

Court No. - 7**Case :-** WRIT - A No. - 5867 of 2022**Petitioner :-** Manoj Kumar Shishoudia**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Housing And Urban Planning Development Lko.**Counsel for Petitioner :-** Mahendra Pratap Singh**Counsel for Respondent :-** C.S.C.

with

Case :- WRIT - A No. - 5873 of 2022**Petitioner :-** Krishan Pal Singh Alias (K.P. Singh)**Respondent :-** State Of U.P. Thru Prin Secy Deptt Of Housing And Urban Planning Lko.**Counsel for Petitioner :-** Mahendra Pratap Singh**Counsel for Respondent :-** C.S.C.

with

Case :- WRIT - A No. - 7513 of 2022**Petitioner :-** Sanjay Vashishtha**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Housing And Urban Planning, Lko.**Counsel for Petitioner :-** Mahendra Pratap Singh**Counsel for Respondent :-** C.S.C.

with

Case :- WRIT - A No. - 8220 of 2022**Petitioner :-** Mukesh Kumar Raghav**Respondent :-** State Of U.P. Thru. Prin.Secy. Deptt. Of Housing And Urban Planning Govt. Of Civil Sectt. Lko.**Counsel for Petitioner :-** Mahendra Pratap Singh**Counsel for Respondent :-** C.S.C.**Hon'ble Abdul Moin,J.**

1. Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the respondent no. 1.

2. Learned counsel for the petitioner contends that the issue involved in WRIT - A No. - 5867 of 2022, WRIT - A No. - 5873 of 2022, WRIT - A No. - 7513 of 2022 and WRIT - A No. - 8220 of 2022 are the same. As such, the Court proceeds to hear all the writ petitions together. For convenience, facts of WRIT - A No. - 5867 of 2022 are being taken.

3. The facts of the case have already been set forth in the order dated 19.07.2023, which for the sake of convenience is reproduced below:

"1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. Instant petition has been filed praying for the following main reliefs:-

"i. to issue a writ, order or direction in the nature of mandamus commanding the opposite party to promote the petitioner on the post of Assistant Engineer (Civil) from the post of Junior Engineer (Civil) under 5 % degrees quota for A.M.I.E. degree holders w.e.f. 18-01- 1995 i.e. the date Sri Rajendra Prasad Dwivedi was promoted on the post of Assistant Engineer (Civil) and then on the post of Executive Engineer (Civil). w.e.f. 27-08-2015.and thereafter to promote the petitioner on the post of Superintendent Engineer (Civil) from 07-12- 2021,the date on which Sri Rajendra Prasad Dwivedi was considered for promotion and Shri Siraj Ahmad was promoted on the post of Superintendent Engineer."

3. The case set forth by the learned counsel for the petitioner is that the petitioner was appointed as a Junior Engineer (Civil) on daily wage basis in Ghaziabad Development Authority, Ghaziabad on 15.10.1988. The petitioner claims to have obtained AMIE degree in December 1991. A Government Order dated 26.08.1992, a copy of which is Annexure-6 to the writ petition, was issued providing that in the local bodies those Assistant Engineers who are having degree of BE/AMIE, for them there would be no minimum service requirement for promotion against 5% promotional quota as Assistant Engineer.

4. The contention is that the person similarly circumstanced namely Sri Rajendra Prasad Dwivedi, who had a degree of AMIE of the year 1993, being aggrieved with the promotion of one Sri Sunil Dutt Sharma and certain others who had been promoted as Assistant Engineer on 18.01.1995 on account of having a degree of AMIE which was subsequent to that of Sri Rajendra Prasad Dwivedi, filed a writ petition before this Court which was allowed vide judgment and order dated 19.08.2011, a copy of which is Annexure-9 to the writ petition,

passed in Writ Petition No.3421 (SS) of 1996 in re: *Rajendra Prasad Dwivedi vs. State of U.P. and another*. This Court directed for consideration of the case of Sri Dwivedi for promotion on the post of Assistant Engineer after completion of ten years service provided he had a degree of BE/AMIE. The said order was modified vide order dated 09.11.2011, a copy of which is Annexure-10 to the writ petition, after considering the Constitution Bench judgment in the case of ***Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others - (1990) 2 SCC 715*** and it was provided that Sri Dwivedi became eligible for promotion to the post of Assistant Engineer as soon as he obtained the qualification of AMIE in 1993. It is claimed that Sri Dwivedi was subsequently promoted as Assistant Engineer w.e.f. 18.01.1995.

5. Subsequent thereto, one Sri Siraj Ahmad also staked his claim for being promoted as Assistant Engineer as he was having AMIE degree of the year 1993. Initially, his case was dismissed by the Division Bench of this Court vide judgment and order dated 11.09.2017 passed in Writ Petition No.1020 (SB) of 2015 in re: ***Siraj Ahmad vs. State of U.P. and another***, a copy of which is Annexure-16 to the writ petition. Being aggrieved, Sri Siraj Ahmad filed a Civil Appeal No.9412 of 2019 in re: *Siraj Ahmad vs. State of U.P. and another*, and the Apex Court vide judgment and order dated 13.12.2019, a copy of which is Annexure-17 to the writ petition, set-aside the judgment of the Division Bench dated 11.09.2017 and directed that Sri Siraj Ahmad would be entitled for promotion to the post of Assistant Engineer (Civil) from the date on which his junior possessing the Bachelor of Engineer/AMIE has been promoted with all consequential benefits.

6. The argument of learned counsel for the petitioner is that even the petitioner is entitled for being promoted as Assistant Engineer immediately on the date he acquired AMIE degree and at least w.e.f. 18.01.1995 i.e. the date when Sri Rajendra Prasad Dwivedi was promoted as Assistant Engineer with all consequential benefits including further promotion as Executive Engineer and Superintending Engineer w.e.f. the date Sri Rajendra Prasad Dwivedi was promoted.

7. However, a perusal of the judgment in the case of **Siraj Ahmad (supra)** would indicate that the Apex Court has categorically held that Siraj Ahmad would be entitled for promotion to the post of Assistant Engineer (Civil) from the date on which his junior possessing the Bachelor of Engineer/ AMIE has been promoted with all consequential benefits.

8. In the entire petition there is no averment to the effect that Sri Rajendra Prasad Dwivedi is a junior of the petitioner. Even the seniority list to indicate the seniority position of the petitioner vis-a-vis others who might have been promoted as Assistant Engineers has not been filed by the petitioner.

9. Learned counsel for the petitioner fairly admits that Sri Rajendra Prasad Dwivedi is senior to the petitioner.

10. Responding to non-filing of the seniority list, the argument of learned counsel for the petitioner is that in the earlier round of litigation in the case of Rajendra Prasad Dwivedi i.e. judgment of this Court which was upheld by the Apex Court with the dismissal of SLP the only thing which was seen was that the junior of Sri Rajendra Prasad Dwivedi who was having a degree of AMIE was promoted on 18.01.1995 and consequently said benefit was given to Sri Rajendra Prasad Dwivedi by this Court as upheld by the Apex Court and consequently it is only those holders of AMIE degree who were to be considered for promotion without any restriction on the number of years spent as Junior Engineer as per the relevant government order as indicated above and thus once Sri Rajendra Prasad Dwivedi has been given promotion as Assistant Engineer w.e.f. 18.01.1995 consequently the petitioner is also entitled for being promoted w.e.f. the aforesaid date.

11. The aforesaid argument of learned counsel for the petitioner is patently misconceived inasmuch as the judgment of Rajendra Prasad Dwivedi as passed by this Court was affirmed by the Apex Court with the dismissal of SLP admittedly in limine. At the same time, the judgment of **Siraj Ahmad (supra)** is a detailed judgment in which the Apex Court has categorically laid down that Siraj Ahmad would be entitled for promotion w.e.f. the date his junior possessing the degree of BE/AMIE has been promoted with all consequential

*benefits. Thus, even if the judgment of Rajendra Prasad Dwivedi (supra) has been affirmed with the dismissal of SLP in limine even then the detailed judgment of the Apex Court in the case of **Siraj Ahmad (supra)** would hold good so far as the present controversy is concerned. Thus, the reason for non-filing of the seniority list as is sought to be assigned by learned counsel for the petitioner is rejected.*

12. Learned counsel for the petitioner prays for and is granted four weeks' time to file a supplementary affidavit duly bringing on record the seniority list of the persons who may have been promoted as Assistant Engineer and who were possessing the AMIE degree vis-a-vis his seniority position so as to stake his claim for being promoted on the post of Assistant Engineer (Civil).

13. List this case after four weeks."

4. In pursuance to the order dated 19.07.2023 the petitioner has filed a supplementary affidavit duly bringing on record the general seniority list dated 02.01.2020 issued by the department. Learned counsel for the petitioner has given the details of dates of appointments, seniority position and date of acquiring of AMIE degree of various persons, which are being quoted below:

Sl No	Name	Date of Appointment	Seniority Position	Date of AMIE Degree
1	Siraj Ahmad	30.03.1987	240	1987
2	Rajendre Prasad Dwivedi	24.02.1987	177	1993 Summer
3	Sunil Dutt Sharma	19.02.1983	--	1993
4	Sajid Hasan	28.07.1982	--	1994
5	Manoj Kumar Sisaudiya	18.10.1988	375	1991

5. From a perusal of the seniority list vis a vis the chart as indicated above it clearly emerges that none of the juniors of the petitioner have been promoted as an Assistant Engineer. Learned counsel for the

petitioner states that none of the petitioners of the connected petitions are senior to the aforesaid persons as indicated in the above chart.

6. As already recorded in the order dated 19.07.2023 the judgement of Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)** is explicit in as much as despite noticing the date of acquisition of AMIE degree of various persons in the penultimate paragraph, Hon'ble Supreme Court has only directed for promotion of the said person (Siraj Ahmad) with effect from the date of promotion of his junior.

7. Admittedly, once no junior of the petitioner has been promoted to the post of Assistant Engineer, consequently this Court cannot issue such a direction, more particularly when the entire issue has been discussed threadbare by Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)**.

8. At this stage, learned counsel for the petitioner contends that a careful perusal of the judgement of Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)** would indicate that Hon'ble Supreme Court has in fact considered the date of acquiring of AMIE degree and was of the view that in case the junior who was having the AMIE degree was promoted earlier, consequently a senior, who was having an AMIE degree prior to the date of acquisition of the AMIE degree by the junior, is also entitled for promotion. He contends that this aspect of the matter has been noted in detail by this Court in the case of **Rejendra Prasad Dwivedi (supra)**.

9. There cannot be any dispute with regard to the argument raised by learned counsel for the petitioner and as was also noticed by the Hon'ble Supreme Court yet as already indicated above, Hon'ble Supreme Court after noticing everything was of the view that a person would only been entitled for promotion to the post of Assistant Engineer (Civil) from the date his junior possessing the Bachelor of Engineering / AMIE has been promoted with all consequential benefits.

10. As regards judgement of this Court in the case of **Rejendra Prasad Dwivedi (supra)** suffice to state that though the said judgment has been affirmed with the dismissal of the SLP in limini yet it is the detailed judgement of Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)** which would hold forte and thus this Court would also be bound by the judgement of Hon'ble Supreme Court.

11. Once admittedly no junior of the petitioner possessing the AMIE degree/ Bachelor of Engineering has been promoted consequently this Court after noticing the judgement of Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)** cannot issue any direction which is contrary to the directions as issued by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)**.

12. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is **dismissed**.

Order Date :- 30.10.2023

J.K. Dinkar