

**AWDHESH KUMAR MISHRA Vs. STATE OF SIKKIM**  
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LAWS(SC)-2014-12-47  
**Supreme Court Of India**  
Decided on December 09,2014  
VERSUS

**STATE OF SIKKIM**

Respondents

## **JUDGEMENT**

**J.S. Khehar, J.** - ( 1. ) THE Appellant was inducted into the employment of the parent Human Resource Development Department, of the Government of Sikkim, as a Graduate Teacher. On the completion of ten years of continuous service as a Graduate Teacher, he was allowed to draw salary in the advancement grade/scale of Rs. 7000 -225 -11500, with effect from 22.01.1997. It is not a matter of dispute, that the afore -stated scale of Rs. 7000 -225 -11500, is that of the post of Post Graduate Teacher.

( 2. ) THE right to be placed in an advancement grade, is provided for to Government employees, under the Sikkim Government Services (Advancement Grade) Rules, 1999 (hereinafter referred to as the '1999 Rules'). The procedure for grant of advancement grade is delineated in Rule 6 of the 1999 Rules, which is being extracted hereunder: 6. Procedure for grant of advancement grade: (1) The Government servants up to the level of Deputy Secretary and equivalent shall be granted pay scales of the advancement grade on completion of 10 (ten) years of continuous service in a post/grade if they do not get any promotion during that period subject to (a) clearance by the Departmental Promotion Committee; (b) Non -appearance of any adverse entry in their confidential reports for preceding three years prior to consideration for advance grade. Provided that grant of advancement grade under these rules shall not be deemed to be promotion to the higher grade nor the employee shall have right to claim for employee shall have right to claim for promotion unless vacancy in such higher grade exists and is otherwise eligible to be considered for promotion to such higher grade. (2) Grant of advancement grade would not involve any change in the designation of the employee concerned. (3) Grant of advancement grade of pay shall be once in a particular post/grade. (4) In cases where the pre -revised scales have been clubbed and where a Government servant has reached the higher scale in pre -revised scale of pay by way of advancement grade prior to 1.1.1996 shall be given higher scale in the revised pay of scale on pay fixation i.e. corresponding advancement scale in the revised pay of scale. (5) The corresponding pay scale of advancement grade shall not be less than the pay scale prescribed for the post to which Government is eligible to be promoted as per the relevant recruitment rules. (Emphasis is ours) The solitary contention advanced by the learned Counsel for the Appellant was, that during his tenure as Graduate

Teacher, the Appellant did not earn a single promotion, and as such, became eligible for being considered for the grant of advancement grade. According to the learned Counsel, advancement grade, is to be determined with reference to the post for which the concerned employee is eligible. Insofar as the instant aspect of the matter is concerned, learned Counsel for the Appellant placed reliance on the Education Department (Principals of the Senior Secondary Schools and Headmasters of the Secondary Schools) Recruitment Rules, 1992 (hereinafter referred to as the Recruitment Rules). The afore-stated Recruitment Rules, provide for the methods of recruitment to the post of Principals, Senior Secondary Schools, as also, the post of Headmasters/Headmistress, Secondary Schools. It is the contention of the learned Counsel for the Appellant, that the Appellant was eligible for the post of Principal, Senior Secondary School, and as such, should have been granted advancement grade in the grade/scale provided for the post of Principal, Senior Secondary School. Insofar as the instant aspect of the matter is concerned, learned Counsel for the Appellant has invited our attention to the Schedule appended to the 'Recruitment Rules' with reference to the post of Principal, Senior Secondary School. A relevant extract of the aforesaid Schedule has been reproduced hereunder: SCHEDULE Relying on the qualifications indicated in Column 8 and 9 of the Recruitment Rules, it is the submission of the learned Counsel for the Appellant, that the Appellant possessed Master Degree with B. Ed. with 7 years' teaching experience, and as such, was eligible for promotion to the post of Principal, Senior Secondary School, on the date from which he was placed in the advancement grade. In the above view of the matter, the Appellant claims the grant of advancement grade, in terms of the pay scale of the post of Principal, Senior Secondary School.

( 3. ) WE have given our thoughtful consideration to the solitary contention advanced at the behest of the Appellant. The validity of the claim of the Appellant would be determined with reference to Rule 6 of the '1999 Rules', which delineate the procedure for grant of advancement grade. Rule 6(5) provides, that advancement grade would be granted with reference to the post, to which a government employee "...is eligible to be promoted as per the relevant recruitment rules". The question to be determined is, whether the Appellant was/is eligible for promotion to the post of Principal, Senior Secondary School under the Recruitment Rules? If the answer to the above, is in the affirmative, his claim would be justified. Despite the fact, that Appellant fulfills the educational qualification prescribed for the post of Principal, Senior Secondary School, we are satisfied, that it would not be correct to conclude, that he "... is eligible to be promoted as Principal, Senior Secondary School, as per the relevant recruitment rules". We say so because, as per the Schedule appended to the Recruitment Rules, the Appellant does not belong to the feeder cadre, out of which appointments can be made by promotion, to the post of Principals, Senior Secondary Schools. The Appellant does not possess the postulated experience, prescribed for such promotion in the Schedule appended to the Recruitment Rules. In this behalf, it would be pertinent to mention, that Column 11 of the Schedule provides, that promotion to the post of Principal, Senior Secondary School, can be made from Headmasters of Secondary Schools with 15 years service, and also from Post -Graduate Teachers with B. Ed., and 7 years regular service. The Appellant has never held the post of Headmaster, or the post of Post Graduate Teacher, nor does he possess the experience of service postulated (15 years as Head Master of a Secondary School, or 7 years as Post Graduate Teacher). The Appellant

therefore, cannot be considered to be "... eligible to be promoted as per the relevant recruitment rules" to the post of Principal, Senior Secondary School. Thus viewed, we are satisfied that the Appellant does not qualify for being allowed advancement grade, under Rule 6(5) of the 1999 Rules in the grade of the post of Principal, Senior Secondary School. ;

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