

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 879 of 2021

1. Serto Chungneilin Kom, aged about 28 years, S/O Serto Lalsem Kom, resident of Thampilen Sagang, P.O. Moirang, P.S. Kumbi, Churachandpur District, Manipur, PIN: 795133.
2. Kongjengbam Chaoba Devi, aged about 56 years, W/O Ch. Pradeep Singh, resident of Soibam Leikai, Khanglabung Leirak, P.O. & P.S. Porompat, Imphal East District, Manipur, PIN: 795001.
3. C. Lian Hanghal, aged about 53 years, S/O H. Pauchinkhup, resident of Upper Chapellane, Hiangtam Lamka, P.O. & P.S. Churchandpur, Churchandpur District, Manipur, PIN : 795128.
4. Sougrakpam Saratchandra Singh, aged about 58 years, S/O S. Chaoba Singh, resident of Nongmeibung Pung Makhong, P.O. & P.S. Porompat, Imphal East District, Manipur : PIN : 795005.

... PETITIONERS

-VERSUS-

1. The State of Manipur through its Commissioner/Secretary (MI), Government of Manipur, having its office at Secretariat Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, PIN : 795001.

2. The Commissioner/Secretary, Department of Personnel & Reforms, Government of Manipur having its office at Secretariat Building, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, PIN : 795001.
3. The Chief Engineer, Minor Irrigation Department, Government of Manipur.
4. Manipur Public Service Commission through its Secretary, having its Secretary, having its office at North AOC, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
5. Maibam Premeshwor, aged about 31 years, S/o M. Nandeshwor Singh of Kwakeithel Heinoukhongnembi, P.O. Imphal & P.S. Lamphel, Imphal West District, Manipur.
6. Athokpam Peliya, aged about 27 years, D/o Athokpam Birendrajit Singh of Khongman Zone-4, Khongman, Imphal East District, Manipur – 795008.
7. Moirangthem Simpa Singh, aged about 30 years, D/o M. Nimai Singh of Wangkhei Akham Maning Leikai, Imphal, Imphal East District, Manipur.

... *RESPONDENTS*

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner	::	Mr. K. Roshan, Adv.
For the Respondents	::	Mr. M. Hemchandra, Sr. Adv. Mr. RS Reisang, Sr. Adv.

Mr. M. Rarry, Adv.

Date of Hearing and
reserving Judgment & Order :: 18.04.2023

Date of Judgment & Order :: **24.08.2023**

JUDGMENT AND ORDER

(CAV)

(M.V. Muralidaran, ACJ)

This writ petition has been filed by the petitioners to quash the impugned notification dated 27.10.2021 and to direct the official respondents to relax the rules for promotion to the Post of Assistant Engineer/Assistant Surveyor of Works (Civil/Mechanical) in Minor Irrigation Department for relaxing the eligibility years in Diploma holder for promotion under Diploma holder sub quota.

2. The case of the petitioners is that they are the diploma holders in Civil/Mechanical Engineering in the Department of Minor Irrigation and they are going to be eligible for promotion under the sub-quota of diploma holder in a short period. The Recruitment Rules provide for eligibility of degree holder for promotion to the post of Assistant Engineer in three years service as Section Officer Grade-I and the diploma holder in eight years service as Section Officer Grade-I. The authority since 1975 provided for keeping the diploma holder quota in promotion to the post of Assistant Engineer/Assistant Surveyor

of Works by giving equal opportunity to all the same cadre of Section Officer Grade-I. However, the respondent authority on 27.10.2021 amended the Recruitment Rules for the post of Assistant Engineer/Assistant Surveyor of Works in Minor Irrigation Department by inserting as *“provided that if sufficient number of officers holding Degree/AMIE or Diploma holders or its equivalent are not available for promotion, the remaining vacancies in this sub-quota may be filled by persons possessing Degree/AMIE or Diploma in Civil/Mech. Engineering with service as specified in Column 11”*, which is discrimination to the diploma holders in Civil/Mechanical in their sub-quota promotion to the post of Assistant Engineer/Assistant Surveyor of Works and the same is arbitrary and mala fide and also violative of the principles of natural justice. The said amendment is made in favour of the degree holders who are appointed in the same year with the first petitioner. Hence, the impugned proviso is liable to be set aside.

3. The respondents 1 and 3 filed affidavit-in-opposition stating that there is no illegality in the impugned Recruitment Rules dated 27.10.2021 and the same was notified for avoiding any prejudice to the degree and diploma holders. In the Recruitment Rules of 2014 and the impugned Recruitment Rules of 2021 for the post of Assistant Engineer

(Civil/Mechanical)/Assistant Survey of Works in the Minor Irrigation Department, the method of recruitment is 60% by promotion and 40% by direct recruitment. Further, the 60% promotion quota shall be filled up in sub-quota i.e. 50% by selection from officers holding Degree/AMIE in Civil/Mech. Engineering and 50% by selection from diploma holders in Civil/Mech. Engineering who obtained diploma after doing a minimum three years course. However, in the earlier Recruitment Rules of 2014, there is no proviso under sub-quota of 50% of holding Degree/AMIE in Civil/Mech. Engineering.

4. It is stated that in the earlier Recruitment Rules of 2014 and the present impugned Recruitment Rules of 2021 for the post of Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works in the Minor Irrigation Department, under Column 11 of MPSC Form-8, have the same criteria to be fulfilled by the incumbent for getting promotion. The benefits stated in Column 11 and Column 10 of the Recruitment Rules of 2014 are meant only for the diploma holders which could not be enjoyed by the degree holders and, as such, there is prejudice upon the other group. In order to give equal privileges to both degree and diploma holder, the process for amendment of Recruitment Rules has been initiated and, after due process, the Department of

P&AR notified the impugned Recruitment Rules by amending the proviso of Column 10 of the previous Recruitment Rules.

5. The second respondent filed affidavit-in-opposition stating that the Recruitment Rules for the post of Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works in the Department of Minor Irrigation, Government of Manipur was amended and notified as “the Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works Recruitment Rules, 2021” vide notification dated 27.10.2021 by the Department of P&AR on the basis of the proposal received from the Department of Minor Irrigation Department. The said Recruitment Rules was forwarded to the Manipur Public Service Commission (MPSC) for their concurrence and, vide letters dated 15.7.2020 and 17.8.2021, the MPSC has placed their observations.

6. It is stated that under letter dated 6.10.2021, the MPSC was intimated to reconsider the decision of the Commission and to place the proposal for amendment of Recruitment Rules for the post of Assistant Engineer. Simultaneously, views regarding the observations of the MPSC on the proposal for framing of a common Recruitment Rules for the post of Assistant Engineer (Civil/Mechanical) in all the

Engineering Departments was also called for. However, no reply has been received till date. After which, the MPSC in reference to the P&AR's letter dated 6.10.2021 concurred with the proposed amendment vide letter dated 21.10.2021 which was finally notified vide notification dated 27.10.2021 by giving equal right to degree and diploma holders on the basis of the justifications as provided for by the Department of Minor Irrigation, Government of Manipur.

7. Pending writ petition, the MPSC and the private respondents were added as respondents 4 to 7.

8. Assailing the impugned amendment to the proviso/notification dated 27.10.2021, Mr. K. Roshan, the learned counsel for the petitioners submitted that the amended Recruitment Rules is not giving equal privileges to both degree and diploma holders meaning thereby that the eligibility from diploma holder is eight years and degree holder is three years regular service, which shows that all the degree holders who joined their service with the diploma holders in the same advertisement in the initial post of Section Officer Grade-I will be promoted to the next higher post after three years and diploma holder will be promoted to the next higher post after eight years. Hence, the regular vacancy of diploma holder quota will be

automatically filled up by the degree holders as none of the diploma holders will be eligible by the time degree holders become eligible for the post. Hence, the said amended Recruitment Rules is discriminatory and against the interest of the diploma holders who are also holding the same cadre in the Engineering Department in the State of Manipur.

9. The learned counsel further submitted that the feeder post of the Assistant Engineer/Assistant Surveyor of Works is the Section Officer Grade-I. The post of Section Officer, Grade-I eligibility qualification is BE/Diploma in Civil and Mechanical from any recognized Institution. By virtue of the eligibility, the MPSC conducted the combined examination for recruitment to the post of Section Officer Grade-I from the eligible candidates. The diploma holders and the degree holders were selected to their respective post and they were appointed in the same cadre and prepared the combined *inter se* seniority list in the cadre of Section Officer Grade-I and there is no separate seniority list for diploma and degree holders in all the Engineering Departments in the State of Manipur in the post of Section Officer Grade-I.

10. The learned counsel for the petitioners urged that the authority cannot take away the sub-quota of diploma holder

posts by the degree holders and the same sub-quota was prepared on the basis of their eligibility for promotion to the higher post. The authority can insert the proviso only after giving equal eligibility condition year to both diploma holders and degree holders. However, in the impugned Recruitment Rules, 2021, the same was not followed.

11. The learned counsel added that the petitioners are discharging their duties as Assistant Engineers/Assistant Survey of Works in the Minor Irrigation Department like a regular Assistant Engineer/Assistant Survey of Works. Moreover, the authority can fill the diploma holders to the post of Assistant Engineer/Assistant Surveyor of Works in regular vacancy by relaxing the rules which is provided in Rule 5 of the Recruitment Rules dated 18.11.2014 in the sub-quota of diploma holder in the cadre instead of amending the recruitment rules by giving benefit to the degree holders.

12. The learned counsel for the petitioners contended that 50% of degree holder quota can be filled up by the degree holder, however, the diploma holders cannot fill up their quota of 50% because of different year of eligibility criteria prepared in the Recruitment Rules. In order to streamline and to give equal treatment to the degree holders and the diploma holders, the

authority prepared the Recruitment Rules, 2014 to bring checks and balances amongst the degree and diploma holders. But the amended Recruitment Rules, 2021 is in favour of the degree holders to promote them to the higher post by taking away the diploma holders sub-quota from the promotion, which is arbitrary and discriminatory. As the petitioners, who are diploma holders, are now discharging their duties as Assistant Engineer/Assistant Surveyor of Works (in-charge), the question of shortage of eligibility does not arise. In support, the learned counsel for the petitioners has relied upon the following decisions:

(1) Sant Ram Sharma v. State of Rajasthan and others, 1967 AIR 1910.

(2) Union of India v. K.P. Joseph and others, 1973 AIR 303.

(3) Dhananjay Malik and others v. State of Uttaranchal and others, Appeal (Civil) No.1771 of 2008, decided on 05.03.2008.

13. Supporting the impugned amendment in the proviso to the Recruitment Rules of 2021, Mr. M. Rarry, the learned counsel, *inter alia*, submitted that the State, after obtaining approval from the MPSC in a similar manner as done in the past, has taken steps to amend Column 10 of the Recruitment Rules and made a rule called “The Minor Irrigation Department, Government of Manipur Assistant Engineer

(Civil/Mechanical)/Assistant Surveyor of Works Recruitment Rules, 2021". The Recruitment Rules 2021 has been issued in supersession of all previous Rules, including the earlier Recruitment Rules, 2014. It has been issued in exercise of the powers conferred by the "proviso" to Article 309 of the Constitution of India.

14. Mr. M. Rarry, learned Special State Counsel would submit that the objection of the petitioners that the Recruitment Rules, 2021 is a notification and not an amendment in the Recruitment Rules already existing is false and such a stand of the petitioners is totally misplaced and misconceived. In the Recruitment Rules, 2021, the previous "proviso" found in Recruitment Rules, 2009 and 2014 permitting the diploma holders to fill up the remaining vacancies of 50% sub-quota meant for degree holders has been removed. In Column 10, 60% promotion quota is now sought to be filled up in sub-quota with 50% by degree holders and 50% by diploma holders provided that the degree holder/diploma holder possess the eligibility or qualifying years of service as provided in Column 11 of the same Recruitment Rules, 2021. The above proviso only comes into operation after giving both the degree holder and diploma holder a full opportunity to get promoted to Assistant Engineer provided

they are qualified and eligible in terms of Column 11 of the Recruitment Rules, 2021. The said “proviso” is to be utilized by both the degree holder as well as the diploma holder without any discrimination.

15. According to Mr. M. Rarry, learned Special State Counsel it is a level playing field for both without any discrimination to either of the degree holder or the diploma holder. The words “the remaining vacancies in this sub-quota” refer to both the sub-quota of degree holder as well as diploma holder and it amounts to doing away the question of sub-quota between the degree holder and diploma holder, the moment it is found that sufficient numbers of officers holding Degree/AMIE or diploma holders or its equivalent are not available for promotion.

16. Mr. Rarry further submitted that the State authorities have taken into consideration the interest of both degree holders and diploma holders in terms of Column 10 of the Recruitment Rules by continuing to maintain the 50% : 50% ratio within the promotion quota of 60% for both degree holders and diploma holders respectively provided that the percentage of sub-quota was to be filled up by the respective degree holders or diploma holders respectively after having become eligible for promotion

by completing the qualifying years of service applicable to the degree holders or diploma holders respectively.

17. Adding further, Mr. Rarry submitted that only after exhausting the above said vacancies by filling up their respective sub-quota by the degree holders or diploma holders respectively, the remaining unfilled vacancies of either sub-quota were to be filled up by using the said “proviso” by either of the degree holders or diploma holders without any discrimination with equal opportunity being made available to all or any of the eligible degree holders or diploma holders to occupy and fill the unfilled vacancies within any sub-quota, irrespective of that such unfilled vacancies falls in the 50% sub-quota of the degree holder or diploma holder. Hence, the “proviso” does not violate Articles 14 or 16 of the Constitution of India.

18. Mr. M. Hemchandra, the learned counsel for the private respondents submitted that there is no illegality in the impugned Recruitment Rules framed under Article 309 of the Constitution of India and the same was notified without any prejudice to degree and diploma holders. In the earlier Recruitment Rules of 2014 and also in the present impugned Recruitment Rules of 2021, for the post of Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works in the Minor

Irrigation Department, the method of recruitment is 60% by promotion and 40% by direct recruitment. Further, the 60% promotion quota shall be filled up in sub-quota as 50% : 50%.

19. The learned counsel further submitted that in the earlier Recruitment Rules of 2014, there is a proviso under sub-quota of 50% of holding Degree/AMIE in Civil/Mechanical Engineering. Only in order to give equal privileges to both degree and diploma holders without any discrimination, the process for amendment of Recruitment Rules has been initiated. Accordingly, the Department of P&AR, after due process notified the present impugned Recruitment Rules by amending the proviso in Column 10 of the previous Recruitment Rules.

20. The learned counsel submitted that the Department is having 16 nos. of Section Officer Grade-I (Civil/Mech) Engineers, out of which 4 nos. are diploma holders and 12 nos. are degree holders. Out of the 15 nos. of sanctioned post of AE/ASW/EA/Geohydrologist, 6 seats are reserved for direct recruitment (filled) and the remaining 9 seats are for promotional quota. Since all 9 seats for promotional quota lying vacant, the department is facing acute shortage of Engineers (Civil/Mech). In the aforesaid situation, the department intended to fill up the seats for its smooth running. However, out of 16 nos. of Section

Officer Grade-I, 8 of them were found eligible fulfilling the Recruitment Rules, namely (a) in case of degree holders, 3 years. Remaining 4 nos. of degree holders did not qualify the same and remaining 4 nos. of diploma holders are also did not qualify the Recruitment Rules; (b) in case of diploma holders, 8 years. Under the previous Recruitment Rules of 2014, 5 nos. of eligible incumbents have been initiated for filling the vacant post of Assistant Engineer in consultation with MPSC and had completed the process and had given promotion to 5 incumbents.

21. The learned counsel then submitted that as per the new amended Recruitment Rules framed, the private respondents were found eligible for promotion to the post of Assistant Engineer and the same had been proposed to Government for consideration with due process of law. Therefore, the question of collusion alleged in the writ petition with the degree holders does not arise.

22. The learned counsel pointed out that the petitioners are insisting for amending the Rules so as to get their benefit before qualifying their service under Column 11 of the previous Recruitment Rules, 2014 as well as the present Recruitment Rules, 2021, which is not sustainable. Thus, a prayer has been made to dismiss the writ petition.

23. This Court considered the rival submissions and also perused the materials available on record.

24. The amended “*proviso*” in Column 10 of the Recruitment Rules, 2021 reads thus:

“Provided that if sufficient numbers of Officers holding Degree/AMIE or Diploma holders or its equivalent are not available for promotion the remaining vacancies in this sub-quota may be filled by persons possessing Degree/AMIE or Diploma in Civil/Mechanical Engineering which service as specified in Column 11”.

25. According to the official respondents, the proviso aforesaid only comes into operation after giving both the degree holder and diploma holder a full opportunity to get promoted to the post of Assistant Engineer, provided they are qualified and eligible in terms of Column 11 of the Recruitment Rules, 2021.

26. The terms of Column 11 of the Recruitment Rules is quoted hereunder for ready reference:

“PROMOTION:

S.O. Grade-I or post equivalent declared by Govt. of Manipur in consultation with the Commission as equivalent thereto with the

following years of regular service in the grade:

(a) In case of Degree holders, 3 (three) years.

(b) In case of Diploma holders, 8 (eight) years.

(c) In case of Diploma holders who pass both Section A & B of AMIE Examination of Institution of Engineers (India), 3 (three) years regular service from the date of such passing.

(d) In case of Diploma holders who possess B.E./B.Tech while in service from a recognized University, 3 (three) years regular service from the dates of such passing.

(e) In case of officers who are not in possession of Degree/AMIE or its equivalent or Diploma, 15 (fifteen) years regular service with outstanding records of service.”

27. The grievance of the petitioners is that the impugned proviso has been inserted/amended in the Recruitment Rules of 2021 making the diploma holder Section Officer Grade-I, illegally lose their sub-quota contrary to the already settled position of 60% quota of Assistant Engineer to be filled up by promotion, which is further divided into two equal portions of 50% each earmarked for Section Officer Grade-I who joined service possessing Degree/AMIE in Civil/Mechanical

Engineering and those who are diploma holders. Further, the years of service as provided under Column 11 i.e. *“in case of diploma holders who possess BE/B.Tech. while in service from a recognized University, 3 (three) years regular service from the date of passing”* makes no sense as the years of regular service prescribed for diploma holder is eight years, whereas, in spite of being a degree holder in Civil/Mechanical Engineering over and above the diploma holder, a Section Officer Grade-I has to qualify more than eight years of regular service, which is discriminatory and arbitrary as others who joined the service at the same time will qualify for promotion before the Section Officer Grade-I (Diploma) who passed a degree in Engineering while in service.

28. The further grievance of the petitioners is that there is no purpose sought to be achieved in classifying those diploma holders who possess B.E./B.Tech while in service from a recognized University and those who are diploma holders in regard to years of regular service for the purpose of promotion, inasmuch as the job profile of all is Section Officer Grade-I irrespective of their educational qualification i.e. whether degree holder or diploma holder. As such, the classification is arbitrary and irrational.

29. On the other hand, the respondent State contends that Column 10 of the Recruitment Rule for the Assistant Engineer (Civil/Mechanical) in the Department of Minor Irrigation was amended vide the impugned notification by giving equal right to degree and diploma holders on the basis of the justifications as provided for by the Department.

30. Taking us through Column 10 of the Recruitment Rules, 2014, the learned Government counsel submitted that the proviso therein included is meant only for diploma holders, which could not be enjoyed by the degree holders and, as such, there is prejudice upon the another group. In such situation, the process has been initiated by the Minor Irrigation Department for amending the above proviso and, accordingly, notified the impugned amended Recruitment Rules, 2021 vide notification dated 27.10.2021.

31. It appears that in the earlier Recruitment Rules of 2014 and the impugned Recruitment Rules of 2021, for the post of Assistant Engineer (Civil/Mechanical)/Assistant Surveyor of Works in the Minor Irrigation Department, the method of recruitment is 60% by promotion and 40% by direct recruitment. The 60% promotion quota shall be filled up in sub-quota as under:

- (i) 50% by selection from officers holding Degree/AMIE in Civil/Mechanical Engineering or its equivalent from a recognised University/Institute with regular service as specified in Column 11.
- (ii) 50% by selection from Diploma holders in Civil/Mechanical Engineering who obtained Diploma after doing a minimum 3 (three) years course from a recognized Institution with service as specified in Column 11 and from officers who are not in possession of a Degree or a Diploma in Civil/Mechanical Engineering with service and records as specified in Column 11.”

32. It also appears that in the earlier Recruitment Rules of 2014, there is a proviso under sub-quota of 50% of holding Degree/AMIE in Civil/Mechanical Engineering as follows:

“Provided that if sufficient number of officers holding Degree/AMIE or its equivalent are not available for promotion, the remaining vacancies in this sub-quota may be filled by persons possessing Diploma in Civil/Mechanical Engineering with service as specified in Column 11.”

33. According to the official respondents, in order to give equal privilege to both degree holder and the diploma holder without any discrimination on both, the process for amendment of the Recruitment Rules was initiated and, after due process, notified the impugned Recruitment Rules by amending the proviso of Column 10 of the previous Recruitment Rules of 2014. The learned Government counsel also drew our attention to the letter of the MPSC dated 17.8.2021 to contend that in the said letter, the MPSC reiterated that there was a necessity to bring consistency in the Recruitment Rules of Engineering Department by reviewing the Recruitment Rules.

34. In the letter dated 17.8.2021, it has been stated as under:

"I am directed to refer to Government's letter No.1/2/21-RRMI)/DP dated 05/08/2021 on the above subject and to say that the (sic) was matter considered by the Commission in its meeting held on 10/08/2021 and it was observed that the Administrative Departments as well as the Department of Personnel had not acted upon the decision of the Commission dated 06/07/2020 to review all Recruitment Rules of Engineering Department from the level of Assistant Engineer to Chief Engineer for all branches

in order to bring consistency in the recruitment rules and to weed out irregular clauses such as segregation of quotas for Diploma & Degree holders for promotion to Assistant Engineer. The resent proposal is of piecemeal in nature.

2. Accordingly, the Commission has decided to advise Department of Personnel to initiate a process to frame a common RR for all Engineering Departments for Assistant Engineer of different branches.

3. The Commission also consider that it is necessary to do away with bifurcation of the promotion quota into separate quotas for Degree holders and Diploma holders for promotion to Assistant Engineer from Section Officer Grade-I as having such quotas will have issues in maintaining roster registers for promotion posts of Assistant Engineer over and above the lack of proper justification for maintaining such separate quotas.

4. It is therefore, requested for taking up further necessary action from your end.”

35. Pursuant to the approval accorded by the MPSC, the State had framed new Recruitment Rules, 2021 for regulating the method of recruitment to the post of Assistant Engineer (Civil/Mechanical)/ Assistant Surveyor of Works in the

Department of Minor Irrigation. The Recruitment Rules, 2021 has been issued in supersession of all previous Rules, including the Recruitment Rules of 2014. According to the official respondents, the Recruitment Rules, 2021 is similar to the earlier amendments made in respect of the Assistant Engineer in the Minor Irrigation Department vide the Recruitment Rules of 1975, 1984, 2009 and 2014 when the petitioners herein or other diploma holders were never aggrieved by the manner in which the earlier Recruitment Rules were amended or made by the State.

36. As could be seen from the relevant materials, it is clear that the Recruitment Rules of 2021 has been made by the Governor of Manipur in exercise of the power conferred by the proviso to Article 309 of the Constitution of India in consultation and proper approval from the MPSC. As stated supra, the Recruitment Rules, 2021 was issued in supersession of all previous Recruitment Rules. Though the petitioners contended that the insertion of the proviso in question in the Recruitment Rules, 2021 is discriminatory to the diploma holder, nothing has been produced by them to prove the same. Further the arguments of the learned counsel for the petitioners is that the diploma holders will not be promoted to the higher post of

Assistant Engineer/Assistant Surveyor Works in their sub-quota till they retired from service by virtue of their eligibility criteria. The aforesaid submission is also not supported by any materials.

37. It is pertinent to note that the previous Recruitment Rules was in such condition that all the promotional seats can be occupied by diploma holders, but the degree holders can never occupy 50% selection seats of diploma holders. The degree holder will have promotional avenue at the time only when the seats occupied by the degree holders become vacant which in some cases can again be occupied by the diploma holders if sufficient degree holders are not available. The degree holders may not have any chance of promotion even there are vacancies.

38. According to the learned Government counsel, the amended proviso in question only comes into operation after giving both the degree holders and diploma holders a full opportunity to get promoted to Assistant Engineer provided they are qualified and eligible in terms of Column 11 of the Recruitment Rules, 2021. The said proviso is to be utilised by both the degree holder and the diploma holder without any discrimination. It is a level playing field for both without any discrimination to either diploma holder or the degree holder. We

find some force in the said contention made by the learned Government counsel for the State.

39. The words "*the remaining vacancies in this sub-quota*" refers to both the sub-quota of degree holder as well as the diploma holder and it amounts to doing away the question of sub-quota between the degree holder and diploma holder, the moment it is found that sufficient numbers of Officers holding Degree/AMIE or Diploma holders or its equivalent are not available for promotion.

40. As stated supra, the proviso in question has been inserted in terms of the advice and the approval given by the MPSC. While inserting the proviso, the State has also taken note of the interest of both the degree holders and the diploma holders in terms of Column 10 of the Recruitment Rules by continuing to maintain 50:50 ratio within the promotion quota of 60% for both degree holders and diploma holders respectively and that the percentage of sub-quota was to be filled up by the respective degree holders or diploma holders respectively after having become eligible for promotion by completing the qualifying years of service applicable to degree holders or diploma holders. Only after exhausting the above said vacancies by filling up their respective sub-quota by the degree holders or diploma holders,

the remaining unfilled vacancies of either sub-quota were to be filled up by using the proviso in question by either of the degree holders or diploma holders without any discrimination with equal opportunity of being made available to all or of the eligible degree or diploma holders to occupy and fill the unfilled vacancies fall in the 50% sub-quota of the degree holder or diploma holder. In view of the above, we are of the view that the amended proviso, which is attacked by the petitioners in this writ petition does not violate Articles 14 and 16 of the Constitution of India.

41. The petitioners cannot also claim that the proviso in question is newly introduced one or they are not aware of the policy decision taken by the State Government in respect of the earlier filling up unfilled vacancies of sub-quota of the degree holders by the diploma holders in the case of sufficient numbers of eligible degree holders being not available to fill up all the post or vacancies meant for degree holders within the sub-quota of 50% when the Recruitment Rules of 2009 and 2014 were in vogue.

42. It is the submission of the learned counsel for the petitioners that the authority can insert the proviso only after giving equal eligibility condition year to both diploma holders and

degree holders, but in the impugned Recruitment Rules of 2021, the same was not followed. In regard to the eligibility for degree holder is three years for eligibility to be promoted to the post of Executive Engineer and if the degree holder is not available the vacancy of degree holder quota will be filled up by the diploma holder as the diploma holder's eligibility to the post of Executive Engineer is eight years. As such, there is no prejudice to the degree holders.

43. In reply, the learned Government counsel submitted that the petitioners cannot be allowed to blow hot and cold at the same time and are bound by the principles of estoppels, waiver and acquiescence as the diploma holders have already been enjoying the said proviso without any murmur and protest when such proviso was incorporated in the Recruitment Rules of 2009 and 2014 for the sole benefit of the diploma holders only. Therefore, it is totally mala fide for the diploma holders to now suddenly claim that the said proviso of Recruitment Rules, 2021 is discriminatory. The argument aforesaid merit consideration.

44. In the decision relied upon by the learned Government counsel in *State of Jammu & Kashmir v. Triloki Nath Khosa and others*, (1974) 1 SCC 19, the Constitution Bench of the Apex Court held:

“35. Therefore, it was open to the Government to give preference to candidates having higher educational qualifications. In Ganga Ram v. Union of India, it was observed that “the State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for promotion in its different departments”.

45. In the case of *Triloki Nath Khosa*, supra, the Apex Court referred to the decision in the case of the *Union of India v. Dr. (Mrs.) S.B. Khohil*, wherein it has been held thus:

“16. It is well-settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a ‘status’ on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often

attempted to be achieved, consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding.

.....

18. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A rule cannot be struck down as discriminatory on any a priori reasoning. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. The burden thus is on the parties to set out facts necessary to sustain the plea of discrimination and to adduce cogent and convincing evidence to prove those facts for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification. In G.D. Kelkar v. Chief Controller of Imports and Exports, Subba Rao, C.J., speaking for the Court has cited three other decisions of the Court in support of the proposition that 'unless the classification is unjust on the face of it, the

onus lies upon the party attacking the classification to show by pleading the necessary material before the Court that the said classification is unreasonable and violative of Article 16 of the Constitution’.”

.....

20. The challenge, at best, reflects the respondent’s opinion on promotional opportunities in public services and one may assume that if the roles were reversed, respondents would be interested in implementing their point of view. But we cannot sit in appeal over the legislative judgment with a view to finding out whether on a comparative evaluation of rival theories touching the question of promotion; the theory advocated by the respondents is not to be preferred. Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld.

21. Out reason for saying this is to emphasize that the respondents ought to have furnished particulars as to why, according to them, the classification between diploma-holders and degree-holders is not based on a rational consideration having

nexus with the object sought to be achieved. In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the respondents to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does not violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. It was therefore incumbent on the respondents to plead and show that the classification of Assistant Engineers into those who hold diplomas and those who hold degrees is unreasonable and bears no rational nexus with its purported object.”

46. From the above law settled by the Apex Court, it is clear that discrimination is the essence of classification and does violence of the Constitutional guarantee of equality only if it rests on an unreasonable basis.

47. It is settled law that policy decisions of the State are not to be disturbed unless they are found to be grossly arbitrary or irrational. The scope of judicial review of Government policy is now well defined.

48. In the case of *Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others*, reported in (2007) 4 SCC 737, the Apex Court held:

“16. The scope of judicial review of Government policy is now well defined. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy nor are Courts Advisors to the Executive on matters of policy which the Executive is entitled to formulate.”

49. In *State of Punjab and others v. Ram Lubhaya Bagga and others*, (1998) 4 SCC 117, the Apex Court held:

“ ... When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out in affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constrains.”

50. Similar was the pronouncement of the Apex Court in the case of *Ugar Sugar Works Limited v. Delhi Administration and others*, reported in (2001) 3 SCC 635, wherein, it has been held as under:

“..... It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive, unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the unconstitutional.”

51. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy and not the wisdom or soundness of the policy is the subject of judicial review. The scope of judicial review in policy matters is no longer *res integra*.

52. In the light of the decisions *supra*, the policy of the respondent State in bringing the present proviso in the Recruitment Rules, 2021 cannot be faulted. As stated *supra*, only to balance both the degree holders and diploma holders, the present proviso was inserted in the Recruitment Rules, 2021, that too, without prejudice to anybody. The said action of the respondent authorities cannot be interfered with exercising power of judicial review.

53. As rightly argued by the learned Government counsel that the consequence arising out from the said Column 11 or its impact upon the proviso to the Recruitment Rules, 2021 cannot be a basis of challenge or otherwise to claim that the said proviso to the Recruitment Rules, 2021 has now treated unequals as equal. The fact remains that the degree holders and the diploma holders are only classified on the basis of educational qualification in Column 11. Therefore, there is no question of treating them as equals as far as proviso to the Recruitment Rules, 2021 is concerned. That apart, the sub-quota of 50:50% for degree holders and diploma holders is still maintained and this sub-quota is to be filled up by the respective degree holders or diploma holders respectively. Therefore, as per the law laid down by the Apex Court that the discrimination is

the essence of classification, the unfilled vacancies of either sub-quota by any of the degree holder or diploma holder as and when they become eligible for promotion to Assistant Engineer cannot be faulted with. As such, the discrimination is constitutionally permissible against the diploma holders being based on reasonable classification of educational qualification. The diploma holders cannot now say that they have been discriminated by the proviso to the Recruitment Rules, 2021, as they have to complete eight years while the degree holders only three years regular service to be qualified as eligible for promotion to the Assistant Engineer.

54. The argument of the learned counsel for the petitioners is that the Chief Engineer, Minor Irrigation Department, with the collusion of the degree holders who are appointed in the year 2016 submitted a proposal for filling up three vacant posts of Assistant Engineers by promotion to the Secretary (MI), Government of Manipur in terms of the amended Recruitment Rules, 2021.

55. In view of our finding arrived at supra that the proviso to the Recruitment Rules, 2021 cannot be faulted by the petitioners, there is nothing wrong in addressing the letter by the Chief Engineer to the Secretary (MI), Government of Manipur for

filling up the three vacant posts. It is reiterated that the only intention and basis for incorporating the proviso to the Recruitment Rules, 2021 is to ensure that all unfilled vacancies for the posts of the Assistant Engineers after promoting and adjusting within their respective sub-quota, all the eligible Section Officer Grade-I to the higher posts of Assistant Engineer are all filled up and do not remain vacant for many years. That apart, the proviso to the Recruitment Rules, 2021 was added for the reason to allow either the diploma holder or degree holder to occupy or fill up all available unfilled vacancies in either of the sub-quota, as it was found necessary to fill the same immediately to ensure a smooth administration of the Minor Irrigation Department in public interest.

56. The learned counsel for the private respondents contended that even under the Recruitment Rules of 2014, the petitioners are yet to be eligible. Highlighting the eligibility years of the petitioners for promotion to the post of Assistant Engineer, the learned counsel for the private respondents submitted that the petitioner Saratchandra Singh retired in March, 2023 from service on attaining the age of superannuation. He would submit that the private respondents are all eligible for consideration for promotion to the post of Assistant Engineers as per the

Recruitment Rules, 2021. According to the learned counsel, the eligibility years of the private respondents is 2019.

57. Adding further, the learned counsel for the private respondents submitted that the Department is having 16 nos. of Section Officer Grade-I, out of which, 4 nos. are diploma holders and 12 nos. are degree holders. Further, out of 15 nos. of sanctioned post of AE/ASW/EA/Geohydrologist, 6 seats are reserved for direct recruitment. It is stated that all 6 seats are filled. The remaining 9 seats are for promotional quota. Since all 9 seats for promotional quota was lying vacant, the Department is facing acute shortage of Engineers (Civil/Mechanical). In such a situation, the Department intends to fill up the seats for its smooth running. Going ahead one step further, the learned counsel for the private respondents submitted that out of 16 nos. of Section Officer Grade-I, 8 of them were found eligible fulfilling the Recruitment Rules, namely (a) in case of degree holders, three years. Remaining 4 nos. of degree holders did not qualify the same and the rest 4 nos. of diploma holders also did not qualify the Recruitment Rules and (b) in case of diploma holders, 8 years. Under the previous Recruitment Rules of 2014, 5 nos. of eligible incumbents have been considered for filling the vacant post of Assistant Engineer in consultation with the MPSC and the

process was completed and accordingly promotion was given to the said five incumbents.

58. It is an admitted position that the Department is facing acute shortage of Assistant Engineers (Civil/Mechanical). It was considered with utmost importance to give promotion to the eligible candidates irrespective of both degree holders and diploma holders without prejudice to anybody. In the said situation only, the proposal was made for amendment in the Recruitment Rules for filling up sub-quota of both diploma and degree holders if sufficient numbers of either degree or diploma holders are not available for promotion. In view of the factual scenario, the action of the official respondents cannot be questioned and/or faulted by the petitioners now.

59. The respondent State contended that they have kept in consideration the interest of both the degree holders and diploma holders in terms of Column 10 of the Recruitment Rules, 2021 by continuing to maintain the 50:50% ratio within the promotion quota of 60% for both degree holders and diploma holders respectively provided that the percentage of sub-quota was to be filled up by the respective degree holders or diploma holders respectively after having become eligible for promotion by competing the qualifying years of service applicable to the

degree holders or diploma holders respectively. Only after exhausting the above said vacancies by filling up their respective sub-quota by the degree holders or diploma holders respectively, the remaining unfilled vacancies of either sub-quota was to be filled up by using the present proviso by either of the degree holders or diploma holders, without any discrimination with equal opportunity being made available to all or any of the eligible degree holders or diploma holders to occupy and fill the unfilled vacancies within any sub-quota irrespective that such unfilled vacancies falls in the 50% sub-quota of the degree holder or diploma holder. In view of the balancing approach adopted by the respondent authorities, it cannot be said that the present proviso is discriminating the diploma holders for promotion under sub-quota of diploma holders. As stated supra, the proviso to the Recruitment Rules of 2021 does not violate the principles of natural justice and also not violative of Articles 14 and 16 of the Constitution of India.

60. For the foregoing discussions, we are of the view that the petitioners have no grievance at all and there is no illegality, arbitrariness, biasness, discrimination and violation of relevant Rules and procedures in issuing the impugned notification dated 27.10.2021. The writ petition fails.

61. In the result,
- (i) The writ petition is dismissed.
 - (ii) There will be no order as to costs.
 - (iii) This Court, by the interim order dated 02.12.2021, directed the respondents not to make any promotions on the strength of the impugned amended Rule dated 27.10.2021. Since the writ petition is dismissed, the interim order dated 02.12.2021 shall stand vacated.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil