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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 30/09/2019****Judgment Delivered on : 24/10/2019****Writ Petition (S) No. 2873 of 2019**

Chandrakant Giri Goswami, son of Late Shri Maheshwar Giri Goswami, aged about 42 years, working as Assistant Grade III, and posted at Dy. Dir. Public Prosecution Office, Raipur, District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Department of Home, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
2. Director, Public Prosecution, State of Chhattisgarh, Indrawati Bhawan, Atal Nagar, Raipur, District Raipur, Chhattisgarh.
3. Deputy Director, (Public Prosecution) Sarguja District Durg Chhattisgarh.
4. Smt. Karuna Toppo, Assistant District Public Prosecution Officer, Deputy Director Public Prosecution Office, Raipur, District Raipur, Chhattisgarh.
5. Shri Dhawal Kumar Sinha, Assistant District Public Prosecution Officer, Deputy Director, Public Prosecution Office, Surajpur, District Surajpur, Chhattisgarh.

---- Respondents**AND****Writ Petition (S) No. 510 of 2019**

Anil Kumar Goswami S/o Shri Dharam Das Goswami, aged about 41 years, working as Assistant Grade - III and posted at Public Prosecution Office, Durg, District - Durg Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh, through Secretary, Department of Home, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District - Raipur Chhattisgarh.
2. Director, Public Prosecution, State of Chhattisgarh, Indrawati Bhawan, Atal Nagar, Raipur, District - Raipur Chhattisgarh.
3. Deputy Director (Public Prosecution) Durg, District - Durg Chhattisgarh.
4. Smt. Karuna Toppo, Assistant District Public Prosecution Officer, Deputy Director, Public Prosecution Office, Raipur District - Raipur Chhattisgarh.
5. Dhawal Kumar Sinha, Assistant District Public Prosecution Officer, Deputy Director, Public Prosecution Office, Surajpur, District - Surajpur Chhattisgarh.

---- Respondents

AND

Writ Petition (S) No. 2887 of 2019

Natraj Pandey S/o Late Shri Joshik Prasad Pandey, aged about 43 years, working as Assistant Grade-III and posted at Deputy Director, Public Prosecution Office, Sarguja, District- Sarguja, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Home, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, District- Raipur, Chhattisgarh.
2. Director, Public Prosecution, State of Chhattisgarh, Indrawati Bhawan, Atal Nagar, Raipur, District- Raipur, Chhattisgarh.
3. Deputy Director (Public Prosecution) Sarguja District- Durg, Chhattisgarh.
4. Shri Sailendra Singh, Assistant District Prosecution Officer, Raipur, Chhattisgarh.
5. Sandhya Kurrey, Assistant District Prosecution Officer, Raipur, Chhattisgarh.,
6. Shri Prakash Chand Yadav, Assistant District Prosecution Officer, Raipur, Chhattisgarh.
7. Smt. Karuna Toppo, Assistant District Public Prosecution Officer, Deputy Director, Public Prosecution Office, Raipur, District- Raipur, Chhattisgarh.

8. Dhawal Kumar Sinha, Assistant District Public Prosecution Officer, Deputy Director, Public Prosecution Office, Surajpur, District-Surajpur, Chhattisgarh.

---- Respondents

For Petitioners	: Shri Ajay Shrivastava, Advocate.
For Respondent/State	: Shri Vikram Sharma, Deputy Government Advocate.
For Private Respondents Respondent	: Shri Devarshi Thakur, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. Constitutional validity of Schedule II under Rule 6 of the Chhattisgarh Lok Abhiyojan (Rajpatrit) Bharti Evam Padonnati Niyam, 2008 (for short, 'the 2008 Rules') fixing a ceiling/age bar at 40 years for being promoted to the post of Assistant District Public Prosecution Officer (for short 'ADPPO') from the feeder category post of Assistants Grade III (for short 'AG-III') having law degree with 7 years experience, is put to challenge in these writ petitions.

2. The main grounds of challenge are that; it is quite arbitrary, discriminatory and violative of the principles of equality and that there is absolutely no nexus with reference to the object, if at all any, to be achieved with reference to the nature of duties to be performed in respect of the higher post.

3. Writ Petition (S) No. 2873 of 2019 is taken as the lead case. Parties and proceedings are referred to as mentioned therein, except where it is separately adverted to, based on the context.

4. We heard Shri Ajay Shrivastava, learned counsel for the Petitioners, Shri Vikram Sharma, learned Deputy Government Advocate representing the State/Departmental authorities and Shri Devarshi Thakur, learned counsel representing the private respondents, in detail.

5. The Petitioner in Writ Petition (S) No. 2873 of 2019, was appointed as AG-III as per Annexure P/2 order dated 22.12.2010. The private Respondents were also appointed as AG-III, but on subsequent dates and hence they were juniors to the Petitioner, as reflected from the placement given in Annexure P/5 final seniority list dated 20.09.2018.

6. The Petitioners and the private Respondents are law graduates and are having a total length of service of 7 years or more in the post of AG-III. The persons working as AG-III, who are law graduate and are having 7 years' experience in the said post, form feeder category for promotion to the post of 'ADPPO' to an extent of 10% as per the 2008 Rules, relevant portion of which has been produced as Annexure P/1. As a matter of fact, 90% of the posts of ADPPO are to be filled up by way of direct recruitment, whereas the remaining 10% is to be filled up by promotion of qualified persons i.e. law graduates working as AG-III with an experience of 7 years. However, Schedule II under Rule 6 of the 2008 Rules puts a rider to the effect that, only those qualified hands who are within the age group of '40 years' alone would be considered for promotion. Petitioners, with reference to their crossing the age bar of 40 years, came to be excluded and promotion was given to the private Respondents, who are juniors, as borne by Annexure P/4 order dated 29.08.2018. This made the Petitioners to feel aggrieved who have moved this Court by filing writ petitions challenging the *vires* of the Rules in prescribing the age bar for promotion; raising various grounds as mentioned above. They are simultaneously challenging the promotions given to the juniors/private Respondents and seek to direct the Respondents

concerned to promote the Petitioners as well, in preference to or *w.e.f* the date of promotion given to the juniors, with all consequential benefits.

7. The prayers are opposed from the part of the State pointing out that the post in question (ADPPO) is not the normal channel of promotion for persons like the Petitioners, who ordinarily travel vertically to the post of AG-II, AG-I etc. from the post of AG-III. Normally, appointment to the post of ADPPO is by direct recruitment as per the Rules and an exception has been carved out to a limited extent of 10%, to be promoted from the qualified AG-III hands having law degree with 7 years' experience, provided they are within the age group of 40 years. This, according to the Government, is to select the best of the candidates available, having regard to the availability of vacancy position every year. It is stated that the Government has also taken into account the fact that the persons who are promoted to the ADPPO cadre should have sufficiently long tenure for rendering their services to the Department and it is a policy decision. It is pointed out that there is nothing wrong or arbitrary in fixing a cut-off date; as supported by various rulings of the Apex Court on the point. The State/Department contends that, considering the nature of duties to be performed and the responsibility to be carried out by the ADPPO, it cannot be said that the Rule in question is arbitrary; which in fact has been framed in public interest. It is pointed out that there is no merit in the contention that there is a 'classification within classification', adding that there is always a presumption in favour of constitutionality of the enactment. The burden is upon the person who attacks it, to show that there is violation of the constitutional mandate, if any. It is asserted that the intent in fixing the age cap is to select the best of the Prosecution Department who are most efficient and outstanding to discharge the duties of ADPPO.

8. The learned counsel for the Petitioners submits that there is absolutely no merit in the contention of the State that the post of ADPPO is not a normal channel of promotion and that it is a specialized category of post, insofar as the rules framed in exercise of power under Article 309 of the Constitution of India reckons the post of AG-III (law graduates with 7 years' experience) as a feeder category for promotion to the post of ADPPO to an extent of 10%. As per the Rules, since 90% of the posts of ADPPO are to be filled up by direct recruitment and only 10% is left for promotion from the above feeder category post (which is the sole feeder category post for promotion) and further since no special skill or technical knowledge is prescribed as per the Rules, there cannot be any weeding out with reference to the age factor. This is more so, when higher age and experience will only contribute to higher learning and acquisition of knowledge, which could be put into practice, once they are appointed in preference to the juniors. It is further pointed out that the maximum age for appointment to the post of AG-III is 36 years, with relaxation to candidates belonging to various reservation segments as per the relevant rules. If a brilliant law graduate of 35 years gets selected to the post of AG-III, he can never aspire to get promoted to the post of ADPPO despite his better academic credentials/performance, since by the time he gathers 7 years' experience in the post of AG-III, he would have crossed the age of 40 years, thus paving way to the less meritorious juniors to be selected and appointed to the higher post, which cannot be in the public interest. In other words, promotion is denied at the 'entry level itself' because of such age restriction, which is nothing but arbitrary and discriminatory. It is also pointed out that there is absolutely no 'nexus' to the 'so-called object' to be achieved and it cannot stand the test of judicial scrutiny. Reliance is sought to be placed on the verdict passed by the Apex Court under similar circumstance (in relation to selection of Additional District Judges where there was an age bar, whereas, for further promotion to the post of District Judges,

there was no such age bar) as reported in ***Indravadan H. Shah v. State of Gujarat & Another***, AIR 1986 SC 1305 (paragraphs 6 and 10 to 16). It is also brought to our notice that there is no such stipulation of higher/maximum age in respect of further promotions from the post of ADPPO to that of DPPO or to the still higher posts of Deputy Director, Additional Director, Joint Director or Director, which are Class I posts. Similarly, there is no such stipulation of maximum age in respect of other posts in the Home Department (under which the Department the post of ADPPO also comes), nor is there any similar provision in the Revenue Department or such other Departments. This is sought to be substantiated by producing a copy of the advertisements issued for filling up the posts of 'Naib Tahsildar' in the Revenue Department, alongwith the terms and conditions prescribed vide Annexure P/3 notification dated 04.03.2014 and the other incidental notice/notifications/proceedings issued in this regard.

9. In response to the above submissions, Shri Vikram Sharma, learned Deputy Government Advocate representing the State/Department points out that the classification of the posts is given in Rule 5 of the 2008 Rules, to be read alongwith Schedule I; whereas the mode of recruitment is provided in Rule 6. In fact, the different posts in the Prosecution sector of the Home Department are arranged as (1) Director, (2) Additional Director, (3) Joint Director, (4) Deputy Director, (5) District Public Prosecution Officer and (6) Assistant District Public Prosecution Officer. The top four posts are of Class I cadre; whereas the posts at serial No. 5 and 6 are of Class II. As per Rule 6, which is to be read alongwith Schedule II, three different modes of recruitment are provided therein i.e. (a) by way of direct recruitment; (b) by promotion from Class I and Class II in respect of category of posts (1) to (5) of Scheduled I and; (c) by transfer from similar posts. It is pointed out that, in the 2008 Rules, there was no post of AG-III in the Home Department, which

however was created later in the Prosecution segment, which according to the learned Department Government Advocate is distinct from the Home Department. We find from Annexure P/1 Rules that the post in question also comes under the Home Department and no separate Department named as 'Prosecution Department' is shown as in existence with a Secretary to head the said Department. It only constitutes a 'different wing' under the very same Home Department.

10. According to the learned counsel for the State, the stipulation of maximum age is a matter of Government 'policy' to extract maximum output and to achieve the best result; as efficiency of persons below the stipulated age will be more. In support of the said contention, reliance is sought to be placed on the decisions rendered by a Division Bench of the Karnataka High Court in ***The Union of India v. P. Boregowda & Others***, {2011 LAB.I.C. 2620, paragraphs 25, 26, 29, 30, 31, 35 and 36}, decision rendered by Gauhati High Court in ***State of Assam v. Taranidhar Choudhury***, {1986 LAB.I.C 1127, paragraphs 1, 3 and 12 } and a Division Bench of this Court in ***Dr. Ranjit Kumar Guru & etc. v. State of Chhattisgarh & Others***; {2010 LAB.I.C. 3608, paragraphs 19 and 20}.

11. The learned counsel for the private Respondents virtually supports the submissions made on the part of the State/Departmental authorities, adding that the private Respondents are having the requisite qualification, experience and are within the requisite age group and they form 'young blood', fit enough to be inducted to the posts in question. It is also pointed out that the normal channel of promotion to the post of AG-III is to AG-II, AG-I and so on. According to the learned counsel, it is a reasonable classification and framed in the better organizational interest, which is not arbitrary or discriminatory and hence is not assailable.

12. As mentioned already, Rule 5 of the 2008 deals with the classification of the posts, which is to be read alongwith Schedule I. They are reproduced below:

5. वर्गीकरण, वेतनमान इत्यादि— सेवा का वर्गीकरण, सेवा में सम्मिलित पदों की संख्या तथा उसके लिए वेतनमान इससे संलग्न अनुसूची—एक में दिए उपबंधों के अनुसार होगी.

परन्तु शासन, सेवा में सम्मिलित होने वाले पदों की संख्या में समय—समय पर, स्थाई या अस्थायी तौर पर वृद्धि या कमी कर सकेगी.

अनुसूची—एक
(नियम 5 देखिये)

स.क्र.	सेवा में सम्मिलित पदों के नाम	पदों की संख्या	वर्गीकरण	वेतनमान	टिप्पणी
(1)	(2)	(3)	(4)	(5)	(6)
1	संचालक, अभियोजन	1	प्रथम वर्ग	18400-22400	-
2	अतिरिक्त संचालक/ अतिरिक्त लोक अभियोजक	02	प्रथम वर्ग	14300-18300	-
3	संयुक्त संचालक अभियोजन/अतिरिक्त लोक अभियोजक	03	प्रथम वर्ग	12000-375-16000	-
4	उप—संचालक, अभियोजन/उप—संचालक (मुख्यालय) अतिरिक्त लोक अभियोजक	19	प्रथम वर्ग	10000-325-15200	-
5	जिला लोक अभियोजन अधिकारी/ अतिरिक्त जिला लोक अभियोजन अधिकारी/सहायक संचालक (मुख्यालय)	32	द्वितीय वर्ग	6500-200-10500	-
6	सहायक जिला लोक अभियोजन अधिकारी	193	द्वितीय वर्ग	5500-175-9000	-

From the Schedule, it is quite obvious that the top four cadres are of Class I; whereas the posts at serial No. 5 and 6 (DPPO and ADPPO) belong to Class II. There is no separate grading (as in the case of AG-III, AG-II and AG-I) in respect to the above posts categorized as different classes. There is an ocean of difference between a 'Class' and a 'Grade'. Schedule I under Rule 5 of the 2008 Rules dealing with classification of the posts segregates the posts as different classes (**Pratham Varg, Dwitiya Varg**).

13. The description of posts in the various classes as given in Schedule II coming under Rule 6 dealing with the mode of appointment specifically uses the term 'Assistant Grade III' (*Tritiya Shreni*) in respect of the feeder category for promotion to the post of ADPPO, which is clearly shown as coming under the 'Home Department'. Rule 6(1) and the connected Schedule i.e. Schedule II are as given below:

"6. भर्ती का तरीका—

- (1) इन नियमों के लागू होने के बाद सेवा में भरती, निम्नलिखित तरीकों से की जाएगी, अर्थात:—
- (क) चयन/प्रतियोगी परीक्षा से सीधी भरती द्वारा :
- (ख) राजपत्रित सेवा श्रेणी 1 तथा श्रेणी 2 के सदस्यों की पदोन्नति द्वारा :
- (ग) इस संबंध में विनिर्दिष्ट ऐसी सेवाओं में, ऐसे पद धारण करने वाले व्यक्तियों के स्थानान्तरण द्वारा.

अनुसूची—दो
(नियम 6 देखिये)

विभाग का नाम	सेवा का नाम	पद का नाम	पदों की संख्या	भरे जाने वाले कर्तव्य पदों की संख्या तथा प्रतिशतता		
				सीधी भर्ती	सेवा के सदस्यों की पदोन्नति	अन्य सेवा के सदस्यों के स्थानांतरण द्वारा
(1)	(2)	(3)	(4)	(5)	(6)	(7)
गृह विभाग	छत्तीसगढ़ लोक अभियोजन (राजपत्रित) सेवा	संचालक	1	-	-	यदि संवर्ग में कोई उपयुक्त अधिकारी उपलब्ध न हो तब I.P.S./उच्चतर न्यायिक सेवाओं में से प्रतिनियुक्ती द्वारा
		अतिरिक्त संचालक/ अतिरिक्त लोक अभियोजक	02	-	100 प्रतिशत	
		संयुक्त संचालक/अतिरिक्त लोक अभियोजक	03	-	100 प्रतिशत	
		उप—संचालक (प्रशासन) अभियोजन अतिरिक्त, अतिरिक्त लोक अभियोजन	19	-	100 प्रतिशत	
		जिला लोक अभियोजन अधिकारी/अतिरिक्त जिला लोक अभियोजन अधिकारी/ सहायक संचालक	32	-	100 प्रतिशत	
		सहायक जिला लोक अभियोजन अधिकारी	193	90 प्रतिशत	10 प्रतिशत अभि. विभाग से विधि उत्तीर्ण तृतीय श्रेणी के कर्म. से जिनकी उम्र 40 वर्ष से अधिक न हो और 7 वर्ष की सेवा पूर्ण कर ली हो.	

14. Rule 8 of the 2008 Rules deals with the conditions to be followed in the case of direct recruitment (including for 90% of the posts of ADPPO under Schedule II coming under the Home Department). This has to be read alongwith Schedule III prescribing the minimum-maximum age of recruitment. The relevant portion dealing with the post of ADPPO is extracted below:

अनुसूची-तीन
(नियम 8 देखिये)

विभाग का नाम	सेवा में पद का नाम	न्यूनतम आयु सीमा	अधिकतम आयु सीमा	शैक्षणिक अर्हताएं
(1)	(2)	(3)	(4)	(5)
गृह विभाग	छत्तीसगढ़ अभियोजन सेवा सहायक जिला लोक अभियोजन अधिकारी	24 वर्ष	35 वर्ष	किसी भी शासकीय विश्वविद्यालय से विधि में उपाधि या समकक्ष / प्रथम श्रेणी वाले या 2 वर्ष विधि व्यवसाय वाले या उच्चतर अर्हता वाले व्यक्तियों को अधिमन्यता दी जाएगी.

15. It is quite pertinent to note that there is no challenge with regard to the classification of the post, the qualification or experience required or as to any other aspect, except the 'age bar' in respect of AG-III having law degree with 7 years' experience. The Petitioners have specifically contended that there is absolutely no purpose, object or nexus in fixing the age cap, considering the nature of duties to be performed on the post in question i.e. ADPPO. But for the assertion made from the part of the State/Department that the maximum age of 40 years is prescribed (for promotion to the post of ADPPO from the feeder category of AG-III having law degree with 7 years' of experience) only to have better efficiency; how this is sought to be achieved is not explained either in the pleadings or made out in the course of arguments. Similarly, when the State/Department concedes that the maximum age for recruitment to the post of AG-III is 36 years (with relaxation to appropriate extent like Scheduled Castes/ Scheduled Tribes/ Other Backward Classes/ Economically Weaker Sections/ domicile of Chhattisgarh

State), the persons who get appointed within such maximum age at the 'entry point itself', if qualified by possessing a law degree, can aspire to be promoted on completion of 7 years of service in the feeder category post of 'AG-III', to the post of ADPPO, which however is prevented at the 'entry point' itself because of the age bar. A person who gets selected at the maximum age (of course within the limit), once completes the stipulated service of 7 years, will be of 43 years or more and since the date of superannuation is stated as 62 years in the State of Chhattisgarh, he/she is definitely to get a further term of 19 years (minimum). This being the position, the stand of the State/Department that it is to get reasonably long tenure of service to the person to be promoted, that the age ceiling has been fixed at 40 years, does not inspire confidence. Even in the case of persons eligible for the benefit of reservation viz. Scheduled Caste/ Scheduled Tribe/ Other Backward Class/ Economically Weaker Section/ domicile of Chhattisgarh *etc.* and who get an entry at the last minute i.e. just before the maximum age (45 years in appropriate cases), will also definitely have a tenure of 17 years to reach the age of superannuation. After completing the minimum service of 7 years, such persons having law degree will of course be having a left over service of 10 years or more, to serve the State; who cannot be cited as a mere 'bird of passage' having no interest in the office to which he is promoted, as termed in paragraph 9 of the return filed by the State; which is totally uncharitable.

16. The issue can be projected from another angle as well, as illustrated below:

Let us assume an instance of selection to the posts of AG-III where a brilliant candidate of 35 years scores a total of 90 marks out of 100 in the process of selection and placed at Sl. No. 1 in the rank list gets selected and appointed today as AG-III. If he is a Law Graduate, on completion of the requisite service of 7 years (standing in front of all others who came to be

selected and appointed in the very same selection) will be pushed down because of the age bar of '40 years', to give way to the last man selected and appointed, but of younger in age (30 years), who however has scored only the minimum pass marks, to be appointed to the higher post of ADPPO. How this will improve the efficiency of the State machinery, is a matter which is to be explained by the State/Department, where they have failed miserably to demonstrate.

17. Coming of the judicial precedents sought to be relied on by the State/Department in support of their contention, we are aware that there is a catena of decisions rendered by the Apex Court, including by a 7 member Bench in ***Pathumma & Others v. State of Kerala & Others*** {(1978) 2 SCC 1} holding that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on the party who assails the same. As discussed already, the Petitioners have illustrated how the impugned provision, fixing a ceiling to the age for promotion to the post of ADPPO is bad, being arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution, besides the absence of any object or nexus behind the stipulation. At the same time, as noted already, when the ceiling/cap is provided only to ensure efficiency and to provide a sufficiently longer tenure to the persons who are promoted to the posts, it does not reconcile with the actual scenario as discussed hereinbefore with reference to the maximum age, for appointment to the post of AG-III and the promotion to the post of ADPPO (for the law graduates who are holding the posts with 7 years of experience). Even the Respondent-State/Department themselves have conceded in 'paragraph 16' of their return, that when any statutory provision is assailed on the ground that it contravenes Article 14, its validity cannot be sustained, if 'two tests' are not satisfied; the 'first test' being as to the extent of intelligible differentia which distinguishes persons or things grouped

together from the others left out of the group and the 'second test' being as to the reasonable relation to the object sought to be achieved by the statutory provision in question. After going through the disputed provision fixing the maximum age for promotion to the qualified hands and the return filed from the part of the State, we find that the State/Department has not demonstrated as to the passing of these 'two tests', to have the validity of the provision sustained. This is more so when the Respondent-State/Department contends in 'paragraph 17' of their return, that the object of promoting the persons in the AG-III services to ADPPO post is to select the best of the Prosecution Wing who are most efficient and outstanding, to discharge the duties of ADPPO, however, failing to explain how the prescription of the maximum age of 40 years would bring in the outstanding and most efficient candidates to be promoted as ADPPO. As already mentioned and illustrated in the previous paragraphs, the first rank holder selected and appointed as AG-III, if has crossed the age bar of 40, will have to give seat to the less meritorious young man (standing far back in the queue with just pass marks, but came to be selected and appointed in the same process of selection) on completing 7 years of standing as AG-III, to be promoted as ADPPO; virtually pushing down the better merited candidates, merely with reference to the higher age factor of the former than the latter. In other words, when the State/Department speaks about the 'better efficiency and skill', to have outstanding performance, how these traits could be achieved merely with reference to younger age factor of 40 years, is not made out anywhere in the pleadings or during the course of arguments. To put it more clear, the post of ADPPO, which is a class II level post is not a selection post, and the entire 10% quota to be filled up by promotion has to be made, based on seniority of the candidates having law degree and completed 7 years of service as AG-III. The fact that promotion merely on seniority, is conceded by the learned counsel representing the State/Department. There is nothing in the relevant

rules, to infer that better performance/efficiency/knowledge will be assessed by any known process of selection like written test, interview or such other method, for promotion as 'ADPPO'. The stipulation of age bar at 40 years virtually enables a candidate of poor merit to get promoted as ADPPO, if he is sufficiently young, spoiling the career and chance for promotion of a highly merited candidate with outstanding performance, if he is of the higher age group, having crossed the age of 40 years. This classification is not a reasonable classification and there is no nexus between the stipulation and the object, if at all any.

18. We are aware, by virtue of the law declared by the Supreme Court, promotion is not a vested right and right of any candidate is only to be considered for promotion. When 10% of the quota to the post of ADPPO is to be filled up by promotion of AG-III having a law degree with 7 years of experience and further since such promotion is not by way of selection, the right to be considered is virtually taken away at the entry level itself, because of the stipulation of the age bar of 40 years; which in fact has no purpose to serve.

19. However, the Respondent-State/Department contends that the State is supported by Division Bench verdicts of the Karnataka High Court, the Gauhati High Court and this Court as per decisions in ***P. Boregowda & Others*** (supra), ***Taranidhar Choudhury*** (supra) and ***Dr. Ranjit Kumar Guru*** (supra).

20. Coming to the case dealt with by the Gauhati High Court in ***Taranidhar Choudhury*** (supra), it was a case involving the fixation of maximum age limit of 42 years for recruitment of ministerial government servants to Class III cadre of Assam Taxation Service, governed by the Assam Taxation Service Rules, 1962. Constitutional validity of Rule 60

proviso (b) of the said Rules was put to challenge, stating it to be arbitrary, discriminatory and violative of Article 14 and 16 of the Constitution of India. The Rule was struck-down by the learned Single Judge as violative of Article 14 and 16 of the Constitution of India, which was challenged by the State in an appeal preferred before the Division Bench. After considering the relevant provisions of law, the Division Bench held that classification was made with a view to achieve administrative efficiency in taxation services, and if this be the object, the classification is clearly co-related to it, for, younger persons are at least presumptive of a higher physical capacity for outdoor work. 'Paragraph 18' deals with the main part of the analysis made by the Division Bench, and hence, it is extracted below:

"18. When we apply the above principles to the proviso (b) to **clause (d) of Rule 6**, we do not find that it is discriminatory either against those who have already crossed the age limit of forty-two years or against those who have already been selected In Taxation Service Class III before they crossed that age limit. It cannot also be said that this classification has no nexus with the object sought to be achieved, namely, administrative efficiency of the Taxation Officer. Though it cannot always be said that those who have crossed the age limit of forty-two years would always be less active and efficient than those who have not, there is undoubtedly a natural presumption that those below forty-two years of age would be more active and more suitable for the outdoor duties of the Class III officers, who are Inspectors of Taxes, either directly recruited or promoted before they crossed forty-two years. The fixation of the suitable age, minimum or maximum, is ordinarily a function of the employer who is the best judge of its needs in the matter of employments. We often find that a maximum age limit is prescribed for entry into Government service and those who are employed earlier before they attained that age, are allowed to continue in service even after they crossed that age limit that has not been regarded as a sufficient reason to strike down the maximum age limit for entry into Government service as discriminatory and violative of Articles 14 and 16. We also find different age limits prescribed for superannuation in different services. To mention a few, in the Armed Forces, comparatively lower age of superannuation is prescribed. In *Air India vs. Nergesh Meerza and others*, AIR 1981 SC 1829 : (1981 Lab IC 1313), it was held that the fixation of retirement age of Air Hostesses at forty-five years of age instead of fifty-eight was not discriminatory. It was also held that the question of fixation of retirement age of an Air

hostess was to be decided by the authorities concerned after taking into consideration various factors such as nature of work, the prevailing conditions, the practice prevalent in other establishments and the like. The factors to be considered must be relevant and bear a close nexus to the nature of the organisation and the duties of the employees. Where the authority concerned takes into account factors or circumstances which are inherently irrational or illogical or tainted, the decision of fixing the age of retirement is open to serious scrutiny. In the instant case it cannot be said that the authority concerned had taken into consideration factors or circumstances which are inherently irrational or irrelevant. On the other hand, the factors considered by them have a close nexus with the nature of the service and the duties to be performed by the Class III Taxation Officers. The proviso therefore cannot be held to be discriminatory and violative of **Articles 14 and 16 of the Constitution of India."**

21. From the above, it is clear that the Bench had considered the nature of duties to be performed by the Taxation Officers who may have to do the outdoor duties as well, where age and physical fitness matter much. The Bench made it clear that the factors to be considered must be relevant and there must be a close nexus to the nature of the organisation and the duties of the employees, however, adding that where the authority concerned takes into account the factors or circumstances which are inherently irrational, illogical or tainted, the decision of fixing the age of retirement is open to serious scrutiny. It was with reference to this aspect, that the Bench observed that in the said case, it was not the position and on the other hand, the factors considered had a close nexus with the nature of the services and the duties to be performed by the Class III Taxation Officers; which made the learned Judges to hold that the proviso under challenge could not be held to be discriminatory, arbitrary or violative of Articles 14 and 16 of the Constitution of India. The said decision does not support the case of the Respondent-State/Department in the instant case, by virtue of the different nature of duties to be performed by the promoted persons as ADPPO in the office/Court room.

22. In the verdict rendered by the Division Bench of Karnataka High Court in **P. Boregowda & Others** (supra), the main challenge was against the cut-off age fixed at 54 years for consideration of persons in the State cadre for promotion to the 'IAS' cadre in accordance with Section 3 of the All India Services Act, 1951, Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 and Regulation 5 of Indian Administrative Services (Appointment by Promotion) Regulation, 1995. The validity of the Rules was challenged, contending that it was arbitrary and discriminatory, involving classification within the class and that no object was sought to be achieved and hence without having any reasonable nexus. After exhaustive analysis of the facts and figures and the relevant provisions of law, the Bench held in paragraph 35, that Article 14 of the Constitution forbids class legislation, but it does not forbid reasonable classification for the purpose of legislation. The Bench held that when any statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained only if two tests are satisfied, the first one that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group and the second one being, the differentia in question must have a reasonable relation to the object sought to be achieved by the disputed statutory provision. However, the Bench observed that it was for the applicants to prove the above two aspects but they had failed, in turn leading to a finding that the Applicants had failed to prove that the impugned Regulation {Regulation 5(3) of the Regulations, 1995} as unconstitutional. In the said circumstance, the verdict passed by the Tribunal was set aside and the applications filed before the Tribunal were dismissed, virtually allowing the writ petition filed by the State.

23. The factual position is different in the instant case, where the Petitioners have satisfied the requirements in respect of the 'twin tests' as to the irrationality of the Rule and the absence of reasonable nexus to the object

because of the age cap for promotion to the post of ADPPO. That apart, in the case considered by the Karnataka High Court in **P. Boregowda & Others** (supra), it was with regard to the promotion of the State cadre Officers to IAS, which, as per the relevant Act, Rules and Regulations, was to be by way of "selection" and it was never automatic on the basis of seniority. For this reason, there is no basis for the Respondent-State/Department to place reliance on the said judgment, which is not applicable in any manner.

24. With regard to the case considered by a Division Bench of this Court in **Dr. Ranjit Kumar Guru** (supra), the common question of law and facts which arose for consideration were projected at the instance of the Petitioners who were working as contract Ayurved Chikitsa Adhikari in various Ayurvedic Hospitals in the State. Validity of Rule 6 of the Madhya Pradesh/Chhattisgarh Public Health (Indian System of Medicine and Homeopathy (Gazetted) Service Recruitment Rules, 1987 and Rule 7 of the Madhya Pradesh/ Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961 providing for method of appointment of Ayurveda Chikitsa Adhikari were put to challenge as *ultra vires* to the Constitution. All the Petitioners who were 'contract employees' had crossed the age limit for appointment and they had sought to enhance the upper age limit upto 48 years or to grant relaxation in age corresponding to number of years of contract service rendered by the Petitioners. The Bench repelled their contentions and held that the validity of the Rules cannot be challenged for the grounds mentioned and that the Petitioners were not entitled to any equitable consideration, merely on the basis of their continuance as contract employees for a few years; simultaneously adding that prescription of lower and upper age limit was essentially a legislative function of the Governor in exercise of the constitutional authority under Article 309. How the said decision will get attracted to the case in hand, to support the contentions of the State/Department, is not demonstrated. According to us, the reliance

sought to be placed on the above verdict is quite out of context and it is not applicable.

25. Almost similar situation in fixing an age bar for promotion to the post of Assistant Judge, when there was no such stipulation for further promotion as District Judge, had come up for consideration before the Apex Court, challenging the relevant rules, in **Indravadan H. Shah** (supra). The validity of Rule 6(4)(i) and Rule 6(4)(iii)(a) of the Gujarat Judicial Service Recruitment (Amendment) Rules, 1979 was the subject matter of consideration in the said case. The said Rules are extracted below:

"(i) Appointment to the post of an Assistant Judge shall be made by the Governor in consultation with the High Court by promotion of a person from amongst such persons (comprising of those holding the post of Civil Judges (Junior Division) and those in the cadre of Civil Judges (Senior Division) whose names have been entered in the Select List referred to in Clause (ii) before they have reached the age of 48 years and continue in that list on the date of appointment;

xxx

xxx

xxx

(iii) (a) The name of a candidate entered in the Select List shall be struck out of it on his reaching the age of 49 years if during the interval, he is not appointed as an Assistant Judge."

26. The Bench observed that regarding appointment to the post of District Judges by promotion from amongst members of the Junior Division, who have ordinarily served as an Assistant Judge, there was no limit or bar of age unlike that of the appointment of an Assistant Judge by promotion from the members of Civil Judges (Senior Division) or from members of Civil Judges (Junior Division). It was only in the case of direct recruitment from amongst the members of the Bar to the post of District Judges, was there an age limit of 45 years, which was relaxable upto 48 years in the case of members of the community recognized as backward by the Government. The age bar was sought to be justified by the respondents therein, including the

High Court of Gujarat, stating that the age restriction for promotion to the post of Assistant Judge was "in practice" since 1954 or so. The rationale underlying the age restriction for recruitment to the post of District Judge was stated as, such Assistant Judges should have sufficient number of years left before they reach the age of superannuation, so that their service could be utilized as District Judges, adding that there would be no point in selecting them as Assistant Judges, if they were to retire as Assistant Judges. The stand of the State/High Court was upheld on the judicial side by a Division Bench of the Gujarat High Court, which however was deprecated by the Apex Court as totally unsustainable, for the simple reason that if a person holding the post of Civil Judge (Senior Division) who has completed 48 years of age is considered to be not fully equipped with the physical and mental calibre for being appointed to the higher post of Assistant Judge, then on the same analogy, how a member of the Bar will be considered at the age of 48 years to be the most suitable for being appointed to the higher and responsible post of District Judge and such appointees will infuse fresh blood at that important service? The Bench also observed, on the other hand, that it is well established that with the coming of age and experience, a Judicial Officer becomes more suited and well equipped to perform and discharge the higher duties and responsibilities attached to the higher post of Assistant Judge and that of District Judge. Here, we would like to add that, learning is an unending process. Acquisition of knowledge is from different sources and it will be gathered over a period of time. It will only be appropriate, if we quote a small stanza in Sanskrit as to the process of acquisition of knowledge, as given below:

आचार्यात् पादमादत्ते
 पादम शिष्यः स्वमेधया ।
 पादम सब्रह्मचारिभ्यात्
 पादम कालक्रमेण चः ॥

The verbatim translation is to the effect that a person acquires one-fourth of the knowledge from the teachers, one-fourth by himself, one-fourth from the colleagues and remaining one-fourth, by the passage of time. The last leg shows the experience and the relevancy of the age factor. Higher the said traits, higher will be the chance for acquiring the learning/skills. This is more so in the case of Lawyers, Judges or persons who are supposed to do the job of Prosecutors, as involved in the present case. When the Respondent-State/Department recognizes knowledge to be gathered by the law graduates from the experience of 7 years as AG-III, such knowledge/information/ skill being acquired further by the passage of time cannot be watered down and the better merited candidates cannot be pushed down, merely with reference to the stipulation of maximum age as 40 years for promotion to the post of ADPPO. This we have already held as having absolutely no nexus with the object, insofar as the efficiency to the mechanism is concerned.

27. The Apex Court in **Indravadan H. Shah** (supra) held that it is incomprehensible, how the two cadres of Assistant Judges and the District Judges can be treated as two different classes altogether, thereby justifying the introduction of age restriction in regard to selection and appointment by promotion to the post of Assistant Judge while doing away with any such sort of age limit/restriction in respect of appointment to the post of District Judge by promotion amongst the members of junior branch who have served as Assistant Judges. Referring to the mandate of Article 14 and 16 of the Constitution, the Apex Court held that there was no nexus to the object sought to be achieved by introducing the age restriction as per the rules under challenge and hence it was arbitrary and violative of the salutary principles of equality in the matter of public employment. In support of the finding, the principles enunciated and the declarations made by the Apex

Court at earlier instances as it appears in ***E.P.Royappa v. State of Tamil Nadu*** (AIR 1974 SC 555), ***Maneka Gandhi v. Union of India***, (AIR 1978 SC 597) and ***R.D.Shetty v. International Airport Authority of India*** , (AIR 1979 2 SCC 1628) were extracted, as given below:

E.P.Royappa v. State of Tamil Nadu:

"Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art. 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination....

Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law.... "

Maneka Gandhi v. Union of India:

"Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality of non-arbitrariness pervades Article 14 like a brooding omnipresence"

R.D.Shetty v. International Airport Authority of India:

"It is now well settled that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterize every State action whether it be under

authority of law or in exercise of executive power without making of law."

28. It was accordingly held by the Apex Court that the provisions of Rules 6(4)(i) read with 6(4)(iii)(a) were irrational, arbitrary and unreasonable inasmuch as there was no nexus to the object sought to be achieved by introducing the age restriction in regard to appointment of Assistant Judge by promotion from amongst the members holding posts of Civil Judges (Junior Division) and those in the cadre of Civil Judges (Senior Division) whose names have been entered in the select list. The Apex Court made it clear that the observation should not be construed to mean that there cannot be any fixation of age of superannuation in different grades of other services; namely the Armed forces, the Air force or the Navy, in which services, fixation of different age of superannuation in different grades may be made in 'public interest', in order to ensure excellence in service as well as merit and efficiency, which, to a great extent depend upon physical fitness, apart from merit.

29. In the light of the above declaration of law and the discussion made above, we are of the firm view that the Petitioners have succeeded in establishing their case as to the irrationality and lack of nexus to the object sought to be achieved stipulating 40 years as the maximum age for promotion of law graduates having 7 years' of experience as AG-III to the post of ADPPO. Accordingly, we declare that the prescription of ceiling/age bar at 40 years for being promoted to the post of ADPPO from the feeder category post of AG-III, of persons having Law degree with 7 years experience, as stipulated in the II Schedule to Rule 6 of the Chhattisgarh Lok Abhiyojan (Rajpatrit) Bharti Evam Padonnati Niyam, 2008 is arbitrary, discriminatory and irrational, having no nexus to the alleged object of bringing better efficiency to the system. It stands set aside as violative of Article 14 and 16 of the Constitution of India.

30. We direct the official Respondents to consider the candidature of the Petitioners herein, who are qualified in all other respects, notwithstanding the age factor and to promote them to the post of ADPPO in any of the existing vacancies or in the next arising vacancies forthwith. It is also made clear that the Petitioners shall be placed at an appropriate level, protecting their seniority with effect from the date on which their juniors were given appointment as ADPPOs and their salary shall be fixed and disbursed on notional basis. The Petitioners, however, will not be entitled to get arrears of any monetary benefits because of such notional fixation of seniority.

All the writ petitions are allowed. No costs.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE