

(2010) 02 P&H CK 0366
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5141 of 2005

Santi Saroop and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Punjab Regional and Town Planning and Development Act, 1995 — Section 17, 175, 175(4), 182, 182(2)

Citation : (2010) 2 ILR (P&H) 967

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Permod Kohli, J.—Selection/appointment of respondents No. 4 and 5 to the post of Sub-Divisional Engineers (Bridges & Roads) in the Punjab Urban Planning and Development Authority (PUDA) is under challenge in the present writ petition. Respondents-PUDA is admittedly a statutory corporation and amenable to writ jurisdiction of this Court.

2. Factual background leading to the filing of this petition is noticed here-in-below.

3. The petitioners hold three years Diploma in Civil Engineering Initially, they were appointed as Junior Engineers with the respondent-authority on their selection, in accordance with rules on 14th September, 1979, 26th June, 1979 and 14th January, 1980, respectively. Their inter-se seniority is to be determined on the basis of their merit in the process of selection. The respondents-authority re-designated the Junior Engineers as Assistant Engineers, after 16 years of service as such. The petitioners were, therefore, designated as Assistant Engineers. Respondents No. 4 and 5 were also appointed as Junior Engineers in the respondent-authority and re-designated as Assistant Engineers. A final seniority list of Junior Engineers (Civil) was notified vide Circular dated 30th June, 1996 (Annexure P-1) wherein the petitioners figure at Sr. Nos. 24, 25 and

29, respectively whereas respondent No. 4 figures at Sr. No. 76. However, the name of respondent No. 5 is not reflected in the said seniority list. Next promotion in the hierarchy of service is to the post of Sub Divisional Engineer (Civil) which is regulated by the statutory regulations framed u/s 182 of the Punjab Regional, Town Planning and Development Act, 1995 (hereinafter referred to as the "1995 Act"). These Regulations were framed in the year 1999. Regulation 8 deals with the appointment to posts in service. The post of Sub-Divisional Engineer is a Class II post as specified under Schedule III appended to the aforesaid regulation. Regulation 8 and Schedule III read as under :--

8. Qualification and experience : (1) All appointments to the post in service shall be made in the manner specified in Schedule III:

Provided that if no suitable candidate is available for appointment by direct recruitment or by promotion, as the case may be, such a post shall be filled by transfer of person holding identical post or similar post in any department of the Government of Punjab, any other State Government or Government of India or a local authority, a statutory body or a Corporate Body or a Government or Semi-Government Undertaking or Organization. (2) No person shall be appointed to a post in a Service unless he possesses the educational qualifications and experience as specified that post in Schedule III.

(3) All appointments by promotion to Class III posts in a service shall be made from amongst eligible persons on seniority-cum-merit basis and no person shall be entitled to claim promotion on the basis of seniority alone.

(4) All appointment by promotion to Class 1 and Class II post in a service shall be made by selection on merit-cum-seniority basis and no person shall be entitled to claim promotion on the basis of seniority alone.

(5) Whenever any vacancy occurs in a Service the same be filled up as per provisions of these Regulations."

SCHEDULE III

Class II (Technical)

Sr No.

Designation of Post

Source of appointment

Qualification and Experience

Promotion

- Direct Recruitment

Deputation

- Promotion

Direct Recruitment

Deputation

1

2

3

4

5

6

7

8

1

Sub-Divisional Engineer (Civil)

55 per cent

45 per cent

From amongst Junior Engineers (Civil) of the Authority with :-(i) 34 per cent posts from amongst Junior Engineer (Civil) with Diploma in Civil engineering with ten years experience as Junior Engineer (Civil) and having passed or should pass the departmental examination as specified in regulation 17. (ii) 14 percent posts from amongst Junior Engineers (Civil) and drawing cadre having Degree in Civil Engineering with two years experience as Junior Engineers (Civil) or A.M. I.E. in Civil Engineering with five years experience as Junior Engineer (Civil) and in the case of drawing cadre the experience of live years as Draftsman or above and having passed or should pass the departmental examination as specified in Regulation-17.

Degree in Civil Engineering or equivalent qualification from a recognized university/ institution and to pass Department examination as specified in Regulation 17

Should be holding an identical or similar post or should possess qualifications and experience prescribed for appointment direct recruitment or by promotion

(iii) 7 per cent posts from Circle Head Draftsmen of the Authority with at least ten years experience as Draftsman and above and having passed or should pass the departmental examination as specified in Regulation 17.

Note: In case the eligible candidates are not available for promotion in category (ii) then these vacancies will be filled up from amongst the candidates in category (i).

4. Proviso to Regulation 8(1) prescribes three modes of appointment-(1) by direct recruitment (2) by promotion and (3) if no suitable candidate is available for appointment by direct recruitment or by promotion, such a post shall be filled by transfer of person holding identical post or similar post in any department of the Government of Punjab, any other State Government or Government of India or a local authority, a statutory body or a corporate body or a Government or Semi-Government Undertaking or Organization. A appointments by promotion to Class I and Class II posts in Service are to be made by selection on merit-cum-seniority basis. Schedule III provides for making appointment to the post of Sub-Divisional Engineer (Civil), 55% by promotion and 45% by direct recruitment. In so far as the promotion is concerned, the feeding channel is Junior Engineer re-designated as Assistant Engineer (Civil) with 34% posts from amongst Junior Engineers (Civil) with Diploma in Civil Engineering with 10 years experience and having passed the departmental examination as specified in Regulation 17 and 14% posts from amongst Junior Engineers (Civil) having degree in Civil Engineering with two years experience as Junior Engineer (Civil) or A.M.I.E. in Civil Engineering with five years experience as Junior Engineer (Civil). The qualification for direct recruitment is Degree in Civil Engineering or equivalent qualification from a recognized University and to pass departmental examination in accordance with Regulation 17. The petitioners and respondent No. 4 belong to the feeding channel representing 34% quota prescribed for promotion to the post of Sub Divisional Engineer. It is alleged that with a view to grant undue promotional benefit to respondent No. 4, the then Minister for Housing Construction Urban Development prepared a note dated 19th June, 2001 for creation of one new post of SDO (Roads and Bridges) to be filled up from the Junior Engineers of PUDA having experience of construction of roads and bridges. In the said note, particular reference is made to respondent No. 4 and regarding his experience in construction of bridges. On the basis of the initiative of the Minister, the matter was considered by the Punjab Urban Development Authority and,--vide Agenda Item No. 14.10 two posts from direct recruitment quota were converted to be filled up from amongst the Junior Engineers (Civil) working in PUDA having at least five years experience regarding construction of bridges and roads out of the total requisite experience prescribed under the Regulation. It is alleged by the petitioners that this entire exercise was to provide promotion to respondent No. 4 who otherwise would not have earned promotion being much below in seniority than the petitioners. The petitioners represented against the aforesaid decision of the respondent-authority.--vide representation dated 9th November, 2001 (Annexure P-5).

5. On the basis of the aforesaid decision, applications were invited by the Administrative Officer to till up the post of Sub-Divisional Engineer (Bridges and Roads) in PUDA from concerned J.Es (Civil) working in PUDA.--vide letter dated 7th December. 2001 (Annexure P-6). The petitioners challenged the decision of the PUDA to fill up the posts through the aforesaid notice in CWP No. 19814 of 2001. In the aforesaid writ petition Division Bench of this Court, on 20th

December. 2001, while issuing notice of motion, passed following order :--

Notice of motion for 27th May. 2002.

Meanwhile, petitioners may apply for the post under contention, which has been advertised.--vide Annexure P-4 provisionally. Appointments, if made, shall be subject to the decision of this writ petition.

6. Besides keeping the appointments subject to the decision of the writ petition, the petitioners were also permitted to apply. In the meanwhile, the respondent-authority issued another Office Order dated 20th December. 2001 (Annexure P-8) taking two posts of Junior Engineer out of direct recruitment quota of Sub-Divisional Engineer (Civil) for the work relating to Bridges and Roads. In pursuance to the decision of the authority in its 14th meeting held on 6th November, 2001,--vide Agenda Item No. 14.10, regulations of 1999 were amended in the following manner :--

SCHEDULE III

Class II (Technical)

Sr. No

Designation of Post

Source of Appointment

Qualification and Experience

Promotion

Direct Recruit-

Deputation

Promotion

Direct Recruit-

Deputation

1

2

3

4

5

6

7

8

2

Sub-Divisional Engineer (Bridges and Roads)

2 posts out of 45% mentioned in Sr. No. 1 above.

From amongst Junior Engineers (Civil) with 5 years experience in construction of bridges and roads and to pass Departmental examination as specified in regulation 17.

Note : In case the eligible candidates are not available for promotion in category (ii) then these vacancies will be filled up from amongst the candidates in category (i).

7. It is alleged that the aforesaid Office order is ante-dated as the Hon"ble High Court had issued interim order on 20th December, 2001. In response to the letter dated 7th December, 2001 (Annexure P-6) inviting applications, the petitioners as also respondents No. 4 and 5 applied for their consideration against the two separately carved posts. It is one of the grounds of the petitioners that the applications were invited even without amending Regulation. According to the petitioners, applications were invited on 7th December, 2001 whereas Regulation came to be amended on 20th December. 2001 which establishes malafide intention of respondents No. 1 and 2.

8. To fill up these posts, the authority constituted a Screening Committee. On the basis of the selection by the Screening Committee, respondents No. 4 and 5 were appointed as Sub Divisional Engineers (Bridges and Roads) in the pay scale of Rs. 7880--13500, subject to decision of the writ petition filed by the petitioners,--vide orders dated 26th February, 2002 (Annexures P-10 and P-11). The petitioners have challenged the aforesaid orders of appointment of the respondents on variety of grounds. Besides the Regulation referred to above, the department of Housing and Urban Development. Punjab had earlier also issued a notification dated 27th May. 1996 under sub-section (4) of Section 175 of the 1995 Act constituting following departmental selection committee for Classes I and II promotions :--

1.

Chairman, PUDA

Chairman

2.

Vice Chairman-cum-SHUD

Member

3

Chief Administrator

Member

4.

Subject matter expert

Member

5.

One Scheduled Caste Officer if there is no SC Officer in the Committee

Member

9. The Government of Punjab issued another Circular dated 6th September, 2001 modifying the instructions regarding setting up of the Departmental Promotion Committee and the criteria for selection. It was decided to consider the ACRs of last five years for promotion and the ACRs to be evaluated in the following manner:--

"Out-standing

4 marks

Very Good

3 marks

Good

2 marks

Average

1 mark"

10. Apart from above, it was decided to fix the minimum bench marks. The petitioners have challenged not only the selection/appointments of respondents No. 4 and 5 but also the validity of the amended Regulation 8 (Annexure P-9) as also the Minutes of the Screening Committee (Annexure P-17). It is relevant to note that the Screening Committee constituted by the respondents had evaluated respondents No. 4 and 5 on the basis of criteria laid down by it during the course of selection. The criteria laid down by the Committee is as under :--

"1.

Marks regarding the experience of bridges

5

2.

Marks regarding the experience of roads

5

3.

Marks on the basis of annual confidential reports of the last five years

10

4.

Marks for the seniority

5

5.

Marks for the interview

5"

11. The final evaluation of the applicants was made in the following manner:--

Sr. Name of the No. applicant

Marks of experience

Marks of experience

Marks of report

Marks of seniority

Marks of interview

Total marks

1Gurtej Singh (BC)

.3.5

0

6.5

3.70

2

15.70

2Fauza Singh (Gen.)

3

0

6

3.96

2

14.96

3Manjit Singh (Gen.)

0

0

6

5

0

11

4Charanjit Singh (Gen.)

0

0

4.5

4.10

2.5

11.10

5Gurdev Singh (Gen.)

2.5

0

5.5

4.60

0

12.60

6Harbans Singh (BC)

1.5

2

6

1.22

2

12.72

7ParamjitLal (SC)

3

1

6.5

1.41

3.5

15.41

8Satish Kumar

(SC)

2

0

6.5

1.57

4

14.7

9LalChand (SC)

2

0

7

4.42

4

17.42

10ShantiSarupKhanania (Gen.)

3

0.5

7.5

4.79

4

19.79

11 Dev Raj (SC)

3

2.5

6

2.12

3.5

17.12

12Amar Singh Randhawa

3.5

4

9

1.51

3

21.10"

12. Respondent No. 5 belongs to Scheduled Caste and out of the two posts, one post was reserved for Scheduled Castes candidates, hence respondent No. 5 was appointed against the reserved vacancy whereas respondent No. 4 was appointed against the General Category vacancy. Total points secured by respondent No. 5 were 17.42 at Sr. No. 9 and by respondent No. 4, 21.10 marks at Sr. No. 12. Petitioner No. 1 has been awarded 19.79 marks and is placed at Sr. No. 10 of the evaluation list whereas petitioner No. 2 was placed at Sr. No. 5 and petitioner No. 3 at Sr. No. 2 of the evaluation list with 12.60 and 14.96 marks, respectively.

13. The petitioners have challenged the selection/appointment of the private respondents primarily on the following grounds :--

(1) Respondents-authority has acted illegally and arbitrarily in amending the Regulation of 1999 with the sole object of adjusting respondent No. 4.

(2) The selection/Screening Committee acted illegally by creating criteria during the process of selection in such a manner that the benefit could go only to respondent No. 4. The criteria laid down during the process of selection is liable to be set aside.

(3) Applications were invited for filling up of the two posts even before the amendment of the regulations;

(4) The criteria adopted by the Selection Committee is itself bad and arbitrary in nature.

(5) The entire exercise was initiated at the instance of the Hon"ble Minister to adjust respondent No. 4.

(6) The post having been filled up by criteria laid down for promotion regulation governing promotion is applicable.

14. To the contrary, it is contended on behalf of the respondents that the petitioners participated in the selection process and after having been rejected have filed this petition. They are estopped from challenging the selection. It is further pleaded that criteria adopted is fair, rational and valid. There is no bias or mala fide in selection and the selection has been made on merits of candidates.

15. I have heard learned counsel for the parties.

16. The petitioners and the private respondent are the employees of the Punjab Urban Planning and Development Authority (hereinafter referred to as the Authority) constituted under the Punjab Regional Town Planning and Development Act, 1995 (hereinafter referred to as the Act). "Authority" is defined u/s 2(d) of the Act which reads as under: --

2(d)--- "Authority" means the Punjab Urban Planning and Development Authority constituted u/s 17 or a Special Urban Planning and Development Authority constituted u/s 29 or a New Town Planning and Development Authority constituted u/s 31.

17. The composition of the "Authority" is prescribed u/s 17 of the Act whereas the Officers and Employees of the "Authority" are to be appointed in terms of Section 26 of the Act. Section 182 of the Act empowers the Authority to make regulations. The aforesaid provisions of the Act are noticed here under :--

17. Establishment and constitution of the Authority.--(1) With effect from such date as the State Government may by notification, specify in this behalf, the State Government shall establish for the purposes of this Act. an Authority to be known as the Punjab Urban Planning and Development Authority, with headquarters at such places as the State Government may specify.

(2) The Authority established under sub-section (1) shall be a body corporate as well as a local authority, by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract; and shall, by the said name, sue and be sued.

(3) The Authority established under sub-section (1) shall consist of the following members to be appointed by the State Government, namely:--

(i) a Chairman;

(i-a) a Co-Chairman

(ii) a Vice-Chairman;

(iii) a Chief Administrator who shall be appointed from amongst the officers of the Government of Punjab having such qualifications and experience as may be prescribed : and

(iv) not more than twelve and not less than six official and non-official members including the Secretaries Government of Punjab holding the charge of Local Government and Town and Country Planning :

Provided that the number of non-official members shall not at any time, exceed three.

(4) The Chief Minister, Minister-in-charge of Housing and Urban Development and the Secretary to Government of Punjab, holding the charge of Housing and Urban Development shall, respectively, be the Chairman. Co-Chairman and the Vice-Chairman of the Authority.

XXX XXX XXX

26. Staff of the Authority.--(1) The Authority may appoint such number of officers and other employees including experts for technical and legal work as may be necessary for the efficient performance of its functions and may determine their designations and grades.

(2) The officers and other employees of the Authority shall be entitled to receive, from the fund of the Authority, such salaries and allowances and shall be governed by such conditions of service as may be determined by regulations made in this behalf by the Authority.

(3) The exercise of any powers of discharge of any duties or functions under subsection (1) by any officer or other employees of the Authority shall be subject to such restrictions, conditions and limitations, if any, as may be laid down by regulations of the Authority, and shall also be subject to its control and supervision..

XXX XXX XXX

182. Power of the Authority to make regulations.--(1) The Authority may make regulations, consistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of this power, such regulations may provide for,--

(a) the summoning or holding of the meetings of the Authority, the time and place where such meetings are to be held and the conduct of business at such meetings under subsection (1) of section 21;

(b) the functions to be assigned to the Chief Administrator by the Authority u/s 22;

(c) the appointment of committees u/s 23;

(d) the salaries, allowances and conditions of service of officers and other employees of the Authority under sub-section (2) of section 26;

(e) the powers and duties of the officers and other employees of the Authority under sub-section (3) of Section 26 :

(f) any other matter which has to be, or may be, determined by regulations.

18. From the composition of "Authority" prescribed u/s 17 of the Act, it appears that it is a multi-member authority and is autonomous in nature, though the Chairman and Vice-Chairman are the Chief Minister and the Minister In-charge of Housing and Urban Development. Similarly, other officials of the Government are also the members of the Authority. Section 26 of the Act authorizes the authority to appoint such number of officers and other employees, including experts for technical and legal work. The Authority also can determine their designation and grade. Section 182 of the Act empowers the Authority to make regulations to carry out the purposes of the Act. Clause (d) of sub-section (2) of Section 182 of the Act empowers the authority to prescribe salaries, allowances and other conditions of service of officers and other employees of the Authority.

19. In exercise of the power u/s 182(2)(d) of the Act, the Authority has framed regulations to prescribe qualifications and mode of recruitment to various posts in the Authority. The Authority has framed regulations. Some of the relevant Regulations are reproduced here under:--

3. Number and character of posts :--The service specified in Scheme II shall comprise of the posts specified in Schedule-I:

Provided that nothing these regulations shall affect the inherent right of the Authority to add or reduce the number of such posts or create new posts with different designations and different scales of pay whether permanent or temporary.

XXX XXX XXX

9. Selection Committee and its functions :--All appointments by direct recruitment to Class-I. Class-II, Class-III posts shall be made on the recommendations of the Selection Committee to be constituted by the Chief Administrator in consultation with the State Government.

20. In terms of Section 26 of the Act, it is the Authority which has the exclusive jurisdiction not only to appoint Officers and other employees including experts on technical posts but also to determine their designation and grades. In exercise of the aforesaid powers, the Authority has prescribed qualifications and the mode and method of recruitment of employees, including the Engineering staff. In the Original Regulation 8, there were three modes of appointment, according to the quota prescribed therein whereas by virtue of the amendment, another source of recruitment has been created i.e. by selection from the in-service employees of the Authority. Two posts were taken out from the direct recruitment quota to be filled in by selection from the in-service Junior Engineers. From the conjoint reading of Sections 26 and 182(2)(d) of the Act, it appears that the Authority was fully competent to amend the regulations and create another source of

recruitment. It has been alleged that the Authority has amended the Regulations with the sole object of adjusting respondent No. 4. In support of this contention, reference is made to the initial note prepared by the Minister for Housing and Urban Development. It is admitted position on record that when the said note was prepared, reference was made to respondent No. 4. However, by amending the regulation, two posts were created one for General Category and another for reserve category of Scheduled Castes. The posts have been filled up by inviting applications from all eligible employees and by holding the process of selection. Petitioners and some other candidates who were eligible under the amended regulations applied in response to the advertisement and participated in the selection process. They have been duly considered by the Selection Committee constituted for the purpose.

21. Except alleging that respondent No. 3 was interested to promote respondent No. 4, there is no specific allegation that during the course of selection, respondent No. 3 exercised any influence for the selection of respondent No. 4. It is settled law that it is within the exclusive domain of the employer to decide as to how and from what source, recruitment should be made and also to provide the ratio for the same. In the case of *Bishan Sarup Gupta Vs. Union of India (UOI) and Others*, it has been held as under :---

7....It was for the Government under rule 4 of the Income Tax Officers Class-I. Grade-II Service Recruitment Rules to determine the method or methods to be employed for the purposes of filling any particular vacancies and the number of candidates to be recruited by each method. It is wrong to assume that this court would take upon itself to do what the Government is required to do under rule 4....

22. The petitioners have also challenged the validity of criteria laid down by the Selection Committee. On the one hand, it is pleaded that the criteria has been laid down to adjust respondent No. 4, on the other hand, it is contended that the marks have not been allocated fairly to the petitioners and other candidates. First contention of Mr. Gupta, learned counsel for the petitioners is that respondent No. 4 had no better experience of construction of bridges as the Authority had not constructed many bridges on its own. It has also been urged that to depute an Officer for construction of a particular building or bridge is the prerogative of the Authority and thus the petitioners cannot be accused of lack of experience, if any. In any case, the fairness of the criteria is not disputed. Other contention of the petitioners is that the criteria has been laid down during the process of selection. From Annexure P-17 it is evident that the criteria was laid down by the Screening Committee in its meeting held on 15th January, 2002, after interviewing the candidates. This criteria has been laid down for the first time during the process of selection.

23. The other argument raised by the petitioners is that the applications were invited for filling up of the posts even before amendment of the Regulations and creation of the posts. From Agenda Item No. 14.10 (Annexure P-4) it appears

that two selection posts of Sub Divisional Engineers (Bridges and Roads) were segregated by converting two posts from the direct recruitment quota. This decision was taken on 6th November, 2001. The Authority through its Administrative Officer invited applications from the eligible TEs (Civil).--vide its letter dated 7th December, 2001 addressed to all Superintending Engineers (Civil). PUDA. Thus, it appears that the applications were invited after the amendment of the Regulations and not before the amendment as alleged in the writ petition. After the rules were amended and two selection posts were converted, the petitioners also filed CWP No. 19814 of 2001 before this Court and while issuing notice of motion, the petitioners were also permitted to apply in response to the advertisement and appointments were allowed subject to the decision of the writ petition. It is thus incorrect to say that the applications were invited before the amendment of the regulations. It has also been argued on behalf of the petitioners that even though the two posts were converted from direct recruitment quota, but the procedure adopted was for promotion and thus, the mode prescribed for making promotion was to be adopted. Reference is made to Annexure P-13 which lays down the procedure for making promotion. From the perusal of the aforesaid documents, it appears that the Departmental Promotion Committees were constituted and procedure for making promotion was laid down in respect of the Government employees for promotion to Class-I and Class-II posts. It appears that this procedure was in respect of the Government employees. There is nothing in the aforesaid document which even suggests that autonomous bodies like the Development Authority are required to adopt the same procedure, particularly, when Section 26 of the Act itself empowers the Authority to lay down conditions of service and grades etc. Thus, the contention of the petitioners that procedure/criteria laid down,--vide Annexure P-13 could only be pressed into service cannot be accepted. It is also seen that the authority had framed regulation 9 which deals with the constitution of Selection Committees and its functions. In view of the above regulation, appointments by direct recruitment are to be made on the recommendation of the Selection Committee to be constituted by Chief Administrator in consultation with the State Government. In view of the above regulation, the criteria could be laid down by the Chief Administrator. From annexure P-17, it is further evident that the Screening Committee is comprised of the Chief Administrator as its Chairman. It is thus argued on behalf of the respondents that since the Chief Administrator was the Chairman of the Selection Committee, the criteria laid down,--vide Annexure P-17 is deemed to be in terms of regulation 9 of the regulations framed by the Authority. It is, however, admitted position that the Chief Administrator has not laid down any separate criteria except during the course of selection. There is another important aspect. Regulation 9 clearly provides that the criteria is to be laid down in consultation with the State Government, There is nothing on record to indicate that the criteria adopted has been laid down in consultation with the State Government.

24. In absence of there being any material on record, it can be safely concluded

that the criteria has not been laid down in consonance with Regulation 9. It is settled law that when law requires an act to be done in a particular manner, it must be done in that manner.

25. The criteria laid down is thus liable to be set aside for two reasons--firstly it has been laid down during the process of selection that too, after the interviews were conducted; and secondly it has not been framed in consonance with Regulation 9 which, inter alia, requires consultation of the Government.

26. It has also been contended on behalf of the respondents that the petitioners cannot challenge the selection, they having participated in the process of selection. It is not in dispute that the petitioners have participated in the process of selection. However, in view of the order passed by the Hon''ble Division Bench in CWP No. 19814 of 2001, the appointments are subject to outcome of the writ petition. This writ petition was, however, withdrawn with liberty to file a fresh one by challenging the amendment of the regulations, criteria and the selection made--vide order dated 22nd November, 2004. Secondly, the criteria was not known to the petitioners nor it was notified before the selection. Laying down criteria during the process of selection amounts to prescribing the rules of game after the game is over. Respondents have referred to the judgement rendered in the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, wherein the Hon''ble Supreme Court has held as under :--

23. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination...

27. In the aforesaid judgment, it has been laid down that an employee who participates in the selection is not entitled to challenge the selection. It is, however, seen that the petitioners' participation in the selection is not an estoppel against them because they participated under the orders of the court and subject to the outcome of the writ petition. Even at the time of their participation, the criteria to be adopted for selection was not known to them. It is evident from Annexure P-17 that the criteria was formulated during the process of selection which action has been held to be bad in law. Thus, the locus of the petitioners to file this writ petition cannot be challenged.

28. Mr. Gupta has also vehemently argued that the regulation could only be amended by a notification as it is a legislative act. According to him, framing of regulation is a subordinate legislation, particularly, when the regulations are to be framed in exercise of the jurisdiction u/s 182 of the Act. No. doubt, the framing of regulation is a legislative act, it being a subordinate legislation. However, the decision has been taken by the competent authority i.e. the PUDA in accordance with Section 182 of the Act. To notify the regulation is only a ministerial act. No particular mode has been prescribed u/s 182 of the Act to amend the regulation. The procedure adopted cannot be faulted with. Reliance

has been placed upon the judgment of Hon''ble Supreme Court in the case of Feroz Ahmad v. Delhi Development Authority and others 2007 (1) R.S.J. 185, In this case, the Hon''ble Supreme Court has held that the statutory rules cannot be supplemented by an executive order. This judgment has no application to the facts of the present case. Here no statutory rules have been supplemented by any executive order, rather the regulations in force have been amended by the competent authority and have been notified as is evident from Annexure P-9 by amending Schedule III.

29. It has also been argued on behalf of the petitioners that the two posts have been taken out from recruitment quota and are thus required to be filled on the basis of the qualification prescribed for direct recruitment. Under Schedule III to the regulation, the minimum qualification for direct recruitment is degree in Civil Engineering and the respondents do not possess degree in Civil Engineering. It is further argued that if the posts are to be filled up by promotion, then the method prescribed for promotion was to be adopted. It is admitted case of the parties that two vacancies were taken out from the direct recruitment quota, but a separate quota has been created to fill up the two vacancies from in-service candidates. For this distinct quota, a distinct mode of selection can be provided. It can also have separate qualification. What should be the qualification for a particular post or the manner of appointment is for employer to lay down. It is admitted case of the parties that two different qualifications have been prescribed for direct recruits and promotees. The employer thus is competent to adopt any of the qualifications or even a different qualification or eligibility while carving out another mode of recruitment. It is not for the Court to interfere in the adoption of such mode and qualifications. In the case of J. Ranga Swamy Vs. Government of Andhra Pradesh and Others, wherein the Hon''ble Supreme Court has held as under :--

6... It is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for the post in question.....

30. Again in the case of V.K. Sood Vs. Secretary, Civil Aviation and others, the Hon''ble Supreme Court has held as under :--

7....It is for the expert body and this Court does not have the assistance of experts. Moreover, it is for the rule making authority or for the Legislature to regulate the method of recruitment, prescribe qualifications etc. It is open to the President or the authorised person to undertake such exercise and that necessary tests should be conducted by U.P.S.C. before giving the certificates to them. This is not the province of this Court to trench into and prescribe qualifications in particular when the matters are of the technical nature.....

31. Similar issue has been considered by a Division Bench of this Court in the case of Mohinder Pal Singh and others v. Punjab State Electricity Board and others, 1994 (2) S.L.R. 438 wherein it has been observed as under :--

8. Concededly, the Board has not framed statutory rules for filling the posts of Junior Engineer-II (Electrical) and Sub Station Operators. By an executive order, it had decided to reserve 60% posts of Junior Engineer-II meant for direct recruits for Diploma holders and 33% posts for Sub Station Operators. The Board decided to fill the direct recruits quota from amongst the inservice candidates with a view to remove stagnation. The employer can prescribe the mode and method of recruitment. The Board resolved to fill the vacant posts of direct recruits quota by holding a written test and proper criteria was laid down for the written test. Minimum qualifying marks were prescribed. The test was held on February 3, 1991 and the result was finalized through Computer on the same day. It was approved and signed by the Chairman, Staff Selection Committee and other officers conducting the written test on the same day. The record indicates that fair and proper procedure was adopted by the Board in conducting the written test and there was no possibility of outside interference. The merit lists were prepared strictly as per the merit.

32. Thus, there is no substance in the contention raised by Mr. Gupta in this regard and the same is hereby rejected.

33. It is lastly contended that respondent No. 5 has no experience of construction of bridges and even respondent No. 4 has not been given any work of bridges after his appointment and the amendment was only a device to grant him benefit. As far as the question of experience is concerned, it is for the competent selection committee to examine the issue and this Court cannot substitute its own opinion for that of the Selection committee.

34. In the totality of the circumstances, this petition is allowed. The appointment of respondents No. 4 and 5 are hereby quashed. However, respondents are at liberty to initiate fresh process of selection by laying down appropriate criteria in accordance with law by according consideration to the eligible candidates.