

STATE OF SIKKIM AND OTHERS

v.

ADUP TSHERING BHUTIA AND OTHERS

(Civil Appeal No. 2446 of 2014)

FEBRUARY 18, 2014

[H L. GOKHALE AND KURIAN JOSEPH, JJ.]

Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000: r.9(iv) - Integration of services - Three different services viz. Police Force, Armed Police and Vigilance Police in the State of Sikkim - In Vigilance Police and Armed Police, though the members therein got accelerated promotion to the post of inspector, there was no further promotion available to them - Promotion to the post of Deputy Superintendent of Police (DSP) available only to members of the Police Force - This inequality sought to be remedied by integration of three services - The feeder category for promotion to the post of DSP is inspector - Date of promotion/direct recruitment to the post of sub-inspector taken as determining factor for fixation of seniority for the purpose of promotion to the post of DSP and grant of deemed/notional promotion to the members of the Police Force from the date their compeers in the other two services got promotion to the post of inspector - Writ petition by respondent alleging that on account of the retrospective promotion granted to the members of the Police Force based on the date of appointment/promotion as sub-inspector in the case of the other two services, the respondent became junior to them, affecting his chances of promotion to the post of DSP - High Court allowed writ petition - Held: High Court patently erred in holding that the acquired or accrued rights of the writ petitioner had been affected by the fixation of seniority at the level of sub-inspector of Police - The very purpose of integration was to remove the inequality and provide them with

- A *the opportunity for promotion to the post of DSP - If length of continuous service in the highest cadre of some similar services is taken as basis of fixing seniority and for further promotion that would certainly result in deeper injustice to the members of the other services - r.9(iv) is just, fair and equitable in the given circumstances without which the integration of services would have resulted in graver inequality and injustice to the members of the major service - The impugned judgment is set aside - However, for doing complete justice, being a solitary case, the benefits granted by the High Court in the impugned Judgment to the writ petitioner shall not be disturbed - Service law.*

Prior to the constitution of integrated Sikkim Police Force w.e.f. 11.09.2000, there were three different services viz. Sikkim Police Force, Sikkim Armed Police and Sikkim Vigilance Police in the State of Sikkim. All the three forces were governed by separate service rules. There was entry level of constable in all the three forces. The Sikkim Vigilance and Sikkim Armed Forces ended with the cadre of inspector. In the case of Sikkim Armed Police there was also 50% direct recruitment at the level of sub-inspector. Promotion to the post of Deputy Superintendent of Police was available only to the Sikkim Police Force. The posts of Deputy Superintendent of Police in Sikkim Vigilance Police and Sikkim Armed Police were filled up only by deputation. The personnel belonging to the Sikkim Vigilance Police and Sikkim Armed Police had been raising their grievances with regard to lack of promotion beyond inspector of police at various levels. The State Government framed the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 under Article 309 of the Constitution of India consisting of posts upto inspector in all the three forces whereby seniority and retrospective promotion was granted notionally to the members of pre-integrated Sikkim Police Force.

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STATE OF SIKKIM AND OTHERS v. ADUP TSHERING1005
BHUTIA AND OTHERS

The respondent had joined Sikkim Police as a Constable on 12.08.1974. He was absorbed in the Sikkim Vigilance Police on 12.09.1978. He was promoted as sub-inspector on 22.12.1986 and was further promoted as inspector on 26.09.1995. On account of the retrospective promotion granted to the members of the Sikkim Police Force based on the date of appointment/promotion as sub-inspector in the case of the other two services, the respondent became junior to them, affecting his chances of promotion to the post of Deputy Superintendent of Police. He filed a writ petition before the High Court.

The High Court allowed the writ petition quashing the retrospective promotion granted to the private respondents and striking down Rule 9(iv) holding also that the seniority in the integrated cadre of inspectors shall be decided only on the basis of their substantive promotion to that post, and not based on the date of promotion/appointment to the post of sub-inspector. The Court, however, protected the promotions granted to the private respondents. Even the respondent was also promoted as Deputy Superintendent of Police on 23.02.2012 and he retired from service on 31.08.2012. The direction by the High Court was to grant promotion w.e.f. the date the first promotion was granted to any other private respondent with all the consequential including monetary benefits. The instant appeal was filed challenging the order of the High Court.

Allowing the appeal, the Court

HELD: 1. Integration of three services was necessitated for balancing the inequality to the extent that the members of two of the services were denied promotion to the post of Deputy Superintendent of Police. Such promotion was available only to the members of the erstwhile Sikkim Police Force and was denied to Sikkim Vigilance Police and Sikkim Armed

A Police. Accepting the recommendation of the Commission for a unified Police Force, the State Government integrated three services and promulgated the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000. The members of Sikkim Vigilance
B Police and Sikkim Armed Police had obtained accelerated promotion to various posts up to the position of inspector of police. However, their compeers in the erstwhile Sikkim Police Force could not get such promotions to the higher post of inspector for want of
C vacancy. There was entry level direct recruitment in one of the services, viz., Sikkim Vigilance Police to the extent of 50%. No doubt one of the main principles of integration is equation of posts. But the question is whether such integration based only on equation of
D posts will result in inequality or injustice to the members of any other service. Promotion to the post of Deputy Superintendent of Police was available only to members of the Sikkim Police Force. In the other two services, viz., Sikkim Vigilance Police and Sikkim Armed Police, though the members therein got accelerated promotion to the
E post of inspector, there was no further promotion available to them and they had to retire from service in that cadre. It was this inequality that was sought to be remedied by integration. The feeder category for promotion to the post of Deputy Superintendent of Police
F is inspector. If the seniority is fixed in that cadre of inspector, it would virtually amount to denial of promotion to the post of Deputy Superintendent of Police for quite some time to the members of the Sikkim Police Force. It was this discrimination and resultant injustice that was
G sought to be remedied by referring the matter to the Committee which recommended that for the purpose of promotion to the post of Deputy Superintendent of Police and preparation of seniority list in that regard, the date of promotion to the post of sub-inspector should form the
H basis. That date was taken, since there was direct

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING1007
BHUTIA AND OTHERS

recruitment to the post of sub-inspector in Sikkim Armed Police. What has been done by the Government is to base the date of promotion/direct recruitment to the post of sub-inspector as the determining factor for fixation of seniority for the purpose of promotion to the post of Deputy Superintendent of Police and grant deemed/notional promotion to the members of the Sikkim Police Force from the date their compeers in the other two services got promotion to the post of inspector. Appointment to the post of inspector is by promotion. Therefore, the entry level appointment to the cadre of sub-inspector becomes relevant. The sub-inspector of Sikkim Vigilance and Sikkim Armed Forces, by chance, got accelerated promotion to the post of inspector. It was this injustice that was sought to be remedied by the retrospective promotion without monitory benefits and the amendment in the Rules. Merely because there is equation of post in a cadre on integration that does not necessarily mean that the common seniority list should be prepared in that cadre for promotion to the next higher cadre. If that method would result in injustice and graver inequality, another fair and just mode can be adopted. [Para 12 to 16] [1018-C-D; 1019-B-H; 1020-A-F]

State of Gujarat and Anr. v. Raman Lal Keshav Lal Soni and Ors. (1983) 2 SCC 33: 1983 (2) SCR 287; *B.S. Yadav and Ors. v. State of Haryana* (1980) Suppl. SCC 524: 1981 SCR 1024 - referred to.

2. True, many officers who were working as sub-inspectors, while the writ petitioner had been working as inspector, have gone above him in the process but the hard fact which caused the heartburn to his compeers in the Sikkim Police Force is that at the level of sub-inspectors, all of them were either travelling together with the writ petitioner or had gone much earlier to him in that cadre. No doubt, after integration, the promotion chances

A of members of Sikkim Police have been reduced
considerably, since originally it was their exclusive
domain. [paras 17, 18] [1020-G-H; 1021-A]

B 3. The High Court patently erred in holding that the
acquired or accrued rights of the writ petitioner had been
affected by the fixation of seniority at the level of sub-
inspector of Police. It has to be noted that, but for merger,
neither the writ petitioner nor the members of the two
other police forces, viz., Sikkim Vigilance Police and
C Sikkim Armed Force, could have got any promotion at all
to the post of Deputy Superintendent of Police. The very
purpose of integration was to remove the inequality and
provide them with the opportunity for promotion to the
post of Deputy Superintendent of Police. If length of
D continuous service in the highest cadre of some similar
services is taken as the basis of fixing the seniority and
for further promotion to higher posts that would certainly
result in deeper injustice to the members of the other
services. It was hence the State, after due deliberations
and based also on report of an expert Committee
E consisting of the top level offices in the State, took an
equitable decision to make the post of sub-inspector of
Police, where there is direct level entry in one of the
services, as the determining factor for fixation of seniority.
The writ petitioner did not suffer any demotion in the
F process. He continued in the post of inspector. The only
thing is that his compeers in Sikkim Police Force who
could not get accelerated promotion to the post of
inspector, but who are admittedly senior to him if the date
of appointment to the post of sub-inspector is taken, were
G given the deemed date of promotion to the post of
inspector based on the seniority at the level of sub-
inspector. The amended rule certainly has thus a nexus
to the injustice sought to be removed so as to balance
the equity. It is neither irrational nor arbitrary. In the whole
H State of Sikkim, the writ petitioner is the only person who

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING 1009
BHUTIA AND OTHERS

challenged the amendment which by itself would show that it was a case of a solitary instance, assuming there is basis for his grievance. The writ petitioner was senior to some of the private respondents if his date of entry in service as Sikkim Police Constable is taken. But when the Sikkim Vigilance Police was formed, he opted for that and he was absorbed in that Police wherein he got accelerated promotions to the various posts of head constable, assistant sub-inspector, sub-inspector and inspector. But such a ground with regard to his original date of entry as a police constable in 1974 was not taken anywhere. The principle of fixation of seniority as introduced by the amendment was already there in Rule 9(1). It is already provided therein that the relative seniority of the members recruited directly will be fixed based on the date of induction to the cadre. In other words, date of induction to a cadre where there is direct recruitment is the basis of fixation of seniority in the instant case at the level of sub-inspector. Thus, the amendment is merely clarificatory in nature and, therefore, it is deemed to exist from the original date of commencement of the Rule in 2000. Be that as it may, the High Court has already protected the promotions granted to the private respondents but the High Court has struck down the Rule and has quashed the seniority list. The High Court has unfortunately missed the crucial consideration with regard to the principles set by the State with regard to fixation of seniority, the purpose sought to be achieved in the process, the relevant considerations which led to the decision and the materials including the report of the expert committee which were relied on by the State in the process of making and taking of the decision. The State has only acted within its authority under Article 309 of the Constitution of India in bringing about the clarificatory amendment with regard to the fixation of seniority in the cadre of sub-inspectors. The retrospectivity given to the private respondents by giving the deemed date of

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A promotion is neither arbitrary nor unreasonable. On the contrary, it is perfectly just, fair and equitable in the given circumstances without which the integration of services would have resulted in graver inequality and injustice to the members of the major service. The impugned judgment is set aside. The first respondent-writ petitioner was also promoted as Deputy Superintendent of Police and he has retired from service. Rule 17 of the 2000 Rules has provided for power of relaxation to the State. Since the first respondent-writ petitioner had actually entered in service in 1974, prior to some of the private respondents, this could have been probably a case for the State Government to exercise that power. For doing complete justice, being a solitary case, the benefits granted by the High Court in the impugned Judgment to the writ petitioner shall not be disturbed. [paras 26 to 30]

Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Ors. v. State of Tamil Nadu and Ors. (1980) 3 SCC 97: 1980 (1) SCR 1026; *Indian Airlines Officers' Association v. Indian Airlines Limited and Ors.* (2007) 10 SCC 684: 2007 (8) SCR 655; *Kerala Magistrates' (Judicial) Association and others v. State of Kerala and Ors.* (2001) 3 SCC 521: 2001 (2) SCR 222; *Life Indian Corporation of India and Ors. v. S. S. Srivastava and Ors.* 1988 Supp SCC 1: 1987 SCR 180; *New Bank of India Employees' Union and Anr. v. Union of India and Ors.* (1996) 8 SCC 407: 1996 (3) SCR 322; *K.S. Vora and Ors. v. State of Gujarat and Ors.* (1988) 1 SCC 311: 1988 (1) SCR 611; *Reserve Bank of India v. N.C. Paliwal and Ors.* (1976) 4 SCC 838: 1977 (1) SCR 377; *R.S. Makashi and Ors. v. I. M. Menon and Ors.* (1982) 1 SCC 379: 1982 (2) SCR 69; *Prafulla Kumar Das and Ors. v. State of Orissa and Ors.* (1976) 4 SCC 838: 2003 (4) Suppl. SCR 301; *S.S. Bola and others v. B.D. Sardana and Ors.* (1997) 8 SCC 522: 1997 (2) Suppl. SCR 507 - relied on.

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING 1011
BHUTIA AND OTHERS

Case Law Reference:

1983 (2) SCR 287	referred to	Para 11	A
1981 SCR 1024	referred to	Para 11	
1980 (1) SCR 1026	relied on	Para 19	B
2007 (8) SCR 655	relied on	Para 19	
2001 (2) SCR 222	relied on	Para 19	
1987 SCR 180	relied on	Para 19	C
1996 (3) SCR 322	relied on	Para 19	
1988 (1) SCR 611	relied on	Para 20	
1977 (1) SCR 377	relied on	Para 22	
1982 (2) SCR 69	relied on	Para 23	D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2446 of 2014.

From the Judgment and Order dated 10.10.2012 of the High Court of Sikkim, Gangtok in WPC No. 33 of 2010.

A Mariarputham, AG, A.K. Gaguli, Aruna Mathur, Yusuf Khan (for Arputham, Aruna & Co.) for the Appellants.

Bhaskar Raj Pradhan, Arunabh Chowdhury, Anupam Lal Das, Karma Dorjee, G. Panmei, Vaibhav Tomar, Dipesh Sinha, Anirudh Singh, Annam D.N. Rao for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. Integration of services means the creation of a homogenous service by the amalgamation or merger of service personnel belonging to separate services. Integration is a policy matter as far as the State is concerned. In evolving a proper

A coalescence of the services, there are various steps:

(i) Decide the principles on the basis of which integration of services has to be effected;

B (ii) Examine the facts relating to each category and class of post with reference to the principle of equivalence;

(iii) Fix the equitable basis for the preparation of common seniority list of personnel holding posts which are merged into one category.

C The State is bound to ensure a fair and equitable treatment to officers in various categories/cadres of services while preparing the common seniority list. Being a complicated process, integration is likely to result in individual bruises which are required to be minimised and if not possible, to be ignored.
D These first principles on integration are to be borne in mind whenever a dispute on integration is addressed.

SHORT HISTORY

E 3. Prior to the constitution of integrated Sikkim Police Force w.e.f. 11.09.2000 as per the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000, there were three different services, viz., (1) Sikkim Police Force, (2) Sikkim Armed Police Force and (3) Sikkim Vigilance Police. All the three forces were governed by separate service rules. There is entry level of constable in all the three forces. The Sikkim Vigilance and Sikkim Armed Forces ended with the cadre of inspector. In the case of Sikkim Armed Police there was also 50% direct recruitment at the level of sub-inspector. Promotion to the post of Deputy Superintendent of Police was available only to the Sikkim Police Force. The posts of Deputy Superintendent of Police in Sikkim Vigilance Police and Sikkim Armed Police were filled up only by deputation. The personnel belonging to the Sikkim Vigilance Police and Sikkim Armed Police had been raising their grievances with regard to lack of promotion beyond inspector of police at various levels.
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STATE OF SIKKIM AND OTHERS v. ADUP TSHERING 1013
BHUTIA AND OTHERS [KURIAN, J.]

The matter reached the High Court in Writ Petition (C) No. 513 of 1998. Realising the heartburn, the State Government appointed Justice N. G. Das, a former Judge of the High Court of Sikkim as one man Commission for examining the scope of integration of different services. Implementing the recommendations of the Commission, the State Government framed the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 under Article 309 of the Constitution of India consisting of posts upto inspector in all the three forces. For the purpose of ready reference, we shall extract Rule 4 of 2000 Rules on constitution of the forces:

"4. Constitution of the Force:

The Force shall consist of the following, namely:-

- (a) Persons holding the posts upto and including Inspectors under Schedule I of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1981.
- (b) Persons holding the posts of Constable, Head Constable, Assistant sub-Inspector, Sub-Inspector and Inspector under the Sikkim Vigilance Police Force (Recruitment, Promotion and Seniority) Rules, 1981.
- (c) Persons holding the posts of Sub-Inspector and Inspector under the Sikkim Armed Police (Recruitment, Promotion and Seniority) Rules, 1989.
- (d) Persons recruited to the Force in accordance with the provisions of these rules."

4. On seniority, Rule 9 provided that the same would be determined by the order of merit in which they are selected for recruitment. To quote:

A "9. Seniority

(i) The relative seniority of the members of the force recruited directly, shall be determined by the order of merit in which they are selected for such recruitment. Members as a result of an earlier selection shall be senior to those recruited as a result of a subsequent selection.

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(ii) The relative seniority of persons promoted from a lower post shall be on the basis of seniority-cum-merit subject to successfully passing the prescribed exam.

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(iii) The relative seniority inter-se of members recruited directly and through promotion shall be determined according to the rotation of vacancies between direct recruits and promotes which shall be based on the quota of vacancies reserved for direct recruitment and promotion, respectively, in these rules."

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(Emphasis supplied)

5. On inter se seniority at the level of two cadres, viz., sub-inspector and inspector, it appears, there was a back reference to Justice N. G. Das Commission. However, it is seen from the records that there was no further recommendation from Justice N. G. Das Commission. With regard to the method and modalities of fixing of seniority of the sub-inspectors and inspectors, the matter was hence referred to a committee of senior police officers constituted by the Director General of Police. It was recommended that the inter se seniority at the level of sub-inspectors be the determining criterion for fixing the inter se seniority of inspectors in the integrated cadre. The proposal was approved by the Government on 11.04.2008 but the same was not implemented due to the pendency of a Writ Petition filed by the first respondent herein. After the disposal

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STATE OF SIKKIM AND OTHERS v. ADUP TSHERING1015
BHUTIA AND OTHERS [KURIAN, J.]

of the Writ Petition on 27.08.2009 as withdrawn, the government again constituted a high level committee headed by the Chief Secretary as Chairman with Director General of Police, Home Secretary and Secretary DoP as members and Joint Secretary DoP as member secretary. The committee submitted its report on 31.10.2009. It was recommended that the inter se seniority of police inspectors should be fixed based on the seniority at the entry level of sub-inspectors. It was also recommended that inspectors of Sikkim Police be deemed to have been promoted as inspectors w.e.f. the date their colleague officers at the entry level of sub-inspectors in Sikkim Armed Police and Sikkim Vigilance Police first got promoted as inspectors. The recommendation was approved by the State Government on 10.11.2009, and on 19.01.2010 a Notification was issued granting retrospective promotion to 52 members of the Sikkim Police Force with the condition that the officers will not be entitled to arrears of pay.

6. The State Government also amended the integrated Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 as per Notification dated 20.01.2010 with retrospective effect from 11.09.2000. The amendment was mainly in Rule No. 9 on seniority wherein a new sub-clause (iv) was inserted. The amended Rule 9 (iv) reads as follows:

"9(iv)(a) The inter-se-seniority of police personnel up to the rank of Assistant Sub-inspector in the Sikkim Police and Sikkim Vigilance Police on the date of amalgamation of the cadres for the purpose of their promotion to the next rank shall be determined on the basis of their date of appointment to the entry level post of Constable.

(b) The inter-se-seniority of Police Inspectors of Sikkim Police, Sikkim Vigilance Police, Sikkim Armed Police and Indian Reserve Battalion on the date of amalgamation of the cadres for the purpose of their promotion to the rank of Deputy Superintendent of

A Police shall be determined on the basis of their date of appointment to the entry level of Sub-Inspector."

(Emphasis supplied)

B 7. The Rules also provided for a residuary power to the Government for relaxation. The relevant Rule reads as under:

C "17. Power to relax: Where the Government of Sikkim is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax and of the provisions of these rules with respect to any class or category of persons or post."

SHORT FACTS

D 8. Seniority, the retrospective promotion granted notionally to the members of the pre-integrated Sikkim Police Force and the amendment was challenged by respondent no.1 before the High Court in Writ Petition (C) No. 33 of 2010 mainly with the following two prayers:

E "(a) A writ in the nature of certiorari or any other writ, order or directions striking down/quashing Rule 9(iv)(b) of the Sikkim Police Force (Recruitment, Promotion & Seniority) Rules, 2000 as inserted by

F Rule 2 of the Sikkim Police Force (Recruitment, Promotion and Seniority) Amendment Rules, 2009 brought into force vide Notification No. 222/GEN/DOP dated 20.01.2010 with retrospective effect from 11.09.2000.

G (b) A writ in the nature of certiorari or any other writ, order or directions striking down/quashing the Notification No. 02/PHQ/2010 dated 19.01.2010 to the extent it gives retrospective promotion to over 6 years to the private Respondent Nos. 7 to 28

H except Respondent No. 21 by a deeming fiction

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING 1017
BHUTIA AND OTHERS [KURIAN, J.]

irrespective of their actual date of confirmation with effect from the dates mentioned in the said impugned notification against the names of each of the said private Respondents." A

9. For a proper understanding of the factual disputes, we shall refer to the grievance of the writ petitioner. He joined Sikkim Police as a Constable on 12.08.1974. He was absorbed in the Sikkim Vigilance Police on 12.09.1978. He was promoted as sub-inspector on 22.12.1986 and was further promoted as inspector on 26.09.1995. On account of the retrospective promotion granted to the members of the Sikkim Police Force based on the date of appointment/promotion as sub-inspector in the case of the other two services, the writ petitioner became junior to them, affecting his chances of promotion to the post of Deputy Superintendent of Police. B C D

10. The High Court by Judgment dated 10.10.2012 allowed the Writ Petition quashing the retrospective promotion granted to the private respondents and striking down Rule 9(iv) holding also that the seniority in the integrated cadre of inspectors shall be decided only on the basis of their substantive promotion to that post, and not based on the date of promotion/appointment to the post of sub-inspector. The Court, however, protected the promotions granted to the private respondents. It is significant to note that even the writ petitioner was also promoted as Deputy Superintendent of Police on 23.02.2012 and he retired from service on 31.08.2012. The direction by the High Court is to grant promotion with effect from the date the first promotion was granted to any other private respondent with all the consequential including monetary benefits. Thus aggrieved, the State is before this Court. E F G

11. The High Court has placed reliance on the Constitution Bench decision of this Court in *State of Gujarat and Another v. Raman Lal Keshav Lal Soni and Others*¹ regarding

1. (1983) 2 SCC 33. H

A retrospective operation of law. Reliance is also placed on another Constitution Bench decision in *B. S. Yadav and Others v. State of Haryana*². In *B. S. Yadav's* case (supra), this Court dealt with the legislative power of the State under Article 309 of the Constitution of India. It was clearly held in both the decisions that the State is competent to enact laws with retrospective effect. The only rider is that the date of retrospective operation should have relevance and nexus with the object sought to be achieved and the same shall not affect the accrued rights.

C 12. The short question is whether the amended Rule on fixation of seniority satisfied the test of reasonableness. Integration of three services was necessitated for balancing the inequality to the extent that the members of two of the services were denied promotion to the post of Deputy Superintendent of Police. Such promotion was available only to the members of the erstwhile Sikkim Police Force and was denied to Sikkim Vigilance Police and Sikkim Armed Police. In this context, it would be useful to refer to the terms of reference to Justice N. G. Das Commission:

E "(1) To comprehensively review the existing Recruitment Rules of all the different wings of Sikkim Police so as to arrive at an appropriate solution, which would meet promotional aspirations of the entire Police Force.

F (2) To examine the necessity for integration of the different Recruitment Rules particular (a) Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 1988, (b) Sikkim Armed Force (Recruitment, Promotion and other Conditions of Service) Rules, 1989 and (c) the Sikkim Vigilance Police (Recruitment, Seniority and Promotion) Rules, 1981, so as to bring about long term solution

H 2. (1980) Suppl. SCC 524.

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING1019
BHUTIA AND OTHERS [KURIAN, J.]

to meet the promotional aspirations of the entire
Police Force. The Commission shall submit its
report on or before 31.12.99."

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(Emphasis supplied)

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13. Accepting the recommendation of the Commission for a unified Police Force, the State Government integrated three services and promulgated the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000. It is to be specifically noted that the members of Sikkim Vigilance Police and Sikkim Armed Police had obtained accelerated promotion to various posts up to the position of inspector of police. However, their compeers in the erstwhile Sikkim Police Force could not get such promotions to the higher post of inspector for want of vacancy. It is crucially significant to note that there was entry level direct recruitment in one of the services, viz., Sikkim Vigilance Police to the extent of 50%.

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14. No doubt one of the main principles of integration is equation of posts. But the question is whether such integration based only on equation of posts will result in inequality or injustice to the members of any other service.

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15. As we have already noted above, promotion to the post of Deputy Superintendent of Police was available only to members of the Sikkim Police Force. In the other two services, viz., Sikkim Vigilance Police and Sikkim Armed Police, though the members therein got accelerated promotion to the post of inspector, there was no further promotion available to them and they had to retire from service in that cadre. It was this inequality that was sought to be remedied by integration.

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16. The feeder category for promotion to the post of Deputy Superintendent of Police is inspector. If the seniority is fixed in that cadre of inspector, it would virtually amount to denial of promotion to the post of Deputy Superintendent of Police for quite some time to the members of the Sikkim Police Force. It

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A was this discrimination and resultant injustice that was sought to be remedied by referring the matter to the Committee which recommended that for the purpose of promotion to the post of Deputy Superintendent of Police and preparation of seniority list in that regard, the date of promotion to the post of sub-inspector should form the basis. That date was taken, as we have already noted above, since there was direct recruitment to the post of sub-inspector in Sikkim Armed Police. What has been done by the Government is to base the date of promotion/

B direct recruitment to the post of sub-inspector as the determining factor for fixation of seniority for the purpose of promotion to the post of Deputy Superintendent of Police and grant deemed/notional promotion to the members of the Sikkim Police Force from the date their compeers in the other two services got promotion to the post of inspector. Appointment

C to the post of inspector is by promotion. Therefore, the entry level appointment to the cadre of sub-inspector becomes relevant. The sub-inspector of Sikkim Vigilance and Sikkim Armed Forces, by chance, got accelerated promotion to the post of inspector. It was this injustice that was sought to be remedied by the retrospective promotion without monitory

D benefits and the amendment in the Rules. Merely because there is equation of post in a cadre on integration that does not necessarily mean that the common seniority list should be prepared in that cadre for promotion to the next higher cadre. If that method would result in injustice and graver inequality,

E another fair and just mode can be adopted.

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17. True, many officers who were working as sub-inspectors, while the writ petitioner had been working as inspector, have gone above him in the process but the hard fact

G which caused the heartburn to his compeers in the Sikkim Police Force is that at the level of sub-inspectors, all of them were either travelling together with the writ petitioner or had gone much earlier to him in that cadre.

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING1021
BHUTIA AND OTHERS [KURIAN, J.]

18. One cannot also lose sight of the fact that, after integration, the promotion chances of members of Sikkim Police have been reduced considerably, since originally it was their exclusive domain. A

19. The Apex Court in *Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others v. State of Tamil Nadu and Others*³ held that integration is a complicated administrative process and it is likely to affect certain individuals. To quote: B

"7. In service jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional "excesses", judicial correction is not right. Under Article 32, this Court is the constitutional sentinel, not the national ombudsman. We need an ombudsman but the court cannot make-do. C D E

8. ... Maybe, a better formula could be evolved, but the court cannot substitute its wisdom for Government's, save to see that unreasonable perversity, mala fide manipulation, indefensible arbitrariness and like infirmities do not defile the equation for integration. We decline to demolish the order on this ground. Curial therapeutics can heal only the pathology of unconstitutionality, not every injury." F G

(Emphasis supplied)

The same view has been followed in *Indian Airlines*

3. (1980) 3 SCC 97.

A *Officers' Association v. Indian Airlines Limited and others*⁴, *Kerala Magistrates' (Judicial) Association and others v. State of Kerala and others*⁵, *Life Indian Corporation of India and Others v. S. S. Srivastava and Others*⁶ and *New Bank of India Employees' Union and Another v. Union of India and Others*⁷.

B 20. It has also been held by this Court in *K.S. Vora and others v. State of Gujarat and others*⁸ that integration affecting the larger public interest would necessarily affect the seniority of some members of some of the services. To quote:

C "5. As we have already pointed out in the instant
 D case the State decided at stages to switch over to the
 E common cadre in respect of all the four grades of the
 F Subordinate Service. Before common grades had been
 G formed promotion was granted departmentwise. When
 ultimately a common cadre came into existence - and all
 that was done by 1974 - it was realised that if seniority as
 given in the respective departments were taken as final for
 all purposes there would be prejudice. Undoubtedly the
 common cadre was for the purpose of increasing the
 efficiency by introducing a spirit of total competition by
 enlarging the field of choice for filling up the promotional
 posts and in the interest of discipline too. After a common
 cadre was formed, the general feeling of dissatisfaction
 on account of disparity of seniority became apparent. The
 1977 Rules were introduced in this background to ease
 the situation. The scheme of this rule protected the rank
 then held by every member of the service notwithstanding
 alteration of seniority on the new basis. This, therefore,
 made it clear that accrued benefits were not to be
 interfered with. To that extent the 1977 Rules were not

4. (2007) 10 SCC 684.

5. (2001) 3 SCC 521.

6. 1988 Supp SCC 1.

7. (1196) 8 SCC 407.

H 8. (1988) 1 SCC 311.

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING¹⁰²³
BHUTIA AND OTHERS [KURIAN, J.]

retroactive. In spite of the protection of rule regarding the post then held, the Rules brought about a change in the inter se seniority by adopting the date of initial recruitment and the length of service became the basis for refixing seniority. Total length of service for such purpose is a well known concept and could not said to be arbitrary. Undoubtedly one of the consequences of the change in the basis was likely to affect prospects of promotion - a matter in future. Two aspects have to be borne in mind while considering the challenge of the appellants to this situation. It was a historical necessity and the peculiar situation that arose out of government's decision to create a common cadre with four grades in the entire Secretariat. We would like to point out with appropriate emphasis that there was no challenge to creation of the common cadre and certainly government was competent to do so. The second aspect to be borne in mind is that rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules to regulate seniority, if the rules were made bona fide and to meet exigencies of the service, no entertainable grievance could be made. If these are the tests to apply, we do not think the appellants have indeed any grievance to make. In our view, therefore, the High Court rightly dismissed the contention and found that appellants were not entitled to relief."

(Emphasis supplied)

21. In *Kerala Magistrates' (Judicial) Association case* (supra), this Court held:

"5. We have examined the relevant records containing the deliberations made in the full court meetings of the High Court on the topic of integration of the two wings. It appears that on the criminal side the entry post was Magistrate Second Class and the highest post, a Magistrate Second Class could reach was Chief Judicial Magistrate. On the

A civil side the entry post was Munsif and the highest post
B was the District Judge. The association of the Criminal
C Magistrates had all along been clamouring that the post
D of District and Sessions Judge should also be separated
E and the Chief Judicial Magistrates on the criminal side
F should also be promoted to the post of District and
G Sessions Judge. the number of posts of Judicial
H Magistrates Second Class, which existed on the date of
the full court meeting. The Court took notice of the fact that
on the date of integration, 42 Magistrates Second Class
will be absorbed in the category of Munsif Magistrates and
all of them will be duly benefited in their scale of pay. The
Court also considered that in view of the number of posts
available, while Munsifs could expect promotion to 49
posts of Subordinate Judge but the Judicial Magistrates
could expect promotion only to 18 posts of Chief Judicial
Magistrates, as it existed. But by reason of integration, the
chances of promotion of the Magistrates will be much
more enhanced, compared to the chances of promotion
to the Munsifs. The Court also considered the normal rate
of promotion and found that for Munsifs, the rate being
1.25, for a Magistrate rate was only 0.30 and on account
of integration, the ratio would come to 0.84, which
indicates that overall chances of promotion to the Munsifs
would get reduced from 1.25 to 0.84, whereas the chances
of promotion of the Magistrates get increased from 0.30
to 0.84. The High Court, therefore, suggested that the ratio
of 3:1 should be fixed both in the integrated cadre of the
Subordinate Judges and Chief Judicial Magistrates for
promotion to the post of District Judge as well as in the
cadre of Munsifs and Magistrates First Class for the
promotion to the post of Subordinate Judges. The High
Court also was of the opinion that the effect of integration
will be that while Munsifs would lose chances of promotion
the Magistrates will improve their chances of promotion,
although some Senior Magistrates, individually, will sustain
some loss. But such loss is the usual consequence of any

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING 1025
BHUTIA AND OTHERS [KURIAN, J.]

integration process. Notwithstanding the aforesaid recommendations of the High Court, the State Government on receipt of representation from the Magistrates' Association, made further correspondence with the High Court and suggested that the ratio for promotion from the Munsifs and Magistrates to the Subordinate Judges should be fixed at 5:2. The High Court initially had some reservations, but ultimately accepted the same and communicated its acceptance to the Government, whereafter the Rules were promulgated and Rule 3(4) of the Rules embodies the aforesaid principle. We see no legal infirmity with the conclusions arrived at by the High Court, requiring interference by this Court, even though we agree that some individual Magistrates might have suffered some loss. ..."

(Emphasis supplied)

22. All that apart, integration is a policy matter for the State. This Court had occasion to consider this aspect of the matter in *Reserve Bank of India v. N.C. Paliwal and others*⁹. To quote:

"15. Now, the first question which arises for consideration is whether Reserve Bank violated the constitutional principle of equality in bringing about integration of non-clerical with clerical services. We fail to see how integration of different cadres into one cadre can be said to involve any violation of the equality clause. It is now well settled, as a result of the decision of this Court in *Kishori Mohanlal Bakshi v. Union of India*² that Article 16 and a fortiori also Article 14 do not forbid the creation of different cadres for government service. And if that be so, equally these two articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services.

9. (1976) 4 SCC 838.

A That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by the combined seniority scheme cannot in the circumstances be assailed as violative of the constitutional principle of equality."

(Emphasis supplied)

23. In *R.S. Makashi and others v. I. M. Menon and others*¹⁰, this Court held that :

C

"34. When personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected. The courts will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Government. In the instant case, we have already indicated our opinion that in equating the post of Supply Inspector in the CFD with that of Clerk with two years' regular service in other government departments, no arbitrary or unreasonable treatment was involved."

D

E

F

(Emphasis supplied)

24. In *Prafulla Kumar Das and others v. State of Orissa and others*¹¹, it was held that :

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"33. Under Article 309 of the Constitution of India, it is open to the Governor of the Sate to make rules regulating the recruitment, and the conditions of service of persons appointed to such services and posts until provision in that

10. (1982) 1 SCC 379.

H

11. (2003) 11 SCC 614.

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING 1027
BHUTIA AND OTHERS [KURIAN, J.]

behalf is made by or under an Act of the legislature. As has been rightly pointed out by the Court in *Nityananda Kar case*², the legislature, or the Governor of the State, as the case may be, may, in its discretion, bestow or divest a right of seniority. This is essentially a matter of policy, and the question of a vested right would not arise, as the State may alter or deny any such ostensible right, even by way of retrospective effect, if it so chooses (sic) in public interest."

(Emphasis supplied)

25. In *S. S. Bola and others v. B.D. Sardana and others*¹² also, this Court held that seniority of a government servant is not a vested right and that an Act of State Legislature or a Rule under Article 309 of the Constitution of India can retrospectively affect the seniority of a government servant. To quote:

"153. xxx

xxx xxx

xxx

AB. A distinction between right to be considered for promotion and an interest to be considered for promotion has always been maintained. Seniority is a facet of interest. The rules prescribe the method of recruitment/selection. Seniority is governed by the rules existing as on the date of consideration for promotion. Seniority is required to be worked out according to the existing rules. No one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be taken away only by operation of valid law. Right to be considered for promotion is a rule prescribed by conditions of service. A rule which affects chances of promotion of a person relates to conditions of service. The rule/provision in an Act merely affecting the chances of promotion would not be regarded as varying the conditions of service. The chances of promotion are not conditions of service. A rule which

12. (1997) 8 SCC 522.

A merely affects the chances of promotion does not amount
 to change in the conditions of service. However, once a
 declaration of law, on the basis of existing rules, is made
 by a constitutional court and a mandamus is issued or
 B direction given for its enforcement by preparing the
 seniority list, operation of the declaration of law and the
 mandamus and directions issued by the Court is the result
 of the declaration of law but not the operation of the rules
 per se.

C xxx xxx xxx xxx xxx

200. Thus to have a particular position in the seniority list
 within a cadre can neither be said to be accrued or vested
 right of a government servant and losing some places in
 the seniority list within the cadre does not amount to
 D reduction in rank even though the future chances of
 promotion get delayed thereby."

26. The High Court patently erred in holding that the
 acquired or accrued rights of the writ petitioner had been
 E affected by the fixation of seniority at the level of sub-inspector
 of Police. It has to be noted that, but for merger, neither the writ
 petitioner nor the members of the two other police forces, viz.,
 Sikkim Vigilance Police and Sikkim Armed Force, could have
 got any promotion at all to the post of Deputy Superintendent
 of Police. The very purpose of integration was to remove the
 F inequality and provide them with the opportunity for promotion
 to the post of Deputy Superintendent of Police. If length of
 continuous service in the highest cadre of some similar services
 is taken as the basis of fixing the seniority and for further
 promotion to higher posts that would certainly result in deeper
 G injustice to the members of the other services. It was hence the
 State, after due deliberations and based also on report of an
 expert Committee consisting of the top level offices in the State,
 took an equitable decision to make the post of sub-inspector
 of Police, where there is direct level entry in one of the services,
 H as the determining factor for fixation of seniority. The writ

STATE OF SIKKIM AND OTHERS v. ADUP TSHERING1029
BHUTIA AND OTHERS [KURIAN, J.]

petitioner did not suffer any demotion in the process. He continued in the post of inspector. The only thing is that his compeers in Sikkim Police Force who could not get accelerated promotion to the post of inspector, but who are admittedly senior to him if the date of appointment to the post of sub-inspector is taken, were given the deemed date of promotion to the post of inspector based on the seniority at the level of sub-inspector. The amended rule certainly has thus a nexus to the injustice sought to be removed so as to balance the equity. It is neither irrational nor arbitrary.

27. It is significant also to note that in the whole State of Sikkim, the writ petitioner is the only person who challenged the amendment which by itself would show that it was a case of a solitary instance, assuming there is basis for his grievance. We may, however, take note of a factual position that the writ petitioner was senior to some of the private respondents if his date of entry in service as Sikkim Police Constable is taken. But when the Sikkim Vigilance Police was formed, he opted for that and he was absorbed in that Police wherein he got accelerated promotions to the various posts of head constable, assistant sub-inspector, sub-inspector and inspector. But it appears that such a ground with regard to his original date of entry as a police constable in 1974 is not taken anywhere.

28. All that apart, if we closely analyse Rule 9(1), it can be seen that the principle of fixation of seniority as introduced by the amendment was already there. It is already provided therein that the relative seniority of the members recruited directly will be fixed based on the date of induction to the cadre. In other words, date of induction to a cadre where there is direct recruitment is the basis of fixation of seniority in the instant case at the level of sub-inspector. Thus, the amendment is merely clarificatory in nature and, therefore, it is deemed to exist from the original date of commencement of the Rule in 2000.

29. Be that as it may, the High Court has already protected the promotions granted to the private respondents but the High

- A Court has struck down the Rule and has quashed the seniority list. As we have already noted above, the High Court has unfortunately missed the crucial consideration with regard to the principles set by the State with regard to fixation of seniority, the purpose sought to be achieved in the process, the relevant considerations which lead to the decision and the materials including the report of the expert committee which were relied on by the State in the process of making and taking of the decision. The State has only acted within its authority under Article 309 of the Constitution of India in bringing about the clarificatory amendment with regard to the fixation of seniority in the cadre of sub-inspectors. The retrospectivity given to the private respondents by giving the deemed date of promotion is neither arbitrary nor unreasonable. On the contrary, it is perfectly just, fair and equitable in the given circumstances without which the integration of services would have resulted in graver inequality and injustice to the members of the major service. In the result, the appeal is allowed. The impugned judgment is set aside. Writ Petition filed by the private respondent in High Court is dismissed.
- E 30. We have already noted above that the first respondent-writ petitioner was also promoted as Deputy Superintendent of Police and he has retired from service. Rule 17 of the 2000 Rules has provided for power of relaxation to the State. Since the first respondent-writ petitioner had actually entered in service in 1974, prior to some of the private respondents, this could have been probably a case for the State Government to exercise that power. We do not propose to relegate the first respondent-writ petitioner at this stage for that remedy. For doing complete justice, being a solitary case, we hold that the benefits granted by the High Court in the impugned Judgment to the writ petitioner, shall not be disturbed.
- G

31. The appeal is allowed as above. There is no order as to costs.