

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESHO
SHILLONG BENCH

W.P.(C) No. 149(SH) of 2010

Meghalaya Diploma Engineers' Service
Association represented by its General
Secretary Shri Anthony Nongkynrihy,
Lower Arbuthnot, Laitumkhrah, Shillong

∴ Petitioner

-vs-

1. The State of Meghalaya,
Represented by the Secretary to the
Government of Meghalaya, Public Works
Department, Shillong.

2. The Secretary to the Govt. of
Meghalaya, Personnel and Administrative
Reforms Department, Shillong.

3. The Joint Secretary,
Public Works Department (Roads &
Buildings), Govt. of Meghalaya,
Shillong.

∴ Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI
THE HON'BLE MR JUSTICE K MERUNO

Advocate for the Petitioner : Mr HS Thangkhiew, Sr Adv
Mr P Nongbri,
Mr N Mozika,
Mr L Khyriem, Advs.

Advocate for the Respondents : Mr KS Kynjing, Adv. General
Mr ND Chullai, Sr. GA.

Date of hearing : 23.04.2012

Date of judgment and order : 04.09.2012

JUDGMENT AND ORDER

(T Vaiphei, J)

The constitutional validity of Rule 7(7)(c) and Rule 7(8) of the Meghalaya (PWD) Service Rules, 1995 and the consequential amendment of Schedule-II as amended by the Meghalaya Engineering (Public Works Department) Service (First Amendment) Rules, 2007 and Rules 2(i), 7(5) and 7(6) of the Meghalaya Engineering (Public Works Department) Service (Second Amendment) Rules, 2009 creating the new post of "Intermediate Grade", etc.. is called into question by the Meghalaya Diploma Engineers' Service Association in this writ petition.

2. The petitioner-association is a registered association of diploma holders of three years course in engineering ("Diploma holders" for short), who are serving in various services including the Meghalaya Engineering (Public Works Department) Service and Meghalaya Engineering (Public Works Department) Subordinate Service under the Government of Meghalaya. The recruitment and the conditions of service of persons appointed in the Meghalaya Engineering (Public Works Department) Service are regulated by the Meghalaya Engineering (Public Works Department) Service Rules, 1995 ("the Principal Rules") and the Meghalaya Engineering (Public Works Department) Subordinate Service Rules. Diploma Engineers are initially recruited as Junior Engineers (Grade-III) in the Meghalaya Engineering (Public Works Department) Subordinate Service ("Engineering Subordinate Service" for short), and upon their promotion from Grade-III to Grade II post, the Diploma holders get inducted into the Meghalaya Engineering (Public Works Department) Service and are thereafter, according to the petitioner-association, placed on par with

the degree holder engineers, who are initially recruited as Grade-II(Assistant Engineer). Rule 7(7)(a) of the Rules read with Schedule II thereto provides that 30% posts of the cadre strength in Grade-II posts are to be filled up by promotion from Junior Engineers who are Diploma holders and who belongs to the Engineering Subordinate Service and having rendered not less than 10 years of continuous service as Junior Engineer (JE).

3. It would appear that in the year 2007, some amendments were made to the Principal Rules by the Meghalaya Engineering (Public Works Department) Service Rules, 2007 (First Amendment) whereby Rule 7 was amended by inserting Rule 7(7)(c) and by substituting Rule 7(8) whereby the proportion of vacancies in the post of Assistant Engineer (Grade-II) to be filled up by direct recruitment is fixed at 55% i.e. from 70%, 15% by promotion from amongst Junior Engineers who are degree holders and the remaining 30% by promotion from amongst Junior Engineers who are Diploma holders i.e. those belonging to the Engineering Subordinate Service. This means that no separate quota was earmarked for degree holders for promotion to the post of Grade prior to the First Amendment. Another amendment was made in the Principal Rules by the Meghalaya Engineering (Public Works Department) Service (Second Amendment) Rules, 2009 ("Second Amendment") whereby a new grade called "Intermediate Grade" was introduced in Rule 2(i) therein between the existing Grade-I and Grade-II, and this intermediate grade is being re-named as Assistant Executive Engineer as against the erstwhile posts of SDO and SDO(TC), which along with SDO(Mechanical) and SDO(Electrical)

stood abolished. The existing Rule 7(6) was renumbered by this 2nd Amendment as Rule 7(5) by substituting therein that any appointment to the post of Intermediate Grade shall be made by promotion from amongst the members belonging to Grade-II of the respective stream/cadre who have completed 8 years of continuous service in Grade-II as specified in Schedule-II and included in the select list referred to in Rule 9(5). According to the petitioner-association, by substituting 7(8) in this manner, the Junior Engineers holding a degree are being given undue advantage of accelerated promotion at the expense of the members of the petitioner-association.

4. It is the case of the petitioner-association that even though the eligibility criteria for promotion to Grade-II is 10 years of regular service as Junior Engineers, past experience shows that Diploma holders who joined their services as Junior Engineers are promoted to Grade-II only after completion of 22-25 years: they have to be content if they manage to be promoted only once from Junior Engineer to Assistant Engineer during their entire service tenure. This is in sharp contrast to the case of the Graduate Engineers who enjoy 4-5 promotions in their service career. This is contrary to the recommendations of the Pay Commissions, which have been accepted by the Government, wherein a minimum of two promotions, that is to say, one in the first half of his career and the other in the second half, is contemplated. By the impugned amendment, the members of the petitioner-association will have no prospect of second promotion during their service career and will thereby result in stagnation. Another amendment was made in the Principal Rule by the Meghalaya Engineering (Public Works

Department) Service (Second Amendment) Rules, 2009 ("Second Amendment") whereby a new grade called "Intermediate Grade" was introduced in Rule 2(i) of the principal Rules between the existing Grade-I and Grade-II posts and the same has been re-named as Assistant Executive Engineer as against the erstwhile posts of SDO and SDO(TC), which along with SDO(Mechanical) and SDO(Electrical) stood abolished.

5. In the aforesaid amendment, the existing Rule 7(6) was re-numbered as Rule 7(5) by substituting therein that any appointment to the post of Intermediate Grade shall be made by promotion from amongst the members belonging to Grade-II of the respective stream/cadre who have completed 8 years of continuous service in Grade-II as specified in Schedule-II and included in the select list referred to in Rule 9(5). The petitioner-association contends that this amendment, which creates Intermediate Grade, which fixes the eligibility criteria for promotion to this grade at 8 years of regular service in Grade-II, upgrades 106 Grade-II posts for the posts of Intermediate Grade and reserves the posts of SDO/SDO(TC), etc. exclusively for Engineers in Intermediate Grade is highly arbitrary and discriminatory and will deprive the Diploma holders of their due and legitimate rights of promotion in future. The Engineers in Grade-II would now be first promoted to the newly created post of Intermediate Grade and thence to Grade I (Executive Engineer). Moreover, the re-designation of the posts of SDO/SDO(TC) as Assistant Executive Engineer and reserving it for the post of Intermediate Grade will make this new Grade beyond the reach of the members of the petitioner-

association. Aggrieved by this, the petitioner-association submitted their representation for reconsideration of the amendments and for keeping the same in abeyance, but no tangible result has come out so far with result that they have to file this writ petition.

6. The writ petition is opposed by the State-respondents who, in their affidavit-in-opposition, assert that the academic qualification of the Degree in Engineer is higher than Diploma in Engineer, and those Junior Engineers having higher academic qualification naturally deserve giving preferential treatment in promotional matter. The Cabinet has agreed in principle that Junior Engineers with Degree in Engineering and who are working and engaged in specialized type of works e.g. Designing and Planning of Roads, Bridges and Building, etc. cannot be compared with the services rendered by the Diploma holder or promotee Junior Engineer, and, therefore, decided that 15% post of Assistant Engineer may be filled up by promotion of degree holder Junior Engineers to the rank of Assistant Engineer. The government accordingly amended the Recruitment Rules by decreasing the quota for direct recruitment from 70% to 55% so that 15% is reserved for filling up by promotion from Junior Engineers who are degree holders. Moreover, this amendment does not affect the existing quota for Assistant Engineer, which is till 30% by promotion of Junior engineers who are Diploma holders in Engineering. It is also the case of the answering respondents that Junior Engineers holding Diploma in engineering are promoted to the post of Assistant Engineer under rule 7(a) of the principal Rules now re-numbered as Rule 6(a) by the Second Amendment with the condition specified in Column No. 7

and 8 against Item 6 of Schedule-II, namely, they should have rendered not less than 10 years of continuous service as Junior Engineer on the first day of the year in which selection is made and should have passed the professional examination prescribed by the Government from time to time. In other words, these provisions amply make it clear that completion of 10 years of continuous service as Junior Engineer does not guarantee automatic promotion to the post of Assistant Engineer.

7. According to the answering respondents, the spirit of the said condition is that in case there is a vacant post which requires to be filled up under the aforesaid sub-rule, such diploma holder who is to be promoted should have completed 10 years of continuous service as Junior Engineer. It is also pointed out therein that in terms of the Principal Rules, Diploma holder who were promoted from the rank of Junior Engineer to the rank of Assistant Engineer were treated at par with the Assistant Engineers who are Degree holders: Diploma holders are also allowed to hold the post of SDO/SDO(TC). Rule 7(6) of the principal Rules provides for promotion of Officers who are Intermediate Grade to the next higher Grade i.e. Executive Engineer, which is Grade-I: it is natural that promotion is given where there is vacant post in the higher rank. It is also the case of the answering respondents that a condition in Col. 8 against Item 5 of Schedule II to the Principal Rules, which states that the concerned Engineer "should have rendered 5 years continuous service in the post mentioned in Col. 7 on the first day of the year in which the selection is made" does not make any distinction between the a Degree holder and Diploma

holder. The answering respondents do admit that by the Second Amendment, a new grade called "Intermediate Grade" has been created and that there is no sanctioned post for the new Intermediate Grade: the posts are sought to be managed from the existing sanctioned posts in the cadre of Grade-II posts without creation of posts.

8. It is further contended by the answering respondents that the number of posts to be brought to the Intermediate Grade by cadre management depends on the number of officers who are in the cadre of Grade II and who have completed 8 years of continuous service in the Grade. Thus, an Assistant Engineer who has completed 8 years of continuous service in Grade-II shall be promoted to the post of Intermediate Grade, namely, Assistant Executive Engineer. Accordingly, a Diploma holder who has fulfilled the condition of 8 years of continuous service is not deprived of the promotional avenue to the post of Assistant Executive engineer. Diploma holders are eligible for direct recruitment to the post of Junior Engineer only, and on serving as Junior Engineer, and after completion of 10 years of continuous service thereon, it is expected that they would have attained experience to some extent and become capable of holding higher posts. It is denied by the answering respondents that Engineers with Diploma are already a stagnated lot. According to the answering respondents, no promotion has been denied to them; they are equally entitled to be considered for promotion to Intermediate Grade on their completion of 8 years of continuous service. There is thus no discrimination against Diploma holders, more so, when the proviso to

Rule 19(4) of the Principal Rules provides that a member of service appointed by promotion shall be senior to a member appointed by direct recruitment. Thus, under this proviso, Diploma holders on promotion to Grade II have an edge over direct recruit in the matter of seniority. The representation of the petitioner-association was duly examined by the Department, which is of the view that their grievance is against the spirit of the order dated 22-6-2009 passed by this Court in **WP(C) No. 121(SH) of 2008 (Shri Baron Sen and others v. State of Meghalaya)**. These are the sum and substance of the case of the respondent authorities.

9. In their reply affidavit, it is averred by the petitioner –association that the selection process for the post of Junior Engineer, be it for a Diploma holder or for a Degree holder, is common, and a common select list is prepared for diploma holders and degree holders thereby placing them together in a common cadre. Once they are integrated in one cadre of Junior Engineer, the preference treatment given to Degree holders by way of providing them special channel of promotion by reserving 15% of posts in the grade of Assistant Engineer is highly arbitrary and discriminatory vis-à-vis Diploma holders like the petitioners. This gave undue advantage to the Degree holders by ensuring them accelerated promotion. According to the petitioner-association, as no new posts for Intermediate Grade is being created, this would reduce the number of posts available for the promotion of Junior Engineer having Diploma in Engineering to Grade II: this would cause further stagnation. Diploma Engineers like the petitioners get their first promotion on completion of 22-25 years of service, by which

time, they would, on average, have already attained 50 years of age. By prescribing a continuous service of 8 years in Grade-II for promotion to Grade-I, most of the Diploma holders will have attained the age of superannuation of 58 years by the time they have completed the qualifying 8 years. This will have the effect of denying any further promotion from Grade-II to Grade-I to the members of the petitioner-association. This problem was recognized by the Review Committee, who recommended for placement of Assistant Engineer in the next higher grade on completion of 8 years of service.

10. Before proceeding further, the undisputed facts on record may be recorded. By means of the First Amendment, the percentage of the posts of Assistant Engineer to be filled up by direct recruitment stands reduced to 55% from 70%, while 15% of the posts are to be filled up by promotion among Junior Engineers who are degree holders. The remaining 30% of the posts are to be filled up by promotion from Junior Engineers who are Diploma holders. In other words, the quota meant for Junior Engineers holding Diploma in Engineering is not disturbed by the 1st Amendment as clearly spelt out by the respondent authorities towards the end of paragraph 6 of their affidavit-in-opposition dated 10-11-2010 through Shri B. Myrphet, Joint Secretary to the Government of Meghalaya, Public works Department (R&B). What is being affected by this 1st Amendment is the quota for direct recruitment, which used to be allotted 70%. Therefore, no right of members of the petitioner-society is affected even remotely by the 1st Amendment. Consequently, the challenged provisions of Rule 7(7)(C), Rule 7(8) and the consequential amendment of Schedule II to the

Meghalaya Engineering (Public Works Department) Service (First Amendment) Rules, 2007 fails.

11. Coming now to the validity of Rule 2(i), Rule 7(5) and Rule 7(6) of the Second Amendment including the consequential amendments, it may be noted at the outset that by means of this amendment, the post of Assistant Executive Engineer is now to be filled up by promotion from amongst members belonging to Grade II and who have completed 8 years of continuous service in Grade II as specified in Schedule II and included in the select list referred to in sub-rule (5) of Rule 9. Secondly, the posts of Sub-Divisional Officers and Su-Divisional Officers (Technical Consultant) are to be renamed as Assistant Executive Engineers, who shall henceforth be manned by officers in the newly created posts of Intermediate Grade. Furthermore, the terms "Sub-Divisional Officers, Sub-Divisional Officers (Technical Consultant), Sub-Divisional Officers (Mechanical) and Su-Divisional Officers (Electrical) also stand deleted hereafter. In other words, in order to become an officer of Grade-I, a Junior Engineer shall have to be promoted to Assistant Engineer (Grade II), thence to Intermediate Grade in contrast to the earlier rule which contemplated promotion to Grade-I from Grade-II. A Junior Engineer, be it a Diploma holder and Degree holder shall have to climb the ladders of Grade-II (Assistant Engineer) and Assistant Executive (Intermediate Grade) before becoming eligible for promotion to the post of Grade-I (Executive Engineer). Interestingly, the qualifying service for promotion to the post of Grade-I (Executive Engineer) from Assistant Executive Engineer is nowhere mentioned in the Second Amendment. This serious lacuna

shall have to be looked into by the respondent authorities so that this does not become another source of litigation in future. Due to this lacuna, the apprehension of the petitioner-association that Junior Engineers with Diploma in Engineering have no prospect of promotion to Grade-I (Executive Engineer) is premature as well as misconceived.

12. The contention of Mr. H.S. Thangkhiew, the learned senior counsel for the petitioner-association, is that the introduction of the post of Assistant Executive Engineer by fixing the eligibility criteria for promotion to this newly created at 8 years of service in Grade-II, of upgrading 106 posts of Grade-II to the post of Intermediate Grade without corresponding creation of new posts for the same and of reserving the posts of SDO/SDO(TC), etc. exclusively for Engineers in the Intermediate Grade is arbitrary and discriminatory and will deprive the Diploma Engineers of their chance to become Grade-I during their entire service inasmuch as they shall have to complete 10 years of qualifying service for being eligible for the post of Assistant Engineer, then another 8 years of continuous service for becoming eligible for promotion to the post of Intermediate Grade (Assistant Executive Engineer) and another five years of service to the post of Executive Engineer. According to the learned senior counsel, this may be contrasted with the case of Degree holders, who can either directly join the post of Assistant Engineer from the direct recruit quota of 55% without rendering any previous service while some degree holder Junior Engineers can become Assistant Engineers by promotion from 15% quota reserved for them under the First Amendment by rendering less number of years of service than Diploma holder Junior Engineers

even after attaining the qualifying service of 10 years. It is also the submission of the learned senior counsel that by upgrading 106 Grade-II posts to Intermediate Grade without corresponding creation of new posts of Assistant Executive Engineer, there is every possibility of depriving a number of Junior Engineers with Diploma in Engineering of their chance to even become Intermediate Grade (Assistant Executive Engineer) officer in their entire career: this will result in further stagnation in their already stagnated services. It is also contended by the learned senior that when the source of recruitment of both Diploma Engineers and Graduate Engineers is one and same, and are also placed in a common integrated cadre, there can be no discrimination in the matter of promotion. He maintains that when the Diploma Engineers and Graduate Engineers have common pay scale, common integrated gradation list, there can be no discrimination between the two. It is thus contended by the learned senior counsel that the members of the petitioner-association are given a raw deal and are subjected to hostile discrimination, and this calls for the interference of this Court. He also argues that the order dated 22-6-2009 passed by this Court in **WP(C) No.121(SH) of 2008 (Shri Baron Singh & 4 others v. State of Meghalaya)** is violated by the State-respondents in framing the First and Secondments. In support of his various contentions, the learned senior counsel relies on the following decisions of the Apex Court:- (i) **Food Corporation of India v. Parashotam Das Bansal, (2008) 5 SCC 100**; (ii) **Dr. Ms. O.Z. Hussain v. Union of India, 1990 Supp SCC 688**; (iii) **Govind Dattatray Kelkar & ors. V. Chief Controller of Imports & Exports, AIR 1967 SC 839**; (iv) the

judgement dated 25-8-2010 of Uttaranchal High Court in **WP(C) No. 267 of 2010 (SK Singh v. State of Uttaranchal)** and (vi) **Mohd. Shujat Ali v. Union of India, (1975) 3 SCC 76.**

13. On the other hand, Mr. KS Kynjing, the learned Advocate General, maintains that Junior Engineer with Degree in Engineering, who are working and engaged in specialized type of works such as Designing and Planning of Roads, Bridges and Building cannot be equated with Diploma Engineers: it is a settled law that having higher educational qualification is a relevant factor. He also contends that the petitioner-association has no legitimate grievance to make against the reservation of 15% of the posts of Assistant Engineers for degree holder Junior Engineers for promotion inasmuch as the posts are made available by decreasing the quota for direct recruitment from 70% to 55%, which does not affect in any manner the quota for them which is still maintained at 30%. It is also submitted by the learned Advocate General that no discrimination is made between the Junior Engineer with Diploma and Junior Engineer with degree who, when promoted to the posts of Assistant Engineer are treated alike: the Diploma holders are also allowed to hold the post of SDO/SDO(TC). In fact, a Junior Engineer with Diploma has the right to be considered for promotion to the post of Assistant Executive Engineer like a Degree holder Junior Engineer, when has completed the qualifying service of 8 years: no separate qualifying service is made for a degree holder and no classification is thus made between a Degree holder and a Diploma holder. According to the learned Advocate General, no order of this Court in **Shri Baron Sen and 4**

others v. State of Meghalaya (*supra*) is violated by the State-respondents. Reliance is placed by him on the decision of the Apex Court in (i) **T. Narasimhulu and others v. State of AP and ors., (2010) 6 SCC 545**; (ii) **M. Rathinaswami v. State of T.N., 2009 AIR SCW 3930** and (iii) **Chandravathi P.K. v. C.K. Saji and others, 2004 AIR SCW 1178** to fortify his submissions. Contending that the writ petition is bereft of merit and is otherwise not maintainable, he, therefore, strenuously urges this Court to dismiss the writ petition with cost.

14. The first point for consideration is whether the order of his Court in **Shri Baron Sen case** (*supra*) has been violated by the state-respondents. In that case, this Court had disposed of the writ petition by directing the State-respondents to complete the proposed amendment of the Service Rules by incorporating the recommendation of 3rd Pay Commission as well as the recommendation of the Review Committee within a particular period of time. The findings of the Court are found at the fourth paragraph of the order onwards, which may be reproduced below:

"Taking cognizance of the legitimate demand of the petitioners and their group, the 3rd Pay Commission of the State Govt. recommended in its report for creation of intermediary post with the designation of Assistant Executive Engineer in the State PWD and 8 years as Assistant Engineer was recommended as the qualifying service for consideration to the recommended grade of Assistant Executive Engineer. The recommendation of the 3rd Pay Commission for creation of a new grade with designation of Assistant Executive Engineer was accepted by the State government by a resolution dated 8-9-1997, as is evident from the communication dated 21-12-2008 (Annexure-1 to the writ petition). Thereafter, by a communication dated 18-2-2002 issued by the Respondent No. 5, sanction of the Governor of Meghalaya for placement of Assistant Engineer/SDO in PWD, Meghalaya to the higher grade of Assistant Executive Engineer w.e.f. 1-1-1996 was conveyed to

the Respondent to No. 7, Accountant General of the State. It is stated by the petitioners that many of the names of Assistant Engineers did not appear in the list of Assistant Engineer placed in the higher grade of Assistant Executive Engineer because of the fact that the qualifying period of service prescribed in the aforesaid communication dated 18-2-2002 was 8 years whereas the recommendation of the Third Pay Commission was only 8 years as qualifying period of service for promotion to the post of Assistant Executive Engineer. The list prepared by the State government, which was reflected in the communication dated 8-2-2002 was cancelled and a fresh list was drawn up which is reflected in the letter dated 21-2-2002. However, the names of many Assistant Engineers did not appear in the list because of same problem of prescription of 9 years as qualifying service.

It is stated in the affidavit filed by the Govt. Respondents that the Accountant General, Meghalaya has observed that there was a deviation and variance inasmuch as the Government has prescribed 9 years as qualifying service instead of being 8 years which is prescribed by the 3rd Pay Commission. If at all the 3rd Commission report is to be implemented by creating a new grade of Assistant Executive Engineer, the Government is supposed to adhere to the qualifying period of service prescribed by the 3rd Pay Commission and no other qualifying period of service could be envisaged. In that view of the matter, a review committee was set up by the Government to study and make appropriate recommendation and the review committee, in fact, recommended that those Assistant Engineers/SDO who have completed 8 years of qualifying service can be considered for placement to the higher scale of pay of Rs. 7750-12,155/- to the cadre/grade of Executive Engineer without involving recreation of post as done in some other Departments of the Government. Further, in order to avoid complication, the government decided to amend/modify Meghalaya Engineers (PWD) Service Rules, 1995 by incorporating the recommendation of the 3rd Pay commission as well as the recommendation of the Review Committee constituted by the Govt. in this regard.

The proposal of the State PWD to amend the Service rules, as discussed above, has been approved by the State Cabinet on 27-9-2006 but the same could not be implemented due to some request made by the Meghalaya Diploma engineers Service Association to reduce the qualifying service from 8 years to 3 years and as a result, the modification and amendment to the Service Rules could not be effectuated.

From the above stand of the Government, as discussed above, it is seen that the Government is not opposing the amendment of the Service rules, 1995 by incorporating the recommendation of the 3rd Pay Commission and also as well the Review Committee. In other words, there is no opposition

from the Government to reduce the qualifying service from 9 years to 8 years.

Admittedly, by now all the petitioners have retired from service without getting the benefit of higher scale of pay of Assistant Executive Engineer and it is the precise grievance of the petitioners that they have been deprived of the financial benefit w.e.f. 1.1.96 as proposed earlier and as such, a prayer is made for issuance of a writ of mandamus directing the Govt. Respondents to finalize the propose amendment of the Service rules within a time frame by incorporating the recommendation of the 3rd Pay commission as well as the Review Committee constituted by the Government for the purpose.

It is not disputed that the matter has already been processed earlier but the same got stuck up, as claimed by the Government, only because of the representation submitted by the Meghalaya Diploma Engineers Service Association for further reduction of the qualifying service from 8 years to 3 years."

(Underlined for emphasis)

The sentences underlined by me in the foregoing clearly run counter to the contention of the learned senior counsel for the petitioner-association that the order of this Court has been violated by the state-respondents. On the contrary, this Court had only noted the demand made by the petitioner-association for reducing the length of qualifying service for promotion to the proposed Assistant Executive Engineer from 8 years to 3 years, but did not pass any direction to that effect. Therefore, the first limb of contention of the learned senior counsel for the petitioner-association fails. Coming now to the second contention of the learned counsel for the petitioner-association that prescribing the same length of qualifying service of 8 years for the promotion to the post of Intermediate Grade for both Junior Engineers with Diploma in Engineering and Graduate Junior Engineers is discriminatory and arbitrary inasmuch as they have a remote chance of being considered for such promotion in view of the fact that they

shall have to climb the ladder of Assistant Engineer after 10 years of service and another ladder of Assistant Executive Engineer after 8 years of qualifying service. Perhaps, it escapes the attention of the learned Senior Counsel that promotion to the post of Assistant Engineer or to the post of Intermediate Grade after attaining the qualifying services is not automatic. True, some advantage is likely to be given to the Degree Holder by means of the impugned amendments, but as already noticed, challenge to preferential treatment given to one having higher educational qualification is seldom successful in a court. In our opinion, the grievance of the members of the petitioner-association in respect of the impugned amendments is merely speculative: at the most, the chance of promotion to the post of Intermediate Grade for some of them is likely to be reduced, but by no means to all.

15. That apart, no quota is reserved exclusively for the Degree holder Assistant Engineer for promotion to Intermediate Grade (Assistant Executive Engineer): both the Degree holder Assistant Engineers and Diploma holder Assistant Engineers, who have completed 8 years of service irrespective of their academic qualification, have the right to be considered for promotion to this grade on equal footing. In our opinion, the fact that Diploma Assistant Engineers may have lesser chance than degree holder Assistant Engineer cannot be ground for our interference. It is by now a well-settled law that mere chance of promotion is not a condition of service and the fact that there is likelihood of reduction in the chance of promotion would not amount to a change in the conditions of

service. If any decision is needed on this aspect of the law, we may cite the decision of the Apex Court in **SP Shivprasad Pipal v. Union of India, (1998) 4 SCC 598** wherein it is held: (SCC, paragraph 19)

“19. However, it is possible that by reason of such merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This Court in **Union of India v. SL Dutta** examined this contention. In **SL Dutta case** a change in promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the **State of Maharashtra v. Chandrkant Anant Kulkarni** this court held that a mere chance of promotion would not amount to a change in the conditions of service.”

16. As already indicated earlier, for further promotion to Grade-I (Executive Engineer), in the absence of prescribing the length of qualifying service by the State-respondents, it is not possible at this stage to speculate as to whether the members belonging to the petitioner-association will be deprived of their right to be considered for promotion to this grade during their entire career. In any case, if the Degree holder Assistant Engineers will have an edge over the Diploma holder Assistant Engineers by virtue of the impugned Second Amendment, the petitioner-association cannot have legitimate grievance for the simple reason that the degree holder Assistant Engineers have higher educational qualification. This is the legal proposition reiterated by the Apex Court in **M. Rathinaswami (supra)** after considering the earlier decisions. This is what it said: (AIR SCW, para 26)

*"26. As regards the non-graduate promotee Assistants, we are of the opinion that ordinarily it is for the State Government to decide whether their qualification has a reasonable relation to the nature of their duties and responsibilities that go with it and are attendant on the promotional post of Deputy Teshildar. It is true that as observed in **Roop Chand Adlakha's case** they may, conceivably, cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another, and whether the classification is reasonable or not must, therefore, depend upon the facts of each case and the circumstances obtaining at the relevant time. However, the question whether the difference in the educational qualification is sufficient to give preferential treatment to one class of candidates against another, should in our opinion be ordinarily left to the executive authorities to decide. The executive authorities have expertise in administrative matters, and it is ordinarily not proper for this court to sit in appeal over their decisions unless it is something totally arbitrary or shocking. Whether graduate degree is a sufficient basis for classification for promotion vis-à-vis non-graduates, and whether such classification has rational relation to the nature of duties of a Deputy Teshildar, it, in our opinion, for the State Government to decide, and not the Court. Hence, we uphold the validity of the impugned rule to the extent that it gives preference to the directly recruited Assistants over the promoted Assistants who are non graduates.*

17. True, some heart burn among the Diploma holder Junior Engineers or Assistant Engineers is likely to be caused or is inevitable in the some cases, but in the absence of illegality or proved hostile discrimination made by the State-respondents, this Court should be loath to interfere with the impugned Amendments, which are done by the State-respondents after undertaking balancing exercise between the competing interest of the Diploma holders and Degree holders in engineering keeping in mind the higher educational qualification possessed by the Degree holders. Ultimately, there can be no wooden equality or fool proof mechanism to fully satisfy the interest of all employees. In the ideal world, some via media can be worked out to completely satisfy the aspirations and competing interest of both groups of engineers, but this is a practical world where sometimes life

can be cruel, for which no one can be blamed. Law does not demand wooden equality or mathematical equality. If by virtue of the impugned Amendments, the degree holders ultimately get faster promotion than diploma holders also, that alone can hardly be a ground for this Court to strike down the same. This reminds us of what the Apex Court had said some thirty years ago in **V.T. Khanzode and others v. Reserve Bank of India, (1982) 2 SCC 7** in the following manner: (SCC, para 40)

"40. Private interests of employees of public undertakings cannot override public interest and an effort has to be made to harmonize the two considerations. No scheme governing service can be foolproof and some section or the other of the employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Arbitrariness, irrationality, perversity and mala fides will of course render any scheme unconstitutional but the fact that the scheme does not satisfy the expectation of every employee is not evidence of these."

18. For the reasons stated in the foregoing, there is no merit in this writ petition, which is hereby dismissed. However, on the facts and in the circumstances of the case, we pass no order as to costs.

19. However, before parting, we must bring to the notice of the State – respondents the legislative faux pas committed, unwillingly or otherwise in not prescribing the qualifying length of service for promotion from the post of Intermediate Grade (Assistant Executive Engineer) to the post of Grade I (Executive Engineer). It is hope that the State-respondents will take immediate action for necessary rectification to this end. However, the State-respondents shall, while prescribing the qualifying length of services for promotion from the post of Assistant Executive Engineer to the post of Executive Engineer

(Grade-I), consider the case of the members of the petitioner-association for reducing the qualifying length of service for them vis-à-vis the Degree holders to provide them a level playing field as their grievance appears to be quite legitimate.

JUDGE

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