
(1991) 04 RAJ CK 0052
In the Rajasthan High Court
Case No : Civil Writ Petition No. 100 of 1987

Basti Ram Mangal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-04-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16, 226, 32
Evidence Act, 1872 — Section 11, 13, 41

Citation : (1991) 2 WLN 15

Hon'ble Judges : Y.R. Meena, J;J.R. Chopra, J

Bench : Division Bench

Judgement

J.R. Chopra, J.—This writ petition is initially filed by the petitioner against the State of Rajasthan. The Chief Engineer Public Works Department Rajasthan Jaipur and Shri J.K. Soni on 6.1.1987 alongwith number of annexures and affidavits.

2. A reply to the show cause notice was filed by the respondent No. 3 on 30.3.87 alongwith certain annexures. On behalf of respondent No. 1 State of Rajasthan, a reply was filed on 13.7.87. The petitioner filed separate rejoinders alongwith certain documents to the replies filed by respondent Nos. 1 and 3 on 7.10.87. A reply to the rejoinder was filed by respondent No. 3 on 21.10.87 and to that, a further rejoinder was filed by the petitioner on 8.11.87 alongwith certain documents. The respondents thereafter filed a rejoinder to the reply on 13.11.87. An additional affidavit was also filed by respondent No. 3 Shri J.K. Soni on 17.11.87. A rejoinder to the reply of respondent Nos. 1 and 2 was filed by the petitioner on 3.2.88 and a reply to the rejoinder to the reply to the writ petition was again filed by the respondents on 12.8.88. To it, a further rejoinder was filed by the petitioner on 1.11.88 and a reply to the rejoinder filed by the petitioner in reply to the writ petition was again filed on behalf of respondent Nos. 1 and 2 on 12.4.1989. Thereafter it appears that Shri J.K. Soni and Shri S.C. Purohit were promoted as Executive Engineers and, therefore, an application for amendment of the writ petition was filed. A reply to the amendment application was filed and

ultimately, the application for amendment of the writ petition was allowed and the amended writ petition has been filed on 17.1.90 and its reply has been filed by the respondent No. 3 Shri J.K. Soni on 4.2.1990. Although, the State maintained its earlier reply but a rejoinder to that reply was filed by the petitioner and this is how the record has become bulky.

3. Be that as it may, the facts necessary to be noticed for the disposal of this writ petition briefly stated are: that the petitioner Basti Ram Mangal had obtained a Diploma in Electrical Engineering in the year 1958 and entered the services of the Government of Rajasthan as an Overseer (Engineering Subordinate) in Public Works Department (B & R) on adhoc basis in 1958. Thereafter, the post was advertised by the Rajasthan Public Service Commission and he was selected by the R.P.S.C. vide an order dated 4.11.59 as will be clear from Annex. 1 seniority list dated 27.5.68. It is alleged that on 9.2.66, he was asked to look-after the work of Assistant Engineer (Electrical). Later on 24.6.68, his term as an Assistant Engineer (Electrical), hereinafter referred to as "A.En." was extended from 10.2.66 to 9.6.66 vide Annex. 2. This appointment was then extended upto 10.6.67. It is alleged that the post of A.En at Jodhpur was put under abeyance on 1.7.67 but no orders of reversion of the petitioner were passed and in physical terms, the petitioner continued to discharge the duties of A.En. It is alleged that on 1.6.70, petitioner was again appointed as A.En. but he was on long leave and, therefore, he could not avail this chance, and therefore, another order dated 30.8.71 was passed whereby the petitioner was appointed as A.En. in adhoc capacity. The order dated 30.8.71 has been produced as Annex. 3. The petitioner joined his duty as A.En. on 18.9.71. In the year 1974, the Departmental Promotion Committee was convened and if considered the case of the petitioner and the result of the D.P.C. was put under a sealed cover because the enquiry under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 was pending against him. The enquiry however was concluded in the year 1976 and a minor punishment of stoppage of one annual grade increment was imposed on him vide an order dated 15.7.76. However, the D.P.C. vide an order dated 1.9.80 approved him for promotion to the post of A.En. and he was allotted the year 1979. The petitioner therefore protested vide his representation dated 13.12.80, and, therefore, an order came to be issued on 4.9.81 whereby he was allotted the year of selection as 1975, marked as Annex. 5. Against this order also, he made a representation on 23.5.83, a copy whereof is Annex. 3 and it was claimed by him that he was entitled to be given promotion from the promotion quota in the year 1968 because that was the year in which he completed ten years' service as Engineering Subordinate. The representation came to be rejected vide Annex. 7 dated 20.9.86 and hence this writ petition.

4. It is alleged that one Shri Bihari Lal who was junior to him and was not possessed of the Diploma but was appointed as Engineering Subordinate vide order of the R.P.S.C. dated 4.11.59, was accorded promotion to the post of Assistant Engineer on adhoc basis in the year 1965 vide order dated 6.3.65 marked Annex. 8. As he was not eligible and, therefore, on representation of the

petitioner, the Government passed an order for his reversion on 25.4.70 vide Annex. 9 but the Chief Engineer did not give effect to that order and before Shri Bihari Lal attained the age of super-annuation and retired. It has been claimed that Shri Bihari Lal was junior to him and, therefore the petitioner should be promoted from the date Shri Bihari Lal was accorded promotion as A.En. i.e. from 6.3.65 and if that cannot be done then atleast he should be accorded promotion from the date he was completed ten years of service i.e. in the year 1968.

5. As regards respondents No. 3 and 4, the petitioner has submitted that vide order dated 1.6.84, the final seniority list was published wherein the petitioner's name finds place at S.No. 3 and that of respondent No. 4 appears at S.No. 6 whereas the name of respondent No. 3 appears at S.No. 2. This is because the petitioner was given seniority as per the recommendation of the D.P.C. allotting to him the year of 1975 whereas Shri J.K. Soni was given promotion in the year 1974 who was allotted that year on completion of fifteen years of service and Shri S.C. Purohit was allotted the year of 1976. Both the respondents No. 3 and 4 were accorded promotions to the post of Executive Engineer vide Annex. 35 dated 26.9.89. As regards Mr. Soni, it has been claimed that he is not possessed of the qualification of the Diploma in Engineering. He came to be selected by the R.P.S.C. in 1959 alongwith the petitioner but in the recommendation of the R.P.S.C., it has been clearly mentioned that he is not possessed of the qualification of the diploma and, therefore, he was given a lesser start than the petitioner which is clear from Annex. 10 dated 30.10.1959 sent by the R.P.C.S. to the P.W.D. Shri J.K. Soni was promoted as A.En. on adhoc basis in the year 1970 although he had not completed fifteen years of service. Inspite of the fact that he was not a diploma holder, he was regularly selected as A.En. in the promotion quota of the year 1974. The Chief Engineer vide his communication dated 31.3.70 marked Annex. 11 claimed that Shri Soni is not possessed of the requisite qualifications for the post of Assistant Engineer, and, therefore, he cannot be promoted before 1974 but in the letter dated 6.4.1970 marked Annex. 12, it has been claimed that he has become eligible on completion of ten years. However, the Chief Engineer vide his letter dated 5.11.89 requested the Govt. to examine whether two years Electrical Supervisor's course from Govt. Polytechnic Institute, Dehradun U.P. can be recognised as equivalent to three years course of Electrical Diploma. This matter was also referred by the Chief Engineer to the Principal, Government Industrial and Technical Institute, Dehradun and Director Board of Technical Education Rajasthan Ajmer requesting them to enquire whether this particular Supervisor's course Certificate awarded to Shri Soni is equivalent to three years polytechnic diploma course. A reply has been received from them which clearly shows that it is not equivalent to the diploma course: In this respect, Annex. 36, 37 and 38 have been filed wherein it has been claimed that a person who holds the Certificate, can be appointed on the post of Electrician/Wireman and not an Engineering Subordinate. The Principal, Govt. Industrial and Technical Institute, Dehradun U.P. also gave reply on 4.11.89

marked Annex. 39 that this Certificate is not equivalent to the diploma course. It appears that during this period, the respondent No. 3 also submitted a representation claiming that the Supervisor's course Certificate is equivalent to three years diploma course and in this respect, he placed reliance on the decision of this Court rendered in S.B. Civil Writ Petition No. 2128 of 1971 M.R. Shahi v. The State of Raj. and Ors. on September 2, 1975 in which a letter dated March 30, 1970 issued by the State Government was produced whereby the State Govt. duly recognised the Diploma of Electrical Supervisor awarded by the Director of Industries, U.P. on the ground that the Authority which conducted the examination and was then designated as the Director of Industries, U.P. was now renamed as Director of Board of Technical Education U.P. and, therefore, in view of its earlier order dated November 17, 1962 whereby all the Certificates and Diplomas granted by the State Boards of Technical Education for purpose of appointment to subordinate posts were treated as equivalent to Diplomas awarded by the Board of Technical Education of that State. The Hon'ble High Court held that the State Govt. is the only Competent Authority empowered to recognise the diploma for the purpose of qualification prescribed in Schedule I annexed to the relevant Rules and as the State Govt. has clearly recognised the diploma so possessed by Shri Soni, the Hon'ble Court held that Shri Soni was possessed of the requisite qualifications for promotion to the post of A.En. It has been claimed that this order is based on insufficient facts and actually, the Electrical Supervisor's course Certificate issued in favour of Shri Soni is not equivalent to three year's diploma course and it was in this context that the Chief Engineer had written to the Secretary, P.W.D. on 29.11.89 that it is not so. In this respect, copy of that letter has been filed as Annex. 36. Even the D.P.C. took the decision that he has become eligible and, therefore, it selected him regularly in the year 1974. Shri B.R. Mangal made certain representations whereupon Deputy Secretary to the Govt. addressed the letter to Chief Engineer, P.W.D. on 7.8.70 to explain how Shri Biharilal who is junior to Shri Mangal has been promoted as A.En. and why Shri Mangal has not been given promotion from the year 1965 or atleast with effect from 27.12.68 when he has completed ten years of service as Engineering Subordinate. A copy of this letter has been filed as Annex. 14. One Shri Rameshwar Lal who was given appointment as A.En. on adhoc basis, resigned on 28.12.69 and in that vacancy the Chief Engineer promoted Shri J.K. Soni, on 5.2.70, the Chief Engineer however addressed the letter to the Secretary, a copy of which has been submitted as Annex. 15 in which it has been claimed that Shri Biharilal should be reverted as he will become eligible for promotion in the year 1972 and in his place, Mr. Mangal should be appointed as A.En. at Jodhpur which has been put in abeyance should be revived. When nothing turned upon it, he served a notice for demand of justice on the Chief Engineer vide Annex. 16 dated 26.6.86 and thereafter this writ petition has been filed in the year 1987 for promotion to the post of Executive Engineer, and it is material that the petitioner's promotion may not be considered on that post as it may be deemed that he has not acquired the requisite qualifications firstly because he has not been confirmed as he has not

passed the departmental examination and secondly because he has been allotted the year 1975 for promotion as A.En. whereas he should have been allotted the year 1968 or 1969 whenever regular vacancy for the post of A.En. was available. Alternatively, it was claimed that the petitioner is entitled to be allotted the promotion quota of the year 1971-72 because Shri Soni was not possessed of the requisite qualifications and, therefore, he could not have been promoted as A.En. as he only became eligible for promotion as A, En. in the year 1974 and not prior to that. The petitioner can be given promotion in the earlier years on the basis of the provisions of Raj. Services (Recruitment by Promotion against vacancies of Earlier years) Rules, 1972, (hereinafter referred to as "the Rules of 1972"). It was further claimed that he should be deemed to have been promoted w.e.f. December, 1968 as A.En. when he completed ten years as Engineering Subordinate. The implied reversion of the petitioner from 1.7.67 is patently illegal and as Shri Biharilal and Shri J.K. Soni who were juniors to him, were promoted earlier to him, therefore, he is entitled to be promoted as A.En. from those dates. Even before 1.7.67, from 10.2.66 to 30.6.67, he has worked as A.En. and thereafter also, he has factually discharged the duties of the A.En. and, therefore, firstly he should be deemed to have been promoted from the year 1966 and if not then from Dec. 1968 and if even that is not possible then from the year 1970 or from the year 1971 because he has been continuously functioning as A.En. from 18.9.71. He has rather claimed that he is continuously discharging the duties of A.En. w.e.f. 10.2.66. He has, therefore, claimed salary of the post of A.En. from 1.7.67 to 17.9.71 because no order reverting him as Engineering Subordinate was ever passed. He has further sought a declaration that the promotions granted to respondent Nos. 3 and 4 on the post of Executive Engineer vide order dated 26.9.86 may be declared illegal because this has been done ignoring the petitioner's seniority which has wrongly been reckoned.

6. It was claimed that Rajasthan Civil Services (Departmental Examinations) Rules, 1959 provide for departmental examination for certain categories of Staff Rule 18(1) provides that Govt. Employees who have attained the age of 45 years on or before 1st January 1982, are exempted from appearing at the departmental examination. The petitioner claims that he stands exempted from this examination because he has already completed forty five years and the words "on or before 1st January, 1982" which come on his way, should be declared illegal and ultravires because this cut out date has no nexus with the object sought to be achieved. It has been claimed that as per Rule 17 of the aforesaid rules of 1959, syllabus for the departmental examination in respect of A. Ens. was published on 22nd October, 1971 in the Rajasthan Gazette and in spite of it, Shri C.P. Singhal, Shri K.B.L. Sethi, Shri D.K. Kapoor and Shri J.K. Soni were exempted from departmental examination and were confirmed vide orders dated 21.10.72 and 20.8.74 although they did not complete forty five years their dates of birth being 18.12.41, 13.3.39, 19.9.44 and 26.4.39 respectively. He has submitted that this cut out date as provided in Rule 18(1) of the Rajasthan Civil Services (Departmental Examinations) Rules, 1959 should be

declared ultravires and it be declared that he need not pass the departmental examination and should be promoted as Executive Engineer.

7. Respondent No. 3 while submitting his reply, has claimed that the matter relates to promotion and, therefore, it should immediately go to the Rajasthan Civil Services Appellate Tribunal and it could not have been agitated by way of a writ petition. The claim of the petitioner for promotion is time-barred because according to the Rajasthan Civil Services Appellate Tribunal Act, 1976, the limitation of only sixty days is provided for filing an appeal against an order which is under challenge and this is how the remedy has become time-barred. The writ-petition also deserves to be dismissed on the ground of delay and laches as it relates to final orders passed way back in the year 1983 and, therefore, the writ petition is highly belated and cannot be entertained. The question of territorial jurisdiction has also been raised and it has been claimed that the present controversy raised in this writ-petition has already been decided by this Court in the aforesaid writ petition bearing No. 2128/71 Mr. R. Shahi v. The State of Raj. and Ors. decided on Sept. 2, 1975 whereby it has been declared that the petitioner is a diploma holder and he has rightly been given promotion on the post of A.En. Even in the selection list that has been prepared by the R.P.S.C., he has been placed at number 2 whereas the petitioner is at number 3. The fortuitous promotion does not confer any right on the petitioner. Moreover, the petitioner has not continued on the post of A.En. from 1.7.67. He did not avail the promotion which was offered to him in the year 1970 i.e. on 1st June, 1970. It was only in the year 1971 that he joined as A.En. and, therefore, he is not entitled to be promoted from the year 1968. It was claimed that the respondent No. 3 was not selected as A.En. by the D.P.C. of 1974 but he was selected by the D.P.C. of 1973 against the vacancies meant for the quota of years 1972-73. The order that was passed in pursuance of which the regular promotion has been given to him by the D.P.C. has been filed as Annex. R. 3/1. The petitioner has been assigned the quota of the year 1975 and, therefore, he is definitely junior to him and his claim for seniority has been rejected by the Govt. In the final seniority list i.e. 1st June, 1984, the respondent No. 3 has been shown as substantive whereas the petitioner has been shown as junior to him and has not yet been made substantive till date. A photo copy of that order dated 6.1.84 has been submitted as Annex. R. 3/2. The petitioner remained wilfully absent from duty for a period of two years and it was because of this that he could not avail promotion granted to him in the year 1970. The answering respondent No. 3 was accorded regular promotion in the year 1973 vide Annex. R. 3/1. That conclusively proved that the Govt. has treated the petitioner junior to respondent No. 3 and has by implication rejected all his claims for seniority and later he was given a regular selection w.e.f. 1975 by the orders of 1980. Thus, if he was aggrieved by any of these orders, he should have filed a writ petition after the year 1973 when Annex. R. 3/1 was passed. Therefore, this writ petition is highly belated and he cannot be allowed to unsettle the all settled affairs. His representation as regards seniority dated 22.5.83 stands rejected by

the final seniority list dated 1st June, 1984 confirming the earlier decision of the Govt. as will be clear from Annex. R. 3/2. It is wrong for him to say that the respondent No. 3 was promoted in the year 1974. Actually, the D.P.C. was convened in the year 1973 and there was no vacancy in the year 1974. He was adjusted against the vacancy for the year 1972-73. Representations do not give any fresh cause of action and, therefore, even if the petitioner has been going on making representations, that does not absolve him of the charge of delay and laches. Respondent No. 3 has claimed that he is possessed of the diploma in Electrical Supervisorship and that has been considered as equivalent to Diploma in Electric and R.P.S.C. also has taken it to be a valid diploma in view of the High Court decision and other factors, and, therefore, that settles the matter for all time to come and it cannot be allowed to be reagitated time and again. It has also been claimed that the letter which was written by the Chief Engineer on 31st March, 1970 was in ignorance of the letter dated 30th March, 1970 issued by the Govt. and it was in this context that the revised letter dated 6th April, 1970 was sent was by the Chief Engineer wherein it has been claimed that Shri J.K. Soni has acquired the requisite qualifications for promotion as A.En. Reference has also been made to certain correspondence which has been made by the petitioner and it has been claimed that this certificate has been treated as equivalent to diploma course and, therefore, he is definitely senior to the petitioner and hence he has rightly been promoted as A.En. ahead of the petitioner. It has, therefore, been claimed that this writ petition may be dismissed.

8. In reply to the amended writ petition also, it has been claimed by respondent No. 3 that the Government has recognised this Certificate as equivalent to diploma vide its order dated 30.3.1970 and that has been given effect to by the R.P.S.C. while making regular selection and moreover he has taken his education in Govt. Polytechnic, Dehradun and this letter which has been issued by the Principal, Govt. of Industrial and Technical Institute, Dehradun cannot apply to him.

9. On behalf of the State and the Chief Engineer it has been claimed that the promotion that was given to the petitioner on 10.2.66 was only a stop gap arrangement because the concerned officer proceeded on leave. That period of promotion was extended upto 30.6.67 and thereafter no extension was granted and, therefore, there was no question of passing the reversion order. When there was no promotion order, the petitioner automatically reverted to his original post i.e. Engineering Subordinate. The petitioner remained absent from 29.12.69 to 20.3.71 and joined back on 26.3.71. His joining-report is Ex. R/1 which clearly shows that he joined as Engineering Subordinate and not as an A.En. It has also been claimed by the State that D.P.C. was held in the year 1973 and not in 1974. The proceedings of the D.P.C. show that the petitioner was not promoted because enquiry Under Rule 16 was pending against him. He was selected on regular basis vide an order of the Government dated 1.9.80 and he was allotted the quota of 1979 but later vide order of the State Government dated 1.6.84 he

was allotted the quota of 1975. It is true that the petitioner made number of representations in which he had claimed that he should be promoted against the promotion quota of 1968 and those representations were considered and final decision was conveyed to him vide Govt. Order No. Pa-1(118) PW 68 dated 20.9.1986 whereby his representations were rejected. As regards Shri Biharilal, it has been claimed that although he has been promoted in the year 1965 vide order dated 6.3.65 but Govt. has admitted that Shri Biharilal was junior to Shri Basti Ram Mangal and, therefore, he was reverted back vide Annex. 9 but before appropriate orders in pursuance of the Govt. order Annex. 9 were passed, Shri Biharilal attained the age of superannuation. Shri J.K. Soni was selected by the R.P.S.C. He did not complete three years diploma course but he was recommend for appointment as Engineering Subordinate because persons with higher qualifications were not available. Shri J.K. Soni has done two years Electrical Supervisor's training diploma from the Director of Industries, a course run by Directors of Industries and that was held as sufficient for his selection to the post of Engineering Subordinate by the R.P.S.C. and this Certificate came to be recognised as equivalent to diploma vide State Govt.'s Order dated F. 9(3)C.A. 30701/30.3.70 i.e. Annex. R/2. In a writ petition filed by Shri Sahi the High Court has also treated this Certificate as equivalent to Diploma and has ordered that he has rightly been promoted as A.En. as the name of Shri J.K. Soni was above Shri B.R. Mangal in the list sent by the R.P.S.C. and that seniority was maintained throughout and it was because of this that Shri Soni was promoted as A.En. ahead of Shri Mangal. It has therefore been contended that it is wrong to suggest that Shri Soni acquired requisite qualifications for promotion as A.En. in the year 1974. He joined in 1959 and, therefore, he has acquired the requisite experience for promotion in the year 1969 and was consequently promoted as A.En. in the 1970 and later was given a regular promotion in the quota of 1973 by the D.P.C. It has therefore been claimed that the petitioner is entitled to no relief and, therefore, the writ petition should be dismissed.

10. In the additional replies and affidavits, the controversy as regards the superannuation of Shri Biharilal has been raised. The petitioner has contended that the superannuated in the year 1974 whereas the contention of the State respondent is that although he was to retire in the year 1974 but he took leave preparatory to retirement in the October, 1973 and, therefore, he retired in the October, 1973. The facts that have been asserted by the parties have been controverted by each one of them as against the others in the additional replies and rejoinders and reply to the rejoinders and additional reply to the rejoinders.

11. Be that as it may, we have heard Mr. R.C. Maheshwari appearing for the petitioner, Shri B.S. Bhati learned Dy. G.A. for the State and Mr. A.K. Rajvanshi for respondent No. 3 and Mr. M.R. Singhvi for respondent No. 4 and have carefully gone through the record of the case which on account of replies and re-replies and rejoinders being filed, has become voluminous.

12. The first contention of Mr. R.C. Maheshwari is as regards the qualification of

Mr. J.K. Soni because much will turn upon the decision of this fact as to whether Shri Soni is possessed of a qualification of diploma in Engineering and has been given promotion as A.En. ahead of Shri Mangal rightly or whether Shri Soni could not have been promoted as A.En. before he had completed fifteen years of his service as Engineering Subordinate because he was not possessed of the requisite qualification of diploma in Engineering Subordinate. Mr. Maheshwari submitted that initially when the recruitment took place for the post of Engineering Subordinate, it is true that Shri J.K. Soni was at No. 2 and his name was at No. 3. It is further true that this selection took place for the post of Engineering Subordinate but the P.S.C. vide its order dated 30th October, 1959 marked Annex. 10 has categorically made it clear in the aforesaid letter sent to Chief Engineer B & R P.W.D. Rajasthan, Jaipur that the. Candidates at S.No. 2 and 5 have not completed a regular 3 years diploma course. No. 2 has done the two years Electrical Supervisor training course and No. 5 hold a diploma in craftsmanship. They have however been selected because they do possess a working knowledge of the subject and because the candidates with higher qualifications are not available and hence it was recommended that they may however be given an initial start of Rs. 90/- only. The contention of Mr. R.C. Maheshwari is that as Shri J.K. Soni was not possessed of the requisite qualifications, he was given a lesser start of Rs. 90/- whereas the petitioner who was a holder of a diploma from the M.B.M. Engineering College of Jodhpur, was given a higher start of Rs. 115/-. Our attention has also drawn to Annex. 11 dated 31.3.70 which was written by the Chief Engineer to the Secretary to the Govt. P.W.D. Rajasthan, Jaipur wherein it has been mentioned that Shri Biharilal Sharma will become eligible for promotion on 11.4.72 and Shri Basti Ram Mangal has become eligible for promotion on 28.11.68 on completion of ten years. Shri J.K. Soni holds a Electrical Supervisor's Certificate and in view of the fact that he does not hold Diploma in Electrical Engineering, he becomes eligible for promotion on completion on 15 years i.e. 26th November, 1974. The Chief Engineer therefore observed that only Shri Basti Ram Mangal is eligible for promotion. In this respect our attention was also to the provisional seniority list published of the temporary Engineering Subordinate (Electrical) which is enclosed with Annex. 1 dated 27th May, 1968 wherein it has been written against Shri J.K. Soni that he is a matriculate with Electrical Supervisor's course from Govt. Polytechnic Dehradun and as against Shri B.R. Mangal, it has been written that he is a holder of diploma in Electrical Engineering from M.B.M. Engineering College, Jodhpur. Our attention was next drawn to Annex. 20 wherein the Principal of Govt. Industrial and Polytechnic Institute, Dehradun has certified that the qualification held by Shri J.K. Soni who has acquired two years' Electrical Supervisor's Course in the year 1959 is not equivalent to a diploma. Our attention was also drawn to Annex. 24 wherein certain Govt. orders have been incorporated. The first being dated 20th Oct. 1962 bearing G.O. No. 2019E2/62/XXIII-PB-23ELA/47 whereby it was ordered that a person who has passed two years Electrical Supervisor's Course at any of the Institutions of the Govt. Industrial and Technical Industries in the State, can be granted a wireman's

permit. It also contains a Govt. order dated Dec. 13, 1960 bearing G.O. No. 8967 ELO/60/XXIII-PB-23E-ELA/1957 that these persons are entitled to get a wireman's permit. Our attention was also drawn to Annex. 25 dated 12.8.64 whereby the Chief Engineer P.W.D. B & R, Jaipur has written to the Superintending Engineer P.W.D. (B & R), Udaipur that the Certificate awarded to Shri V.K. Jain by the Govt. Polytechnic Dehradun, Department of Industries Uttar Pradesh in the year 1959 for electrical Supervisor is not considered sufficient for appointment to the post of Engineering Subordinate (Electrical). Our attention was next drawn to Annex. 22 dated 23.3.83 whereby the Education Minister informed the members of Rajasthan Legislative Assembly that the two years' Electrical Supervisor's Course, 1959 has not been recognised as equivalent to diploma. Our attention was next drawn to a letter of Govt. Industrial and Technical Institute Dehradun written to the Chief Engineer, P.W.D. Rajasthan, Jaipur on Nov. 1989 wherein it has been explained that the Certificate which has been issued to Shri J.K. Soni in the year 1978 is a correct Certificate and holders of such Certificates are entitled to work either as Electrician or wireman. It has also been made clear in this letter that earlier the Govt. Industrial and Technical Institute Dehradun was working under the name of Govt. Polytechnic, Dehradun. Our attention was next drawn to Annex. 39 whereby the Dy. Director and Secretary to the Board of Technical Education Rajasthan, Jodhpur has written to Chief Engineer P.W.D. that two years' Certificate Course of Electrical Supervisor run by Govt. Polytechnic Dehradun is not equivalent to three years' diploma course though the Course was run at Govt. Polytechnic, Dehradun. It was also made clear that Shri J.K. Soni a recipient of Electrical Supervisor Certificate from the Department of Industries, U.P., Kanpur cannot be considered as a diploma holder in Electrical Engineering because he does not hold the qualifications prescribed in the above letter under A & B. Our attention was also drawn to Annex. 40 a letter written by the Dy. Director Technical Education U.P. Kanpur to Shri R.S. Saxena in connection with the letter dated 14.11.89 whereby he sought certain information about the qualification of Shri J.K. Soni. In answer to that letter it has been made clear vide Director's letter No. 21797/E. 2/Ch/58 dated 14.2.72 that this two years Electrical Supervisor Course is not equivalent to diploma course and alongwith this letter, a copy of the letter written by the Director of Technical Education U.P. to Shri J.K. Soni has been reproduced and it has been mentioned in it that this Course of Electrical Supervisor conducted by Govt. Polytechnic, Dehradun is recognised by the State Govt. of U.P. for purpose of recruitment to suitable posts under the Department vide G.O. No. 2303/ED/XVIII-D-105 ED/63 dated May 4, 1965. This letter is dated 14th Feb. 1972. It is alleged that Shri J.K. Soni has filed a forged copy of the letter dated 4th Feb. 1972 wherein one line has been added at the end "that also this is equivalent to diploma", whereas this line is totally missing in the original letter which has been written by Shri V.P. Atwale Assistant Director of Technical Education who has signed for Director of Technical Education, U.P. It has therefore been claimed that he is a forger who has produced a forged letter and its correct copy is at page 301 of the paper book wherein this last line is totally missing. The original letter

which was written to Shri R.S. Saxena has been produced as Annex. 40 dated 18.1.90. It has been made clear by Shri U.V.S. Rajput Dy. Director in this letter that this certificate is not equivalent to diploma course. On the basis of these documents and certain representations which have been made by Shri Mangal and which have been forwarded to or by the Chief Engineer, it has been claimed that at no time, this Certificate was considered as equivalent to diploma and, therefore, inspite of the fact that Shri J.K. Soni was selected by the R.P.S.C. as an Engineering Subordinate, he was not entitled to be promoted as Asstt. Engineer before the expiry of 15 years because he was not a diploma holder. His qualifications were only a Certificate in Electrical Supervisor's Course issued by Polytechnic Institute, Dehardun and that course in U.P. only entitled him to work as wireman or electrician and not an Engg. Subordinate and, therefore, his promotion ahead of Shri Mangal is contrary to the rules and prescribed qualifications and therefore it was claimed that the petitioner should be given promotion ahead of him.

13. This contention raised by Mr. R.C. Maheshwari is seriously opposed by Mr. B.S. Bhati learned Dy. G.A. appearing for the State as also Mr. A.K. Rajvanshi, appearing for Shri J.K. Soni. It was contended by them that the Rajasthan Public Service Commission inspite of these qualifications selected Shri J.K. Soni as Engineering Subordinate. If he was not qualified to be appointed as Engineering Subordinate, the P.S.C. would not have selected him. It is an admitted case of the petitioner that even in the selection list which has been prepared by the P.S.C., Shri Soni has been put at No. 2 whereas Shri Mangal has been put at No. 3. Even in the provisional seniority list to which reference has been made by Shri Mangal vide Annex. 1 dated 27.5.68, Shri Soni has been assigned seniority at No. 381 whereas Shri Mangal has been assigned seniority in the provisional seniority list at No. 382. Mr. Bhati and Mr. Rajvanshi drew our attention to Annex. 23 which is a letter of General Administration Department dated 17.11.62 whereby the Government decided that all the Diploma Examinations conducted by Technical Departments of the State of Bombay as well as Boards of Technical Education of all other States shall be treated as recognised for purpose of recruitment to Subordinate posts under the Raj. Govt. from 1st March, 1956 and it was in this context that respondent No. 3 Shri Soni was selected by the P.S.C. on the post of Engineering Subordinate. Our attention was next drawn to Annex. R/iii which is dated 30.3.70. This has also been issued by the General Administration Department Rajasthan, Jaipur to the Chief Engineer P.W.D. Rajasthan, Jaipur. This pertains to the subject of recognition of Electrical Supervisor's Diploma awarded by the Director of Industries U.P. This is in reply to the letter of the Chief Engineer P.W.D. dated 24.3.70, copy of which has not been filed before this Court wherein the General Administration Department has written to the Chief Engineer that no specific orders recognising this particular diploma seems to have been issued by this department i.e. as regards the recognition of the Electrical Supervisors Diploma but as this diploma has been awarded by the director of Industries, U.P. who is now the Director of the Board

of Technical Education U.P. it should be treated as recognised following an all India pattern vide Govt. Order No. F. 2(38)GA/A/Gr. II/62 dated 17.11.62 i.e. Annex. 23 under which the diploma of all the State Boards of Technical Educations have been recognised for appointment on the Subordinate posts under the State Govt. The original certificate received alongwith that letter was also returned. It has, therefore, been claimed that vide order dated 30.3.70, Shri Soni's Electrical Supervisor Certificate has been recognised equivalent to that of diploma in Engineering and it was treated as sufficient for appointment on the Subordinate post under the State-Govt. It was contended that this recognition was granted by the State Govt. in pursuance of a letter written by the Chief Engineer dated 24.3.70. It is not based on any false representations made by Shri J.K. Soni. It is nowhere contended either by the State Govt. or by any body that this recognition dated 30.3.70 was issued on any false representation made by Shri Soni. It was issued in the context of an earlier decision which was taken by the Government keeping in view the fact that all Certificates and Diplomas issued by the Boards of Technical Education throughout the Country have been recognised as equivalent to diploma course and, therefore, keeping in view an all India pattern, this Certificate was also recognised as sufficient for appointment to the Engineering Subordinate. When this was clarified by the State Govt. then the Chief Engineer corrected his earlier letter dated 31.3.70 Annex. 11 and wrote back to the State Govt. vide Annex. 12 that in view of this order of the State Govt. dated 31.3.70 which was not in the knowledge of the Chief Engineer when he wrote Annex. 11 dated 31.3.70 wherein he has mentioned that Shri J.K. Soni is not entitled to be promoted before 26.11.74 was a wrong assertion. It was therefore stated by the Chief Engineer that Shri J.K. Soni holds Diploma from a recognised Institute for the purpose of recruitment and, therefore, he is eligible for promotion after ten years of service and in view of the above information furnished in para Nos. 2 and 3 of the letter dated 31.3.70 is not correct. The correct position is that Shri Soni became eligible for promotion on 25.11.69 forenoon as on that date, he has already completed ten years" service as an Engineering Subordinate. In the meanwhile, Shri J.K. Soni was promoted as A.En. Electrical with effect from 27.9.69 as Shri Rameshwar Lal Asstt. Engineer had resigned. This fact is contained in Annex. 15 dated 5.2.70. Against this promotion as A.En., a writ petition was filed by Shri M.R. Shahi wherein it was claimed that respondent No. 2 Shri J.K. Soni studied at Govt. Polytechnic Dehradun for two years and passed the examination of Electrical Supervisor's Course conducted by the Director of Industries U.P. in the year 1959. Shri Soni was selected by the R.P.S.C. for the post of an Overseer and was appointed as a temporary Overseer with effect from Sept. 25, 1959. He was later on confirmed on the post of Engineering Subordinate vide Chief Engineer, Rajasthan's letter dated 29th Sept. 70 with effect from Jan. 1, 61. By an order dated November 29, 1969, Shri Soni was promoted as Asstt. Engineer in a temporary capacity with effect from Sept. 27, 1969 and he was thereafter selected by the D.P.C. for the post of A.En. (Electrical) and was appointed on the aforesaid post on one year's probation, by the order of the State Govt. dated Dec. 24, 1973. Subsequently

Shri Soni was confirmed on the post of A.En. (Electrical) by the order of the State Govt. dated Aug. 20, 1974 w.e.f. June 24, 1974. It was claimed that Shri Soni was not a diploma holder and, therefore, was not eligible for promotion to the post of A.En. (Electrical) in the year 1969 as he did not possess 15 years' experience as an Engineering Subordinate (Electrical) and, therefore, his promotion is illegal and void. I was next contended that the State Govt. has not recognised the Certificate obtained by Shri Soni from Dehradun Polytechnic as equivalent to diploma from a recognised Institute.

14. After considering the rival contentions, the learned Single Judge who decided this writ petition bearing No. 2128/71 M.R. Shahi v. State of Rajasthan and Ors. vide its judgment dated Sept. 2, 1975 observed that there is no dispute that Shri Soni was appointed as an Engineering Subordinate on Sept. 25, 1959, and was promoted as A.En. on 29th Nov. 1969. The only question which therefore remains to be considered is whether Shri Soni was holder of Diploma from a recognised institute. The respondents had produced Annex. F. dated March 30, 1970 by which the State Govt. duly recognised the Diploma of Electrical Supervisor awarded by the Director of Industries, U.P. on the ground that the Authority which conducted the examination and was designated as the Director of Industries U.P. has now been renamed as the Director of Board of Technical Education and the State Govt. has recognised vide an earlier order dated 17.11.62 has recognised all diploma granted by all the State Boards of Technical Education for the purpose of appointment to Subordinate posts and, therefore, the diploma possessed by him, was equivalent to the diploma in Engineering. The learned Single Judge felt that the State Govt. was the only competent authority empowered to recognise the diploma for the purpose of qualifications prescribed in Schedule I annexed to the Rules i.e. the Rajasthan Service of Engineers (Building and Road Branch) Rules, 1954 and by the order Annex. F, the State Govt. clearly recognised the diploma possessed by Mr. Soni who had attended the course of instructions at the Govt. Polytechnic, Dehradun prior to his obtaining a diploma of Electrical Supervisor in the year 1959. In these circumstances, the learned Single Judge felt that it must be held that Shri Soni possessed the requisite qualifications for promotion to the post of Assistant Engineer as he was holding a diploma from a recognised Institution in Electrical Engineering and had also ten years experience on the post of Engineering Subordinate. His promotion, in a temporary capacity, to the post of Assistant Engineer (Electrical) w.e.f. Sept. 27, 1969 was, therefore, held to be perfectly valid and in this view of the matter, the writ petition filed by Shri Shahi was dismissed.

15. The contention of Mr. Bhati as also Mr. A.K. Rajvasnshi is that once a qualification is recognised by the State Govt. as equivalent to a diploma course, it cannot be claimed now that it is not equivalent to a diploma course. The State Govt. is the only Competent Authority which can recognise a particular course or Certificate as equivalent to diploma course and it has recognised the Electrical Supervisor's Certificate issued by the Govt. Polytechnic Dehradun as equivalent

to diploma and that contention has been upheld by the Hon''ble High Court in M.R. Shahi's writ petition which is a judgment in rem and, therefore, all parties who want to challenge this particular fact, are bound by it. Now, even if the State Govt. derecognises this diploma then too, the derecognition will be prospective and it cannot be retrospective and rights vested in a particular individual on the basis of the recognition granted by the State Govt. way back in the year 1970 i.e. on 30.3.70 cannot be divested at the whims and caprices of somebody.

16. Mr. R.C. Maheshwari has submitted that the petitioner is not bound by this judgment because he was not party to it and secondly certain new facts have been brought on record to show that this Certificate has not been considered to be equivalent to diploma course even by the State Govt. which has granted the Certificate then the matter needs reconsideration and this Hon''ble Court should ignore this judgment and hold that Shri J.K. Soni was not possessed of the requisite qualifications at the time when he was promoted as A.En. and later was selected on the regular basis by the department. It was contended by Mr. Maheshwari that it is not a judgment in rem and it is not binding either u/s 41 of the Evidence Act or u/Article 141 of the Constitution. Article 141 of the Constitution provides that decisions of the Hon''ble Supreme Court laying down proposition of law are binding on all. No party need be served with any notice or be a party to these proceedings before that judgment becomes applicable to him. In this respect, our attention has been invited to a decision of their lordships of the Supreme Court in M/s. Star Diamond Co. India v. Union of India and Ors. reported in AIR 1987 SC 179 . Our attention was also drawn to a Full Bench decision of this Court in State of Rajasthan Vs. Shamlal and Others, wherein para 27 while arriving at AIR 1940 Privy Council 230 wherein their lordships of the Privy Council reproduced with approval certain remarks in Lord Halsbury in Quinn v. Leathern (1901) AC 495 which reads as under:

Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found.

17. On the authority of these observations, it was claimed that at the time when judgment in M.R. Shahi's writ petition was rendered, certain facts were not in the knowledge of the High Court. All those facts have been brought on record and, therefore, that decision should be treated as judgment on the facts of that case and no general application of that judgment should be accepted. Actually, the authority to which the Full Bench have referred was a case of Punjab Co-operative Bank Ltd. v. Commr. of Income Tax, Lahore wherein while arriving at conclusions on the matter relating to the construction of Section 205, their lordships felt that first no question of the jurisdiction of his Majesty in Council can arise unless there is a Certificate, in which case the direct appeal lies to the Federal Court and secondly their lordships felt that if in the absence of a

Certificate it appears to the Board on an appeal that there is no ground for thinking that there is a matter for the consideration of High Court and that they ought to have given or withheld a Certificate, the Board ought to decline to hear the appeal until the High Court have had an opportunity of doing one or the other. Thirdly, the section on its true construction is dealing only with case where there is a reasonable possibility that the specified question may arise and the duty is imposed on the Judges of the High Court in those cases. It was in this context that their lordships observed that the remarks of the Board as regards the duties of the Judges of the High Court must be read as confined to cases of the nature which arose in that case and in that connection, reference was made to Lord Halsbury's remarks in (1901) AC 495 which has been quoted above. The general remarks of the Board do not constitute judgments which are binding but a judgment which is rendered by a competent Court deciding the status of a party is a judgment in rem as per Section 41 of the Indian Evidence Act and it is binding on all the parties whether they are parties to it or not. In this respect our attention was drawn to S.B. decision of Mysore High Court in Duggamma and Anr. v. Ganeshayya and Ors. reported in AIR 1965 Mysore 97 wherein para 4, the learned Judge observed that the decision of a foreign Court on title to immovable property within its jurisdiction will be conclusive between the parties in India provided it is a decision of a Competent Court and does not suffer from any of the infirmities mentioned in the different clauses of Section 13. Our attention was next drawn to D.B. decision of the Madras High Court in C.S. Nataraja Pillai and Another Vs. C.S. Subbaroya Chettiar, wherein their lordships while relying on a decision of the Bombay High Court reported in AIR 1938 Bombay 394 held that a declaration by a Court affecting the status of a person domiciled within its territory is treated by the comity of nations as being analogous to a judgment in rem and governs succession to movable property. Our attention was next drawn to a decision of the Bombay High Court rendered in Menahem Mesha Mehaheem Messa and Ors. v. Moses Bunin Menahem Messa and Ors. reported in AIR 1938 Bombay 394 relied upon by the Madras High Court in Natraja's case wherein while discussing the scope of Section 41 of the Evidence Act, their lordships observed that judgment in rem is not conclusive if it relates to a matter which need not have been controverted or which was not material or which only came collaterally into question or which was only incidentally cognizable. The principle is that in order to be a judgment in rem binding on the world, there must be a finding on status which is not only the foundation of the judgment but is necessary for it.

18. It was contended by Mr. Bhati as also Mr. A.K. Rajvanshi that the status of Shri Soni as regards his promotion as A.En. and the qualifications that he possessed, was directly in question in that writ petition. It was not a matter which need not have been controverted or which was not material or came collaterally into question or which was only incidentally material. This was the only question which was at issue and it was this issue which the Court was directly called upon to decide and the Court has decided it. Such a judgment

which declares the status of a person as regards his qualifications and as regards his promotions is certainly a judgment in rem and it is binding on the whole world whether one is a party to it or not. In this respect, our attention was next drawn to a D.B. decision of the Calcutta High Court in *Ganga Prosad Chowdhury Vs. Kuladananda Roy and Others*, where on p. 573 column I, their lordships observed that judgments, orders or decrees which come within Section 41 of the Evidence Act partake of a conclusive character for certain limited purposes on the footing of their being judgments in rem. The reliance was placed on this Authority on the ground that it has declared status and right of a particular person to hold a particular post. May be that the present petition was not a party to it but the question which is at issue presently was also the question at issue in that writ petition i.e. that the Certificate issued by the Govt. Polytechnic, Dehradun is a Certificate equivalent to a diploma course or not? When the Govt. has recognised the Certificate as equivalent to diploma and, therefore, it has very much to be treated as equivalent to diploma and it was in this context that this Court upheld his promotion as A.En. It is only where a decree has been obtained by means of fraud exercised by one party against the other that it is binding on the parties and privies and on persons represented by the parties so long as it remains in force but it may be impeached for fraud and may be set aside if the fraud is proved. In the case of judgments in rem the same rule hold good with regard to persons who are strangers to the Suit. In this respect, we place reliance on a decision of the Bombay High Court in *Ahmedbhoy Hubibhoy v. Bulleebhoy Cassumbhoy etc.* reported in 1882 ILR 703 . It is nobody's case that judgment was obtained by any fraud or that recognition was granted by the State Govt. on account of any fraudulent representation made by Shri J.K. Soni. This letter which is said to have been forged is dated 14.2.72. It was not in existence at the time when recognition was granted by the State Govt. Moreover, this recognition was granted by the pursuance of a letter of the Chief Engineer. What Director of Industrial and Technical Education of U.P. feels or what particular status they grant to a holder of Certificate from Polytechnic Institute Dehradun and what type of the work they take in their own state from such Certificate holders is beside the point. We are not concerned with all this. What is material so far as this case is concerned is that the State Govt. of Rajasthan has recognised the Certificate as equivalent to a diploma in Engineering and the recognition is not based on any misrepresentation or fraud being played and, therefore, copies of all G.Os., the assertions made by Shri Mangal in his representations, the view expressed by the successive Chief Engineers and any forgery made in a letter issued by Shri Y.D. Athavale are all beside the point. Nothing has been brought on record that this recognition which was accorded to this Certificate issued by the Polytechnic Institute Dehradun by the Govt. vide its order dated 30th March, 1970 has been withdrawn. Thereafter till today when the recognition is in force and has not been withdrawn so far, that recognition holds good because it is the State Govt. which is competent to recognise a particular Certificate as equivalent to a prescribed qualification in the Rules. That is the only authority Competent to recognise it and if it has recognised it inspite

of the value which is attached to it by the Govt. which grants such a Certificate then the recognition so granted by the employing State will hold good and not the views of the Govt. which is responsible for grant of these qualifications. Thus, what is material is that the State Govt. where a man get employment, recognised it and that recognition has been upheld by this Court in which the status of Shri J.K. Soni as a diploma holder and his entitlement to get promotion as A.En. has been upheld and, therefore, that judgment is binding on all the concerned whether they claim through the parties to these proceedings or not but they are bound by it because that is a judgment in rem. actually, M.R. Shahi's writ petition should be treated to be a writ petition in a representative capacity because a particular qualification which Mr. Soni possessed, was under challenge on behalf of all the diploma holders. The question involved in that writ petition was whether the recognition of this Certificate as equivalent to diploma is correct or not and whether in that light, the promotion of Shri Soni as A.En. is valid or invalid. Moreover, such judgments are relevant under Sections 11 and 13 of the Evidence Act also as has been held by a D.B. decision of the Bombay High Court in Naranji Bhikhabhai and Ors. v. Dipa Umed and Ors. reported in 1879 Indian Law Reports Bombay Series p. 3 and Gujju Lall v. Fatteh Lall reported in 1880. Indian Law Reports Calcutta Series p. 171 a Full Bench decision of the Calcutta High Court. The judgments which are not interpartes are also relevant u. Section 11 of the Evidence Act as per a S.B. decision of the Himachal Pradesh rendered in Collector Vs. Lachhman and Others, If inspite of this recognition, the Education Minister has given any wrong reply before the floor of the house that such a diploma has not been recognised by the State Govt., it is for the Legislature to take an action against the Minister concerned and if any false letter has been produced by Shri Soni as regards his qualification to the Govt. then the Govt. is free to take any action against him but so far as the recognition of this Certificate is concerned, the Govt. vide its order dated 30.3.70 has recognised this Certificate as equivalent to diploma and that recognition has been given effect to by the learned Single Judge of this Court in S.B.C.W. Petition No. 2128/71 decided on Sept. 2, 1975 and till that judgment and its recognition are in force, it has to be held that Shri Soni was possessed of the requisite qualifications for promotion as A.En. after ten years of service as per the Rajasthan Service of Engineers (B & R) Rules, 1954. He was selected for the post of Engineering Subordinate keeping in view these qualifications and when these qualifications have been recognised as equivalent to diploma then he was entitled to be promoted after ten years. He was definitely senior to Shri Mangal not only in the provisional seniority list Annex. R/1 but also in the final Seniority list which was published on 1.6.84 Annex. R-3/2 at p. 137 of the paper book. So far as the first question is concerned, it has to be held that Shri J.K. Soni is senior to Shri B.R. Mangal and has been rightly considered to be senior to him in view of the aforesaid recognition granted by the State Govt., the status of a diploma as regards his qualifications of Electrical Supervisor's Certificate and on the basis of the judgment that has been rendered by this Court on Sept. 2, 1975 in S.B. Civil Writ Petition No. 2128/71.

19. It was next contended by Mr. R.C. Maheshwari that Shri B.R. Mangal was initially appointed as Engg. Subordinate on adhoc basis on 28.12.58. Later on, he was selected by the R.P.S.C. on regular basis as an Engineering Subordinate and was appointed on 30.10.59 and, therefore, he has completed ten years on 27.12.68, and in this way, firstly he is entitled to be promoted as A.En. from 27.12.68 or for that matter from 28.11.68 as mentioned in Annex. 11 dated 31.3.70 issued by the Chief Engineer to the Secretary P.W.D. Raj. Jaipur and in the alternative, it has been claimed that he should be promoted as A.En. from the date Shri B.L. Sharma was promoted as A.En. in the year 1965. Shri B.L. Sharma was initially recruited on 11.7.57 and later he was made regular on 30.10.59 and he was promoted as A.En. on 21.3.65. The Chief Engineer in his letter to the Secretary to the Govt. marked Annex. 15 has written that Shri B.L. Sharma has wrongly been promoted on the post of A.En. He should be reverted and in his place, Shri Mangal should be appointed. However, it is alleged that inspite of the Govt. orders to revert him, he was not reverted by the concerned Superintending Engineer and in the meanwhile, he superannuated. It has been claimed by the petitioner that he should be promoted with effect from the date his junior Shri B.L. Sharma was promoted as A.En. He has further contended that he himself was temporarily promoted as A.En. vide an order Annex. 1 A dated 9.2.66. That was an order whereby he was asked to look after the work of the post of A.En. who had proceeded on leave. Thereafter vide Annex. 2 dated 24.6.68, he was granted a fortuitous promotion as A.En. for four months i.e. from 10.2.66 to 9.8.66. Thereafter his period of fortuitous promotion as A.En. was extended from 10.6.66 to 9.8.66 vide Annex. 26 dated 16.5.69 and thereafter it was further extended from 10.8.66 to 9.2.67 vide Annex. 27 dated 25.4.70 and thereafter it was extended upto 30.6.67 vide annex. 28 dated 25.4.70. Thereafter no further extension was granted and actually the post of A.En. (Electrical) was held in abeyance vide Annex. R.A dated 21.8.67 and it mentioned in that order that Shri Mangal is not yet eligible for the post of Assistant Engineer (Electrical).

20. Be that as it may, the contention of the petitioner is that for all practical purposes, he discharged the duties of A.En. and no reversion orders were passed. However, then came to be issued an order promoting him again as A.En. vide Annex. R/7 dated 1.6.70 but he could not avail that promotion as he was on long leave and thereafter came to be issued an order Annex. 3 dated 30.8.1971 whereby the petitioner was again promoted as A.En. and he availed that promotion. The petitioner has claimed that he should be paid the salary of A.En. from 1.7.67 to 30.8.71. Because he claims that in physical terms, he performed the duties of the post of A.En. during this period.

21. These contentions raised by the petitioner are seriously opposed by Mr. B.S. Bhati and he has submitted that the promotion which was granted to the petitioner upto 30.6.67 was a fortuitous promotion on account of certain person proceeding on leave or on account of existence of a temporary vacancy. By that time, the petitioner did not complete the requisite service of ten years and,

therefore, he could not have been promoted. Moreover, he was junior to Shri J.K. Soni and, therefore, he could not have been promoted prior to Shri J.K. Soni. It has been admitted on behalf of the State Govt. that Shri B.L. Sharma was asked to officiate as A.En. in the year 1965 and on representation made by Shri Mangal, the Govt. firstly called the explanation of the Chief Engineer as to why Shri Biharilal was promoted ahead of Shri Mangal when he is junior to him and secondly, it was ordered that he should be reverted and Shri Mangal should be promoted. The Chief Engineer in his comments had also written that Shri Biharilal should be reverted and Shri Mangal should be promoted but before that could be done, Shri Biharilal went on leave preparatory to retirement in the month of Oct. 70 and thus proceeded on retirement although he was to retire in the month of January or February, 71. That of course is beside the point and if the petitioner felt that he should have been promoted from the back date then he should have raised his claim in the years 1965, 1968 or 1970 when Shri Biharilal was promoted as A.En. or when he completed ten years of his service or when the Govt. ordered that Shri Biharilal should be reverted. Now, such a stale claim which is more than twenty years old cannot be agitated after such a long lapse of time. In this respect we cannot do better than to refer to a decision of their Lordships of the Supreme Court in the case of P.S. Sadasivaswamy v. State of Tamil Nadu reported in 1976(1) S.L.R. 53 wherein their lordships have held that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of certain length of time but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra ordinary powers under Article 226 of the Constitution in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. This authority is on all fours so far as the claim of the petitioner to be promoted as A.En. on the basis of promotion of Shri Beharilal is concerned. He retired way back in the year 1970 and, therefore, a claim put forth after such a long lapse of time is too much delayed and cannot be entertained. Moreover, it is not understood in what physical terms, the petitioner performed the duties of the post of A.En. The petitioner was never allowed to work as A.En. after 1.7.67 and, therefore, there was no necessity to pass an order of reversion because there was no extension granted and, therefore, once the extension is not granted, the petitioner had to revert back to his original post. In the meanwhile, he remained absent for about two years i.e. from 29.12.69 to 20.3.71 and when he joined back his duty on 26.8.71, he has categorically stated that he has joined his duty as Engineering Subordinate and sought the permission of the Authorities to relieve him as Engineering Subordinate. Moreover, if he was treated as A.En. and was paid the salary of that post before he proceeded on leave, there was no necessity for him to claim the salary of A.En. from 1.7.67 to the date he joined at Bikaner as A.En.

This shows that he was never paid the salary of the post of A.En. and was never treated as A.En. and, therefore, his claim for grant of salary of the post of A.En. from 1.7.67 to 29.8.71 is a stale claim and secondly it cannot be entertained being time-barred. So far as his claim for promotion ahead of Shri J.K. Soni is concerned; Shri Soni has been held to be senior to him. Shri Mangal was promoted ahead of him but he was not able to avail the promotion in the year 1970 because he was on leave and, therefore, when he joined back, he was accorded a promotion as A.En. Thereafter Shri Soni was promoted as A.En. on a regular basis by the D.P.C. against the vacancy of 1973 which is clear from Annex. R-3/1 dated 24.12.73 at p. 136 of the paper book. That was the end of the matter. When the D.P.C. has recognised this Certificate as equivalent to a diploma holder and has regularly promoted him, a definite cause of action arose to the petitioner to agitate this claim for the post of A.En. in preference to Shri J.K. Soni. It hardly matters that he has been giving representations to the Govt. and the Chief Engineers have been taking a particular view or the Education Minister has been stating wrong facts on the floor of the house, the fact remains that in the year 1973 a regular promotion was accorded to Shri J.K. Soni by the D.P.C. and, therefore, the petitioner definitely came to know that his claim for promotion as A.En. ahead of Shri Soni has not been accepted by the D.P.C. and that was the day on which cause of action arose to him and, therefore, this writ petition filed as against Shri Soni to claim preference over and above him for promotion on the post of A.En. cannot be sustained because it is highly belated. Our attention was drawn to a decision of their lordships of the Supreme Court in *Har Swarup Vs. The General Manager, Central Railway and Others*, wherein their lordships observed that stale claims by petitioner cannot be examined in a writ petition after delay of about a decade or two. Their Lordships observed that of and on the petitioner has been ventilating his grievances and sometimes with success too. That hardly matters because from the facts stated, their lordships felt that the claim made by him is a stale claim and the Court cannot examine it after a delay of about a decade or two. Our attention was next drawn to a decision of their lordships of the Supreme Court in *Malcom Lawrence Cecil D'souza Vs. Union of India (UOI) and Others*, wherein their lordships in para 8 observed the seniority of the petitioner qua respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules and that seniority was reiterated in the seniority list issued in 1958. The writ petition was filed in the year 1971. Their lordships observed that the petitioner in our opinion, cannot be allowed to challenge the seniority further observed that any one who feels aggrieved with an administrative decision affecting one's seniority or other's right should act with due diligence and promptitude and not sleep over the matter. Their lordships further observed that no cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress. In para 9, their lordships observed that it would therefore appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time. Our attention was also drawn to a decision of their lordships of the Supreme Court in *N.S. Mehta and Others Vs.*

Union of India (UOI) and Others, wherein their lordships observed that the delay in invoking the jurisdiction under Article 32 which may create equitable rights of others, may give rational grounds for discrimination so that it would cease to be a case of violation of Articles 14 to 16 at all. In para 10, their lordships observed that it is also explained therein how delay in invoking the jurisdiction of the Court which may create equitable rights of others, may give rational grounds for discrimination so that it would cease to be a case of any violation of Articles 14 and 16 at all. This conclusion was drawn by their lordships on the basis of earlier authorities of the hon''ble Supreme Court mentioned in para 10 and ultimately observed that the principles laid down in those cases apply to this case also. Thus, first the claim of the petitioner as against Shri Biharilal is a very stale claim and cannot be allowed to be agitated after a long lapse of time. His claim for grant of pay of the post of A.En. from 1.7.67 to 29.8.71 has become time barred and stale and, therefore, it cannot be granted. His case for promotion ahead of Shri J.K. Soni also cannot be upheld in view of the aforesaid discussion. It is true that he had sent certain representations to the Govt. and the Chief Engineer has also forwarded them. They are Annex. 6 dated 23.3.83 Annex. 7 dated 20.9.86 and Annex. 14 dated 5/7.8.70 but except the representation dated 5/7.8.70. All other representations have been given after regular selection of Shri J.K. Soni as A.En. and Shri J.K. Soni has been confirmed as A.En. in the year 1974 on completion of one year's probation and, therefore, the settled position cannot be allowed to be unsettled after a long lapse of time because equities are against the petitioner.

22. It was next contended by Mr. Maheshwari that the petitioner had joined his services in the year 1958. Thereafter, in the year 1959, the Raj. Civil Services (Departmental Examination) Rules, 1959 came into force. Rule 18(1) of these Rules relates to exemption which as amended vide notification dated 21.1.84 reads as under:

18(1) Govt. employee who have attained the age of 45 years on or before 1st January, 1982, are exempted from appearing at the departmental examination.

23. Mr. Maheshawari contended that the petitioner has already completed the age of 45 years but the words on or before 1st January, 1982 come in his way to grant him an exemption and, therefore, they should be held as ultravires because no nexus between this cut off date and the object sought to be achieved by incorporation of this cut out date. It has got no nexus with the object for which this provision has been inserted in the rules. The purpose of insertion of this rule is that those who have acquired 45 years of age and acquired sufficient experience of the job should be exempted to appear in the departmental examination if their record is otherwise good as they deserve further promotion on the basis of their eligibility as also qualifications. The persons who are Engineering Subordinates and have attained the age of 45 years on the basis of this rule, from one class if they have attained the age of 45 years prior to 1.1.1982 and Engineering Subordinates who have attained the age of 45 years

after 1.1.1982 form a different class. There is no rational ground for making such a classification. The object of exemption is the acquisition of experience and expertise of the job, and therefore, the object for which this exemption is to be granted cannot be reasonably achieved by insertion of this cut-off date.

24. In this respect, we cannot do better than to refer to an authority of their lordships of the Supreme Court in *Sankari Cement Alai Thozhilalar Munnetra Sangam, Tamil Nadu Vs. Government of Tamil Nadu and Another*, wherein their lordships observed that all pensioners form a class as a whole and cannot be micro-classified criterion for the purpose of grant of revised pension. In para 7, the contention of the petitioners was notice whereby they have stated that the Court should consider the *raison d'être* for payment of pension. If the pension is paid for past satisfactory service rendered and to avoid destitution in old age as well as a social welfare or socio-economic justice measure, the differential treatment for those retiring prior to a certain date and those retiring subsequently, the choice of the date being wholly arbitrary will result in according differential treatment to pensioners who form a class irrespective of the date of retirement and, therefore, it is violative of Article 14. It was contended that classification based on fortuitous circumstance of retirement before or subsequent to a date, fixing of which is not shown to be related to any rational principle, would be equally violative of Article 14. Their lordships after noticing number of their own earlier decisions concluded that these decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz; that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and that differentia must have a rational relation to the objects sought to be achieved by the statute in question. This is what has been the principle laid down by their lordships of the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, wherein their lordships have observed that the classification may be founded on different bases according to the objects sought to be achieved but what is implicit in it is that there ought to be a nexus that has real connection between the basis of the classification and the object of the Act under considerations. Their lordships have further observed that it is equally well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. Persons who attained the age of 45 years while in service on or before 1.1.82 form one class and those who attain 45 years of age after 1.1.82 form another class. The exemption from appearing in the departmental examination is based on this ground that they have acquired sufficient practical experience and expertise and, therefore, they may be confirmed even without passing that examination. If they are good enough to be retained in service upto the age of 45 years on a particular post then they should be confirmed whether they pass the departmental examination or not. Now to differentiate between these two

classes of Engineering Subordinate who have attained the age of 45 years on the basis of a cut-off date i.e. 1.1.1982 appears to be arbitrary and has no reasonable nexus with the object sought to be achieved. By a catena of authorities, a change has been brought by their lordships in the interpretation of Article 14 and it has been held that arbitrariness is the very anti-thesis of reasonableness in classification and, therefore, it would be violative of Article 14 of the Constitution. In this respect, we may refer to E.P. Royappa Vs. State of Tamil Nadu and Another, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, Thus, this cut-off date given in Rule 18(1) is arbitrary and unreasonable as no reasonable nexus exists between fixing of this cut-off date and the object sought to be achieved by grant of this exemption contemplated by Rule 18(1) of the Rules of 1959. It cannot be conceived that those who attain the age of 45 years on or before 1.1.82 acquire more experience of the job than those who attain it after 1.1.82. Thus, there is no reasonable ground to distinguish between this homogeneous group of employees i.e. Engineering Subordinate persons who attain 45 years of age on or before 1.1.82 and those who attain it after 1.1.82. Therefore, when this classification is arbitrary and unreasonable then that unreasonableness becomes violative of Article 14 of the Constitution. Any legislative or executive action can be sustained only if it satisfies the test of reasonable co-relation with the object sought to be achieved. Their lordships of the Supreme Court in the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, have observed that the State action has to be reasonable and not arbitrary and if it is arbitrary then it has to be struck down as violative of Article 14 of the Constitution. Consequently, the use of the words on or before 1.1.1982 included in Rule 18(1) and therefore, it deserves to be struck down being ultravires.

25. Learned Dy. G.A. was pointedly asked as to what is the purpose of inserting this cut-off date in this rule but he was unable to explain the basis of the insertion of this cut-off date and what are the grounds which prevailed with the Govt. to form these two classes of Engineering Subordinates for grant a particular benefit i.e. exemption from departmental examination to those who have attained the age of 45 years on or before 1.1.1982 and to deny this benefit to those who have attained the age of 45 years after 1.1.82.

26. It was contended by Mr. R.C. Maheshwari that four persons have been confirmed as A.En. although they did not pass the departmental examination even before they attained the age of 45 years by relaxation of the Rules. They are Shri Gajendra Prasad Singhal, Shri Kul Bhushan Lal Seth, Shri D.K. Kapoor and Shri J.K Soni. Mr. Mangal has given their dates of birth and has shown that their confirmation orders Annex. 31 dated 21.10.72 and Annex. 32 dated 20.8.74 clearly show that they did not attain the age of 45 years on those dates and did not also pass the departmental examination. The Rules of the departmental examination came into force in the year 1959. The syllabus of the departmental examination was published in the Rajasthan Gazette Part 4(GA) dated 4.11.71.

Its copy has been filed at p. 345 of the paper book. Thus, it is false to contend that no syllabus was published. It was very much published. So much so that Shri D.K. Kapoor has appeared in the departmental examination and has failed. In this respect, he has drawn our attention to Annex. 29 from which it is clear that Shri Soni did not appear in the examination but Shri D.K. Kapoor appeared but failed. This result was published on 24.12.74 and prior to that, the confirmation orders of all these four persons were issued and, therefore, it was contended by Mr. Bhati that they need not have appeared in the examination. It is true that they were confirmed prior to holding of the examination but they could only be confirmed by relaxing the Rules but they have been confirmed against the Rules of 1959 which clearly provide that everybody who holds the post of an Engineering Subordinate has to undergo a departmental test to his further promotion and if he is not required to undergo that test then in his case, relaxation has to be granted but in granting relaxation, it is expected of the State Government to act reasonably and fairly. The very fact that Rules authorise a particular Authority to relax the Rules which means that the Rules are directory in nature but even then while relaxing them, the authorities have to act reasonably and fairly. In this respect, we cannot do better than to refer to a decision of their lordships of the Supreme Court in *Principal, King George's Medical College, Lucknow Vs. Dr. Vishan Kumar Agarwal and Another*, wherein their lordships have held that the rigour of a rule can be relaxed provided such relaxation is permissible under the rules or if the rule is directory and not mandatory. And even if it is permissible to relax a rule such relaxation must be governed by defined guidelines or objective considerations. No public authority, least of all a University which is entrusted with the future of the Student community, can pick and choose persons for receiving the benefit of relaxation of the rules. We may straightaway state that the relaxation from undergoing a departmental test before next promotion has been provided in the Rules for the persons who have attained the age of 45 years on or before 1.1.1982. These four persons in whose cases this relaxation was granted and they were confirmed as A.En., was done actually beyond the scope of the Rule's because they did not attain the age of 45 years prior to confirmation as A.En. whereas the petitioner has already attained the age of 45 years and still for a future promotion, he has not passed the departmental examination. If Mr. Soni can be confirmed without attaining the age of 45 years and without appearing in the test and if Mr. D.K. Kapoor can be confirmed the departmental examination and has failed although such confirmation orders have been issued prior to the holding of the examination then a differential treatment cannot be meted out to Mr. Mangal as per the aforesaid authority. If his service record is otherwise clean and he is otherwise eligible for confirmation then this rule should certainly be relaxed in his favour. In a University also cannot pick and choose the Officers for grant of such favours. It has to adopt a reasonable attitude based rational basis for such a relaxation. It cannot act arbitrarily and if it does then it deserves a direction that it should act fairly. In this respect, our attention was drawn to a decision of their lordships of the Supreme Court in *Virendra Kumar and Others Vs. Union of India*

(UOI), wherein the case was that a large number of persons who have completed two years of Service were promoted on the post of Chageman Gr. II. The other persons similarly situated were not promoted on the ground that they have not completed three years of service. The Hon"ble Judges of the Supreme Court felt that no justification for differential treatment is made out and, therefore, when others have been promoted after completion of two years" service, they should also be promoted.

27. The result is that we hold that the insertion of words "on or before 1.1.82" in Rule 18(1) of the Rajasthan Civil Services (Departmental Examinations) Rules, 1959 as regards grant of relaxation in departmental examinations ultravires of Article 14 of the Constitution of India and it has no reasonable nexus with the object sought to be achieved and, therefore, this cut-off date cannot be sustained. All those persons who as Engineering Subordinate have attained the age of 45 years and are otherwise eligible and suitable guidelines to its subordinate officers so that no arbitrariness may creep in grant of such a relaxation. So far as the case of the petitioner is concerned, if the record is otherwise clean then he should be confirmed on the post of Assistant Engineer Electrical without passing the departmental examination because he has already attained the age of forty five years. Shri B.R. Mangal was appointed way back in the year 1958 and promoted as A.En. in the year 1971 and is allowed to continue to function as such upto this date and is eligible for promotion to the next higher post of Executive Engineer then to insist upon him to pass the departmental examination before confirmation as A.En. (Electrical) even otherwise is inequitable. In this respect, we may refer to a decision of The State of Punjab and Another Vs. Shamlal Murari and Another, wherein para 4, their lordships observed as under:

4. Right away, we may indicate that we are not Impressed with the State"s contention that the failure to pass the departmental test by the Govt. servant concerned, after having put In more than two decades of service cannot and in the way of his enjoying the benefits of increment etc., particularly because he had been accorded exemption. Passing petty tests after a petrefying length of dull official service is an odd insistence except in important levels of work.

28. In the result, this writ petition is partially succeeds. The petitioner is not entitled to any back dated promotion as A.En. from the date Shri Biharilal Sharma was promoted as A.En. He is further not entitled to get any relief against Shri J.K. Soni because Shri J.K. Soni possessed a qualification which is equivalent to diploma in Engineering and which has been recognised by the State Government as such vide its order dated 30.3.70 and which recognition has been upheld by the learned Single Judge of this Court in S.B. Civil Writ Petition No. 2128/1971 M.R. Shahi v. State of Raj. and Ors. on Sept. 2, 1975 and, therefore, he has been rightly promoted on adhoc officiating basis and on regular basis ahead of Shri B.R. Mangal and has rightly been confirmed ahead of him. The petitioner"s claim for grant of pay from 1.7.67 to 29.8.71 also is stale and time

barred and stands rejected. Shri J.K. Soni and Shri S.C. Purohit who were earlier promoted as Executive Engineers vide Annex. 35 dated 26.9.89, have been reverted back as A.En. with immediate effect vide Annex. 41 dated 9.7.90, and, therefore, no relief need be granted against them on this score. However, the insertion of words on or before 1.1.1982 in Rule 18(1) of the aforesaid rules of 1959 is declared as ultravires. The petitioner having attained the age of 45 years, his case for confirmation as A.En. should be considered on merits without insisting on his passing the departmental examination and if he is other suitable for confirmation, he should be confirmed and should be considered for next promotion alongwith all other eligible candidates on the basis of his seniority and eligibility.

29. The writ petition stands disposed of accordingly on merits.