007 and allowed the Writ Petition No.17578 of 2008 filed by respondents 3 to 5 and also Writ Appeal No.312 of 2008.
3. Since the facts involved in the controversy in all the appeals are common, we shall make a reference to the facts as narrated by the High Court. This shall be supplemented by any additions made by the appellants in this Court.
4. The facts noticed by the High Court are that initially the Health Department consisted of Multipurpose Health Workers and Unipurpose Health Workers who were engaged in various schemes for eradication of different diseases which were widespread throughout India. By an order dated 29th September, 1982, Unipurpose Workers were integrated as Multipurpose Health Workers. On 4th November, 1988, there was a subsequent integration of employees engaged in the family welfare. Soon thereafter, statutory rules were notified under the proviso to Article 309 by the G.O.Ms. No.1507 dated 16th August, 1989 which were made applicable

to the Multipurpose Health Workers Scheme. Under the rules, different Class I and Class II posts were notified and their essential qualifications were prescribed. The essential qualification for appointment to the post of Multipurpose Health Assistant was SSLC and long term Multipurpose Health Worker's Training Course Certificate or possession of Sanitary Inspector's Course Certificate and short term training course certificate from multipurpose health workers training. It was further provided that the candidates will have to acquire the long time training course within five years from the date of appointment. The essential qualifications were also prescribed for all other posts. By an amendment dated 19th November, 1990 (G.O.No.1984), the pay scales of Multipurpose Health Assistant were re-fixed. On 13th August, 1991, the Health and Family Welfare Department by G.O. No.1123 prescribed the qualifications for promotions of Multipurpose Health Supervisors as Block Health Supervisors. Vide G.O.Ms. No.4 dated 4th January, 1993 some of the categories were added in the feeder posts of Multipurpose Health Supervisor and Multipurpose Health Workers. These rules were, however, applicable only to those who joined the service under the Tamil Nadu Public Health Services.

5. Again the Health and Family Welfare Department, through G.O. No. 593 dated 11th September, 1995, categorized Multipurpose Health Supervisors and Multipurpose Health Assistants as Health Inspectors Grade I and Grade II. The G.O. further provided that all Multipurpose Health Assistants were to be promoted as Multipurpose Health Supervisors provided they had served on the post for 20 years and had crossed the age of 50 years. This relaxation was given as a one time measure by upgradation of the post. It is pertinent to mention here that the Multipurpose Health Assistants promoted under this G.O. included the Unipurpose Health Workers who had been absorbed pursuant to the integration in 1982. The aforesaid G.O. No.593 was challenged by certain aggrieved persons in Writ Petition Nos. 17550 of 2006 and 25608 of 2006. Prior to this, the rules were amended on 20th December, 1995 w.e.f. 6th September, 1989 by G.O. No.782. It was, however, made clear that the amendment shall not adversely affect those who were holding the post prior to 16th August, 1989.

6. The inter se dispute between the parties in the present appeals originated when the fact of successful eradication of leprosy by the National Leprosy Eradication Programme (NLEP) led to the integration of the employees working in the said Scheme into the Multipurpose Health Workers Scheme. The integration of the Multipurpose Health Workers Scheme with the Leprosy Eradication Scheme took place vide G.O. Ms. No.320, Health and Family Welfare (G-1) Department dated 27th June, 1997. The G.O. sets out the rationale for the integration as follows:-

“The National Leprosy Eradication Programme is in operation in Tamil Nadu from 1955. With the introduction of the Multi Drug Therapy (MDT) comprising these drugs. DAPSONE, RIFAMPICIN and CLOFAZIMINE, incidence of leprosy has been brought down considerably. Tamil Nadu has done a commendable work in the leprosy control Programme over the years. The prevalence of leprosy in Tamil Nadu was 118 per 10,000 in 1983 which has been reduced to 7 per 10,000. The reduction in prevalence rate for the last two years is not very significant. Recently, India hosted an International Meet on Eradication of leprosy and the Prime Minister has set a goal that the leprosy should be eradicated from India by 2000 A.D. The IWHO has also taken similar efforts globally. The eradication of leprosy means bringing down the prevalence rate to 1 per 10,000.”

7. Thus, the Government of India in 1990-91 had suggested integration of leprosy services. It was felt that in order to sustain leprosy services at the operational level, its integration with the public health services will be desirable. Integration would not result in abolition of special services. On the contrary, specialized component will continue to be available within the general health services at the State and District level for planning and evaluation, provision of training, technical supervision, advice, referral services and research. The purpose of this integration would be to involve the Leprosy Field Staff in Public Health Work and Health Inspectors in the leprosy work, so that the leprosy inspector will cover a population of 5,000 to 10,000 as against 25,000 which was being covered at that time by the leprosy inspectors. The Government of Tamil Nadu had also upon considering, for quite some time, the question of integrating the leprosy services with Multipurpose Health Workers Scheme, under the Primary Health Care Services, constituted a committee by the G.O.Ms. No. 1705 dated 18th December, 1996 to go into the various aspects of integration and submit a report. The recommendations submitted by the aforesaid Committee were examined by the Government and accepted with some modifications.

Thus, the G.O. (Ms.) No. 320 dated 27th June, 1997 was issued integrating Leprosy Control Scheme with Multipurpose Health Workers Scheme. The G.O. made elaborate provisions with regard to: (i) the administrative control of the National Leprosy Eradication Programme, which was to be vested with the Director of Public Health and Preventive Medicine, who was to be responsible for the implementation of the National Leprosy Eradication Programme activities in the State. At the District level, the Deputy Director of Medical Services (Leprosy) would be the in-charge of the hospital based units and would be the Programme Officer, assisted by Deputy Director

(Health Services), and (ii) the Salary and other components of the programme staff. It was further provided that Salary and other components of the programme staff under the control of Deputy Director of Medical Services (Leprosy) will be met from the existing allotment under Demand-18. Paragraph 4(vii) of the aforesaid G.O. was as under:-

“The posts of Health Educator, Non Medical Supervisor and Leprosy Inspectors re-designated as Health Inspector Grade IB are brought under the control of Director of Public Health and Preventive Medicine for programme implementation. However, separate seniority shall be maintained for these staff and the promotions of the respective categories will continue in the existing channels (sic).”

8. The other relevant clause would be 5(iv), which is as under:-

“Leprosy Inspectors: The Leprosy Inspectors will be redesignated as Health Inspector Grade IB and will be transferred to the Directorate of Public Health and Preventive Medicine. They will be posted to the Health Sub-Centres covering a population of about 10,000 one for 2 Health Sub-centres or at one for 5,000 population in problem areas. The scale of pay of this category of staff will continue to be in the existing scale of pay of Rs.1200-30-1560-40-2040. However, in order to protect their present emoluments they will be allowed special allowances of Rs. 50/- per month and the existing Health Inspector Grade I under the control of Director of Public Health and Preventive Medicine will be re-designated as Health Inspector Grade IA in the Scale of pay Rs.1350-30-1440-1800- 50-2200. The Health Inspector Grade IB will attend to and undertake various Public Health activities as per the Job chart for Health Inspector Grade IA in Health Grade IA and Grade II will also attend to Leprosy Control Work apart from their existing duties after necessary training. The Director of Public Health and Preventive Medicine will issue necessary further orders prescribing revised job chart for the Health Inspector Grade IA, Health Inspector Grade IB and Health Inspector Grade II.”

9. Similarly provision was made for absorption of Ministerial staff in Clause 6 of the G.O. in the following terms:-

“Ministerial Staff: One of the two sections at the State Head quarters will be transferred to the Office of the Director of Public Health and Preventive Medicine to look after the service matters of the Leprosy staff other than

those coming under Director of Medical and Rural Health Services. Further one Assistant will be transferred from the Office of the Deputy Director (Lep.) to the Deputy Director of Health Services in the Districts. The administrative control of the above staff will vest with the Director of Public Health and Preventive Medicine. The remaining ministerial staff sanctioned for Leprosy Control Programme will be transferred and posted to the institutions under the control of Director of Medical and Rural Health Services. The establishment matters of all the ministerial staff including the staff attached to the Director of Public Health and Preventive Medicine will, however, continue to be with the Director of Medical and Rural Health Services for the purpose of future promotions in the respective categories. The salary and allowances of the ministerial staff attached to the Director of Public Health and Preventive Medicine will be met from the existing budget allotment under Demand-10 Medical by Director of Public Health and Preventive Medicine. In respect of other ministerial staff salary and other allowances will be met by Director of Medical and Rural Health Services from the budget allotment under Demand-18 Medical.”

10. By Clause 8, even the transportation vehicles were transferred as under:-

“The Government direct that the 102 vehicles along with drivers working in the Leprosy Control units shall be transferred to the Director of Public Health and Preventive Medicine.”

11. By Clause 10, all the Government buildings occupied by the Government Leprosy Control Units were placed under the control of the Director of Medical and Rural Health Services along with the equipment and furniture for expansion of Taluka hospitals, except in places where the buildings were required for the office of the Deputy Director of Health Services. Under Clause 11, the Director of Public Health and Preventive Medicine was also directed to take immediate action to impart necessary training to the leprosy staff in various public health activities. Similarly, the Public Health staff was directed to be trained in leprosy control activities. By Clause 13, it was directed that the integration of the Leprosy Control Programme with the Director of Public Health and Preventive Medicine will take effect from 1st July, 1997. It appears that upon issuance of the G.O., the merger was completed by 1st August, 1997. It would be apparent from Clause 5(iv) of the 1997 G.O. that the Leprosy Inspectors were designated as Health Inspector Grade IB and transferred to the Directorate of Public Health and Preventive Medicine. They were to be paid according to their existing scale of pay of Rs.1200-30-1560-40-2040. In order to protect their present emoluments, they were given special

allowance of Rs.50/- per month. The existing Health Inspectors Grade I under the control of Director of Public Health and Preventive Medicine were designated as Health Inspectors Grade IA. They were in the pay-scale of Rs.1350-30-1440-1800-50-2200. It is also apparent that the Health Inspectors Grade IB were to undertake various public health activities as per the job chart for Health Inspector Grade IA. Furthermore, Health Inspectors Grade IA and Grade II were to attend to leprosy control work apart from their existing duties after necessary training. Thereafter, the issue with regard to the merger of the two categories of Health Inspectors Grade IA and Grade IB into a single category was to be examined at the time of the next Pay Commission. But it appears that the issue was not examined in the official Committee of 1998. From the above narration, it becomes clear that there was complete integration of the Leprosy Control Scheme with the Multipurpose Health Scheme through the G.O.Ms. 320 dated 27th June, 1997. Also, the fact that non-possession of Sanitary Inspector Course by the Leprosy Inspectors was not viewed with any serious concern is evident from the fact that the 1997 scheme was never challenged by the appellants.

12. Thereafter, the Director of Public Health and Preventive Medicine in his letters dated 17th February, 2006 and 15th July, 2006 set proposals for redesignation of post of Health Inspectors Grade IB as Health Inspector Grade I considering their length of service in the department, without imparting any training to them. He had suggested the aforesaid proposal for administrative convenience. At the same time, the Public Health Department Officials Association (Leprosy) had been requesting the Government repeatedly for re-designating them as Health Inspector Grade I. By letter dated 24th January, 2006, the Government requested the Director of Public Health and Preventive Medicine to send the necessary detailed proposal for imparting in-service training for a period of one week for all the Health Inspectors Grade IB so as to re-designate them as Health Inspectors Grade I. The proposal was also to include detail of expenditure involved in the proposed training and where the expenditure to be made out from the leprosy funds.

13. At this stage, some employees filed a number of writ petitions challenging the instructions issued in the Government letter dated 24th January, 2006 in the High Court of Madras. In its order dated 20th January, 2007, in M.P. Nos. 2 and 3 of 2006 in Writ Petition No. 23893 of 2006, the High Court directed that in redesignation made by the respondents shall be subject to the writ petition. At the same time, the High Court dismissed Writ Petition No. 7892 and 7893 of 2006 on 22nd March, 2006 with the observation that before any order is passed on the proposal, the State shall consider the objections of the petitioners therein. It appears that Writ Petition Nos. 6250 and 6251 of 2006 had also been filed at the

Madurai Bench of the Madras High Court in which a stay order had been granted on 1st August, 2006. The stay order was, however, vacated on 27th April, 2007. At the same time, the Tamil Nadu Health Inspectors Association had also given a representation raising their objection for redesignation of the Health Inspector Grade IB as Health Inspector Grade I.

14. Upon examination of the entire issue and taking into account the necessity for the merger of the Leprosy Control Scheme with Multipurpose Health Workers Scheme, the Government issued a further G.O. on 12th October, 2007 accepting the proposals of the Director of Public Health and Preventive Medicine to re-designate the Health Inspector Grade IB as Health Inspector Grade I for the purpose of administrative convenience and to allow the scale of pay of Rs.4500-125-7000. The aforesaid proposal was accepted through G.O.Ms. No. 382 dated 12th October, 2007. In this G.O., the rule relating to the possession of the Sanitary Inspectors Course (or) Multipurpose Health Worker (Male) Training Course was relaxed in favour of these Health Inspectors Grade IB to designate them as Health Inspector Grade I, without affecting the rights of the existing Health Inspector Grade I working in the Public Health Department. The conditions of absorptions were contained in Clause 6 of the aforesaid G.O. which is as under:-

“The Government has therefore decided to accept the proposals of the Director of Public Health and Preventive Medicine to re-designate the Health Inspectors Grade-I(B) as Health Inspector Grade-I for the purpose of administrative convenience and to allow the scale of pay of Rs.4500-125-7000. The rule relating to possession of Sanitary Inspector Course (or) Multi Purpose Health Worker (Male) Training Course is relaxed in favour of these Health Inspectors Grade-I(B) to designate them as Health Inspector Grade I, without affecting the rights of the existing Health Inspector Grade-I working in Public Health Department. The Government accordingly issue the following orders:

i) The post of Health Inspector Grade-I (B) shall hereafter be designated as Health Inspector Grade-I and the scale of pay of Rs.4500-125-7000 be allowed to them from the date of issue of the order.

(ii) Fixation of pay in the revised scale of pay shall be allowed only from the date of issue of orders under FR 23 at the same stage if there is a stage or next stage if there is no such stage. They are eligible for monetary benefits only from the date of issue of the Government order.

(iii) The above re-designation is subject to the result of Writ Petition No.23893/06 pending in the High Court of Madras and Writ Petition Nos. 6250 & 6251/06 pending before the Madurai Bench of Madras High Court.

(iv) These re-designated Health Inspector Grade-I will be placed in the seniority list of Health Inspector Grade-I below the last person of the Health Inspector Grade-I already working in the Department. As the re-designation as Health Inspector Grade-I is given only from the date of issue of the order in relaxation of rule relating to possession of sanitary inspectors course, these re- designated Health Inspector Grade-I cannot claim seniority now or in future in the post of Health Inspector Grade-I from the date of their absorption in the Public Health Department as per G.O.Ms. No. 320 Health dated:27.6.1997.

(v) The re-designated Health Inspector Grade I cannot claim promotion to the post of Block Health Supervisor, and Technical Personal Assistant till the last person in the existing list of Health Inspector Grade I gets promotion as Block Health Supervisor, and Technical Personal Assistant. However, the existing promotion channel as Non-Medical Supervisor and Health Educator shall be allowed to them till their turn for promotion to the post of Block Health Supervisor, Technical Personal Assistant, comes as per their seniority.”

15. At this stage, the respondents, i.e., the employees of the erstwhile Leprosy Control Scheme challenged the Clauses No. 4 and 5 of Para 6 of the aforesaid G.O. in Writ Petition Nos. 17578, 12654, 25844 and 27982 of 2008. Apart from the aforesaid challenge, the G.O.Ms. No. 382 was also challenged by the present appellant in Writ Petition No. 34401 of 2007.

16. It would be appropriate to notice here that the Government of Tamil Nadu issued G.O.(Ms.) No. 73 dated 28th February, 2008, whereby the Director of Public Health and Preventive Medicine was permitted to implement the orders of the High Court dated 21st November, 2007, wherein it was decided that only those Health Inspectors Grade I who had the Sanitary Inspector Course Certificate were entitled to be considered for promotion to the next post of Block Health Supervisor.

17. At the same time, the laboratory assistants, who were promoted as Health Inspectors Grade I; and the directly recruited Multipurpose Health Assistants, who were promoted as Health Inspectors Grade I filed a batch of writ petitions viz. Writ

Petition Nos. 2249, 10807, 17550 and 25608 of 2006 and 8987, 8988 and 9185 of 2007 with a prayer to restrain the department from drawing the panel for the post of Block Health Supervisor by including the names of Health Inspectors Grade I, who did not possess either Sanitary Inspector Course Certificate or Multipurpose Health Course Certificate. It is pertinent to note here that the Unipurpose Health Workers who got absorbed into Multipurpose Health Scheme in 1988 and were made Health Inspectors Grade I in 1999 did not possess the aforesaid certificates and this very fact was the grievance made against the said Unipurpose Health Workers. The petitioners in the aforesaid bunch of writ petitions were in possession of the said certificates. It was their case that since Unipurpose Health Workers were promoted as Health Inspectors Grade I as a one time measure after completing 20 years of services, they were not entitled to further promotion on the post of Block Health Supervisor. Their promotion was, therefore, sought to be challenged on the twin grounds that : (i) they did not possess the necessary certificate and (ii) they were already recipients of the benevolence of the Government in that they had been given promotion as Health Inspectors Grade I as a one time measure. A Single Judge of the High Court allowed the aforesaid Writ Petition on 21st November, 2007 accepting both the grounds raised in the writ petition. As noticed above, the Government accepted and implemented the aforesaid order of the learned Single Judge, through G.O.Ms. No. 73 dated 28th February, 2008. The aforesaid G.O. now prompted the Health Inspector Grade I (Erstwhile Unipurpose Health Workers), who were not in possession of the required certificate to challenge the same. They filed Writ Petition No. 8339 and 1459 of 2008 with a prayer for quashing the aforesaid G.O.Ms. No. 73. The same category also filed Writ Appeal No. 312 of 2008 challenging the order dated 21st November, 2007, passed by the Learned Single Judge, which had been implemented by the Government by issuing G.O.Ms. No. 73 of 28th February, 2008. All these matters were taken up for consideration by the Division Bench of the Madras High Court and decided vide judgment dated 23rd July, 2010. The aforesaid judgment has been challenged in the following Civil Appeals:- Civil Appeal No.4491 of 2013 arising out of SLP (C) No. 566 of 2011, Civil Appeal No. 4492 of 2013 arising out of SLP (C) No. 4572 of 2011, Civil Appeal No.4493 of 2013 arising out of SLP (C) No. 2179 of 2011, Civil Appeal No.4495 of 2013 arising out of SLP (C) No. 2183 of 2011, Civil Appeal No.4494 of 2013 arising out of SLP (C) No. 2188 of 2011, Civil Appeal No.4496 of 2013 arising out of SLP (C) No. 2191 of 2011, Civil Appeal No.4498 of 2013 arising out of SLP (C) No. 2194 of 2011, Civil Appeal No.4497 of 2013 arising out of SLP (C) No. 2196 of 2011, Civil Appeal No.4499 of 2013 arising out of SLP (C) No. 3485 of 2011, Civil Appeal No.4483 of 2013 arising out of SLP (C) No. 24492 of 2010, Civil Appeal No.4484 of 2013 arising out of SLP (C) No. 24493 of 2010, Civil Appeal

No.4485 of 2013 arising out of SLP (C) No. 24494 of 2010, Civil Appeal No.4487 of 2013 arising out of SLP (C) No. 25388 of 2010 and the connected appeals being Civil Appeal No.4486 of 2013 arising out of SLP (C) No. 25226 of 2010, Civil Appeal No.4488 of 2013 arising out of SLP (C) No. 25417 of 2010, Civil Appeal No.4489 of 2013 arising out of SLP (C) No. 26159 of 2010, Civil Appeal No.4490 of 2013 arising out of SLP (C) No. 25442 of 2010, Civil Appeal No.4500 of 2013 arising out of SLP (C) No. 15221 of 2011, Civil Appeal No.4501-4502 of 2013 arising out of SLP (C) No. 4710-4711 of 2012 and Civil Appeal No.4503-4504 of 2013 arising out of SLP (C) No. 10939-10940 of 2012.

18. By the impugned judgment, the Division Bench of the High Court has held that even though Unipurpose Health Workers had been given a concession of one time promotion, it would not act as an embargo on their subsequent promotion. Furthermore, the requirement of possession of certificate was waived only for absorption of Unipurpose Health Workers as Multipurpose Health Assistants. Thereafter, G.O.Ms. No. 4 dated 4th January, 1993 provided that the requirement of 5 years service as Basic Health Workers, Vaccinators, Cholera Workers in the Tamil Nadu Public Health Subordinate Service was sufficient for promotion to the post of Health Inspector Grade I. Similarly, 5 year's service in the post of Health Inspector Grade I was sufficient for promotion as Block Health Supervisor. The High Court emphasised that Rule nowhere contemplates that Health Inspector Grade I, who did not possess the required certificate could not be promoted as Block Health Supervisor. The only requirement of the Rule was that for promotion as Block Health Supervisor, the candidate shall have 5 year's service as Health Inspector Grade I. Consequently, the judgment of the learned Single Judge was set aside and G.O.Ms. No. 73 dated 28th February, 2008 was quashed. It was made clear that those Health Inspector Grade I who were not in possession of the Sanitary Inspector Course Certificate or Multipurpose Health Workers training Course Certificate are eligible for promotion to the post of Block Health Supervisor from the date on which their juniors were promoted with all benefits.

19. The Division Bench thereafter turned its attention to the main controversy between Health Inspector Grade I, who had been re-designated as Health Inspector Grade IA and Leprosy Inspectors, who had been re-designated as Health Inspectors Grade IB. The High Court has accepted the claim of the respondents that their absorption as Health Inspector Grade I had to be given effect to w.e.f. 1st August, 1997. The aforesaid conclusion of the High Court is based upon the rationale that upon integration, the nature of duties and responsibilities performed by Health Inspector Grade IA and Grade IB were one and the same. The fact that Grade IA was enjoying a higher scale of pay than the pay-scale of Inspector Grade IB was of

no relevance, for the purpose of equivalence of Posts. Whilst allowing the claim of the respondents and accepting that they have been absorbed as Health Inspector Grade I w.e.f. 1st August, 1997, the High Court, however, directed that they would be placed at the bottom of the seniority of serving Health Inspectors Grade I as on 1st August, 1997. Consequently, the Writ Petitions Nos. 8339, 12654, 14592, 17578, 25844 and 27982 of 2008 and the writ appeal in W.A.No.312 of 2008 were allowed. However, Writ Petition Nos. 23893 of 2006 and 34401 of 2007 were dismissed.

20. We have heard the counsel for the parties at great length.

21. The first submission of Mr. P.P. Rao, the learned senior counsel on behalf of the petitioner, is that the executive instructions cannot supplant statutory rules and for the redesignation of Health Inspectors Grade IB as Health Inspectors Grade I an amendment in the relevant statutory rules was necessary. He relies upon Sant Ram Sharma Vs. State of Rajasthan & Ors.[1] in support of this submission. This submission has been reiterated by all the counsel for the appellants. Mr. S. Gomathinayagam, relies upon the case of Prafulla Kumar Das & Ors. Vs. State of Orissa & Ors.[2], Pradip Chandra Parija & Ors. Vs. Pramod Chandra Patnaik & Ors.[3], Uday Pratap Singh & Ors. Vs. State of Bihar & Ors.[4] and D.N. Sinha & Ors. Vs. State of Bihar & Ors. [Civil Appeal No. 3671 of 1988].

22. The second contention of Mr. P.P. Rao is that the academic qualifications prescribed for a post cannot be relaxed and the length of experience cannot be a substitute for educational qualifications prescribed (Relies on: Syed Khalid Rizvi & Ors. Vs. Union of India & Ors.[5]; Suraj Prakash Gupta & Ors. Vs. State of J & K & Ors.[6]; R.S. Garg Vs. State of U.P. & Ors.[7]; Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors.[8] and State of M.P. & Anr. Vs. Dharam Bir[9]). Thus, it has been pointed out that relaxation given firstly vide G.O.Ms. No. 593 dated 11th September, 1995; and then vide G.O. (Ms.) No. 382 dated 12th October, 2007 with regard to the qualification of Sanitary Inspector Course or Multipurpose Health Worker (Male) is in violation of Articles 14 and 16 of the Constitution of India. It is also pointed out that the relaxation amounts to treating un-equals as equals. This submission was reiterated by Mr. S. Gomathinayagam. The learned Addl. Advocate General placed reliance upon Haryana State Electricity Board & Anr. Vs. Gulshan Lal & Ors.[10]

23. The learned counsel further pointed out that any such relaxation, even if valid, can only be prospective in application from the said order. However, the Division Bench of the High Court has given retrospective effect to G.O. No. 382 dated 12th

October, 2007. Thus, the impugned judgment/order has in fact added to the illegal benefit given to the respondents by the aforesaid G.O. No.382. They have placed reliance upon the case of Nani Sha & Ors. Vs. State of Arunachal Pradesh & Ors.[11] In addition, it is submitted that the Sanitary Inspector Course is still available and that it is required for promotion to the post of Block Health Supervisor.

24. All the learned counsel have reiterated the submissions of Mr. P.P. Rao that Court would not enforce negative equality. In support of this submission they relied upon Gurdeep Singh Vs. State of J & K & Ors.[12]; Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Ors.[13]; Gursharan Singh & Ors. Vs. New Delhi Municipal Committee & Ors.[14]; and Shanti Sports Club & Anr. Vs. Union of India & Ors.[15]

25. Mr. Rao, Mr. Giri, Mr. Ganguly, learned senior counsel; Mr. Poongkuntran, Ms. Mohanna and Mr. S. Gomathinayagam, learned counsel, have submitted that no merger between the Health Inspector Grade IB and Health Inspectors Grade I can be considered to have had taken place. The fact that a clear distinction was maintained with regard to the said posts even after 1997 would show the lack of any merger. Further, it cannot be overlooked that Leprosy Service was not abolished. Also, the very fact that separate seniority channel of promotion for the Leprosy Inspectors re-designated as Health Inspectors Grade IB was maintained, would show that there was no merger. Mr. S. Gomathinayagam further points out that the High Court's order has resulted in giving double promotion to the said Leprosy Inspectors on the basis of G.O.Ms. No. 382 dated 12.10.2007. Mr. Ganguly, learned senior counsel, has relied upon Sanjay Kumar Manjul Vs. Chairman, UPSC & Ors.[16] Besides, Mr. Giri, learned senior counsel, has relied upon the case of R.K. Sethi & Anr. Vs. Oil & Natural Gas Commission & Ors.[17] in support of the submission that there is no valid merger in the present case.

26. Premising her contentions on the aforesaid submissions, Ms. Mohanna, learned counsel, pointed out that the G.O.(Ms.) No. 320 dated 27th June, 1997 which culminated in effectuating the second integration was never challenged by the Health Inspectors Grade IB, though they claimed that the duties being performed by them are similar to Health Inspectors Grade I. This, according to her, cannot be the ground for equating the post of Health Inspectors Grade IB with that of Health Inspectors Grade I. Thus, the judgment of the High Court is not correct insofar it has equated the aforesaid two posts. It has also been argued by the learned Addl. Advocate General that the latter G.O.Ms. No. 382 was a consequential order based on earlier G.O. No. 320 and, therefore, writ petitioner(s) did not have any locus

standi to challenge the consequential order. Reliance has been placed upon the case of Laxmi Rattan Cotton Mills Limited. Vs. State of Uttar Pradesh & Ors.[18]

27. Another submission is that the High Court wrongly confused and intermingled the controversy relating to promotions of employees involved in the first integration with that of second integration. In this context, it was pointed out that the resolution of the issue relating to promotion under the G.O.Ms. No. 593 dated 11th September, 1995 of employees who initially joined after 1989 as the Multipurpose Health Assistants from various Unipurpose Schemes have no relevance to the controversy relating to the Leprosy Inspectors re- designated as Health Inspector Grade IB, since both of the said posts are borne on separate and distinct cadres. It was also submitted that while allowing the Writ Appeal No. 312 of 2008 which was filed by the employees who were initially working as Unipurpose Inspectors, the High Court did not go into the merits thereof. Furthermore, the benefit given to the employees under the said writ appeal was wrongly extended to the Leprosy Inspectors re-designated as Health Inspectors Grade IB. Reliance has been placed by Mr. S. Gomathinayagam, in this context, upon the cases of T. Venkateswarulu Vs. Executive Officer, Tirumala Tirupathi Devasthanams & Ors.[19] and Ghulam Rasool Lone Vs. State of Jammu and Kashmir & Anr.[20]

28. Mr. Rao also submitted that the absorbed employees are not entitled to count previous service in the earlier grade for the purpose of seniority in the new cadre. Reliance has been placed upon; K.C. Gupta & Ors. Vs. Lt. Governor of Delhi & Ors.[21]; SK. Abdul Rashid & Ors. Vs. State of Jammu & Kashmir & Ors.[22]; and Govind Prasad Vs. R.G. Parsad & Ors.[23]

29. In reply, Mr. P.S. Patwalia, learned senior counsel for the respondents, submits that the integration of Leprosy Inspectors into the Department of Health and Preventive Medicine which took place vide G.O.(Ms.)No. 320 dated 27th June, 1997, was complete in all respects. According to him, this becomes clear from the detailed instructions contained in the said G.O. The same submissions have been reiterated by Mrs. Nalini Chidambaram, learned senior counsel. Both learned senior counsel submitted that a policy decision to merge two or more posts, cadres or services can be made implemented/enforced through an executive order/instructions as long as the executive order/or instructions do not run counter to the Rules. [Reliance for this submission was placed upon Indian Airlines Officers' Assn. Vs. Indian Airlines Ltd. & Ors.[24] and Vinay Kumar Verma & Ors. Vs. State of Bihar & Ors.[25] Mr. Jaideep Gupta, learned senior counsel, has pointed out that the G.O. through which the integration and merger has been

ordered are in the nature of executive instructions. These instructions have not supplanted the statutory rules and are within the ratio of Sant Ram Sharma (supra) and Dhananjay Malik & Ors. Vs. State of Uttaranchal & Ors.[26]

30. The next submission of Mr. Patwalia, which is reiterated by the other learned senior counsel for the respondents, is that since the second integration was complete in all respects, the Leprosy Inspectors cannot be discriminated against in consideration of their eligibility for further promotion to the post of Block Health Supervisor, on the ground of initial recruitment. In other words, it has been argued that the “birthmark disappears after integration into a single class or cadre.” In this behalf, reliance has been placed upon: B. Manmad Reddy & Ors. Vs. Chandra Prakash Reddy & Ors.[27]; S.L. Sachdev & Anr. Vs. Union of India & Ors.[28]; General Manager, South Central Railway, Secunderabad & Anr. Vs. V.R. Siddhantti & Ors.[29]; and State of Mysore Vs. M.H. Krishna Murthy & Ors.[30]

31. It has been also argued by Mr. Patwalia that it needs to be appreciated that G.O. No. 382 dated 12th October, 2007 is in the nature of a clarification as it clarifies what ought to have been done in G.O. No. 320 dated 27th June, 1997. He has emphasised that since the G.O. No. 320 did not re-designate the Leprosy Inspectors as Health Inspectors Grade I in 1997, the 2007 order ‘sets the mistake right’ of the State Government. He points out that the 2007 G.O. itself speaks of the reasons for rectifying the mistakes committed in the 1997 order. Thus, the G.O. of 2007 merely reinforces the integration of 1997. In this respect, Mr. Jaideep Gupta, learned senior counsel, has gone even further and submitted that even if it has to be assumed that the merger of the cadres took place effectively only on the passing of G.O.Ms. No. 382 dated 12th October, 2007, the High Court was correct in concluding that Leprosy Inspectors re-designated as Health Inspectors Grade IB would be entitled to the benefit of their service in the post of Health Inspector Grade IB since 1997. Relying upon the law laid in K. Madhavan & Anr. Vs. Union of India & Ors.[31]; R.S. Makashi & Ors. Vs. I.M. Menon & Ors.[32]; Wing Commander J. Kumar Vs. Union of India & Ors.[33] and Sub-Inspector Rooplal & Anr. Vs. Lt. Governor Through Chief Secretary, Delhi & Ors.[34]; it has been contended that where persons from different sources are merged into one service, their pre-existing total length of service in the parent department has to be protected. Their previous service cannot be obliterated upon integration/merger.

32. Thus, it has been contended that the High Court has rightly given the benefit to the Leprosy Inspectors retrospectively from the date of second integration and correctly placed them at the bottom of the seniority list of the already existing Health Inspectors Grade I, with effect from 27th June, 1997.

33. Mr. Patwalia has further submitted that the insistence for qualification (Sanitary Inspector Course) for entry level/feeder post-Health Inspector Grade II for re- designation of Leprosy Inspectors as Health Inspector Grade I in 2007 is misplaced since the State Government has passed a reasoned order to this effect, after considering the report of the Special Committee constituted for integration. He further submitted that the argument of the appellants that since education qualifications are different, nature of duties are different, there cannot be any integration, has been specifically rejected in the Indian Airlines Officers' Assn. case (supra). Similarly, the argument that the absorption must be from the entry level in the new cadre was also rejected in the aforesaid case. Further, since the Sanitary Inspector Course has long been discontinued, it would be an impossible condition to fulfill.

34. We may also notice here that the submission of Mrs. Nalini Chidambaram, learned senior counsel, that since Rule 5 of Notification III under G.O.Ms. No. 1507 dated 16th August, 1989 does not mention the Sanitary Inspector Course as a sine quo non for the post of Block Health Supervisor, the argument of the appellants that possession of such a course is necessary is unfounded. She has further submitted that the State Government is estopped from raising such an objection in this Court since before the High Court, it was admitted by the State that Sanitary Inspector Course is not required to get designated as Health Inspectors Grade I.

35. All the learned counsel for the respondents emphasised that equity is in the favour of the respondents. It needs to be appreciated, according to them, that Leprosy Inspectors have lost the entire service from 1979-1989 till 1997. Also, that the State Government's stand before this Court is contradictory to that before the High Court, which is not permissible in view of the law laid down in Hari Bansh Lal Vs. Sahodar Prasad Mahto & Ors.[35]

36. Besides, Mrs. Nalini Chidambaram, learned senior counsel, has submitted that the Health Inspectors Grade I who were working as Health Inspectors Grade II before the second integration never challenged the said integration and therefore, they are estopped from contending that they should be ranked senior to Health Inspectors Grade IB.

37. Mr. Jaideep Gupta further submitted that the question of equation of posts does not depend merely on the fact that both posts were in same or similar pay scales. There are a number of other factors, namely, nature of duties, responsibilities,

minimum qualification, etc, which have to be considered as a whole. In support of this submission, he relied on Union of India & Anr. Vs. P.K. Roy & Ors.[36]

38. We have given considerable thought to the very elaborate submissions made by the learned senior counsel and the other counsel for all the parties. The qualifications prescribed under the aforesaid rules for the basic post of Health Inspector Grade II, were: (a) SSLC Pass Certificate; (b) One year long term Multi Purpose Health Worker (Male) Training Certificate; or (c) Sanitary Course Certificate with Short Term Multi Purpose Health Worker (Male) Training Certificate. The aforesaid provision contained in the Rules framed under Article 309 of the Constitution of India could not be amended by executive instructions. We have no hesitation in accepting the first submission of Mr. Rao that the executive instructions can not supplant the statutory rules, in view of the ratio of law laid down in the case of Sant Ram Sharma (supra). The aforesaid ratio has been reiterated by this Court on numerous occasions. It is not necessary to make a reference to any of the subsequent decisions as it would be a mere repetition of the accepted ratio, noticed above. We are, however, of the opinion that the ratio of law laid down in Sant Ram Sharma's case (supra) would not be applicable in the facts and circumstances of this case. The qualification of having passed the one year long term Multi Purpose Health Worker (Male) Training Certificate or Sanitary Course Certificate with short term Multi Purpose Health Workers (Male) Training Certificate are the statutory requirements for recruitment and appointment on the post of Health Inspector Grade II. These qualifications would, therefore, be possessed by some of the incumbents on the promotional post of Health Inspector Grade II being Multi Purpose Health Supervisor/ Health Inspector Grade I as well. It is a matter of record that even in the cadre of Health Inspector Grade II, there were many incumbents who did not possess these qualifications. There was a category of employees i.e., the direct recruit Health Inspectors Grade II who possessed the aforesaid qualifications. There was the other category i.e. Unipurpose Health Workers consisting of Health Workers, Cholera Workers and Vaccinators, who had entered the cadre of Health Inspector Grade II without such qualifications. The requirement for having the aforesaid qualifications on the post of Health Inspector Grade II was waived by way of order G.O. Ms. No. 1936 dated 29th September, 1982. Thus, it is evident that the possession of the two aforesaid qualifications was no longer considered a requirement for appointment on the post of Health Inspector Grade II. It is also a matter of record that the possession of the aforesaid qualifications was not prescribed for promotion to the post of Multi Purpose Health Supervisor/Health Inspector Grade I. Notification III issued under G.O.Ms. No. 1507 dated 16th August, 1989 provides for the following rules applicable to the post of Multi Purpose Health Supervisor that:- “

2. Constitution |The post shall constitute a distinct ||| category in Class –I of the said ||| service. |3. Appointment:- |Appointment to the post shall be made||| by promotion from the post of Multi ||| Purpose Health Assistant under the ||| Multi Purpose Health Workers Scheme. |4. Appointment |The appointment authority for the ||| Authority:- |post shall be the Deputy Director of ||| Public Health and Preventive medicine|5. Qualification: |Experience for a period of not less ||| then five years in the category of ||| Multi Purpose Health Assistant under ||| the Multi Purpose Health Workers ||| Scheme. |”

39. By virtue of the aforesaid provisions, many Health Inspectors Grade II had been promoted as Health Inspectors Grade I, without possessing the aforesaid qualifications. It is also noteworthy, as admitted by the State Government, that the Sanitary Inspector Course was rescinded much prior to the issuance of the G.O. Ms. No. 320 dated 27th June, 1997, thus there was no opportunity for the Leprosy Inspectors to qualify for the aforesaid Certificate. Yet the aforesaid G.O. provided that since the Leprosy Inspectors do not possess the aforesaid qualifications, they shall be designated as Health Inspector Grade IB on integration with the post of Multi Purpose Health Supervisor / Health Inspector Grade I. In view of the aforesaid developments, Leprosy Inspectors were fully eligible to be re-designated as Multi Purpose Health Supervisor / Health Inspector Grade I. It was wholly unnecessary, unjustified and unfair to re-designate the Multi Purpose Health Supervisors as Health Inspectors Grade IA and Health Inspectors Grade IB.

40. From the above, it becomes apparent that the G.O.Ms. No. 320 dated 27th June, 1997 did not have the effect of amending the rules. It is also clear that the aforesaid G.O. did not supplant the statutory provisions. It is also further clear that there was no relaxation of the qualifications on the post of Multi Purpose Health Assistant (Health Inspector Grade II) or on the post of Multi Purpose Health Supervisor (Health Inspector Grade I). Therefore, in our opinion, upon integration of Leprosy Inspectors into the cadre of Multi Purpose Health Supervisors, the further categorization into Health Inspector Grade IA and Health Inspector Grade IB was wholly unjustified. It had no rational nexus with any object sought to be achieved, and therefore, violated Articles 14 and 16 of the Constitution of India.

41. We may notice here that under the G.O.Ms. No. 320 dated 27th June, 1997, Clause 7 had provided that the post of Health Educator, Non-Medical Supervisor and Leprosy Inspectors (re-designated as Health Inspector Grade IB) were brought under the control of Director of Public Health and Preventive Medicine. However,

separate seniority was to be maintained for the aforesaid staff and the promotions of the respective categories will continue in the existing channel. Therefore, till the issuance of G.O.Ms. No. 382 dated 12th October, 2007, Leprosy Inspectors continued to be promoted on the next higher post of Non-Medical Supervisor and Health Educator. It is noteworthy that the aforesaid G.O. Ms. No. 320 was not challenged and Leprosy Inspectors were being promoted under separate channels of promotion. Thus, it is evident that till the issuance of the G.O. Ms. No. 382 of 2007, Health Inspector Grade IA, who had been promoted from the post /category of Health Inspector Grade I, had no grievance with the integration through G.O.Ms. No. 320 dated 27th June, 1997.

42. In view of our above conclusions, we are unable to accept the third submission of Mr. P.P. Rao and the other learned counsel that there has been any relaxation with regard to qualification of Sanitary Inspector Course or Multi Purpose Health Workers (Male) Training Certificate in violation of Articles 14 and 16 of the Constitution of India. As noticed earlier by G.O. Ms. No. 593 dated 11th September, 1995 did not, in any manner, concern the Leprosy Inspectors. The aforesaid G.O. was only issued for implementation of the G.O. Ms. No. 1936, Health and Family Welfare dated 29th September, 1982, with effect from 4th November, 1988 which was implemented through G.O. Ms. No. 1507 dated 16th August, 1989. The aforesaid relaxation was given to remove stagnation to Multi Purpose Health Assistants, who were not able to get any promotion even after crossing the age of 50 years or having rendered 20 years of service. It was specifically noticed in G.O. Ms. No. 593 dated 11th September, 1995 that possession of the Multi Purpose Health Workers (Male) Training Certificate and Sanitary Course Certificate with short term Multi Purpose Health Workers (Male) Training Certificate was not a precondition for absorption of Basic Health Workers, Vaccinators, Cholera Workers as Multi Purpose Health Assistants. Therefore, at the time when G.O. Ms. No. 320 was issued, the aforesaid qualifications were not acquired. Even if required, the same had been duly relaxed. Therefore, it would also not be possible to accept the submission of Mr. Rao that the relaxation given to the Leprosy Inspectors was either arbitrary or discriminatory. The State was within its powers to relax the aforesaid qualification in exercise of its powers of the Tamil Nadu State and Subordinate Services Rules, 1955. Rule 48 of the aforesaid rules provides as under:-

“48. Notwithstanding anything contained in these rules or in the special rules, the Governor shall have power to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of persons who have served

as aforesaid or any candidate or class of candidates for appointment to a service in such manner as may appear to him to be just and equitable:

Provided that, where any such rule is applicable to the case of any person or class of persons, the case shall not be dealt with in any manner less favourable to him or them than that provided by that rule.”

43. Therefore, the provision contained with regard to any relaxation given to any of the categories under G.O. Ms. No. 320 dated 27th June, 1997 and under G.O. Ms. No. 382 dated 12th October, 2007 being traceable to the power under Rule 48 of the 1955 Rules can not be said to be without any legal authority or jurisdiction. We, therefore, reject the aforesaid submission of the counsel for the petitioners also. We are of the opinion that in fact injustice had been caused to the Leprosy Inspectors at the time when G.O. Ms. No. 320 dated 27th June, 1997 was issued, which has been rectified by issuing G.O. Ms. No. 382 dated 12th October, 2007. As noticed above, the qualification of Multi Purpose Health Worker (Male) Training Certificate, the qualification of Sanitary Course Certificate with Short term Multi Purpose Health Worker (Male) Training Certificate were not the required qualification for appointment as Multi Purpose Health Supervisors. These were also not the qualifications which were required for being appointed as a Leprosy Inspector. However, even though by the 1997 integration through G.O. Ms. No. 320 dated 27th June, 1997, the Leprosy Inspectors were equated with Multi Purpose Health Supervisors, both categories were not given the same designation. The Multi Purpose Health Supervisors were designated as Health Inspector Grade IA, while Leprosy Inspectors were designated as Health Inspector Grade IB. The aforesaid categorization of Leprosy Inspectors as Health Inspector Grade IB was founded on a fallacy. It was wrongly assumed by the State that Leprosy Inspectors could not be designated as Multi Purpose Health Supervisors as they did not possess the necessary qualification for the basic post of Health Assistants, i.e., Health Inspector Grade II. The mere fact that Leprosy Inspectors were not placed in the feeder cadre of Health Inspector Grade II makes it evident that they were not required to possess the qualifications of the basic posts. They were in fact from the very inception being equated with the post of Multi Purpose Health Supervisor (Health Inspector Grade I). It was not a case of upgradation of the post of Leprosy Inspector to the post of Multi Purpose Health Supervisor. The two posts were equated. Leprosy Inspectors were transferred and brought under the control of Director of Public Health and Preventive Medicine for programme implementation. On transfer, they were re-designated as Health Inspector Grade IB. In spite of the fact that the aforesaid two qualifications of one year long term Multi Purpose Health Workers (Male) Training Certificate and Sanitary Course

Certificate with short term Multi Purpose Health Worker (Male) Training Certificate were not the essential qualifications for appointment as Health Inspector Grade I, the post of Health Inspector Grade I was unnecessarily split into Health Inspector Grade IA and Grade IB.

44. Learned counsel for the petitioner had also submitted that relaxation even if valid can only be prospective in its application. The aforesaid proposition of law also would not be applicable in the facts and circumstances of this case. We are of the opinion that injustice had been done to the Leprosy Inspectors at the time of the 1997 merger/integration. In spite of a complete merger, G.O.Ms. No.320 dated 27th June, 1997 still provided in Paragraph 4 of Clause 7 of the G.O. that the incumbents of the post of Health Inspector Grade IB, although brought under the control of Director of Public Health and Preventive Medicine for programme implementation shall be placed in a separate seniority list, and the promotions of the respective categories will continue in the existing channels. Although Inspectors Grade IB were placed in a lower pay scale, they were to attend various Public Health activities as per the job chart for Health Inspector Grade IA, in addition to Leprosy Control Programme. Similarly, Health Inspector Grade IA and Grade II were to attend the Leprosy Control Work apart from their existing duties after necessary training. It was made clear that the Director of Public Health and Preventive Medicine will issue necessary further orders prescribing revised job chart for the Health Inspector Grade IA, Health Inspector Grade IB and Health Inspector Grade II. Therefore, it seems apparent that there was complete integration of Leprosy Control Scheme with Multi Purpose Health Workers Scheme with effect from 1st July, 1997 and the process of integration was actually completed by 1st August, 1997. As held in the case of P. K. Roy (supra), an issue concerning the posts has to be considered from a broader prospective, and it does not depend merely on the salary of the employees. Broadly speaking, the relevant factors could be: (i) the nature and duties of a post, (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. Further, it was also held in the aforesaid case that “if the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different, would not in any way make the post 'not equivalent'.” Since the post of Health Inspector Grade IB was for all practical purposes equal to Health Inspector Grade IA, there was no legal justification to continue the disparity in the pay scales of Health Inspector Grade IA and Health Inspector Grade IB. The High Court, therefore, rightly gave the benefit of equation of post of Health Inspector Grade –IB with that that of Health Inspector Grade IA from the date of their integration, in 1997.

45. Having accepted the complete merger of the cadre of Health Inspector Grade IB with Health Inspector Grade IA and all being re-designated as Health Inspector Grade I, G.O.(Ms.) No. 382 of 2007 failed to achieve the intended result. It still discriminated against the erstwhile Health Inspector Grade IB, by robbing them of service from 1997 to 2007. They were given the pay scale of Rs.4500-125-7000 but from the date of the G.O.(Ms.) No. 382 of 2007 i.e. 12th October, 2007. Further, they were placed en bloc at the bottom of the seniority list of Health Inspector Grade I. This denial of seniority was justified on the ground that “as the redesignation of Health Inspector Grade I is given only from the date of the issue of the order in relaxation of rule relating to possession of Sanitary Inspector Course, they can not claim the benefit of service since integration on 27th June, 1997.” The re-designated Health Inspector Grade I were also denied promotion on the post of Block Health Supervisor and Technical Personal Assistant till the last person in the category of Health Inspector Grade I is promoted as Block Health Supervisor. They were given the alternate route of promotion as Non-Medical Supervisor and Health Educator, till their turn comes for promotion, as per their seniority.

46. Upon merger of the two posts, it was no longer permissible to treat the re-designated Health Inspector Grade IA differently from Health Inspector Grade IB. Since 1997, all incumbents on the posts of Health Inspector Grade IA and Health Inspector Grade IB were performing the same duties. There was intermixing of the duties performed by the two categories of the Health Inspector Grade IA and IB. Both the posts had lost their original identity since 27th June, 1997, and formed one homogenous cadre. Further, having relaxed the qualifications on the basis of their length of service and experience, they were at par with the Health Inspector Grade IA. Thereafter, the State was not justified in denying to the erstwhile Health Inspector Grade IB, the same treatment as was given to Health Inspector Grade IA. Therefore, the respondents could not have been denied the benefit of service on the post of Health Inspector Grade I from the date of the initial integration. It would be appropriate to notice the ratio of law laid down in the case of Sub-Inspector Rooplal (supra), wherein it was inter-alia held that the previous service of the transferred officials who are absorbed in an equivalent cadre in the transferred post is permitted to be counted for the purpose of determination of seniority. It would be appropriate to notice here that Leprosy Inspectors re-designated as Health Inspector Grade IB have not been granted the benefit of seniority in their cadre from the date of their initial appointment. They have been deprived of their service on the post of Leprosy Inspector upto 27th June, 1997 when they were integrated and re-designated as Health Inspector Grade IB.

However, upon merger w.e.f. 27th June, 1997, there was no distinction in the services rendered by Health Inspector Grade IA and Health Inspector Grade IB. Therefore, in our opinion, the provision in G.O. (MS) No. 382 of 2007 not to grant the Health Inspectors Grade IB/erstwhile Leprosy Inspectors the benefit of the service from 1997 for determination of their seniority for promotion to the post of Block Health Supervisor was completely unjustified.

47. Thus, the High Court, in our opinion, was completely justified in quashing Para 6(iv) and (v) of the G.O.(Ms.) No. 382 of 2007. The High Court has correctly held that the re-designated Health Inspector Grade I ought to have been given the same scale of pay as Health Inspector Grade IA from the date of the merger. In fact, on that date itself, the two posts should have been re-designated as Health Inspector Grade I, enjoying the same scale of pay, as all incumbents were performing the same duties and shouldering the same responsibilities. It was not permissible for the State to treat the re-designated Health Inspector Grade I differently from the Health Inspector Grade IA, on the basis of the initial source of recruitment.

48. The birth mark was obliterated on the merger of the post of Leprosy Inspector with Health Inspector Grade I. There was no justification of putting Health Inspector Grade IB in the pay scale of Rs.1200-2010, whilst Health Inspector Grade IA was placed in the pay scale of Rs.1350-2200. At the time of integration, both categories had to be given the same pay scale i.e. Rs.1350-2200. In this respect, the principle of law laid down by this Court, time and again, is that a classification based on the birth mark that stood obliterated after integration of officers, coming from different sources into a common cadre/category, would be wholly unjustified and discriminatory. This principle was relied upon by this Court in the case of B. Manmad Reddy (supra), wherein this court reiterated the observations of this Court in Paragraph 5 of Roshan Lal Tandon Vs. Union of India[37]:

"In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well founded and must be accepted as correct. At the time when the petitioner and direct recruits were appointed to Grade D, there was one class in Grade D formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade D were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade C. To put it differently, once the direct recruits and promotees are absorbed into one cadre, they

form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade C."

49. Since G.O. Ms. No. 382 dated 12th October, 2007 was issued to remove the injustice done to Leprosy Inspectors at the time when G.O. Ms. No. 320 dated 27th June, 1997 was issued. We are unable to accept the submission of Mr. Rao that any unjustified retrospective effect has been given to the G.O. Ms. No. 382 dated 12th October, 2007. Consequently, we also do not find any merit in the submission of Mr. Rao that granting the benefit of service to Health Inspectors Grade IB on the post of health Inspector Grade I resulted in enforcement of a negative equity. Therefore, the judgments relied upon by the learned counsel would not be applicable in the facts and circumstances of this case.

50. In view of the detailed reasons given above, we also do not find any merit in the submission of the learned counsel for the petitioners that there was not a complete merger between the post of Leprosy Inspectors and Multi Purpose Health Supervisor, by G.O. Ms. No. 320 dated 27th June, 1997.

51. We also do not find any substance in the submission of the Additional Advocate General, that the erstwhile Leprosy Inspectors have been given double benefit of promotion as they still continue to enjoy original channel of promotion on the post of Non-Medical Supervisor and Health Educator.

52. The promotion on the aforesaid posts were being given to the Health Inspectors Grade IB only in view of the wholly illegal prohibition contained in G.O. Ms. No. 320 of 1997.

53. These observations are fully applicable in the facts and circumstances of this case.

54. We, therefore, find the submissions of the appellant to be devoid of any merit. The High Court was justified in quashing the Paras 6(iv) and (v) of the G.O.Ms. No.382. The seniority of the respondent has to be fixed in the cadre of Health Inspector Grade I by giving the benefit of service from 27th June, 1997. Further, they are eligible to be promoted on completion of 5 years service on the post of Health Inspector Grade I, though, they can be placed at the bottom of the seniority of serving Health Inspector Grade I as on 1st August, 1997.

55. We may also mention here about the extent of interference of this court in matters relating to integration or fusion of employees. This court held in the Indian

Airlines Officers Association's case (supra) that the matter of integration or the fusion of employees, being one of policy, could not have been challenged by the employees unless the said decision was arbitrary, unreasonable or capricious. And as noticed earlier, that none of the Government Orders vide which integration was effectuated, suffers from any of the aforesaid irregularities. The High Court has merely undone the injustice done to the respondents. We are, therefore, not inclined to interfere in the well reasoned order of the Division Bench of the High Court.

56. We have given considerable thought to the law laid in the judgments cited and relied upon by Mr. Rao, learned senior counsel appearing on behalf of the petitioner.

57. However, none of the principles enunciated by this Court in the judgments cited by the learned counsel for the appellants have been infringed by any of the actions taken on the basis of G.O.Ms. No. 320 dated 27th June, 1997 and G.O. Ms. No. 382 dated 12th October, 2007. In our opinion, the High Court, in fact rightly quashed and set aside the offending clauses of 6(iv) and 6(v) of G.O. Ms. No. 382 dated 12th October, 2007.

58. At this stage, we may summarise the conclusions recorded by us in the following manner:-

- i. The integration of Leprosy Inspectors into the Department of Health and Preventive Medicine by G.O.Ms. No. 320 dated 27th June, 1997 was complete in all respects.
- ii. The aforesaid G.O. Ms. No. 320 dated 27th June, 1997 did not bring about an amendment in the Statutory Services Rules contained in G.O. Ms. No. 1507 dated 16th August, 1989. The G.O.Ms. was supplementary to the aforesaid Rules and did not supplant the same.
- iii. There was no relaxation in the educational qualification for the integration/re-designation of Leprosy Inspectors as Multi Purpose Health Supervisors as the post of Leprosy Inspector was equated with the post of Multi Purpose Health Supervisor. The qualifications prescribed for appointment on the post of Multi Purpose Health Assistants re-designated as Health Inspector Grade II were not applicable for the post of Multi Purpose Health Supervisor.

iv. Since, there was a complete integration of the posts of Leprosy Inspector and Multi Purpose Health Supervisor by virtue of G.O.Ms. No. 320 dated 27th June, 1997; both categories were entitled to the same treatment. Therefore, Leprosy Inspectors re- designated as Health Inspector Grade IB were entitled to the pay-scale of Rs.1350-2000 w.e.f. 1st August, 1997 and the pay-scale of Rs.4500-7000 w.e.f. the same were given to Health Inspector Grade IA, with all consequential benefits.

v. Upon integration vide G.O.Ms. No. 320 dated 27th June, 1997, Multi Purpose Health Supervisors and Leprosy Inspectors were to be re-designated as Health Inspector Grade I. The birth mark of the Leprosy Inspector got obliterated with the integration. There could be no further distinction in the cadre of Health Inspector Grade I. There could be no such division as Health Inspector Grade IA and Health Inspector Grade IB.

vi. Since Paragraph 6(iv) and 6(v) of G.O.Ms. No. 382 dated 12th October, 2007 was in violation of Articles 14 and 16 of the Constitution of India, they have been correctly struck down by the High Court.

vii. The denial of seniority to the re-designated Health Inspectors Grade IB, i.e., erstwhile Leprosy Inspectors on the post of Health Inspector Grade I w.e.f. 1st August, 1997 to 12th October, 2007 violated Articles 14 and 16 of the Constitution of India. The Division Bench of the High Court has correctly concluded that the integrated Leprosy Inspectors, re-designated as Health Inspector Grade IB are to be re-designated as Health Inspector Grade I and to be given seniority as well as consequential reliefs such as seniority and further promotions.

viii. The provision contained in Clause 6(v) of G.O.Ms. No. 382 dated 12th October, 2007 denying promotion of the re-designated Health Inspector Grade I to the post of Block Health Supervisor and Technical Personal Assistant till the last person in the existing list of Health Inspector Grade I gets promotion as Block Health Supervisor and Technical Personal Assistant, has been rightly held by the High Court to be violative of Articles 14 and 16 of the Constitution of India.

ix. The continuance of the existing promotion channels as Non-Medical Supervisor and Health Educator to the re-designated Health Inspector grade I (erstwhile Leprosy Inspectors) did not amount to bestowing a double benefit upon this category. Therefore, the High Court did not enforce

negative equality. The High Court has correctly observed that upon integration and merger into one cadre, the pre-existing length of service of the Leprosy Inspectors re-designated as Health Inspector Grade IB had to be protected as it can not be obliterated. Therefore, the Leprosy Inspectors have been correctly placed at the bottom of the seniority list of the already existing Health Inspectors Grade I w.e.f. 27th June, 1997. Therefore, it can not be said that benefit has been given to the Leprosy Inspectors /Health Inspector Grade IB /Health Inspector Grade I with retrospective effect.

59. In view of the aforesaid conclusions, we find no merit in any of the following Civil Appeals, i.e., Civil Appeal No.4491 of 2013 arising out of SLP (C) No. 566 of 2011, Civil Appeal No 4492 of 2013 arising out of SLP (C) No. 4572 of 2011, Civil Appeal No.4493 of 2013 arising out of SLP (C) No. 2179 of 2011, Civil Appeal No 4495 of 2013 arising out of SLP (C) No. 2183 of 2011, Civil Appeal No.4494 of 2013 arising out of SLP (C) No. 2188 of 2011, Civil Appeal No.4496 of 2013 arising out of SLP (C) No. 2191 of 2011, Civil Appeal No.4498 of 2013 arising out of SLP (C) No. 2194 of 2011, Civil Appeal No. 4497 of 2013 arising out of SLP (C) No. 2196 of 2011, Civil Appeal No. 4499 of 2013 arising out of SLP (C) No. 3485 of 2011, Civil Appeal No.4483 of 2013 arising out of SLP (C) No. 24492 of 2010, Civil Appeal No.4484 of 2013 arising out of SLP (C) No. 24493 of 2010, Civil Appeal No.4485 of 2013 arising out of SLP (C) No. 24494 of 2010, Civil Appeal No.4487 of 2013 arising out of SLP (C) No. 25388 of 2010 and the connected appeals being Civil Appeal No.4486 of 2013 arising out of SLP (C) No. 25226 of 2010, Civil Appeal No.4488 of 2013 arising out of SLP (C) No. 25417 of 2010, Civil Appeal No.4489 of 2013 arising out of SLP (C) No. 26159 of 2010, Civil Appeal No.4490 of 2013 arising out of SLP (C) No. 25442 of 2010, Civil Appeal No.4500 of 2013 arising out of SLP (C) No. 15221 of 2011, Civil Appeal No.4501-4502 of 2013 arising out of SLP (C) No. 4710-4711 of 2012 and Civil Appeal No.4503- 4504 of 2013 arising out of SLP (C) No. 10939-10940 of 2012. All of them are hereby dismissed.

60. Further, no need arises for passing a separate order in the Contempt Petition No. 133 of 2012 in Civil Appeal No.4498 of 2013 arising out of SLP (C) No. 2194 of 2011 and Contempt Petition No. 145 of 2012 in Civil Appeal No.4492 of 2013 arising out of SLP (C) No. 4572 of 2011, as the said Contempt Petitions would be rendered infructuous by this judgment.

[1] (1968) 1 SCR 111

[2] (2003) 11 SCC 614

- [3] (2002) 1 SCC 1
- [4] 1994 Sup (3) SCC 451
- [5] (1993) Supp. 3 SCC 575
- [6] (2000) 7 SCC 561
- [7] (2006) 6 SCC 430
- [8] (2006) 4 SCC 1
- [9] (1998) 6 SCC 165
- [10] (2009) 12 SCC 231
- [11] (2007) 15)SCC 406
- [12] 1995 Supp. (1) SCC 188
- [13] (1997) 1 SCC 35
- [14] (1996) 2 SCC 459
- [15] (2009) 15 SCC 705
- [16] (2006) 8 SCC 42
- [17] (1997) 10 SCC 616
- [18] (2009) 1 SCC 695
- [19] (2009) 1 SCC 546
- [20] (2009) 15 SCC 321
- [21] 1994 Supp. (3) SCC 408
- [22] (2008) 1 SCC 722
- [23] (1994) 1 SCC 437
- [24] (2007) 10 SCC 684
- [25] (1990) 2 SCC 647
- [26] (2008) 4 SCC 171
- [27] (2010) 3 SCC 314
- [28] (1980) 4 SCC 562
- [29] (1974) 4 SCC 335
- [30] (1973) 3 SCC 559
- [31] (1987) 4 SCC 566
- [32] (1982) 1 SCC 379
- [33] (1982) 2 SCC 116
- [34] (2000) 1 SCC 644
- [35] (2010) 9 SCC 655
- [36] (1968) 2 SCR 186
- [37] (1968) 1 SCR 185