

(2010) 01 SHI CK 0042

In the High Court Of Himachal Pradesh

Case No : LPA No's. 45, 50, 68, 69 and 109 of 2009

Anokhi Ram Verma

APPELLANT

Vs

Arun Kumar and Others
 Raj Kumar and Others Vs
HPSEB and Others
 HPSEB Vs Lal Chand Thakur and
Others
 Om Parkash Thakur and Others Vs HPSEB and
Another

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 01 SHI CK 0042

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—These aforesaid appeals are being disposed of by a common judgment. CWP No. 1358 of 2008 and LPA No. 65 of 2009 were also heard along with these appeals. Though the points involved are similar, those cases are being disposed of by a separate judgment since different Departments are involved and the Rules are different.

2. The present appeals relate to the H.P. State Electricity Board (hereinafter referred to as the Board). CWP No. 750 of 2000 was filed by 11 Petitioners in this Court. The same was later transferred to the H.P. State Administrative Tribunal. On the abolition of the Tribunal the petition was again transferred to this Court and registered as CWP(T) No. 53 of 2008. In the said case the Petitioners were all graduate engineers appointed as Junior Engineers in the Board during the years 1985 to 1988. They challenged the seniority list issued by the Board whereby private Respondents who are non-graduate Junior Engineers and had passed the AMIE degree during service and thus become graduate engineers, had been granted seniority by counting their service rendered as Junior Engineer before the acquisition of AMIE qualification.

3. The learned Single Judge allowed the writ petition and upheld the contention

of the Petitioners in the said writ petition following the law laid down in Shailendra Dania and Others Vs. S.P. Dubey and Others,

4. LPA Nos. 45 and 50 of 2009 have been filed by persons who were private Respondents in CWP(T) No. 53 of 2008.

5. LPA No. 52 of 2009 arises out of the judgment passed in CWP(T) No. 2158 of 2008 filed by Respondents 3 to 5. Though the said Respondents had also claimed seniority but they had not impleaded any person as a private party in the writ petition. The Appellant contends that this judgment would adversely affect his rights since he would be rendered junior to Respondents 3 to 5. Leave has been granted to the Appellant to file the appeal. In this case the learned Single Judge only held that the parties before him had not disputed the fact that the case was squarely covered by the judgment delivered in CWP (T) No. 53 of 2008 titled Arun Kumar v. H.P. S.E.B.

6. LPA Nos. 68, 69 and 70 of 2009 have been filed against the judgment passed by the learned Single Judge in CWP(T) No. 2727 of 2008 wherein the learned Single Judge has held that it is not disputed by the learned Counsel for the parties that the lis is squarely covered by the judgment rendered by him in CWP (T) No. 53 of 2008 dated 26.3.2009. It would be pertinent to mention that in this case this statement was only made by the counsel for the Petitioners and the Board. The Appellants in LPA No. 69 of 2009 were Respondents in the case and the matter has been disposed of in their absence. In this case also the learned Single Judge has held that it is not disputed by the learned Counsel for the parties that the lis is squarely covered by the judgment rendered by him in CWP (T) No. 53 of 2008 dated 26.3.2009. It would be pertinent to mention that in this case this statement was only made by the counsel for the Petitioners and the Board. There were a number of other parties before the learned Single Judge. They may have been ex-parte but no judgment on the basis of a statement of only two parties could have been recorded and the case should have been decided on merits. However, since we are dealing with the entire matter on merits we ourselves have gone into the merits of the case.

7. LPA No. 70 of 2009 has been filed by the Petitioners in CWP (T) No. 2727 of 2008 who now claim that in addition to the relief granted a further direction be issued to hold review DPC for filling up four vacancies which became available up to the year 1994 against AMIE quota with all consequential benefits.

8. In LPA No. 109 of 2009 has been filed by the Petitioners in CWP (T) No. 2158 of 2008. In this case there were no private Respondents and an order was passed on the statement of the counsel for the parties that the matter is covered by the judgment passed in CWP(T) No. 53 of 2008. The Petitioners have filed this appeal claiming that the instructions dated 18.8.1995 should also be quashed and consequential benefits be granted to the Appellants.

9. To understand the controversy between the parties, it would be relevant to make reference to certain Rules and Instructions. The Recruitment and

Promotion Rules for the post of Assistant Engineer in the HPSEB provided that 54% of the said posts would be filled in by direct recruitment and 46% by promotion. The promotional quota was further sub divided in the following manner:

- i) Junior Engineers (Qualified) having 7 years in the grade = 28%
- ii) a) J.Es (unqualified) with ITI qualification having = 8% 12 years service in the grade.
- b) J.Es (unqualified) with 15 years service in the grade.
- iii) From amongst those who pass Section A&B of = 6% the examination of Institution of Engineers (India) during service period & have minimum one year service in the grade.
- iv) Drawing Staff.

Circle HDM possessing diploma in Civil/Mech = 4% Engineering or diploma certificate of D/Manship from a registered institution having 5 years service in the grade failing which 10 years service as D/man/HDM/CHDM & failing both total 15 years service in the D/man cadre.

10. The Board had also issued instructions on 5.12.1980 that the seniority list of Junior Engineers who pass Sections A&B of AMIE during service may be prepared from the date of declaration of the result of passing Section A&B. Admittedly the Board was preparing a separate list of AMIE qualified Junior Engineers and seniority in this list was being maintained on the basis of the date of passing of the examination and after Junior Engineers had completed one year service after obtaining the AMIE qualification they were considered for promotion as Junior Engineers.

11. The question as to whether service of an employee rendered prior to the obtaining of the higher qualification should be considered to be qualifying service or not was considered in a number of cases.

12. In N. Suresh Nathan and another Vs. Union of India and others, the Rule provided that Section Officers possessing a recognized degree in Civil Engineering or equivalent with three years' service in the grade would be eligible for promotion. The dispute was whether the service rendered prior to obtaining the degree or equivalent qualification should be taken into consideration while counting 3 years service or only the service rendered after obtaining the requisite qualification should be so considered. The Apex Court held that three years service in the grade means three years from the date of obtaining the degree and the previous service could not be counted. In this case the Apex Court also relied upon the previous practice being followed by the Department.

13. Thereafter, a similar question came up for consideration before the two Judge Bench of the Apex Court in M.B. Joshi and Others Vs. Satish Kumar Pandey and Others, The Rule under consideration before the Apex Court in that case reads as

follows:

Graduate Engineers completing 8 years of service

14. The State Government in the case before the Apex Court had been counting the entire service rendered by a Graduate Sub Engineer irrespective of the date on which the Diploma Engineer acquired the degree of graduation in Engineering. Reference was made to N. Suresh Nathan's case and the Apex court held as follows:

11. A perusal of the above observations made by this Court clearly show that the Respondents diploma-holders in that case has admitted the practice followed in that department for a long time and the case was mainly decided on the basis of past practice followed in that department for a long time. It was clearly laid down in the above case that if the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It was clearly said "it is in this perspective that the question raised has to be determined". It was also observed as already quoted above that the tribunal was not justified in taking the contrary view and unsettling the settled practice in the department. That apart the scheme of the rules in N. Suresh Nathan case was entirely different from the scheme of the Rules before us. The rule in that case prescribed for appointment by promotion of Section Officers/Junior Engineers provided that 50 per cent quota shall be from Section Officers possessing a recognised degree in Civil Engineering or equivalent with three years" service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years" service in the grade. The aforesaid rule itself provided in explicit terms that Section Officers possessing a recognised Degree in Civil Engineering was made equivalent with three years" service in the grade. Thus, in the scheme of such rules the period of three years" service was rightly counted from the date of obtaining such degree. In the cases in hand before us, the scheme of the rules is entirely different.

12. xxxx

13. xxxx

14. It is further important to note that in the cases before us, the government itself has been adopting the practice and making promotion as contended by the Appellants and we are upholding such practice. In Y.V. Suresh Nathan case also this Court had upheld the practice followed by the government. It is also a well-settled principle of service jurisprudence that in the absence of any specific rule, the seniority amongst persons holding similar posts in the same cadre has to be determined on the basis of the length of service and not on any other fortuitous circumstance.

15. xxxx

16. In these circumstances mentioned above, we are clearly of the view that the tribunal was wrong in determining the seniority from the date of acquiring

degree of engineering and it ought to have been determined on the basis of length of service on the post of Sub-Engineer and the State government was right in doing so and there was no infirmity in the orders passed by the government....

15. It would be pertinent to mention that in the H.P. Public Works Department also there was a Rule which provided that non-graduate Junior Engineers who had passed Sections A&B of AMIE with five years service as Junior Engineers could be considered for promotion. On June 11, 1984 the Rule was amended to reads as follows:

From amongst the graduate junior engineers (University graduate or AMIE) having three years regular or ad hoc service rendered up to December 31, 1983 or both.

16. Below this Rule a foot note was added which read as follows:

For purpose of promotion three years regular or ad hoc service rendered up to 31.12.1983, shall be counted from the date of appointment of the graduate junior engineers and from the date of passing Section A& B of AMIE Examination by in service junior engineers respectively.

17. This foot note was challenged as being ultra vires by a number of Petitioners in two writ petitions which were later transferred to the Tribunal. The Tribunal vide its judgment dated June 7, 1991 held that such Rule was discriminatory and highly anomalous. It was held that both the graduate engineers and junior engineers perform the same duties and therefore it would be highly absurd to hold that service put in by non-graduate junior engineers prior to their attaining the AMIE qualification could not be taken into consideration. Therefore, the said foot note was quashed and set-aside.

18. Following the aforesaid judgment of the Tribunal in Rattan Singh's case (supra) and the judgment passed in M.B. Joshi's case (supra) the Board passed fresh instructions on 18.8.1995:

Subject: Preparation of Seniority list of JEs (AMIE).

According to the instructions issued vide this office letter No. HPSEB (SECTT)/4-11/80-102613-15 dated 5.12.80, the seniority of JEs (C/M) and JEs (E) who pass AMI Examination during service is being maintained batchwise from the dates of declaration of result of passing Section A&B. Some of JEs had represented against the said decision and had claimed that seniority of JEs who pass AMIE during service should be according to the length of service in the grade of JEs.

After careful consideration of the matter and taking into consideration the judgment of Hon''ble H.P. Administrative Tribunal in the case of Sh. Rattan Singh and Ors. v. State of H.P. (Secretary, PWD) and judgment of Hon''ble supreme Court of India in the appeal of Sh. M.B. Joshi & Sh. Satish Kumar Pandey,

contained in AIR 1993 SC, it has now been decided that the seniority of the JEs who pass AMI Examination during service shall be determined according to the length of their service in the grade of JEs. These instructions will become operative from the date of decision of Hon"ble supreme Court judgment i.e. 1993 and batch-wise seniority of JEs AMIE Holders already circulated will no longer be operative w.e.f. 1.1.93. However, the cases of AMIE holders JEs who have already been promoted as Assistant Engineers against 6% quota of available vacancies up to 31.12.92 will not be re-opened.

Accordingly the instructions issued vide this office letter dated 5.12.80 are superseded to the extent and in future no separate seniority lists of Junior Engineers AMIE holders would be prepared.

19. The Petitioners allege that they are only aggrieved by the misinterpretation of sub-head (iii) of the R&P Rules and according to them only the service rendered by the Junior Engineers after passing the AMIE examination could be taken into consideration while considering them for promotion to the post of Assistant Engineers.

20. It is not disputed that there was a ban on direct recruitment and no direct recruitment was being made in HPSEB from 1988-89 onwards. In order to carry out day to day work a number of directly recruited graduate Junior Engineers and those diploma holders who had obtained AMIE degree were promoted as ad hoc Assistant Engineers. The Petitioners in CWP(T) No. 53 of 2008 were also promoted as Assistant Engineers. As per the previously issued instructions the qualifying service of the Diploma Holders who had obtained AMIE degree was to be considered only from the date of having passed the AMIE. According to the Petitioners none of the Appellants in LPA No. 45 of 2009 had passed AMIE when the Petitioners were promoted as ad hoc Assistant Engineers. According to the Petitioners, the Board erred in changing the criteria for determining the countable service of Diploma Holder Junior Engineers who had qualified the AMI Examination in accordance with the law laid down by the Tribunal in Rattan Singh's case and by the Apex Court in M.B. Joshi's case.

21. On 31.12.1997 the Board took a decision to grant one time relaxation in the R&P Regulations in the following terms:

As a one time relaxation to the R&P Regulations 50% AMIE/Graduate Junior Engineers (E) and 27 AMIE/Graduate JE(C/M) who are working as Assistant Engineers on Adhoc or Acting basis shall be considered for regular promotion as Assistant Engineers if otherwise found fit against vacant posts falling to the share of Graduate meant for direct recruitment. Similarly another 56 Junior Engineers (Elect.) and 22 (C/M) who obtained AMIE/Degree qualification after the above Adhoc/Acting A. Es but became senior to them, AMIE Holders, as a result of Supreme Court decision/Board's order shall be considered for regular promotion as A.E. (E) against vacancies meant for the direct recruitment category.

The Board is further pleased to order that:

25. posts of Junior Engineers (Elect.) and 5 posts A.Es(C/M) upgraded as Assistant Engineers shall be filled up by promotion on regular basis from amongst Diploma holders only as one time relaxation to the R&P Regulations.

22. As a result of this decision the Board decided to grant one time relaxation for granting regular promotion as Assistant Engineers to 50 AMIE/Graduate Junior Engineers in Electrical Division and 27 AMIE/Graduate Junior Engineers in Mechanical who were already working as Assistant Engineers on ad hoc/acting basis. At the same time it was also decided to grant regular promotion to those AMIE Junior Engineers who had become senior to the ad hoc Junior Engineers on the basis of M.B. Joshi's judgment (supra). Thereafter, regular promotion of the Petitioners and private Respondents were made on 31.12.1997 and the seniority list was issued wherein the Petitioners were shown junior the private Respondents. Hence, the petition.

23. According to the Petitioners the judgment in M.B. Joshi's case did not lay down any absolute proposition of law that whenever quota is prescribed for diploma holder Engineers who acquired higher qualification during their service, that the service rendered prior to acquisition of such qualification, must be counted. Further according to the Petitioners, they were promoted on ad hoc basis at a time when there was a ban on direct recruitment and the decision for relaxation was made with a view to promote them in such a situation. According to the Petitioners their initial promotion not being fortuitous and having been regularized by the Board the Respondents could not take benefit of the decision dated 18.7.1995.

24. The matter was contested both by the Board as well as the private Respondents who contended that the past service rendered even prior to acquisition of the AMIE qualification should be taken into consideration and counted while reckoning the seniority. The learned Single Judge allowed these petitions by the impugned judgment. Reliance has been placed by the learned Single Judge mainly on the judgment of the Apex Court in the case of Shailendra Dania and Others Vs. S.P. Dubey and Others,

25. Before referring to Shalendra Dania's case, it would be pertinent to make reference to some other judgment of the Apex Court.

26. In D. Stephen Joseph Vs. Union of India and others, the Rule provided that Assistant Engineers who had attained higher qualification or degree during service could be promoted after completion of 3 years regular service prescribed in the grade of Junior Engineers. The judgment in Suresh Nathan's case was distinguished, the judgment in M.B. Joshi's case was followed and it was held that even the service rendered prior to attaining the higher qualification should be counted.

27. In Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others, , the Apex Court considered the question whether the experience gained while holding Diploma could also be counted in addition to the experience gained

after obtaining of the Degree. After considering the judgments in the cases of N. Suresh Nathan, M.B. Joshi and D. Stephen Joseph, the Apex Court held that the service rendered by the Diploma holders before obtaining the degree can also be counted.

28. In *A. K. Raghmani Singh and Others Vs. Gopal Chandra Nath and Others*, the Rule provided that promotion to the post of Superintending Engineer shall be done by promotion from Executive Engineer possessing degree in Engineering or its equivalent with 6 years regular service in the grade. The writ Petitioner-Respondent before the Apex Court had put in 6 years regular service in the grade but out of the 6 years only two years service was rendered after he had passed the AMI Examination. The Apex court after considering the entire law held that the service rendered prior to obtaining the degree could also be taken into consideration.

29. In *Indian Airlines Ltd. and Ors. v. S. Gopalakrishnan* (2001) 2 SCC 362, a similar question again arose and the Apex court held that when in addition to qualification, experience is prescribed, only the experience earned after obtaining necessary qualification could be counted.

30. All these cases were considered by a three Judge Bench of the Apex Court in *Shailendra Dania and Others Vs. S.P. Dubey and Others*, The Apex court formulated the following question in para 37:

37. The only question involved in these appeals and transferred cases can be stated thus: Whether a diploma-holder Junior Engineer, who obtains a degree while in service, becomes eligible for promotion to the post of Assistant Engineer on completion of three years of service after he obtained the Engineering Degree or on completion of three years of service prior to obtaining the Degree in Engineering.

31. Thereafter, the Apex court held as follows:

43. Taking into consideration the entire scheme of the relevant rules, it is obvious that the diploma-holders would not be eligible for promotion to the post of Assistant Engineer in their quota unless they have eight years' service, whereas the graduate Engineers would be required to have three years' service experience apart from their degree. If the effect and intent of the rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then induction to the cadre of Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma-holders to any further requirement of having a further qualification of two years' service. At the time of induction into the service to the post of Junior Engineers, Degree in Engineering is a sufficient qualification without there being any prior experience, whereas diploma-holders should have two years' experience apart from their diploma for their induction in the service. As per the service rules, on the post of Assistant Engineer, 50% of total vacancies would be filled up by direct recruitment, whereas for the promotion specific quota is

prescribed for a graduate Junior Engineer and a diploma-holder Junior Engineer. When the quota is prescribed under the rules, the promotion of graduate Junior Engineers to the higher post is restricted to 25% quota fixed. So far as the diploma-holders are concerned, their promotion to the higher post is confined to 25%. As an eligibility criterion, a degree is further qualified by three years' service for the Junior Engineers, whereas eight years' service is required for the diploma-holders. Degree with three years' service experience and diploma with eight years' service experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma-holder Junior Engineer. Three years' service experience as a graduate Junior Engineer and eight years' service experience as a diploma-holder Junior Engineer, which is the eligibility criteria for promotion, is an indication of different quality of service rendered. In the given case, can it be said that a diploma-holder who acquired a degree during the tenure of his service, has gained experience as an Engineer just because he has acquired a Degree in Engineering. That would amount to say that the experience gained by him in his service as a diploma-holder is qualitatively the same as that of the experience of a graduate Engineer. The rule specifically made difference of service rendered as a graduate Junior Engineer and a diploma-holder Junior Engineer. Degree-holder Engineer's experience cannot be substituted with diploma-holder's experience. The distinction between the experience of degree-holders and diploma-holders is maintained under the rules in further promotion to the post of Executive Engineer also, wherein there is no separate quota assigned to degree-holders or to diploma-holders and the promotion is to be made from the cadre of Assistant Engineers. The rules provide for different service experience for degree-holders and diploma-holders. Degree-holder Assistant Engineers having eight years of service experience would be eligible for promotion to the post of Executive Engineer, whereas diploma-holder Assistant Engineers would be required to have ten years' service experience on the post of Assistant Engineer to become eligible for promotion to the higher post. This indicates that the rule itself makes differentia in the qualifying service of eight years for degree-holders and 10 years' service experience for diploma-holders. The rule itself makes qualitative difference in the service rendered on the same post. It is a clear indication of qualitative difference of the service on the same post by a graduate Engineer and a diploma-holder Engineer. It appears to us that different period of service attached to qualification as an essential criterion for promotion is based on administrative interest in the service. Different period of service experience for degree-holder Junior Engineers and diploma-holder Junior Engineers for promotion to the higher post is conducive to the post manned by the Engineers. There can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialized job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualifying person would be qualitatively different.

44. After having an overall consideration of the relevant rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineers cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. When the claim is made from a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The 25% specific quota is fixed for degree-holder Junior Engineers with the experience of three years. Thus, on a plain reading, the experience so required would be as a degree-holder Junior Engineer. 25% quota for promotion under the rule is assigned to degree-holder Junior Engineers with three years" experience, whereas for diploma-holder Junior Engineers eight years" experience is the requirement in their 25% quota. Educational qualification along with number of years of service was recognized as conferring eligibility for promotion in the respective quota fixed for graduates and diploma-holders. There is watertight compartment for graduate Junior Engineers and diploma-holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. Fixation of different quota for promotion from different channels of degree-holders and diploma-holders itself indicates that service required for promotion is an essential eligibility criterion along with degree or diploma, which is service rendered as a degree-holder in the present case. The particular years of service being the cumulative requirement with certain educational qualification providing for promotional avenue within the specified quota, cannot be anything but the service rendered as a degree-holder and not as a diploma-holder. The service experience as an eligibility criterion cannot be read to be any other thing because this quota is specifically made for the degree-holder Junior Engineers.

45. As a necessary corollary, we are of the view that the diploma-holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service, would be required to complete three years" service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers.

32. There are two important differences between the Rules in Shailendra Dania"s case and the present Rules. In Shailendra Dania"s case even for recruitment to the post of Junior Engineer, graduate degree holder were entitled to be appointed without experience whereas in the case of Diploma Holders there was a further requirement of having two years service experience. Thus, a Diploma Holder without two years experience could not be appointed directly as a Junior Engineer. In Himachal this was not so. A Diploma holder without any experience could be appointed as Junior Engineer. No doubt a person with higher

qualification could also be appointed to this post. As far as post of Assistant Engineer is concerned only graduate engineers could be appointed by direct recruitment. Further more in the Rules in hand there is no separate provision for promotion of degree holder Engineers as Assistant Engineers. Sub Head (i) deals with qualified Junior Engineers i.e. Diploma Holders having 7 years service in the grade; Sub-rule (ii-a) deals with unqualified Junior Engineers i.e. Non-Diploma Holders with ITI qualification and 12 years service in the grade; Sub-rule (ii-b) deals with totally unqualified Junior Engineers having 15 years service in the grade. The Junior Engineers from sub head (ii) would have to be promotee Junior Engineers. Sub Head (iii) envisages the promotion from amongst Diploma Holder Junior Engineers who passed parts A&B of AMI examination during service with one year's experience. There is no separate head for graduate junior engineers. The entire reasoning given in paras 43 and 44 of Shailendra Dania's case is on the ground of different qualifying service provided for Graduate and Diploma holder Engineers. These water tight compartments do not exist in the State of Himachal Pradesh.

33. The Apex Court in Dilip Kumar Garg and Another Vs. State of U.P. and Others, dealt with the question as to whether Diploma Holders can be treated at par with Degree holders. In the case before the Apex court the Government decided to dispense with the requirement of passing qualifying examination by the Diploma Holders. Thus, the Diploma Holders and Degree Holders were treated to be equal. The Apex court held that this was not unconstitutional. It would be relevant to refer to paras 15 and 16 of the judgment which read as follows:

15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a Court of Appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. See Union of India v. Pushpa Rani and Ors. 2008 (9) SCC 242 and Official Liquidator Vs. Dayanand and Others,

16. The decision to treat all Junior Engineers, whether degree holders or diploma holders, as equals for the purpose of promotion is a policy decision, and it is well-settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.

34. It is thus obvious that it is the State which must decide as to what qualifying service should be rendered by the Diploma Holders or Degree Holders. The Court cannot substitute its opinion for that of the Administrative Authority which is in the best position to take such a decision.

35. In the present case initially in December, 1980 the Board had taken a

decision that only the service rendered after obtaining AMIE degree would be counted. In the year 1995 a fresh decision was taken and it was decided that even the service rendered prior to passing the AMIE examination should be taken into account. This decision was made effective from 1.1.1993.

36. It is urged that this decision is based on the judgment of Rattan Singh's case decided by the Tribunal and M.B. Joshi's case decided by the Apex Court. It is further contended that the decision in M.B. Joshi's case is no longer good law in view of the judgment in Shalendra Dania's case and therefore the decision dated 18.8.1995 is illegal. It would be pertinent to mention that none of the decisions cited above lay down any absolute Rule that an employer could or could not lay down a condition as to which experience is to be counted. It is for the administrative authority to decide whether only the experience earned after attaining the higher qualification should be counted or even the earlier experience can be counted. All the cases were decided in their peculiar facts. In fact in Shalendra Dania's case the decision in M.B. Joshi's case has been distinguished on the ground that Rules for consideration in M.B. Joshi's case did not deal with two classes i.e. degree holders and diploma holders but only with one class i.e. diploma holders. Reference may be made to para 28 of the Shalendra Dania's case (supra) which reads as follows:

28. From the aforesaid, it is clear that the Court was considering the experience/qualifying service of eight years and twelve years amongst the diploma-holder Sub-Engineers and not vis-a-vis the degree-holder Sub-Engineers. The reduction of the qualifying service from twelve years to eight years simply accelerated the entitlement to promotion for the post of Assistant Engineer by Sub-Engineers from twelve years to eight years. The qualifying service which was required to be considered under the rule was that of diploma-holder Sub-Engineers. The qualifying service has no relation with the Degree of Engineering and it is said by the judgment in N. Suresh Nathan's case (supra) that the rule does not contemplate any equivalence of any period of service with the qualification of acquiring Degree of Graduation in Engineering.

37. The judgment in M.B. Joshi's case has not been set-aside in Shalendra Dania's case but only distinguished.

38. The law is well settled that when the Rules are not very clear the administrative authority can fill in the gaps by issuing administrative instructions. Sub Head (iii) of the R&P Rules provides that promotion shall be made from amongst those Junior Engineers who have passed Sections A&B of AMI Examination with one year's service in the grade. The Rule is not clear from which date this service is to be counted. The Board on 5.12.1980 had earlier taken a decision that the seniority of Junior Engineers who passed Sections A&B of AMIE of India shall be prepared on the basis of declaration of result of passing the examination. If this instruction had remained in force necessarily only the service rendered after the passing of the examination could be counted. However, as stated above on 18.8.1995 this instruction was withdrawn and

replaced by another instruction in which it was clearly stated that the seniority of those JEs who pass AMIE during service shall be determined according to the length of their service in the grade of Junior Engineers. These instructions leave no room for doubt that even service rendered prior to passing of AMI Examination had to be counted. The argument that these instructions are based on wrong interpretation of M.B. Joshi's case is not correct. Even assuming that the administrative authority did not correctly understand the import of M.B. Joshi's judgment the fact remains that a conscious decision was taken to count the service even prior to passing the examination. As held in Dalip Kumar Garg's case (supra) it is for the administrative authority to decide such a matter and not for the Court to substitute its opinion for the decision of experts.

39. Having said so, we are of the considered view that these instructions issued on 18.8. 1995 could not be given retrospective operation from 1.1.1993. The earlier instructions held the field till 18.8.1995. None of the employees of the Board were parties in Rattan Singh's case or in M.B. Joshi's case. Therefore, we are of the considered view that the Board has erred in giving retrospective effect to these Rules.

40. Before us it has also been urged on behalf of the writ Petitioners that they were appointed on ad hoc basis against the regular vacancies since their services have been regularized the period of ad hoc service rendered by them must also be counted for determining their seniority. No such plea was taken in the writ petition nor before the learned Single Judge. We also find that their appointments were fortuitous since no direct recruitment was being done during that period. They cannot be given benefit of the ad hoc service rendered by them.

41. The reliefs claimed by the original writ Petitioners in some of the Appeals that fresh DPC be held cannot be granted since this was not a prayer made in the original writ petition. This prayer also cannot be granted in view of the decision which we have now taken.

42. In view of the aforesaid discussion, we cannot uphold the judgment of the learned Single Judge which is accordingly set-aside. However, the instructions dated 18.8.1995 cannot be given retrospective effect and can be made effective only from 18.8.1995. The Board shall have to re-determine the seniority of the Assistant Engineers accordingly. The judgment delivered in CWP(T) No. 53 of 2008 is set-aside to the aforesaid extent.

43. All the appeals are disposed of in the aforesaid terms. No order as to costs.