
(2014) 01 BOM CK 0116

In the Bombay High Court

Case No : Writ Petition Nos. 1398, 1630 and 1592 of 1999 and W.P. No. 485 of 2000

Avinash Nanasaheb Barhate and Others

APPELLANT

Vs

Nagpur Municipal Corporation and Others

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 1 BomCR 726 : (2014) 4 MhLj 327

Hon'ble Judges : B.P. Dharmadhikari, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : Anand Jaiswal in W.P. No. 1398/1999, Ms. K.K. Pathak in W.P. No. 1630/1999, A.R. Atrey in W.P. No. 485/2000 and V.A. Dhabe in W.P. No. 1592/1999, Advocate for the Appellant; B.H. Dangre, A.G.P. for State of Maharashtra, C.S. Kaptan, Sr. Adv., J.B. Kasat for Municipal Corporation, M.G. Bhangde, Sr. Advocate and R.M. Bhangde for Intervenors, Advocate for the Respondent

Judgement

B.P. Dharmadhikari, J.—All these writ petitions were placed in a group for joint consideration along with Writ Petition Nos. 3795/1997, 667/1999 and 2244/2001. Writ Petition Nos. 3795/1999 and 667/1997 were heard first as per consent of the parties and have been decided vide judgment delivered on 25.11.2013, 3.12.2013 and 4.12.2013. Writ Petition No. 2244/2001 has been decided thereafter on 13.12.2013. Controversy involved in all petitions was more or less the same, but, then there were some difference in facets to be looked into, However, all the learned Counsel appearing in total group were present and heard on relevant issues, including the matters in which they were not appearing. Writ Petition No. 1398/1999 is filed by a single petitioner who claims a relief of quashing the seniority list of Graduate Engineers (AE, Grade II) dated 6.2.1999, as violative of Article 14 of the Constitution of India. He claims that his name should be placed at Sr. No. 10 in the said seniority list on the date of his joining service as sectional Engineer.

Writ Petition No. 1630/1999 is filed by three persons who seek quashing of the seniority list prepared on the basis of educational qualification and seek a direction to their employer Nagpur Municipal Corporation to maintain a common seniority list on the basis of designations at the time of appointments.

Writ Petition No. 485/2000 is filed by a single petitioner for declaration that there is only one cadre of Junior Engineer and preparation of three separate seniority lists on 6.2.1999 by the Nagpur Municipal Corporation is illegal.

Writ Petition No. 1592/1999 is by a single petitioner who claims a direction to quash and set aside the option extended to him either to remain in the cadre of Assistant Engineer (II) or then in cadre of sectional Engineer, on the ground that he was already promoted to the next higher post of Deputy Engineer. The preparation of three separate seniority list on 6.2.1999 is also challenged by him with further relief that no promotions should be effected to the post of Deputy Engineer from Assistant Engineer (II). He seeks notional seniority in the post of Deputy Engineer w.e.f. 31.10.1996.

2. As already observed by us above, all the learned Counsel were heard when earlier writ petitions were decided. In fact petitioner in Writ Petition No. 1592/1999 is respondent No. 9 in Writ Petition No. 3795/1997 decided on 4.12.2013 *Azizulrahman and Others Vs. The Nagpur Municipal Corporation and Others*, . In Writ Petition No. 3795/1997, challenge was to a resolution dated 2.12.1997, whereby the Corporation had promoted Junior Engineers as Deputy Engineers. During the pendency of that petition, said resolution was implemented vide orders dated 1.1.1998. Prayer in the writ petition was to direct the Corporation to prepare a cadre wise seniority lists of Assistant Engineer (II) and sectional Engineers independently, based upon the length of service on a particular post. In Writ Petition No. 667/1999, petitioners had sought a relief of declaration that action of Corporation in not following the resolution dated 5.10.1984 was illegal and it was not necessary to divide the single seniority list of cadre of Junior Engineers into cadres like Assistant Engineers (II) and sectional Engineers. In Writ Petition No. 3795/1997 this Court has on 16.10.1998 passed the following order:

Heard. As the respondent Municipal Corporation vide their resolution No. 65 dated 5.10.1984 have adopted and accepted Government Resolution dated 16.4.1984 of the State of Maharashtra, they are required to prepare three separate seniority lists as prayed for, in accordance with the Resolution of the Corporation. The application is allowed in terms of prayer Clause (a). Other reliefs sought would be considered after separate lists as directed is prepared.

Seniority list was accordingly published by the Corporation on 6.2.1999 and on 26.2.1999 this Court passed the following order.

Heard Counsel.

There is no objection to the C.A. No. 932/99 for directions by the respondent

Corporation. C.A. No. 932/99 is allowed. Future promotions, ad hoc or otherwise to the post of Deputy Engineer from the post of Assistant Engineer-II shall be made only on the basis of final seniority list published on 6.2.1999.

The controversy was considered by this Court and ultimately Writ Petition No. 3795/1997 came to be allowed while Writ Petition No. 667/1999 was dismissed. This Court found that temporary promotions effected on 1.1.1998 could not have been sustained and Corporation has to consider Assistant Engineers (Class-II) and sectional Engineers as per their seniority in their respective seniority lists and promote them against the vacancies in the cadre of Deputy Engineer as per quota decided for each cadre. This exercise was/is directed to be completed within a period of three months. In Writ Petition No. 2244/2001, petitioner contended that date of obtaining Graduate qualification was not relevant for promotion in next cadre and, therefore, was not relevant for deciding the seniority. The petitioner there wanted promotion against a post reserved for Nomadic Tribe. Those arguments have been considered and rejected.

3. Before proceeding further to narrate the controversy involved in present four writ petitions, we find it expedient to mention the facts which have crystallized due to earlier judgments, and which are not in dispute before us.

4. Qualifications for recruitment to the post of Junior Engineer or then for effecting promotion from that post to the post of Deputy Engineer are prescribed in a resolution of Corporation bearing No. 31 dated 12.4.1976. State of Maharashtra on 16.4.1984 conferred gazetted status upon Graduate and other Junior Engineers w.e.f. 1.4.1981. The Nagpur Municipal Corporation passed a resolution No. 65 on 05.10.1984 and adopted this State Government policy. Because of this adoption, Graduate Junior Engineers working with the Corporation secured gazetted Class-II status. Diploma holders Junior Engineers (with three years Diploma) got gazetted status after putting in service of 5 years as junior engineer; while those with two years diploma got that status after 10 years of service. The 25% of the posts in the cadre of Junior Engineers were earmarked for Graduate Engineers and holders of those posts were described as Assistant Engineers (Class-II). The diploma holders became sectional Engineers (Class-II) depending upon the length of service. This Court has in earlier judgment noted that the cadre of Assistant Engineer (Class-II) and cadre of sectional Engineer ultimately become next below cadre for the promotional post of Deputy Engineer. It is in this background that arguments advanced in present writ petition need evaluation.

5. Shri Anand Jaiswal, learned Counsel appearing for the petitioner in Writ Petition No. 1398/1999 pointed out that the adoption of the Government policy does not mean that a separate cadre or seniority for Graduate Engineers needed to be prepared. He contends that the basis for preparation of seniority list had to be the date of joining on the post of Junior Engineer. Petitioner after becoming sectional Engineer could not have been denied the benefit of his service from that date till the date of acquisition of Graduate qualification. He needed to be

placed in Graduate list after becoming graduate but from the date on which he became sectional Engineer only. He has submitted that though different qualifications and therefore different designations, have been employed by the Corporation, nature of duties never underwent any change and the holders are transferred on posts held by each other. Thus in practice a Graduate or a diploma holder, was not treated differently than a freshly recruited diploma holder who is designated simply as a junior engineer. Hence, preparation of seniority list for AE-II cadre on the basis of acquiring Graduate qualification is, misconceived. He has contended that the petitioner, therefore, needs to be treated as a Graduate Engineer from the date on which he completed 5 years of service. Though after obtaining Graduate qualification, his name has been rightly entered into the seniority list of Graduates, the date of entry has to be the date on which he became sectional Engineer. He points out that the Government resolution dated 27.3.1972 does not contemplate any different date than the date of entry for the purposes of seniority list. He states that the Mayor of Nagpur Municipal Corporation has on 1.1.1998 relied upon this Government resolution to order preparation of separate seniority list of Junior Engineers. He points out that the sectional Engineers have necessary technical qualification and after obtaining 5 years and 10 years of experience, they are designated as sectional Engineers. This experience cannot be ignored or overlooked. Graduate qualification is not must for becoming eligible to next promotion as Deputy Engineer, and hence, it cannot be a norm to decide the seniority. He contends that the petitioner was unjustly treated when he was placed at Sr. No. 10 in the list of Graduate Engineers (AE-II) on 3.12.1998. He contends that the objections taken by the petitioner to the same on 30.12.1998 has not been decided and defence raised by the Corporation in return affidavit is misconceived.

6. Shri C.S. Kaptan, learned Senior Counsel with Shri J.B. Kasat, learned Counsel appearing on behalf of the Nagpur Municipal Corporation as also Shri M.G. Bhangde, learned Senior Counsel with Shri R.M. Bhangde, learned Counsel appearing for intervenors/respondents have pointed out that the petitions does not challenge creation of separate seniority lists or then conferment of gazetted status upon the Junior Engineers, depending upon their educational qualification and/or experience. They state that the next promotional post is that of the Deputy Engineer and 50% posts in that cadre are to be filled in through the Graduate Engineers, while the remaining 50% are to be filled in through sectional Engineers. It is pointed out that the petitioner entered service on 13.2.1984 and became sectional Engineer on 13.2.1989 after obtaining experience of 5 years. He secured degree on 5.4.1993. After securing degree he had option to continue as sectional Engineer with seniority from 13.2.1989 or then to become Assistant Engineer-II from 5.4.1989. He points out that 5 years experience on the strength of which the petitioner became sectional Engineer again cannot be recounted for the purpose of his seniority in the cadre of Assistant Engineer-II.

7. Our attention has been invited to final seniority list of sectional Engineers to

show that petitioner's name figures at Sr. No. 62 in it, while name of one Shri A.S. Pillai appeared at Sr. No. 59 in that list. Shri Pillai became sectional Engineer on 13.2.1989 along with the petitioner. Petitioner obtained AMIE Degree on 5.4.1993, while Shri Pillai do not obtain it. Due to 50% quota for Graduate Engineers, petitioner could improve his chance for promotion to the post of Deputy Engineer. He submits that normally horizontal moment in such a situation is not allowed, but, if Rules permit, person joining the different cadre after such horizontal moment, must be placed at the bottom of the seniority list of later cadre. He is seeking support from a judgment reported at Shailendra Dania and Others Vs. S.P. Dubey and Others, and a judgment reported at Challa Jaya Bhaskar and Others Vs. Thungathurthi Surender and Others, to support his contentions.

8. He points out uncertainties which may prevail, if a diploma holder is permitted to continue in the list of sectional Engineer and in the list of Assistant Engineer (II) both. He contends that if such sectional Engineer is given seniority even as a Graduate Engineer, from the date of his becoming a sectional Engineer, he will disturb the entire seniority of the Graduate cadre, immediately after he obtains a degree. He has also taken some hypothetical illustrations, but, we do not find it necessary to refer to the same in present facts.

9. In reply arguments Shri Anand Jaiswal, learned Counsel has attempted to distinguish the judgment in case of Shailendra Dania and others v. S.P. Dubey and others (supra), by pointing out that there the determination of seniority was regulated by Rules and this is not the position in present petition. Even judgment in case of Challa Jaya Bhaskar and others v. Thungathurthi Surender and others (supra), is attempted to distinguish on the ground that here the entire cadre of Junior Engineer, though consists of fresh diploma holders, or other qualifications holders, who do not qualify to be sectional Engineers, or sectional Engineers (II) and AE(II), nature of their duties is same and interchangeable. He contends that on 13.2.1989 there was no reason for the petitioner to raise any objection, as he was above all Graduates and only one seniority list was being maintained. The documents filed along with Civil Application No. 2689/2012 i.e. an advertisement published in the year 2003, is shown to this Court with contention that there is no recruitment to the post of Assistant Engineer (Grade-II) or to the post of sectional Engineer, but recruitment has taken place only to one cadre i.e. cadre of Junior Engineers. He, therefore, submits that a vested right which accrues due to length of service cannot be taken away. Referring to the hypothetical illustrations, he states that the same overlooks the fact that situation obtaining on the date on which the vacancy in the cadre of Deputy Engineer is being filled in, is only relevant.

10. Shri Bhangde, learned Counsel with permission of the Court invited attention to the seniority list as finalized, to demonstrate that if demand of petitioner is to be considered, employees after Shri P.S. Rajgire (Sr. No. 12) in the seniority list are affected and name of petitioner is at Sr. No. 27 in the said list. Thus,

petitioner ought to have joined all those employees from Sr. No. 12 to 26 as party respondents. Shri Jaiswal, learned Counsel submitted that the situation is taken care of by orders dated 10.9.1999 in Writ Petition No. 1592/1999. The further promotions made and all promotion policies framed have been subjected to result of that writ petition.

11. Ms. K.K. Pathak, learned Counsel for petitioner in Writ Petition No. 1630/1999 has stated that the petitioners are sectional Engineers and petitioner No. 2 became Deputy Engineer in 1995. It is argued that Graduate Junior Engineers, since beginning were given 5 additional increments at the time of their joining and as such, there is no reason to deny date of entry into service for counting seniority in the cadre of AE-II when a sectional Engineers obtains Graduate qualification & goes to that cadre. It is urged that as there is no separate recruitment to AE-II post, it is not necessary to maintain separate seniority list of sectional Engineers and AE-II.

12. Shri A.R. Atre, learned Counsel appearing for petitioner in Writ Petition No. 485/2000 also invites attention to the previous history given in paragraph Nos. 2, 3 and 4 of the petition to urge that Time Keepers/Mistries, without any technical qualifications can also become Junior Engineers and hence, Graduates when they become Junior Engineers were given weightage in same payscale. He therefore, submits that when Graduates already have advantage of additional increments, it is not necessary to deny the sectional Engineers date of their becoming sectional Engineers (II) for the purpose of determination of their seniority in Seniority list of AE-II.

13. Shri C.S. Kaptan, learned Senior Counsel with Shri J.B. Kasat, learned Counsel oppose the petitions while reiterating the defences already noted above.

14. In Writ Petition No. 1592/1999, Shri V.A. Dhabe, learned Counsel states that the petitioner has been promoted as Deputy Engineer on 1.1.1998 itself on account of his placement in the common seniority list, and as such it was not necessary for the petitioner to give option. He was promoted from the common seniority list of Junior Engineers. When option was asked for, said petitioner on 23.7.1997 had called for relevant information, but that information was never supplied to him. He states that the Mayor had on 21.10.1997 already bifurcated the seniority list of diploma holders and Graduate Engineers and then promotions were made through Order No. 181/0&M dated 1.1.1998. These promotions were because of petitioner's placement in the common seniority list. He contends that these powers with Mayor are not in dispute and promotions given to petitioner was never questioned in any petition, as such the petitioner needs to be continued as a Deputy Engineer and he cannot be forced to give any option.

15. He points out that the petitioner had graduated on 23.7.1987 and at the time of his promotion, seniority list was already bifurcated. He invites attention to Civil Application No. 4396/1999 to show that the seniority list was being prepared on the basis of educational qualification and hence, said civil application has been

filed by the present petitioner for direction to prepare and approve the proposals for promotion to still next higher post such as Assistant Engineer, Executive Engineer and Superintending Engineer on the basis of the educational qualification only without creating any disparity on the basis of date of joining amongst all Graduate Engineers. At one stage he also argued that Resolution No. 80 dated 28.11.1985 should not be implemented. Creation of two separate categories of Junior Engineers also appeared to be objected to by him. He seeks support from a judgment of Hon"ble Apex Court reported at The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, to urge that Corporation ought to have framed Rules for the purpose of determination of seniority. He also sought leave to file written notes of arguments, but we declined that leave to avoid duplication. He however, made it clear that there was no challenge to filling in post of Deputy Engineer by adhering to 50% quota for sectional Engineer and 50% quota for Graduate Engineers.

16. Shri Bhangde, learned Counsel appearing on behalf of intervenors submitted that as three different cadres emerged, the previous services could not have been and has rightly not been counted. He also relies upon a judgment reported at Sushma Mutreja Vs. Union of India and Others, .

17. Shri Kaptan, learned Senior Counsel for Corporation submits that the petitioner never challenged circular dated 19.10.1984 which brought three cadres. The Resolution dated 2.12.1997, as also the modification in decision of the Mayor on 18.10.1999 prescribing quota of 50 : 50 in promotion to the post of Deputy Engineer, have all attained finality. He therefore, reiterates arguments already noted above and prays for dismissal of the writ petition.

18. In his reply arguments, Shri Dhabe, learned Counsel has pointed out order of promotion having No. 181 dated 1.1.1998 has been quashed by the High Court in Writ Petition No. 489/1998. Petitioner has been promoted vide order No. 180 dated 1.1.1998 and that order has not been set aside. He further contends that the petitioner has not been promoted temporarily. He also points out a Government Resolution dated 19.12.1970 prescribing the mode and manner of making appointments to Class-II Cadre. Letter written by the Municipal Commissioner to the State Government on 28.2.1997 on the subject of grant of promotion to newly created 5 posts of Assistant Tax Assessors/Deputy Engineers in Assessment Department, is also pressed into service by him to urge that there sanction to new posts was sought.

19. After hearing all the learned Counsel, we find that the petitioners before this Court are all sectional Engineers (II) i.e. Diploma holders. They seek promotion to the next higher post of Deputy Engineer and for that purpose also rely upon the quota decided by the Mayor. As per that quota, 50% vacancies in the cadre of Deputy Engineers are to be filled in by diploma holders, while 50% are to be filled in by Graduate Engineers. This quota & separate consideration of AE-II i.e. graduates is also not in dispute. In fact, attempt is to get more seniority even in

AE-II cadre by accepting the date of becoming sectional Engineer as date of entry in graduate cadre.

20. The adoption of policy of State Government dated 16.4.1984 by the Administrator of the Nagpur Municipal Corporation vide Resolution No. 65 dated 5.10.1984 has not been assailed by any body. Thus, diploma holders want gazetted status and also do not deny or challenge its conferment on Graduate Junior Engineers. Petitioner in Writ Petition No. 1592/1999 states that he should not be forced to give option, as his promotion as Deputy Engineer is not in question anywhere. Other petitioners state that date on which they have put in necessary service and qualified as sectional Engineers must be allowed to be carried by them even to the cadre of AE-II. They therefore, submit that the date on which they obtain a Graduate qualification cannot be treated as the date of their entry in cadre of AE-II. In Writ Petition No. 485/2000, effort is to urge that no separate list of diploma holder sectional Engineers and Graduate A.E.(II) need to be prepared, and only on the basis of date of entry, the promotions to the post of Deputy Engineers should be effected.

21. In Writ Petition No. 1592/1999 on 10.9.1999, this Court has while issuing Rule made it clear that all further promotions made thereafter and all promotional policies framed thereafter, would be subject to result of the petition. The orders passed in earlier Writ Petition Nos. 3795/1997 on 16.10.1998 and thereafter on 26.2.1999 are already noted by us above. Petitioner in Writ Petition No. 1592/1999 is respondent No. 9 in Writ Petition No. 3795/1997. There, after hearing respondent No. 9, petition of a Graduate Junior Engineer has been allowed. In this situation, when identical order of promotion dated 1.1.1998 issued in furtherance of very same resolution of the Corporation dated 2.12.1997 is, quashed and set aside, we find no substance in the arguments of Shri Dhabe, learned Counsel that order of promotion No. 180 dated 1.1.1998 has not been challenged by anybody and, hence, cannot be set aside. In any case, burden was upon the petitioner to show that he has been substantively promoted. Petitioner Aniruddha has failed to discharge his burden.

22. Part of this challenge is already looked into by this Court while deciding Writ Petition Nos. 3795/1997 and 667/1999. We have also considered the precedents cited before us. There we have observed in paragraphs 21, 22 & 32 as under:--

21. The Resolution No. 65 dated 5/10/1984 points out Assistant Engineer (Class I) in pay scale of Rs. 660/- Rs. 1250/- as the post at top. The post of Deputy Engineer in the pay scale of Rs. 600/- Rs. 1150/- is below it Thereafter, in hierarchy, the post of Assistant Engineer (Class-II) in the pay scale of Rs. 650/- Rs. 950/-, post of sectional Engineer in the pay scale of Rs. 650/- Rs. 950/- and then post of Junior Engineer in the pay scale of Rs. 395/- Rs. 900/- appear. Paragraph (5) of this Resolution mentions that appointments to these posts would be made as per rules of recruitment. The incumbents holding posts of Assistant Engineer (Grade-II) and sectional Engineers were to perform their existing duties and possess same powers. Paragraph (6) thereafter stipulates

that independent orders for creation of posts to be sanctioned in specified proportion for cadres of Assistant Engineer (Grade-II) and sectional Engineer as also about appointments to those posts would be issued. The Circular dated 19/10/1984 is issued by Additional Deputy Municipal Commissioner and it refers to Government Resolution dated 16/4/1984 and states that all incumbents satisfying requirements as stipulated therein would be designated as either Junior Engineers or sectional Engineers or Assistant Engineers (Grade-II). It also stipulates that total number of posts of Assistant Engineers (Grade-II) would be restricted to 25% of total number of Junior Engineers in Corporation. Option has been given to Junior Engineers to come over to new scales or to retain existing scales. Thus, this Circular dated 19/10/1984 is issued in terms of paragraph (6) of the Resolution No. 65 dated 5/10/1984.

22. In this background when the revised pay structure sanctioned to Junior Engineers and sectional Engineers or Assistant Engineers (Class-II) is looked into, it shows that prior to 1/11/1996 pay scale of Junior Engineer was Rs. 14002300/- and they were given revised pay scale of Rs. 16402900/-. sectional Engineers/Assistant Engineers (Class-II) were in the pay scale of Rs. 20003200/- and revised pay scale of Rs. 20003500/- with Class II status has been sanctioned to them by order dated 1/11/1996. The orders stipulate that arrears becoming due and payable for the period from 1/1/1986 to 31/12/1995 would not be paid. The pay so fixed from 1/1/1986 as per revised pay scale and salary becoming payable accordingly was to be released from 1/1/1996. Thus, even when Resolution was passed by Administrator on 5/10/1984 or when it was implemented on 19/10/1984 and thereafter on 1/11/1996 when Municipal Commissioner sanctioned revised pay scales, it became clear that those Junior Engineers with gazetted Status were treated separately while others were continued as Junior Engineers. Junior Engineers with gazetted status either became Assistant Engineers (Class-II) or sectional Engineers depending upon their educational qualification.

32. In this situation, all these developments necessitate maintenance of separate lists insofar as Assistant Engineers (Class-II) or sectional Engineers are concerned. Unless and until there are such separate lists, the above mentioned ratio or then requirement of effecting promotion on the basis of seniority and merit cannot be fulfilled.

23. The Hon"ble Apex Court in judgment in case of Shailendra Dania and others v. S.P. Dubey and others (supra) in paragraph No. 36 has noted that it was required to decide the controversy on the basis of entire scheme of the Rules, the facts and circumstances and the principles involved as also past practice. In paragraph No. 37, it is noted that when 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, question involved was--whether completion of three years of service prior to obtaining that degree could have been looked into? In paragraph

Nos. 43 and 44, the Hon''ble Apex Court has found that the diploma holder would not be eligible for promotion to the post of Assistant Engineer in their quota unless they put in eight years of service, while Graduate Engineers have to put in three years of service. It has also noted quota fixed in this respect. It has noted qualification and difference in experience to reach a finding of qualitative difference in the service rendered by a degree holder Junior Engineer and a diploma holder Junior Engineer. It found that higher technical knowledge gives better thrust to administrative efficiency and quality output. In paragraph No. 44 it has noted that 25% specific quota fixed for degree holder Junior Engineers with experience of three years; whereas for diploma holders Engineers eight years experience was required in their 25% quota. It also noted that this was watertight compartment. Fixation of different quota for promotion from different channels of degree holders and diploma holders itself is found to indicate a watertight compartment. It is found that services required for promotion is an essential eligibility criterion along with the degree or diploma. In present facts, when a graduate Junior Engineer newly joining the service gets gazetted status from the date of joining AE-II cadre & there is no provision for giving him any benefit for past service/experience in the said cadre, graduate sectional Engineers-II also can be put in that cadre only after they procure degree & exercise option to move horizontally to AE-II cadre. In the scheme evolved by the Municipal Corporation, there is no scope for carrying seniority in the cadre of sectional Engineer-II to the AE-II cadre & to supersede the graduates already in that list who did obtain their degree prior to such sectional Engineer.

24. In Challa Jaya Bhaskar and others v. Thungathurthi Surender and others (supra), the Hon''ble Apex Court has found that person who has obtained lateral transfer from non-teaching line to teaching line cannot be permitted to carry his period of service as non-teaching staff for the purpose of computing seniority in the cadre of Assistant Professor. It also noted that basic qualification for being appointed as Assistant Professor in the teaching line was Post Graduate degree which such person seeking lateral transfer secured during the course of their service.

25. Here the petitioners do not dispute distinction being made between Graduate Junior Engineers by labeling them as A.E.-II and diploma holder Junior Engineers who are treated as sectional Engineer-II after putting 5 years or 10 years of service. Petitioners have themselves stated that degree holder Junior Engineers were given 5 additional increments since beginning. Thus different or better treatment given to Graduates is not something new in so far as the establishment of Nagpur Municipal Corporation is concerned. It is in this background that in October, 1984 the Corporation by adopting State Government policy conferred Graduate status upon the diploma holders and Graduates. This also is not in dispute before us. Graduate Engineers since day one become A.E.-II, while a diploma holder gets gazetted status only after completing 5 years or 10 years of service. The petitioners do not even urge that such diploma holder sectional Engineer can go to cadre of A.E.-II, though he has no Graduate degree.

Only in one case, there is a prayer for combined seniority list, but then, that prayer overlooks the fact that conversion of 25% posts in the cadre of Junior Engineer as posts earmarked for Graduate Engineer is an integral part of the scheme adopted by the Corporation. All the petitioners have taken advantage of this scheme. They cannot therefore, take benefit of part of the scheme, which they find advantageous to them and assail other part.

26. Nobody has questioned the requirement of adhering to 50 : 50 quota, while filling in the post of Deputy Engineer. We therefore find that the challenge only to alleged adverse part by some of the petitioners is, erroneous and misconceived. As held by virtue of judgment reported in 1974 Labour Industrial Cases 1 (State of Jammu & Kashmir v. Triloki Nath Khosa and others), a chance of promotion is not a condition of service & it is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. Hon. Apex Court holds that a rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the Rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in service. Here, the scheme adopted in 1984 by the Nagpur Municipal Corporation is being implemented & all impugned steps or promotions are long after it. The cause is promotions on 1.1.1998. Hence, the arguments that benefit of service put in as sectional Engineer by a diploma holder confers upon them any vested right or then about its being taken away is misconceived. In A. Satyanarayana and Others Vs. S. Purushotham and Others, , Hon. Apex Court observes that nobody has a right to be promoted; his right being confined to right to be considered therefor. Similarly, the power of the State to take a policy decision as a result whereof an employee's chance of promotion is diminished cannot be a subject-matter of judicial review as no legal right is infringed thereby.

27. Though Shri Jaiswal, learned Counsel has urged that judgments of Hon'ble Apex Court cited by the respondents reach a particular view in the light of the Rules pointed out to it, we do not find that to be a distinguishing feature at all. There is no challenge to the fact that a Graduate Engineer gets A.E.-II status right from day one after he joins the employment; while a diploma holder has to obtain experience of 5 years or 10 years to acquire gazetted status. When this basic distinction is accepted and it operates in the light of requirement of earmarking of 25% of post for Graduate Engineers and unchallenged 50 : 50 representation in the next promotional post, preparation of two seniority lists is must. Once two separate seniority lists are prepared, a graduate Engineer can never move to the cadre of sectional Engineer II. The sectional Engineer-II can improve his qualification and aspire to become A.E.-II. In that situation, it is necessary for such sectional Engineer to give an option. The lateral or horizontal movement is possible only if within 25% earmarked posts for graduates, a vacancy is available. A Graduate sectional Engineer cannot on the strength of his diploma, seek promotion as Deputy Engineer in 50% quota meant for diploma holders and at the same time claim it against other 50% quota meant for degree

holders. An incumbent can claim promotion either as a degree holder or a diploma holder and not both. He cannot be permitted to shift from one cadre to other more than once, after finding out the change in probabilities and statistics to better a chance of promotion. He has to take that decision only once, and that too when the option is extended to him. Option can not be extended to him if entire cadre of AE-II is full. As & when, in service contingencies, a post in AE-II cadre falls vacant, sectioned Engineer who has improved his qualification, may be put against it. Thus, he can not claim absorption or regularization against a vacancy already occupied by another AE-II legally. In other words, if arguments of the petitioners are upheld, they would dislodge a degree holder recruited against a vacancy in 25% cadre on a date on which petitioners were not even graduates. If this logic is extended further, a senior sectional Engineer obtaining degree at fag end of his service. Say in year 2012, will displace his colleague who got degree in 2002 & became a graduate Junior Engineer in 25% AE-II cadre. This anomalous result would be solely due to their relative placement as sectional Engineers. Thus, the seniority list of degree holders will always continue to be contingent & therefore, uncertain. Future and career of AE-II Junior Engineers cannot be put to peril like this. Thus, sectional Engineer becoming graduate & opting to join the cadre of AE-II needs to be placed at the bottom of that seniority list.

28. We, therefore, do not find anything wrong with the publication of two seniority lists and decision to make promotion through such lists. Infact interim orders of this Court dated 16.10.1998 and 26.2.1999 has been expressly accepted and admitted by the Nagpur Municipal Corporation as correct. It has decided to proceed further in the matter in consonance with those orders. We have recorded the same while deciding Writ Petition No. 3795/1997. Our judgment in said writ petition is also sufficient to turn down the arguments advanced in these matters. In this situation, we find no merit in any of the petitions. The same are accordingly dismissed. Pending civil applications are also disposed of. Rule discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.