



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 7th July, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.24 of 2020

Petitioners : Bijay Kumar Pradhan and Others

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad and Simeon Subba, Advocates for the Petitioners.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents No.1 and 2.

Mr. Bhusan Nepal, Advocate for the Respondent No.2A.

Mr. N. B. Khatiwada, Senior Advocate with Ms. Gita Bista and Ms. Pratikcha Gurung, Advocates for the Respondents No.3, 4, 6 to 12, 14 to 18, 20 to 27.

Mr. N. B. Khatiwada and Mr. Karma Thinlay Namgyal, Senior Advocates with Ms. Gita Bista, Ms. Pratikcha Gurung, Mr. Yashir Namgyal Tamang and Mr. Chetan Sharma, Advocates for the Respondents No.13.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Petitioners were ranked above the private Respondents No.3 to 27 in the provisional *inter se* seniority list, of Junior Engineers (Civil) [hereinafter, "JE(C)"], dated 30-08-2010. Without confirming, altering or finalising the list, the private Respondents No.3 to 27, who were appointed as JE(C) much later than the Petitioners, were designated as "Acting Assistant Engineers" on 14-10-2011 and thereafter their services regularised as Assistant Engineers (Civil), [hereinafter, "AE(C)"], vide impugned Office Order, dated 21-09-2016. This was followed by



the promotion of private Respondents No.3, 4, 6 and 7 as Divisional Engineers (Civil) [hereinafter, "DE(C)"], vide impugned Office Order, dated 20-07-2020, allegedly in clear violation of all Service Rules. Aggrieved by the State action, the Petitioners are invoking the Writ Jurisdiction of this Court.

(i) The Petitioners press prayers (a), (b) and (c)(i) of their Writ Petition, viz; *"issue Rule calling upon the Respondents to show cause as to why a writ of mandamus/certiorari and appropriate writ/order or direction may not be issued commanding and directing the Respondents No.1 and 2;*

[a] to show cause as to why the Office Orders dated 21-09-2016 and 20-07-2020 should not be quashed/set aside and on perusal of the cause shown, if any, to make the Rule absolute;

[b] to place the Petitioners above Respondents No.3 to 27 in the final inter-se-seniority and thereafter promote some of the Petitioners in place of Respondents No.3 to 7;

.....
(c)(i) to quash and cancel Notification No.06/GEN/DOP, dated 11/4/2015 (Annexure-P15/Annexure R1/1), whereby the method of recruitment has been relaxed for regularization of the services of the Respondents No.3 to 27.

....."

(ii) Affidavits were exchanged between the parties with all Respondents denying the allegations of the Petitioners (Respondents No.5 and 19 have since passed during the pendency of this petition).

2. The Petitioners' narrative is briefly traversed below. The twenty Petitioners are Diploma holders in Engineering and were appointed as JE(C), between the years 1993 and 1995, on regular basis in various departments of the Government of Sikkim. The Respondents No.3 to 27 are Civil Engineering Graduates



(Degree holders), and were initially appointed as JE(C), on various dates between February, 2002 and November, 2006. Consequently, in the provisional *inter se* seniority list of JEs, dated 30-08-2010, maintained by the Respondent No.2, they were placed above the private Respondents in the seniority ranking. The list remained unconfirmed. The Junior Engineer (Civil) Recruitment Rules, 1993, under which the Petitioners and private Respondents were recruited does not differentiate between the appointment and promotions of Diploma holder Engineers and Engineering Graduates, except to the extent of granting three advance increments at the lowest rate, to the Engineering Graduates, on their appointment as JE. That, Promotions are governed by the Sikkim State Engineering (Civil, Electrical & Mechanical) Services Rules, 1989 (hereinafter, "Engineering Service Rules, 1989"), where a JE, on ten years of service is eligible for promotion to the post of AE. Rule 17(3) therein provides that the Government shall, every year, under Rule 7(1)(b), i.e., for promotion from JE to AE, prepare a list of names of persons in order of seniority, who have on the first day of that year, completed not less than ten years of continuous service, in the post of JE or equivalent. As the Government failed to comply with the Rules and prepare the yearly seniority list, it worked to the disadvantage of the Petitioners, i.e., firstly, they could not be directly recruited as AEs as provided in Rule 7(1)(a), secondly, in the absence of the list, they could not avail the benefits of promotion, thereby depriving them of promotions from 2003/2005 through 2016. On the other hand, the private Respondents, as Degree holders were eligible for promotion in terms of the Rules (*supra*), only from 2012-2016, depending on



the year of their appointments, however before completion of the requisite period, the State-Respondents, vide an Office Order dated 14-10-2011, designated the private Respondents as "Acting AE(C)", with an additional monthly allowance of ₹ 5,000/- (Rupees five thousand) only, sans Rules, with the caveat that their appointment on regular basis to the post of AE would be through the Sikkim Public Service Commission (SPSC) as per the Engineering Service Rules of 1989.

(i) On 07-09-2012, the Respondents No.1 and 2 advertised 33 vacancies of AE(C), requiring the applicants to appear for an examination and viva-voce. The private Respondents filed a representation dated 14-09-2012, before the Hon'ble Chief Minister, seeking regularisation of their services from "Acting AEs" to AEs, pleading their inability to prepare for the examination of the advertised vacancies due to work obligations. Consequently, the advertisement was kept in abeyance and the services of the private Respondents were regularised by invoking Rule 30, the relaxation clause, of the Engineering Service Rules, 1989, vide Notification dated 11-04-2015, specifying twenty-five posts for regularisation, to accommodate the private Respondents.

(ii) Following the appointment of the private Respondents as AE in 2015, the Respondents No.1 and 2 on 10-08-2019, put up the *inter se* seniority list of Civil Engineers, in which the private Respondents were ranked above the Petitioners in seniority. The Petitioners voiced their grievance regarding the *inter se* seniority by a representation, dated 10-09-2019, before the Hon'ble Chief Minister, which went unaddressed, instead, without finalising the said list, vide Office Order dated 20-07-2020, the private



Respondents No.3, 4, 6 and 7 were promoted as DEs. Hence, the Writ Petition, with the prayers as extracted hereinabove.

3. The Respondents in their respective Returns denied the allegations.

4. Learned Senior Counsel for the Petitioners advancing his arguments alleged that the State-Respondents exhibited a preference for the Engineering Graduates by promoting them as “Acting AEs” on 14-10-2011, without the recommendation of Respondent No.2A, which is illegal and not merely irregular. As the Service Rules make no provision for the post of “Acting AE”, the private Respondents ceased to be governed by the Engineering Service Rules, 1989. That, when the Respondents No.1 and 2 on 07-09-2012 advertised 33 (thirty three) vacancies of AE(C), the private Respondents, successfully circumvented the requirement of taking the examination by obtaining regularisation of their services. That, orders of regularisation can be only issued for irregular appointments, and not illegal appointments as that of the private Respondents. That, although 33 (thirty three) vacancies of AE(C) were initially advertised, the Notification for relaxation of the Rules specified only twenty five posts, to enable accommodation of the private Respondents, making out a case of fraud. Reliance was placed on **Ajit Kumar Bhuyan and Others vs. Debajit Das and Others**¹ to buttress this submission.

(i) Learned Senior Counsel further contended that the private Respondents could not be categorized as a class. That, Rule 30 (*supra*), when invoked requires the Government to record the expediency for such relaxation, which was not complied with in

¹(2019) 12 SCC 275



the instant case but compassionate employment was resorted to by the State-Respondents. That, the relaxation provision cannot be used to render the rules *non est*. On this aspect, strength was drawn from ***State of Orissa and Others vs. Sukanti Mohapatra and Others***². That, in ***Suraj Parkash Gupta and Others vs. State of J&K and Others***³ the Supreme Court observed that Rules cannot be made a hardship.

(ii) Relying on ***G. P. Doval and Others vs. Chief Secretary, Govt. of U.P. and Others***⁴ it was urged that the Supreme Court in the said matter did not consider the objection of the Respondents pertaining to delay, laches and acquiescence, as the State-Respondents had not finalised the seniority list, which worked to the disadvantage of the Petitioners. That, similarly the provisional list herein was not confirmed, while the fresh seniority list of 2019 was prejudicial to the Petitioners. That, in ***R. S. Garg vs. State of U.P. and Others***⁵ the Supreme Court has held that an appointment made without the recommendation of the State Public Service Commission would be *void ab initio* and incapable of relaxation. Reliance was also placed on ***Secretary, State of Karnataka and Others vs. Umadevi (3) and Others***⁶ to canvass that regularisation could be made by the State Government as a onetime measure, to regularise the services of irregularly appointed personnel, in sanctioned posts, but not as a licence to relax the Rules at every opportunity to benefit a chosen few. Hence, the prayers of the Petitioners be allowed.

²(1993) 2 SCC 486

³(2000) 7 SCC 561

⁴(1984) 4 SCC 329 : AIR 1984 SC 1527

⁵(2006) 6 SCC 430

⁶(2006) 4 SCC 1



5. Repudiating the arguments put forth *supra*, Mr. Zangpo Sherpa, Learned Additional Advocate General for the State-Respondents No.1 and 2, contended that the expediency to appoint the private Respondents as Acting AEs' arose on account of the earthquake which struck Sikkim on 18-09-2011. The shortage of AE(C) led to the designating of the private Respondents as "Acting AE" to enable implementation of urgent restorative works. That, pursuant to the appointment of the private Respondents as AE(C), vide Office Order, dated 21-09-2016, a few days later, vide Office Order dated 01-10-2016, the Petitioners were also appointed as AEs. That, the appointment of the private Respondents as AEs was not illegal as alleged, as it was based on the recommendation of the Respondent No.2A, in due compliance of the Rules, following their technical evaluation and personality test/interview, which is revealed in the communication of the Respondent No.2A to the Commissioner-cum-Secretary of the Respondent No.1, dated 10-06-2016. That, the Petitioners did not assail the Notification relaxing the Rules for the purpose of filling up twenty five posts of AEs. That, the 50% quota meant for direct recruitment was being utilised for regularisation of the services of the private Respondents, which in no way impinged on the promotional quota of the Petitioners. The first cause of action thus arose on 11-04-2015 but, no steps were taken by the Petitioners. More than a year later the evaluation test was conducted on 27-28 May, 2016. Neither during the interregnum nor at the time of the evaluation test, or the promotion of the private Respondents, did the Petitioners protest.



(i) It was next urged that as the Engineering Service Rules, 1989, do not specifically provide for seniority, for this purpose Rule 8(c) of the Sikkim Government Establishment Rules, 1974 (hereinafter, the "Establishment Rules, 1974") is to be read with Rule 9 of the same Rules. In accordance thereof the private Respondents were ranked above the Petitioners in seniority. That, in fact, the entire case of the Petitioners is an outcome of their disgruntlement on the subsequent promotion of a few of the private Respondents, as DEs on 20-07-2020, who the Petitioners perceive as their juniors in service. That nonetheless, even the Petitioners have been duly considered and promoted as DEs on 14-02-2023, which circumstance was brought to the notice of this Court by the private Respondents, by filing I.A. No.10 of 2023, reflected in the Order of this Court dated 28-04-2023. Relying on ***Dr. Akshya Bisoi and Another vs. All India Institute of Medical Sciences and Others***⁷ it was urged that seniority ought not to be unsettled after a long period of service rendered by the parties. Reliance was also placed on the decision of this Court in ***Tseten Palzor Bhutia vs. State of Sikkim and others***⁸ wherein this Court had referred to and relied on the ratio in ***P. S. Sadasivaswamy vs. State of Tamil Nadu***⁹ where the Supreme Court held that a person who is aggrieved by an order promoting a junior over his head should approach the Court at the earliest. That, as no prejudice was caused to the Petitioners, the Writ Petition lacking merit and having been filed belatedly deserves a dismissal.

⁷(2018) 3 SCC 391

⁸2022 SCC OnLine Sikk 67

⁹(1975) 1 SCC 152



6. Mr. Bhusan Nepal, Learned Counsel for the Respondent No.2A, while adopting the arguments put forth by Learned Additional Advocate General, augmented it by submitting that recommendation for appointment of the private Respondents was made to the Government by Respondent No.2A, on completion of their evaluation test as per the relevant Rules. Hence, as there was no illegality in the appointments, the petition deserves a dismissal.

7. Mr. Karma Thinlay Namgyal, Learned Senior Counsel for the Respondent No.13, while also endorsing the arguments advanced by Learned Additional Advocate General, canvassed that the Petitioners were well aware that they have approached the Court belatedly and their petition is marred by delay, laches and acquiescence. Consequently, in a bid to conceal this fact, the dates of knowledge of various events are referred to as “recently learnt” as apparent from Paragraphs 3, 7 and 9 of the amended Writ Petition. That, the relaxation clause was invoked by the State Government for the purposes of promoting the private Respondents and was confined to the utilisation of 50% of posts meant for direct recruits. The remaining 50% quota, meant for promotees, such as the Petitioners was untouched, hence the Petitioners have no *locus standi* to agitate this point in the Writ Petition. Besides, the Petition being filed belatedly on this ground alone it deserves a dismissal.

8. Ms. Gita Bista, Learned Counsel for the Respondents No.3, 4, 6 to 12, 14 to 18, 20 to 27, adopted the arguments advanced by the Learned Additional Advocate General and Learned Senior Counsel for Respondent No.13 and added that, the petition



also suffers from non-joinder of parties, as officers in service likely be effected by any finding of this Court, unsettling the *status quo*, have not been impleaded. That, the seniority settled by the State-Respondents were unassailed and have reached a finality, thereby rendering the petition meritless.

9. Having heard Learned Counsel for the parties and perused the pleadings and all documents on record, the questions that require determination by this Court are;

(i) *Whether the Petitioners have locus standi to agitate the points as put forth in the Writ Petition?*

(ii) *Whether the Writ Petition having been filed belatedly renders it inconsequential?*

10. The Petitioners admittedly are Diploma holders in Engineering, *per contra* the Respondents No.3 to 27 are Civil Engineering Graduates. On this facet, it may relevantly be noticed that the Supreme Court while considering whether educational qualification can be recognized as a criterion for classification, in ***The State of Jammu and Kashmir vs. Shri Triloki Nath Khosa and Others***¹⁰ had held that;

“50. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Arts. 14 and 16 of the Constitution and must be upheld.”
(emphasis supplied)

¹⁰(1974) 1 SCC 19



(i) In *Ashok Kumar and Others vs. State of Jammu and Kashmir and Others*¹¹ the Supreme Court referred to the Constitution Bench decision of *The State of Mysore and Another vs. P. Narasinga Rao*¹² wherein it was held that Article 16(1) of the Constitution does not bar a reasonable classification of employees or reasonable test for their selection. The competing parties who were before the Court in the said case were employed as Tracers, carrying out the same duties and responsibilities, the Bench held that the classification of Tracers, into two types with different grades of pay, on the basis that one type consisted of matriculates and the other non-matriculates, is not violative of Articles 14 and 16 of the Constitution of India.

(ii) In *Surinder Singh vs. Union of India and Others*¹³ the Supreme Court observed that;

“16. In our view, in service jurisprudence the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities, which are entrusted to the candidates after their selection to a particular post. All the more, it is important for efficient and effective administration. The basic object of prescribing a minimum qualification is to put a cut-off level for a particular job in accordance with the minimum competency required for the performance of that job. The object of prescribing preferential qualification is to select the best amongst the better candidates who possess more competence than the others.” (emphasis supplied)

(iii) Further, in *State of Uttarakhand and Others vs. S.K. Singh and Others*¹⁴ the Supreme Court observed as follows;

“27. The spectrum of judicial opinions referred to aforesaid leaves us with little doubt that though equality is the very bulwark of the provisions of the Constitution, in service jurisprudence, classifications are a matter of necessity and judicial pronouncements have sought to balance the equality principle with the principle of classification, dependent on the nexus for

¹¹(2021) 15 SCC 650

¹²AIR 1968 SC 349

¹³ (2007) 11 SCC 599

¹⁴ (2019) 10 SCC 49



making the classification. **Higher educational qualifications have been repeatedly emphasised as an aspect which can give exclusive promotion, earlier promotion or for that matter, as in this case, an accelerated promotion. A higher degree of qualification intrinsically would bring in certain skills, though undoubtedly, that should be useful and have a nexus with the job being performed.** As to who should examine this nexus, that has been left to the wisdom of the administrative authorities, who are best equipped to do so [*M. Rathinaswami v. State of T.N.*, (2009) 5 SCC 625].”
(emphasis supplied)

Thus, the argument of Learned Senior Counsel for the Petitioners that the private Respondents could not be categorized as a class, obtains a quietus, in light of the above extracted pronouncements and the principle enunciated therein that such classification on the basis of educational qualification is neither arbitrary nor violative of the constitutional provisions.

(iv) A perusal of the Schedule to the Junior Engineer (Civil) Recruitment Rules, 1993, appended to the petition reveals that both Diploma holders and Degree holders are eligible for appointment as JEs, with provision for three advance increments for Degree holders at the time of appointment. There is no dispute with regard to the method of recruitment prescribed by the Rules. The provisional *inter se* seniority list of 2010 admittedly remained unconfirmed for several years, during which period the Petitioners did not seek finalisation of the list nor did they seek preparation of a seniority list in terms of Rule 17(3) *supra*. Pausing here briefly, the Petitioners have relied on **G. P. Doval** (*supra*), the facts therein are distinguishable as the Petitioners therein had sought finalisation of their seniority by consistently filing representations. The Petitioners herein have not brought any such representation to the notice of this Court, nor was it averred or argued. Indubitably the private Respondents were designated as Acting AE(C), with immediate effect, vide Office Order bearing No.6728/G/DOP, dated



14-10-2011, of the Respondent No.1 Department allegedly to mitigate the circumstances of the earthquake and for commencing restorative works. At this juncture too, no objection arose from the Petitioners.

(v) The argument of Learned Senior Counsel for the Petitioners that in view of the private Respondents being made "Acting AE", which was not provided in the Rules, thus their services under the Engineering Service Rules, 1989, ceased to exist, appears to be a little far-fetched as the State-Respondents have the prerogative and power to take necessary steps for placement of employees for specific reasons. In **Anil Kumar Vitthal Shete and Others vs. State of Maharashtra and Another**¹⁵ the Supreme Court held that, it is always open to an Employer to adopt a Policy for fixing Service Conditions of his Employees. Such Policy, however, must be in consonance with the Constitution and should not be arbitrary, unreasonable or otherwise objectionable. Considering that the legal precedent is that classification on grounds of education is not violative of the constitutional provisions, the designation of the private Respondents as "Acting AE" can neither be said to be arbitrary nor unreasonable.

(vi) While considering and addressing the issue of relaxation of the Rules to accommodate the Degree holders from "Acting AE" to AE which, as per Learned Senior Counsel for the Petitioners, was not irregular, but illegal, necessary reference is made to Notification No.06/GEN/DOP, dated 11-04-2015, which *inter alia* reads as follows;

¹⁵(2006) 12 SCC 148



“.....
GOVERNMENT OF SIKKIM
DEPARTMENT OF PERSONNEL, ADM.
REFORMS, TRAINING & PUBLIC GRIEVANCES
GANGTOK

No.06/GEN/DOP

Dated: 11.4.2015

NOTIFICATION

Whereas the State Government has deemed it expedient to fill up 25 (twenty five) posts of Assistant Engineer (Civil) under the Sikkim State Engineering (Civil, Electrical and Mechanical) Service Rules, 1989 by way of regularization of the services of Acting Assistant Engineer;

And whereas under rule 7 of the Sikkim State Engineering (Civil, Electrical and Mechanical) Service Rules, 1989 (hereinafter referred to as the said rules”), the method of recruitment to the said post is as under:-

“(1) Subject to rule 6, recruitment to the service after the appointed day shall be by the following methods, namely:-

(a) By direct recruitment through a competitive examination and/or selection by interview to be held by the Commission.

(b) By Promotion through overall assessment of Service records and interview to be held by Commission from among persons holding the post of Junior Engineer or any other post or posts declared equivalent thereto by the Government;

(2) The proportion of vacancies to be filled in any year in accordance with clauses

(a) and (b) of sub-rule (1) shall be 50-50 respectively subject to review as the Government may deem fit;

Provided that the number of persons recruited under clause (b) of sub-rule (1) shall not at any time exceed 50 percent of the total strength of the service”;

And whereas the State Government has deemed it expedient to fill up 25 (twenty five) posts of Assistant Engineer (Civil) by relaxing the provision relating to the method of recruitment provided under rule 7 of the said rules and all other required conditions in the matter of age, roster point, etc with the view to utilize the existing provision of 50% direct recruitment quota by way of regularization of the services of Acting Assistant Engineers;

And whereas rule 30 of the Sikkim said rules provides for relaxation of the rules;

Now, therefore, in exercise of the powers conferred by rule 30 of the Sikkim State Engineering (Civil, Electrical and Mechanical) Services Rules, 1989, the Governor of Sikkim is hereby pleased to relax the provision contained in rule 7 and 9 of the Sikkim State Engineering (Civil, Electrical and Mechanical) Services Rules, 1989 relating to the method of recruitment and all other required conditions in the matter of age, roster point, etc, to utilize the existing



provision of 50% direct recruitment quota with an view to fill up 25 (twenty five) posts of Assistant Engineers (Civil) in the Sikkim State Engineering (Civil, Electrical and Mechanical) Service by way of regularization of the services of Acting Assistant Engineers in consultation with the Sikkim Public Service Commission as one time relaxation.

BY ORDER AND IN THE NAME OF THE GOVERNOR

Sd/-

(K.K. Basnet)

Additional Secretary to the Government

DEPTT. OF PERSONNEL, ADM. REFORMS,
TRAINING & PUBLIC GRIEVANCES

”

The seminal points that can be culled out from the Notification is that, 25 (twenty five) posts of AEs were to be filled up by way of regularisation of the services of the “Acting AEs” i.e., the private Respondents by relaxing the Rules as provided by Rule 30 of the Engineering Service Rules, 1989. Thus, the Government by the Notification relaxed the Rules of recruitment as provided under Rules 7(1)(a) and 7(1)(b) of the Engineering Service Rules, 1989, Rule 9 and other conditions pertaining to age and roster, of the Engineering Service Rules, 1989, by invoking Rule 30 of the same Rules.

(vii) Rules 7 and 9 of the Engineering Service Rules, 1989, provides as follows;

“7. Method of Recruitment.—

(I) Subject to Rule 6, recruitment to the Service after the appointed day, shall be by the following methods, namely,—

- (a) By direct recruitment through a competitive examination and/or selection by interview to be held by the Commission.
- (b) By promotion through limited departmental Competitive Examination to be held by Commission from among persons holding the post of Junior Engineer or any other post or posts declared



equivalent thereto by the Government.

(2) The proportion of vacancies to be filled in any year in accordance with clauses (a) and (b) of sub-rule I shall be $66\frac{2}{3}$: $33\frac{1}{3}$ respectively subject to review as the Government may deem fit :

Provided that the number of persons recruited under clause (b) of sub-rule I shall not at any time exceed $33\frac{1}{3}$ per cent of the total strength of the Service.

.....

9. Conditions of Eligibility for appearing at the Competitive Examination.—

In order to be eligible to appear in the interview or to compete at the competitive examination, a candidate must satisfy the following conditions, namely.—

(a) Minimum educational qualification.	Degree in Civil or Electrical or Mechanical Engineering or equivalent as the case may be from a recognized University.
(b) Age	<p>Should have attained the age of 21 years but should not have exceeded the age of 30 years (in case of Sikkim Government servant, not more than 40 years) on the first day of year of advertisement.</p> <p>The maximum age limit may be relaxed up to 5 years in the exceptional cases where the applicant possesses special/ professional qualification and past experience and in respect of candidates belonging to Scheduled castes and Scheduled Tribes in accordance with orders issued by the Government from time to time.</p>

(c) Any other conditions that may be specified by the Government in consultation with the Commission.



(d) Should pay the fees, if any, specified by the Commission.”

The Rules are self explanatory. Thus, after relaxing the provisions of Rules 7, 9, age and roster requirements of the Engineering Service Rules, 1989, a technical evaluation and personality test/interview was conducted by the Respondent No.2A by a “Selection Committee” and not a “Departmental Promotion Committee” as suggested in the letter addressed to the Secretary, Sikkim Public Service Commission (SPSC) by the Additional Secretary, Department of Personnel, Administrative Reforms, Training and Public Grievances (DOPART) (Annexure R1-2). The Selection Committee comprised of the Chairman, SPSC, Member, SPSC, Principal Chief Engineer-cum-Secretary, Irrigation and Flood Control Department, Principal Chief Engineer-cum-Secretary, Public Health Engineering Department, Principal Chief Engineer, Roads and Bridges Department, Additional Secretary of DOPART and an Assistant Professor, NIT Rabongla. Pursuant thereto, the private Respondents were selected and appointed to the post of AEs. It was clarified in the Notification *supra*, that the quota utilised for appointment of the private Respondents would be that which was meant for direct recruitment. Pausing here briefly, the contention put forth by Learned Senior Counsel for the Petitioners that the entire Rules cannot be thrown overboard as done in the instant case is unsubstantiated as the entire Rules were not relaxed, and it was only those Rules as discussed above. The arguments of Learned Senior Counsel that the appointments being illegal cannot be regularised cannot be countenanced as the appointment of the



private Respondents initially and even by relaxation of the Rules are not in contravention of the statutory rules.

(viii) Appositely, it may be reiterated that the power to relax the Rules flows from Rule 30 of the Engineering Service Rules, 1989, which is extracted hereinbelow;

"30. Power to relax.— Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax the provisions of these rules with respect to any class or category of persons or post."

(ix) In *State of Gujarat and Others vs. Arvindkumar T. Tiwari and Another*¹⁶ the Supreme Court observed that the power to relax the recruitment Rules or any other Rule made by the State Government/authority is conferred upon the Government/authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said Rules might have become impossible. This principle was stated earlier in *Ashok Kumar Uppal and Others vs. State of J&K and Others*¹⁷ and *State of Maharashtra vs. Jagannath Achyut Karandikar*¹⁸.

(x) In *J. C. Yadav and Others vs. State of Haryana and Others*¹⁹ the Hon'ble Supreme Court held that the relaxation of the Rules may be to the extent the State Government may consider necessary, for dealing with a particular situation in a just and equitable manner. That, the power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. That, many a times strict application of Service Rules create a situation where a particular individual or a

¹⁶(2012) 9 SCC 545

¹⁷(1998) 4 SCC 179

¹⁸AIR 1989 SC 1133

¹⁹AIR 1990 SC 857



set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service.

(xi) In **Sandeep Kumar Sharma vs. State of Punjab and Others**²⁰, the Hon'ble Supreme Court observed that the power of relaxation even if generally included in the Service Rules could either be for the purpose of mitigating hardships or to meet special and deserving situations. Such Rule must be construed liberally. That, arbitrary exercise of such power however must be guarded against. But a narrow construction is likely to deny benefit to the really deserving cases.

(xii) The observation of the Supreme Court in the plethora of cases cited establish the aspect that the power to relax Rules is the prerogative of the Government for various reasons as enumerated above. Reliance on **Ajit Kumar Bhuyan and Others** (*supra*) by Learned Senior Counsel for the Petitioner is misplaced as in the said case an ex-cadre post was specifically created for the promotion of Respondent No.1 over and above the existing posts indicating undue favour. In the matter at hand, there were 33 substantive posts of AE (Civil) available for direct recruitment, which were advertised and subsequently on the representation of the private Respondents, twenty five posts were utilised for accommodating the private Respondents after relaxation of Rules.

(xiii) It is not anyone's case that the private Respondents lacked the requisite educational qualification for manning the advertised posts of AEs. It is relevant to notice that despite relaxation of the Rules in order to regularise the services of the

²⁰(1997) 10 SCC 298



private Respondents, they have faced a selection/evaluation test. The argument of Learned Senior Counsel for the Petitioner that the appointment of the private Respondents was sans the recommendation of the Respondent No.2A is erroneous in light of the documentary evidence furnished before this Court.

(xiv) Turning now to Rule 8 read with Rule 9 of the Sikkim Government Establishment Rules, 1974, relied on by the State-Respondents, which provides as follows;

"8. Seniority.-

.....
(c) Where some appointments to a category of posts are made through promotion and some by direct recruitment, the order of inter-se seniority between the promotees and the direct recruits shall be determined by the date of first appointment in/promotion to a class, service, category or grade as the case may be.

.....
9. Once an official is confirmed in a post, his name shall be included in the seniority list (*sic*, list) of permanent officials in the grade at the appropriate place and his name shall simultaneously be deleted from the list of officials in the immediate lower category."

(xv) Rule 4 of the Sikkim State Services (Regulation of Seniority) Rules, 1980, referred to in Rule 26 of the Engineering Rules, 1989, prescribing for *inter se* seniority of members of the service, are reproduced hereinbelow;

"26. Seniority.—

(1) There shall be drawn separate seniority list of the three different Services specified under sub-rule 2 of rule 3.
(2) The inter-seniority of the members in the Service shall be determined in accordance with the provisions laid down in the Sikkim State Services (Regulation of Seniority) Rules, 1980 as amended from time to time."

Rule 4 of the Sikkim State Services (Regulation of Seniority) Rules, 1980 reads as follows;

"4. Determination of seniority.- The seniority of the members of the Service shall be determined



separately in respect of each Service in the manner specified below,-

.....
(e) The relative seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees and shall be determined by the dates of their substantive appointment to the Service.
.....”

The Rules succinctly speak for themselves regarding the *inter se* seniority and the method of its determination and the fixation of seniority of the Petitioners and the private Respondents are within the ambit of the Rules, which have been adhered to.

(xvi) During the developments as delineated hereinabove and consequent selection and appointment of the private Respondents, the Petitioners were not inclined to put up a resistance. It also transpires that on relaxation of the Recruitment Rules on 11-04-2015, it was only after more than a year that the technical evaluation and personality test/interview of the private Respondents was conducted by the Selection Committee, which too went unopposed. Following the above recommendations, on 01-10-2016, vide Office Order bearing No.1549/G/DOP, the Governor on the recommendation of the Respondent No.2A appointed the private Respondents as AE with immediate effect. No objection came to be raised. Evidently it was only when promotions of a few officers from the private Respondents in the rank of AE to DE took place, the Petitioners were disgruntled and petitioned the Chief Minister, vide representation dated 10-09-2019, informing therein that vide letter dated 13-08-2019 they had requested the Respondent No.2 for finalisation of their *inter se* seniority between AE’s promoted on 01-10-2016, by regularisation of their services of “Acting AE”, vide Office Order dated 21-09-2016.



(xvii) The representation made by the Petitioners to the Hon'ble Chief Minister itself reflects that the Petitioners were in the know of the entire developments pertaining to the relaxation of Rules and the resultant consequences, if not from 2015 when the relaxation was made, then definitely from 2016, when the orders of promotion were issued. The Petitioners by accepting the course of the events that unfolded as revealed hereinabove, acquiesced to the circumstances and the ranking of the private Respondents above them in seniority.

11. Another issue that cannot be blindsided is the fact that the appointment to the post of AEs for the private Respondents was by way of utilisation of the posts reserved for the direct recruits. This position is not assailed by the Petitioners. In the correct and fair course of events, the State-Respondents ought to have invited applications from the open market to allow Engineering Graduates, to compete and be employed. The Rules of direct recruitment were disregarded by the State-Respondents and the private Respondents appointed as AEs by relaxing the Rules. It was for the fresh Engineering Graduates, who had qualified as such, to have opposed the policy adopted by the State-Respondents of relaxing the Rules to accommodate the twenty five Acting AEs to the substantial posts of AEs. That was not to be. Be that as it may, the appointment of the private Respondents to the post of AEs, vide Office Order dated 21-09-2016, did not impinge on the quota of the promotees, i.e., the Petitioners.

(i) In *K.R. Mudgal and Others vs. R. P. Singh and Others*²¹ the Supreme Court held that a seniority list which remains in existence

²¹ (1986) 4 SCC 531



for 3 to 4 years unchallenged should not be disturbed. The relevant paragraph of which is as follows;

"2. At the outset it should be stated that it is distressing to see that cases of this kind where the validity of the appointments of the officials who had been appointed more than 32 years ago is questioned are still being agitated in courts of law. A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. It is unfortunate that in this case the officials who are appellants before this Court have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged."

(ii) As early as in 1969, the Supreme Court while considering the delay in seeking relief in service matters observed in ***M/s. Tilokchand Motichand & Others vs. H.B. Munshi and Another***²², as follows;

"(10) If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the *sine qua non* for such claims. The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay. I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction."

(iii) In ***Rabindranath Bose and Others vs. The Union of India and Others***²³, the Supreme Court opined that it would be unjust to deprive the Respondents of the rights which had accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion which was effected a long time ago would not be set aside after the lapse of a number of years.

²²(1969) 1 SCC 110

²³(1970) 1 SCC 84



(iv) In **P. S. Sadasivaswamy** (*supra*), the Supreme Court while considering the petition which was filed after a lapse of fourteen years challenging a promotion observed as follows;

"2. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

(v) This Court in **Tseten Palzor Bhutia** (*supra*) had observed as follows;

"37. Law therefore leans in favour of the alert and vigilant. It thus stands to reason from an understanding of the ratiocinations extracted hereinabove that although there can be no guarantee of security in all walks of employment, it should at least be possible to ensure that matters like a person's position in the seniority list after having been settled for once, should not be liable to be reopened after lapse of many years at the insistence of a party who has during the intervening period opted to remain silent."

12. In the end result, it concludes with no ambiguity that educational qualification can be the basis of classification for the purposes of promotion and such classification does not fly in the face of the constitutional provisions of Article 14 and Article 16.

13. The selection and appointment of the private Respondents as AEs from Acting AEs was by way of utilisation of the quota meant for direct recruitment after having faced the rigours of an evaluation test, conducted by the Respondent No.2A. Reliance on **R. S. Garg** (*supra*) by the Petitioners is also of no avail as the private Respondents were appointed on the recommendation



of the Respondent No.2A, after having taken the test prescribed by the Respondent No.2A. It is also evident that the Respondent No.2A has the prerogative in terms of the Rules to either conduct a written examination or to subject the candidate only to an interview.

14. The Petitioners had the opportunity of raising objections if they perceived unfairness in any of the acts of the State-Respondents as detailed above, but they opted to do so only on the promotion of Respondents No.3, 4, 6 and 7 as DEs.

15. The foregoing discussions soundly answers the two questions formulated for determination.

16. It thus concludes that *vigilantibus non dormientibus aequitas subvenit lex*, in other words equity aids the vigilant and not those who sleep over their rights. 'Laches' derived from the French language meaning 'remissness and slackness' involves unreasonable delay. Acquiescence would mean a tacit or passive acceptance [See *Union of India and Others vs. N. Murugesan and Others* (2022) 2 SCC 25]. The conduct of the private Respondents points to delay, laches and acquiescence.

17. Before closing the matter, it cannot but be remarked that the appointment of the private Respondents is said to have been made by regularising the post of "Acting AE" to AE by relaxing the Rules. However, the Office Orders of the private Respondents bear no reference to regularisation of their services. In fact, the Office Orders appear to be for all intents and purposes fresh appointments. It is beneficial to notice that the Memorandum bearing No.11936/G/DOP, dated 17-09-2016 and Office Order bearing No.1420/G/DOP, dated 21-09-2016 establish that no



reference has been made to regularisation of the services of the private Respondents.

18. In any event, this is only an observation made by this Court considering that the State-Respondents appear to be in a quagmire about the mode of appointment of the Respondents. The observation of this Court does not take away, in any manner, any of the rights that may have accrued to the private Respondents in their service career since inception.

19. Consequently, I am constrained to hold that the Petitioners are not entitled to any of the reliefs claimed and the Writ Petition thereby stands dismissed accordingly.

(Meenakshi Madan Rai)
Judge
07-07-2023

Approved for reporting : **Yes**