

(2022) 07 SHI CK 0043

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3773 Of 2021

Shashi Kant And Others

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 07 SHI CK 0043

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : B. C. Negi, Shalini Thakur, P.K. Bhatti, Dilip Sharma, Manish Sharma, Deepak Sharma

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioners have prayed for following substantive reliefs:

"i) For quashing and setting aside Annexure P-13 rejecting representation of the petitioner.

ii) for holding that review DPCs held by the respondents in respect of promotion of petitioners/private respondent JE (AMIE) to the post of Assistant Engineers (PWD) as well as the resultant re-drawn seniority list of AE vide Annexure P-7 dated 1.3.2014 and vide Annexure P-8 dated 1.3.2016 qua the petitioners and private respondents are illegal and may kindly be quashed and set aside. Consequently, all actions taken on the basis of these lists w.r.t. petitioners and private respondents be also declared illegal and void.

iii) for directing the respondents not to apply the judgment of SS Kutlehria for counting seniority."

2. The background facts of the present matter in brief are that prior to

27.4.1994, HPPWD was a unified unit as a department, which came to be bifurcated after said date into two separate units i.e. PWD (B&R) and I&PH.

3. The petitioners and private respondents No. 2 to 14 were inducted as Diploma Holder Junior Engineers in the unified HPPWD before its bifurcation. Recruitment & Promotion Rules for the post of Assistant Engineer in unified HPPWD were notified on 18.9.1978 (for short, '1978 Rules'). As per these rules, 40% quota was meant for direct recruitment and 60% by promotion. Out of 60% promotional quota, 10% was meant for the Graduate Junior Engineers, having three years regular or ad-hoc service or both as such and those Junior Engineers, who had passed Sections A and B of AMIE with five years regular or ad-hoc service or both as such.

4. The R&P Rules for the post of Assistant Engineer in HPPWD were amended on 11.6.1984 (for short, '1984 Rules') and in place of 10% quota by way of promotion for Graduate Engineers and AMIE, as noticed above, the following amendment was carried:-

"(iii) from amongst the Graduate Junior Engineers (University graduate or AMIE) having three years regular or ad-hoc service rendered upto 31.12.1983 or both as such..... 10% .

Note:- For purposes of promotion, three years regular or ad-hoc service rendered upto 31.12.1983 shall be counted from the date of appointment of the Graduate Junior Engineers and from the date of passing Sections A & B of AMIE Examination by in service Junior Engineers respectively".

5. The note appended to above said amendment became subject matter of challenge before the erstwhile H.P. State Administrative Tribunal and vide order dated 7.6.1991, the challenged footnote in 1984 Rules was struck down being discriminatory and anomalous.

6. After bifurcation of HPPWD, Recruitment & Promotion Rules for the post of Assistant Engineers (Civil) in PWD (B&R) were re-enacted in 1995 (for short, '1995 Rules').

Under these rules, a separate quota of 10% was provided for Graduate Engineers with three years of service and a distinct quota of 10% was prescribed by promotion from amongst JE (C), who acquired AMIE or its equivalent degree during service as JE (C), having three years regular or regular combined with continuous ad-hoc (rendered upto 31.3.1999) service in the grade. 1995 rules in PWD (B&R) were subsequently amended from time to time in 2002, 2004, 2005 and 2010 but no change was effected so far as 10% quota for JE (C), who acquires AMIE or equivalent degree during service, was affected. Noticeably, a separate 45% quota was also prescribed for Diploma Holder Junior Engineers, who had rendered seven years regular or ad-hoc or both the services as such. A separate quota was also there for direct recruitment.

7. An inter-se dispute between Graduate Junior Engineers and those who had

acquired AMIE or equivalent degree in service became the subject matter of CWP No. 1358 of 2008, titled as, S. S. Kutlehria & others vs. State of H.P. & others. The dispute had arisen in the context of the provisions of 1984 Rules, as existed prior to bifurcation of HPPWD. The issue considered by a Division Bench of this Court was whether three years service required for Junior Engineers who had acquired AMIE in service, would be reckoned from the date of acquisition of AMIE or initial date of their induction as JEs? Vide judgment dated 8.1.2010, the Division Bench held as under:-

“Coming to the merits of the case, we find that the Rule in this case is akin to the Rules in Shailender Dania’s case. The Rules provide two categories from which promotions can be made i.e. Graduate Junior Engineers as well as Diploma Holder Junior Engineers who have obtained the degree of graduation i.e. AMIE during service. The Rules provide an equal experience of 3 years in both cases. This case is therefore squarely covered by the judgment of the Apex Court in Shailendra Dania’s case and only the service rendered by the Diploma Holder Engineers after having passed both parts of AMIE can be taken into consideration for reckoning 3 years’ experience”.

8. Based on the verdict of aforesaid judgment in S.S. Kutlehria, the seniority lists of Assistant Engineers were revisited, as a result thereof, petitioners were placed lower to private respondents No. 2 to 14 in revised seniority lists on the basis that respondents No. 2 to 14 had acquired AMIE/BE prior in time to the petitioners and hence by reckoning such date of acquisition of higher qualification as bar date, petitioners who had acquired qualification AMIE/BE on date later than private respondents were placed lower in seniority.

9. Petitioners took exception to such action of respondent No.1 and made representation. On rejection of their representation, petitioners approached this Court by way of CWPOA No. 2820 of 2020, which came to be decided by this Court by directing respondent No.1 to consider the representation of the petitioners. In pursuance to aforesaid judgment, petitioners preferred their representation but the same was rejected on 15.12.2020. This rejection order was again challenged in CWP No. 1958 of 2021. During pendency of CWP No. 1958 of 2021, a decision was taken by respondent No.1 to withdraw the rejection order dated 15.12.2020. Respondent No.1 was again issued directions by this Court to decide the representation of the petitioners afresh. Petitioners again preferred representation but the fate was not different. The representation of petitioners was rejected on 26.4.2021 by respondent No.1. By way of instant petition, the petitioners have laid challenge to the rejection order dated 26.4.2021 (Annexure P-13), besides seeking other reliefs.

10. The challenge made to Annexure P-13 by the petitioners primarily is on the ground that their representation has been rejected only on the ground that a Division Bench of this Court in S.S. Kutlehria (supra) had held that the eligibility of Junior Engineers who had acquired AMIE during service could be reckoned from the date they acquired AMIE and thus the requisite three years would

commence from such date. The grievance of the petitioners is that the ratio of S.S. Kutlehria has been wrongly applied against the petitioners, whereas, the case of the petitioners rested on entirely different facts than considered in S. S. Kutlehria. The contention of the petitioners is that S.S. Kutlehria had considered the case of the parties therein in light of the R&P rules existing prior to bifurcation of HPPWD, whereas, the case of petitioners had completely different dimensions in view of 1995 rules framed by PWD (B&R), whereby a separate quota of 10% was created for Graduate Junior Engineers and a total distinct quota of 10% was created for JEs, who had acquired AMIE during service. It has further been contended that in S. S. Kutlehria the matter considered was of two different categories i.e. Graduate Junior Engineers and Junior Engineers having acquired AMIE during service falling in the same quota for promotion and the case of petitioners was clearly distinguishable as by virtue of 1995 Rules, a separate quota of 10% each was created for both the categories. Thus, according to petitioners they and respondents 2 to 12 formed a separate class as per post 1995 rules and the dispute now sought to be adjudicated is in respect of their inter-se seniority.

11. In response, the official respondent as well as private respondents, though have filed their separate replies but the submissions made by them are substantially identical. Their case is that S. S. Kutlehria squarely covers the case in hand. The foundation for respondents to take such defence is that the facts of present case cannot be distinguished from S. S. Kutlehria because still there is overlapping between two separate categories i.e. the Diploma Holder Junior Engineers who became eligible for promotion after seven years' service under a separate 45% prescribed quota for such category and the Diploma Holder Junior Engineers who acquired AMIE during service and thereby became eligible for promotion after three years of such acquisition. As per respondents, in case the claim of petitioners is accepted, anomalous position shall be created as an example private respondents have tried to exemplify such perceived anomalous situation as under: -

"D) That this plea of the petitioners is fallacious and against the Division Bench judgment of this Hon'ble Court in SS Kutlehria. It is submitted that whether a Junior Engineer joined service on the basis of diploma or degree, does not materially affect the ratio of the judgment.

For example, there may be a Junior Engineer joining on the basis of degree in the year 1990, another joining as diploma holder in 1989 and acquiring higher qualification in 1991 and still another JE joining service in 1988 and acquiring higher qualification in 1992. The diploma holder, for staking his claim for promotion against the quota prescribed for diploma holder Junior Engineers, will have to wait for 7 years from the date of his joining service with diploma. Thus, the second JE (supra) would become eligible in 1996 and the third JE would become eligible in 1995.

On the other hand, on acquiring higher qualification, they would become eligible

against 10% graduate quota in 1994 and 1995 on rendering 3 years' service after acquiring higher qualification.

If the plea of the petitioner is accepted, then the second and third JEs would push down the 1st degree holder JE joining in 1990, on the strength of their joining service as diploma holders in 1998 and 1999. It is submitted that the 10 % promotion quota prescribed for graduate Engineers in the ATTESTFO 1984 Rules is a water tight compartment exclusively meant for the candidates having graduation in engineering. A diploma holder JE on acquiring higher qualification during service can opt for promotion from the graduate quota or from diploma holder's quota, but after staking his claim for promotion in degree holder's quota, he is required to be placed at the bottom of the seniority list and his case would be considered only after the cases of promotion of those who ED TODAY have been holding such degree qualification earlier to him have been considered. Otherwise, Registrar the qualified graduates, waiting their right of consideration for promotion in the compartment of 10% graduate quota, would be pushed downwards and unqualified late entrants on acquisition of higher qualification would steal a march over the earlier qualified Engineers.

This would be most unreasonable, arbitrary, irrational and against the mandate of Articles 14 and 16 of the Constitution of India.

It is submitted that a diploma holder JE, on acquiring higher qualification, does not lose his right of consideration for promotion against promotion quota of diploma holders even after acquiring higher qualification. But he has to ESTEC satisfy the criterion of 7 years qualifying service for being eligible in that quota. No additional is granted to him for acquiring higher qualification while in service, when he is being considered for promotion against the quota of diploma holders. Hence, on his opting for promotion against graduate promotion quota, the rule of seniority would apply as he acquired the qualification therefore subsequently".

12. I have heard Mr. B.C. Negi, learned Senior Advocate for the petitioners and Learned Advocate General and Mr. Dilip Sharma, Senior Advocate, for the respondents respectively and have also gone through the record carefully.

13. Perusal of impugned rejection order Annexure P-13 reveals that the representation of petitioners has been rejected only on the basis of the dictum of S. S. Kutlehria. The relevant extract of rejection order reads as under:

"as the Hon'ble Court in S. S. Kutlehria case settled the issue with respect to the counting of the service rendered after obtaining the AMIE/BE qualification and issued directions to redraw the seniority list, therefore, in compliance to the directions of the Hon'ble High Court, passed in CWP No. 1358 of 2008, the PWD revised the seniority list of Assistant Engineers in accordance with the mandate of aforesaid judgment, passed by the Hon'ble High Court and circulated the tentative seniority list in respect of Assistant Engineers on 1.3.2014. Objections to the seniority list were invited and after considering of the objections, the final seniority list was circulated on 1.3.2016. Thus, the seniority list was revised in

accordance with the directions of the Hon'ble High Court, passed in above said judgment, which has attained finality".

14. On the aforesaid premise, the objections raised by petitioners were decided by holding as under:-

"The petitioners are aggrieved by implementation of the judgment passed in S.S. Kutlehria by the Hon'ble Court and according to them, the same is not applicable in their case. They have specifically contended that the judgment is applicable up to year 1995 when R&P Rules were amended and not thereafter. Such interpretation of the judgment given by the petitioner is not understandable as there is no justification for application of the judgment in part and in the manner as desired by the petitioner. The Hon'ble High Court in the judgment of S.S. Kutlehria has nowhere directed to apply the judgment upto 1995 and not thereafter. Simply question before the Hon'ble Court was as to how the service rendered by the diploma holder engineers acquiring AMIE/BE. During service is to be counted for the purpose of promotion etc. The Hon'ble High court has very clearly held that service rendered only after obtaining the degree of AMIE/BE can be counted for the purpose of promotion etc. and not the entire service from the date of entry is to be counted. Thus, there remains no doubt for any other interpretation of the judgment as is being anticipated by the petitioners.

Further contention of the petitioner that supplementary post can be created in order to adjust the officers who could not find place prior to 1995 is also not acceptable. Consequent upon the judgment stated above review DPC was held during May, 2013 for the vacancies which were available between the 1984 to 2012. The Govt. of India, Department of Personnel instruction dated 26.03.1980 do not allow the review DPC to increase number of vacancies already intimated in original DPC in particular case. Thus, the said plea is also not acceptable. The plea of the petitioner that their entire service from the date of entry in to service is to counted for fixing the seniority is also without justification as the service of all other Junior Engineers who acquired AMIE/BE during the service has been counted in similar manner as that of petitioners and in accordance with the judgment rendered by the Hon'ble High Court. There cannot be a separate criterion in respect of the petitioner".

15. Thus, there is no doubt that the claim of the petitioners has been rejected by respondent No.1 solely on the basis of judgment passed by Division Bench of this Court in S.S. Kutlehria, CWP No. 1358 of 2008. Respondent No.1, while passing impugned order Annexure P-13 has nowhere discussed and decided the issues raised by the petitioners, especially relating to the distinction sought to be drawn by petitioners from the case of S. S. Kutlehria. Petitioners vide their representation Annexure P-12 had raised following grounds, which have remained unaddressed by respondent No.1:-

"We are making the present representation on following grounds:

INCORRECT INTERPRETATION OF S S KUTLEHRIA JUDGMENT

1. Final Seniority list of Graduate Junior Engineers(BE/AMIE) by taking into consideration date of acquiring higher qualification or date of joining (in case of Directly appointed as Graduate JE's) consequent upon the verdict of Hon'ble High Court in CWP 1358/2008 SS Kutlehria vs State of H.P and Others issued on 10-05-2010, replica issued on 1-12- 2014 are totally wrong and incorrect as 5.5 Kutlehria judgment has been misinterpreted as this judgment is not applicable after bifurcation of department revised rules became effective which was not in consideration in SS Kutlehria judgment

NO DIFFERENT CADRE OF JUNIOR ENGINEERS

2. There is no different cadre for the post of Graduate Junior Engineers to which list above mentioned has been issued, there is only one Cadre of Junior Engineers possessing Diploma/ITCertificate/AMIE/BE/Btech/ME/ M Tech etc. for further promotion of Assistant Engineers Civil as per R& P Rules of the department.

IN DPC date of joining not taken into consideration

3. Review DPC 2013 is incorrect on which basis 2014 DPC and 2016 DPC are also incorrect because the date of joining/entry into services of AMIE/BE diploma holder were not taken into account Seniority has to be taken from date of joining in the department.

4. Sir we are submitting that for the Promotion of Assistant Engineers, promotion has to be made as per prevalent rules and senior most has to be given preference whereas we are aggrieved as the department has taken date of eligibility i.e. date of passing of degree which is valid only for eligibility not for seniority. Seniority has to be taken from date of joining in the department."

16. In light of above observations, the first issue for consideration before this Court arises whether the rejection of the representation of the petitioners by respondent No.1 vide Annexure P-13, solely on the basis of S.S. Kutlehria can be sustained?

17. Needless to say, that respondent No.1 now cannot be allowed to supplement the reasons for rejection and shall have to confine itself to the reasons provided in Annexure P-13. In Mohinder Singh vs. Chief Election Commissioner, AIR 1978 SC 851, a Full Bench of Apex Court has held as under:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought, out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji:

"Public orders, publicly made, in exercise of a statutory authority cannot be

construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older, A Caveat."

18. Coming to the facts of the case, it cannot be disputed that in S.S. Kutlehria, the inter-se dispute was between two different categories i.e., Graduate Junior Engineers and Junior Engineers having acquired AMIE/BE during service and their claims for seniority falling within same promotional quota. The question before Division Bench, therefore, was as to whether by acquisition of AMIE/BE during service, the Junior Engineers could claim better avenues in the matter of promotion than those who had held the qualification as graduate since inception. However, in the present case, the dispute is with respect to the inter-se seniority of the Junior Engineers having acquired AMIE/BE during service and having their claims under the same quota.

19. The Division Bench while deciding S. S. Kutlehria relied upon Shailendra Dania & others vs. S.P. Dubey & others, decided by three Judges Bench of Supreme Court, 2007 (5) SCC 535. In the context of question, sought to be decided herein, it will be proper to quote the relevant extract of Shailendra Dania's case as under: -

"43. Taking into consideration the entire scheme of the relevant rules, it is obvious that the diploma-holders would not be eligible for promotion to the post of Assistant Engineer in their quota unless they have eight years' service, whereas the graduate Engineers would be required to have three years' service experience apart from their degree. If the effect and intent of the rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then induction to the cadre of Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma- holders to any further requirement of having a further qualification of two years' service. At the time of induction into the service to the post of Junior Engineers, Degree in Engineering is a sufficient qualification without there being any prior experience, whereas diploma- holders should have two years' experience apart from their diploma for their induction in the service. As per the service rules, on the post of Assistant Engineer, 50% of total vacancies would be filled up by direct recruitment, whereas for the promotion specific quota is prescribed for a graduate Junior Engineer and a diploma-holder Junior Engineer. When the quota is prescribed under the rules, the promotion of graduate Junior Engineers to the higher post is restricted to 25% quota fixed. So far as the diploma- holders are concerned, their promotion to the higher post is confined to 25%. As an eligibility criterion, a degree is further qualified by three years' service for the Junior Engineers, whereas eight years' service is required for the

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

44. After having an overall consideration of the relevant rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineers cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. When the claim is made from a fixed quota, the condition

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

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

20. Petitioners and private respondents undisputedly fall under the same bracket of 10% quota provided in 1995 R&P Rules for those diploma holder Junior Engineers, who acquired AMIE/BE during service, which reads as under: -

"by promotion from amongst Junior Engineers (Civil), who acquire AMIE or its equivalent degree during service as Junior Engineers (Civil), having three years regular or regular combined with continuous ad-hoc (rendered upto 31.3.1991) service in the grade".

21. As is evident from the dictum of S.S. Kutlehria and Shailendra Dania, in both these cases, implication had arisen out of the situation when an incumbent was made eligible to jump into another water tight compartment, which is not the case in the present lis. Here the petitioners are seeking seniority vis-à-vis the persons who also fall in the same bracket of 10% created by 1995 rules and have been given benefit of seniority as Assistant Engineers on the basis of the

date of acquisition of AMIE/BE, irrespective of their total length of service in the grade. S.S. Kutlehria was decided by taking into consideration completely different set of Rules, which have undergone change post 1995. The petitioners have agitated their claim on the basis of post 1995 Rules, which refers to three years regular or regular combined with continuous ad-hoc service in the grade. The petitioners and private respondents prior to their promotion as Assistant Engineers belonged to one grade i.e. the grade of Junior Engineers. No separate grade was created merely by acquisition of AMIE/BE during service. Such acquisition created a separate class only for the purpose of considering eligibility for promotion. In such situation, on acquisition of AMIE/BE during service, diploma holder Junior Engineers would become eligible for promotion through 10% special quota on completion of three years' service after such acquisition, but it will not mean and imply that their inter-se seniority will also date back to the date of acquisition of higher qualification because it did not create a new grade for them, they remained in the grade of Junior Engineers. All such persons are on equal footing as they were inducted as diploma holder Junior Engineers, thereafter all of them acquired higher qualification during service albeit on different dates and on completion of three years after acquisition of such qualification became eligible for promotion to the post of Assistant Engineer and aforesaid 10% quota. So all such persons, who had acquired higher qualification during service and also had completed three years' service as such will fall in zone of consideration for promotion, however, their earlier service as diploma holder, where they held their own seniority, cannot be washed away.

22. Once all similarly situated persons, as petitioners and private respondents who initially were inducted as Diploma Holder Junior Engineers and had acquired AMIE/BE during service, by virtue of such acquisition had only become eligible for being considered for promotion to the post of Assistant Engineers. Such separate class had the contest inter-se and not with the Graduate Junior Engineers.

23. As noticed above, though no additional reason can be allowed to be added or substituted to the reasons assigned in Annexure P-13 for rejecting the claim of the petitioners, yet in order to negate any chance of technicalities becoming obstruction in the course of justice, the contention of private respondents regarding creation of anomalous position is also being put to test.

24. The contention of private respondents that still there will be a contest between the Diploma Holder Junior Engineers having a quota of 45% of promotion after rendering seven years and the Diploma Holder Junior Engineers having acquired AMIE/BE during service and becoming eligible for promotion as JEs after three years, in my considered view deserves to be rejected for the reasons that both the categories have their separate quota and will not overlap. There may be a situation where a Diploma Junior Engineer having acquired AMIE/BE during service, gets no chance of promotion as AE in the first instance in 45% quota after having rendered seven years service or vice-versa but that cannot be

called overlapping or jumping to other water tight compartment because both the categories have their separate quota, there being no provisions for intermingling of such quotas. Post of Assistant Engineers being a selection post, R&P rules provide for a twenty-point roster and each category has been provided separate roster point thereby negating any chance of sitting over the promotional avenues of another category.

25. Thus, in view of the above discussions, the order dated 26.4.2021 (Annexure P-13), cannot be sustained and is accordingly quashed. The eligibility condition of three years applicable to Junior Engineers having acquired AMIE/BE during service will not be an impediment in reckoning their inter-se seniority on the basis of entire length of service in the grade. Accordingly, seniority list dated 1.3.2014 (Annexure P-7) and seniority list dated 1.3.2016 (Annexure P-8) are quashed to the extent the petitioners were placed junior to respondents No. 2 to 14. Consequently, respondent No.1 is directed to revisit and redraw the seniority list of petitioners and respondents No. 2 to 14 by taking into consideration their entire length of service as Junior Engineers. Respondent No.1 is further directed to hold review DPC for promotion of Junior Engineers, who have acquired AMIE/BE during service to the post of Assistant Engineers in PWD (B&R) in terms of this judgment and to revisit and redraw the seniority list of Assistant Engineers thereafter.

26. In view of the above analysis, the present writ petition is allowed in aforesaid terms. Pending applications, if any, also stand disposed of.