

Respondents

Dated: 30.11.2021

3. The factual background of the case as stated in the writ petition is that in the light of Resolution No. 395 dated 19.02.2021 issued under the signature of Director-cum-Joint Secretary, Department of Rural Development (Panchayati Raj), Government of Jharkhand by order of the Hon'ble Governor of Jharkhand, the Deputy Commissioner, Ranchi (the respondent no. 3) floated Advertisement No. 252(ii)/2020-21 for Ranchi district inviting applications from eligible candidates to

the posts of Junior Engineer and Account Clerk-cum-Computer Operator on contractual basis under 15th Finance Commission. As per the said advertisement, the essential qualification for the post of Junior Engineer (contractual) was Diploma in Civil Engineering or equivalent with minimum 60% marks from recognized university/institution, however for the candidates belonging to Scheduled Castes/Scheduled Tribes, the minimum marks was fixed as 50%. The petitioner having Diploma in Engineering and being eligible, applied for the said post and participated in the examination process. In the said advertisement, "higher qualification in the concerned field" was mentioned as "desirable qualification". The petitioner being diploma holder in civil engineering was shocked and surprised to see the provisional merit list for appointment to the post of Junior Engineer (contractual) which was prepared on the basis of marks obtained by the candidates mentioning their educational qualifications wherein huge number of candidates being direct B.Tech degree holders were shown as selected in spite of the fact that as per the terms of the advertisement, the essential qualification was only restricted to Diploma in Civil Engineering or equivalent. Hence, the present writ petition.

4. Mr. Amritansh Vats, learned counsel for the petitioner, submits that it has nowhere been mentioned in the notification dated 19.02.2021 issued by the Department of Rural Development (Panchayati Raj), Government of Jharkhand that the candidates having B. Tech degree will also be eligible for selection to the post of Junior Engineer (contractual). As per Clause-2(Kha)(i) of the said notification, essential qualification for selection to the post of Junior Engineer (contractual) is Diploma in Civil Engineering or equivalent (regular course) with minimum 60% marks from recognized university/institution, however for SC/ST candidates, minimum marks is 50%. Clause-2(Kha)(ii) also speaks of higher qualification as the desirable qualification in the concerned field. It is further submitted that B.Tech course is not in line of higher qualification of Diploma course. For taking admission in B.Tech Course, the eligible candidates have to appear in a different test whereas for taking admission in Diploma course, a different test is conducted. Even the minimum qualification for eligibility to appear in the aforesaid courses is different. The category of diploma course, which is of three years, is naturally a lesser qualification with a different curriculum as compare to B.Tech course which is of four years. The action of the respondents in allowing the direct B.Tech degree holders to participate in the said examination though they were not eligible in terms with the aforesaid notification as well as the advertisement, is highly discriminatory and illegal.

5. Per contra, Mr. Sachin Kumar, learned A.A.G.-II appearing on behalf of the

respondents, submits that the provisional merit list for the post of Junior Engineer (contractual) in pursuance of advertisement no. 252(ii)/2020-21 has been prepared as per the provisions of notification no. 395 dated 19.02.2021 issued by the Department of Rural Development (Panchayati Raj), Government of Jharkhand. It is further submitted that both the Diploma and B.Tech degree holders in Civil Engineering have been considered for preparing provisional merit list. B.Tech degree in Civil Engineering is a higher educational qualification and the same has been mentioned in para Kha(ii) of the said advertisement as desirable educational qualification for selection to the post of Junior Engineer. It has nowhere been mentioned in the said notification that only those candidates are eligible who possess Diploma in Civil Engineering necessarily along with higher qualification. Diploma in civil engineering is the minimum required educational qualification for selection to the said post. It is also submitted that as per the notification contained in memo no. 11/SSC-16-08/2013 Personnel-8614 dated 25.10.2019 issued by the Department of Personnel, Administrative Reforms and Rajbhasa, Govt. of Jharkhand and as per the order dated 07.04.2021 passed by the Hon'ble Supreme Court in the case of **Puneet Sharma & Others Vs. Himachal Pradesh State Electricity Board Ltd. & Another (Civil Appeal No(s).1318-1322 of 2021)**, the candidates having higher qualification such as B.Tech Degree in Civil Engineering can also be considered eligible for appointment to the post of Junior Engineer as the candidates having higher qualifications in addition to the minimum educational qualification are also entitled to apply or to be considered for appointment. Since B.Tech degree is a higher qualification than Diploma, there was no infirmity in permitting B.Tech degree holders to appear in the said examination for the post of Junior Engineer (contractual). It is also submitted that out of 36 seats for the post of Junior Engineer (contractual), three times of the vacancies in each category is required to be selected in the provisional merit list. Hence, 2 seats are reserved for BC-I category and as per the notification dated 02.02.2021, 6 candidates are required to be selected in the provisional merit list for BC-I category. It would appear from the primary provisional merit list of candidates of BC-1 category that the name of the petitioner appears at Sl. No. 89. Out of 168 candidates under BC-1 category, 6 candidates have been selected in provisional merit list. Out of 100 marks, the candidates were required to secure minimum 50 marks whereas the petitioner secured only 34.74 marks. Thus, the petitioner could not obtain minimum qualifying marks. In the primary provisional merit list of BC-1 candidates, about 38 B.Tech degree holders have been included and even if they are removed from the primary provisional merit list, the petitioner would still be much below in the list of the said category and would not qualify for inclusion of his

name in the provisional merit list of BC-1 candidates. So far as marking of the candidates is concerned, those candidates, who have done B. Tech (Civil) only, they have been assigned marks treating their B. Tech degree as minimum qualification whereas those candidates, who have done diploma and thereafter B.Tech (Civil), in that situation, B.Tech has been treated as desirable qualification and they have been given weightage out of maximum 10 marks based on their score in the B.Tech.

6. Heard learned counsel for the parties and perused the materials available on record. The petitioner has challenged the provisional merit list published by the respondents for the post of Junior Engineer (contractual) pursuant to Advertisement No. 252(ii)/2020-21 on the ground that the respondents have also included the B.Tech degree holders in the provisional merit list in contravention of the terms and conditions of the said advertisement as well as the criteria mentioned in notification dated 19.02.2021 issued by the Department of Rural Development (Panchayati Raj), Government of Jharkhand for the post of Junior Engineer (contractual)

7. Learned counsel for the petitioner in support of his contention has put reliance on few judgments of the Hon'ble Supreme Court as well as different High Courts.

8. In the case of **State of Uttarakhand & Others Vs. Deep Chandra Tewari & Another** reported in **(2013) 15 SCC 557**, the Hon'ble Supreme Court has held that undoubtedly normal rule is that a candidate with higher qualification is deemed to fulfill the lower qualification prescribed for a post, but that higher qualification has to be in the same channel.

9. In the case of **Zahoor Ahmad Rather & Others Vs. Shiekh Imtiyaz Ahmad & Others** reported in **(2019) 2 SCC 404**, the Hon'ble Supreme Court has held that in absence of a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of the lower qualification. The prescription of qualification for a post is a matter of recruitment policy. The State as the employer, is entitled to prescribe the qualification as a condition of eligibility. It is not the role of the constitutional court to expand the ambit of the prescribed qualifications while exercising power of judicial review. Similarly, equivalence of a qualification is not a matter which can be determined under judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State as a recruiting authority, to determine.

10. In the case of **Deepak Singh and Others Vs. State of U.P. and Others** reported in **2019 SCC OnLine All 4471**, the Full bench of the Allahabad High

Court has held that Diploma in Engineering and Degree in Engineering are two distinct qualifications and a degree in the field in question cannot be viewed as a higher qualification when compared to Diploma in that field. A degree holder is held to be ineligible to participate in the selection process of Junior Engineer in the light of the advertisement issued and the exclusion of the degree holders from the zone of consideration is in consonance with the tests propounded by the Supreme Court in case of **State of Uttarakhand and others Vs. Deep Chandra Tewari and another (supra)**.

11. Learned counsel for the petitioner has put further reliance on a judgment rendered by learned Division Bench of Patna High Court in the case of **The Bihar State Power (Holding) Company Ltd. Vs. Md. Asif Hussain & Others (L.P.A No. 1416 of 2018)** wherein it has been held that the decision to offer the post of Junior Electrical Engineer to only Diploma holders does not amount to such prohibition against Degree holders which may allow the court to invoke Article 14 and 16 of the Constitution of India in favour of the Degree holders who still have other job opportunities. It has further been held that a person who is possessing a qualification of Masters in Electrical Engineering may subsume in it a Degree of Bachelor in Engineering being an in line qualification, but the same cannot be necessarily concluded in respect of a Diploma course inasmuch as a Degree course is not an in line higher qualification of Diploma. For admission in an Engineering Degree course, one has to undergo a different test as compared to an admission in a Diploma course. Even the minimum qualifications for entry in the courses are different. The category of Diploma courses which is of three years is naturally a lesser qualification with a different curriculum as compared to that of a four years Degree course, but to conclude that the same course is also included in a Degree course may not be correct unless it is established by way of an objective and empirical analysis.

12. Learned counsel for the respondents in support his contention has relied upon the judgment rendered by the Hon'ble Supreme court in the case of **Puneet Sharma & Others (supra)** and has further contended that in the said case, their Lordships have observed that for the post of Assistant Engineer, 5% quota was reserved for those who held degrees before joining as Junior Engineers and held that the rule making authority undoubtedly had in mind that degree holders too could compete for the position of JEs as individuals holding equivalent or higher qualifications. If such interpretation was not given, there would be no meaning in 5% sub-quota set apart for those who were degree holders before joining as Junior Engineers-in terms of the existing recruitment rules. Their Lordships have further held that the latest amendment brought about on 03.06.2020 also clarified the

doubt that even for the post of Junior Engineers, those individuals holding higher qualifications were eligible to compete and though the amending rules were brought into force prospectively, nevertheless, being clarificatory, they applied to the recruitment i.e., the subject matter of the present controversy.

13. The aforesaid judgments cited by learned counsel for the parties would have appropriately been discussed by this Court if the petitioner had established his case on facts.

14. In the case in hand, apart from the other arguments, the specific stand of the respondents is that a candidate had to secure minimum 50 marks out of 100 marks for qualifying in the examination whereas the petitioner has secured only 34.74 marks and thus he has not achieved the criteria of minimum qualifying marks. It has been contended by the respondents that even if the degree holders are excluded from the list, the petitioner will still not come in the merit list of BC-1 candidates. The said stand of the respondents has not been controverted by the petitioner.

15. Under the aforesaid circumstance, this Court finds that the question of law as to whether the degree holders were also eligible to apply for the post of Junior Engineer (contractual) pursuant to Advertisement No. 252(ii)/2020-21 is not of much relevance in the emerging facts of this case. The present writ petition has been filed by the petitioner not in the form of Public Interest Litigation, rather raising his individual grievance. Since the petitioner will not come in the merit list in any circumstance, this Court is of the view that the question of law raised by the petitioner remains an academic one. Consequently, the question of law is left open to be decided in an appropriate case. Moreover, the petitioner has also failed to show malafide on the part of the respondents, rather it has been found that the respondents have adopted uniform procedure for preparation of merit list. In the case of **Zahoor Ahmad Rather (supra)**, the Hon'ble Supreme Court has held that equivalence of qualification is not a matter which can be determined in exercise of power of judicial review. It is upon the State Government to determine as to whether a particular qualification is to be regarded as equivalent to some other qualification. Thus, the scope of interference by this Court in such matter is minimal.

16. The writ petition is, accordingly, dismissed. The interim order dated 22.09.2021 stands vacated.

17. I.A. No. 6049 of 2021 and I.A. No. 6156 of 2021 also stand disposed of.

(Rajesh Shankar, J.)