

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No. 641 of 2023

1. Sri Tapan Kr. Sarkar, age 55 years S/O Lt. Sunatan Sarkar Resident of Arunachal Sangha, Rajarbag, P.O-Rajarbag, P.S.-Udaipur. District-Gomati Tripura.
2. Pradip Debbarma age 53 Years S/O Lt. Kartik Debbarma, Resident of North Banamalipur, Near Volcan Club. P.O.-Sadar. P.S.-East Agartala, District-West Tripura.
3. Ajoy Jamatia age 47 Years S/O Lt. Nirmal Ch. Jamatia, Resident of Silghati, P.O Silghati, P.S.-Udaipur District-Gomati, Tripura.

..... Petitioner(s)

V E R S U S

1. The State of Tripura Represented by the secretary, to department of GA (P &T), New capital complex, Kunjaban, Agartala
2. Secretary of Rural Development Department Kunjaban, Agartala
3. Chief Engineer, Rural Development Department P.N Complex, Gurkhabasti, Agartala

.....Respondent(s)

For Petitioner(s): Mr. Sankar Lodh, Advocate
Mr. Samar Das, Advocate,
Mr. S. Majumder, Advocate.

For Respondent(s): Mr. Mangal Debbarma, Addl. G.A.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

01/10/2024

Petitioners seek quashing of the Recruitment Rules, 2015 for the post of Superintending Engineer published vide notification dated 25th June, 2015 and also communication dated 31st January, 2013. They have also prayed for consideration of their cases for promotion to the post of Superintending Engineer from the post of Executive Engineer in accordance with the seniority list without making any discipline wise embargo as like Civil Engineer.

2. As per the averments in the writ petition, the petitioners are Bachelor of Engineering (Mechanical). They were initially appointed as Junior Engineer on 1st August, 1986, 7th August, 1986 and 2nd June, 2003 respectively under the respondent department. The petitioners have in due course of time been promoted to the post of Assistant Engineer and then to the post of Executive Engineer on ad hoc basis as per the ad hoc promotion policy dated 22nd June, 2021. However, for the purpose of promotion to the post of Superintending Engineer the petitioners have been discriminated in view of the Recruitment Rules, 2015 which are a replica of the Recruitment Rules dated 27th December, 2010. Under Clause 11 of the said two Rules, recruitment to the post of Superintending Engineer shall be by promotion/deputation/transfer from the post of Executive Engineer having seven years continuous and regular service in the grade and having degree in Civil Engineering from a recognized University or its equivalent educational qualification. As such, petitioners who are degree holders in Mechanical Engineering have been ousted from the zone of consideration which is arbitrary and unreasonable. Under the Recruitment Rules, juniors to the petitioners will be promoted to the post of Superintending Engineers.

3. It is also contended that the petitioners had made representations for airing their grievances, which were replied in a clumsy manner by communication dated 01.01.2023 (Annexure 8 & 9 to the writ petition). According to the petitioners, the existing rule, which segregates eligible Executive Engineers like the petitioners only on the ground of their discipline i.e. Mechanical or Electrical Engineering, is discriminatory as there has been no such distinction ever before in the basic entry level post or for promotion to the

post of Executive Engineer. During pendency of the writ petition, promotions were carried out to the post of Superintending Engineer from the post of Executive Engineer in pursuance to clause 11(i) of the Recruitment Rules, 2015 only from the discipline of Civil Engineers which is *ex facie* illegal. The petitioners are being illegally and arbitrarily denied chances of promotion to the higher grade. Petitioners, however, do not raise any grievance against the persons who have availed the promotion to the post of Superintending Engineer and hence, have not arrayed them as party respondents. On these grounds, challenge has been made.

4. Learned counsel for the petitioners has referred to the judgment rendered earlier in the case of *Shri Manas Nath Vs. State of Tripura & Ors.*, [WP(C) No. 530/2011] dated 31.07.2014 wherein the petitioner who was a degree holder in Civil Engineering had raised a grievance that there are no separate posts earmarked for engineers who had done their engineering in Mechanical or Electrical field. He had prayed that separate seniority list should be made for Junior Engineer (Civil), Junior Engineer (Mechanical) and Junior Engineer (Electrical) and promotions should be made in the respective streams.

5. However, learned Division Bench of this Court after consideration of the rival submission of the parties rejected the petition as being without merit. It was held that it would be unfair to introduce such a criteria now to deny promotion to Mechanical and Electrical engineers to the higher level by amending the rules at the behest of the petitioner. Therefore, the respondents are not justified in introducing Clause 11 in the 2015 Recruitment Rules to

deny the legitimate expectation of the petitioners for promotion to the higher post of Superintending Engineer.

6. The respondent-Department has filed counter affidavit. Learned counsel for the respondents has taken this court to the averments made therein. It is asserted that the Rural Development Department is involved in the implementation and execution of allied rural infrastructure development activities in the State for which the engineers from branches of Civil, Mechanical and Electrical were recruited as per provisions of the recruitment rules. The engineering works of the Rural Development Department irrespective of their nature are being implemented through all these categories of engineers till date. Therefore, there is a common seniority list is of Junior Engineers, Assistant Engineers and Executive Engineers.

7. The Recruitment Rules of the Assistant Engineers dated 25th June, 2015 is not only for promotion of degree and diploma holders but direct entry provision is also there in the recruitment rules. Whereas 20% of the post of Assistant Engineers is to be filled up through direct recruitment and 80% of the posts are to be filled up (a) 50% from degree holder of Civil, Mechanical & from Electrical Engineering; and (b) 50% from candidates with diploma in Civil, Electrical and Mechanical Engineering. The department has, in pursuance of the government notification dated 22nd June, 2021 granted ad hoc promotion to the eligible candidates as per provisions in the existing recruitment rules and common seniority list prevailing in the department.

8. However, promoted candidates have not gained any new seniority and there is no provision to give next promotion to such candidates counting

the ad hoc period of service. Notification dated 22nd June, 2021 also stipulates only one time promotion. They have further stated that for promotion to the higher post, the requirement of having seven years of regular service on the post of Executive Engineer with a degree in Civil Engineering has been stipulated.

9. In relation to the contention advanced by the petitioners relying upon judgment and order dated 31st July, 2014 in WP(C)530/2011 it is stated that the department has not taken any steps to make separate seniority list for the Junior Engineers, Assistant Engineers and Executive Engineers. Initially, the Recruitment Rules for the post of Superintending Engineer, notified on 28th November, 2003 provided for promotion to the post of Superintending Engineer from the post of Executive Engineers of Rural Development Department having degree in engineering with seven years regular service in the grade. However, in the year 2010 vide notification dated 24th December, 2010 the Rural Development Department framed recruitment rules for the post of Superintending Engineer under proviso to Article 309 of the Constitution of India in supersession of the earlier Recruitment Rules of 2003. The 2010 rules prescribe the criteria of 7 years regular service in the grade of Executive Engineer in the Department with at least a degree in Civil Engineering from a recognized university (Annexure-R/2).

10. Thereafter, in the year 2015 department made recruitment rules of Superintending Engineer under proviso to Article 309 of the Constitution of India in supersession of the earlier Recruitment Rules of 2010 in consultation with the TPSC. In the said Recruitment Rules of 2015 the probation period of 2

(two) years was changed to 1 (one) year in respect of promoted candidates and new provisions for departmental examinations were introduced. The educational qualification criteria has not been changed and it was as stipulated in the Recruitment Rules of 2010, i.e. degree in civil engineering or its equivalent. The respondents contend that the present challenge has been made to the aforesaid criteria after about 13 and 8 years by the writ petitioners though the said qualification was prescribed even in the Recruitment Rules of 2010 and later in 2015.

11. All those writ petitioners have availed two promotions to the post of Assistant Engineer and Executive Engineer as per prevailing rules. They have been granted three numbers of financial upgradation in their service career CAS/ACP/MACP scheme as per relevant ROP Rules. The respondent-State has in the counter affidavit to the amended writ petition contended that by the memorandum dated 5th February, 2024 promotion has been granted to the post of Superintending Engineer on full duty charge to three engineers holding the post of Executive Engineer (ad hoc), two from unreserved category and one from the reserved category who are all senior to the petitioners. The vacancy against the SC category has not been filled up as Er. Tapan Sarkar who belongs to reserve SC category is a Mechanical engineer. The prevalent recruitment rules prescribed degree in civil engineering or its equivalent.

12. Mr. M. Debbarma, learned Additional Government Advocate, has referred to the corrigendum dated 20.09.2006 issued by the Rural Development Department, Government of India to the notification dated 07.05.2005 whereunder Recruitment Rules regulating the method of recruitment to the post

of Junior Engineer, Grade-I & Grade-II under Rural Development Department (Rural Engineering Wing) were framed with the nomenclature Junior Engineer Grade-I & Grade-II of the RD Department (First Amendment) Recruitment Rules, 2005 brought into effect from the date of publication in the official gazette i.e. 18.05.2005. By the corrigendum dated 20.09.2006, Clause 7(A) and (B) of the Recruitment Rules of 2005 which prescribe the educational and other qualification required for direct recruitment *inter alia*;

“7. Educational and other qualification required for direct recruitment:

- A) Degree in Engineering from a recognized university/institute or equivalent for Junior Engineer, Grade-I
- B) Diploma in Engineering from a recognized Institute or equivalent for Junior Engineer, Grade-II”

were substituted in the following manner:

“7. Educational and other qualification required for direct recruitment:

- A) Degree in Civil Engineering from a recognized University/Institute or equivalent for Junior Engineer, Grade-I
- B) Diploma in Civil Engineering from a recognized Institute or equivalent for Junior Engineer, Grade-II.”

13. By reference to the Recruitment Rules of Junior Engineer Grade-I & Grade-II in the Rural Development Department as above, it is submitted that the competent authority has made a conscious decision to lay down the educational and other qualifications required for direct recruitment to the post of Junior Engineer making it mandatory for the candidate to have a degree in Civil Engineering for Junior Engineer Grade-I and Diploma in Civil Engineering for Junior Engineer Grade-II. As such, recruitment from the entry post of Junior Engineer in the Rural Development Department is now permissible only to Degree holder and Diploma holder in Civil Engineering to Grade-I or Grade-II, as the case may be.

14. Petitioners have been granted two promotions from the grade of Junior Engineer to Assistant Engineer and then to Executive Engineer though

they have a degree in Mechanical Engineering. However, the rule making authority has in the aforesaid background consciously laid down additional criteria of Degree in Civil Engineering with experience of 7 years of regular service in the post of Executive Engineer for promotion to the higher post of Superintending Engineer, which cannot be questioned on grounds of arbitrariness or discrimination. It is submitted that no vested right was created in favour of the petitioners since the 2010 Recruitment Rules also provide for same educational criteria for degree in Civil Engineering which the petitioner never thought it necessary to challenge. Therefore, no vested right for promotion to the post of Superintending Engineer has accrued which are being taken away by the impugned Recruitment Rules of 2015. The writ petition may, therefore, be dismissed.

15. We have considered the submission of the learned counsel for the parties and taken note of the materials placed on record in support and in traverse of the Recruitment Rules of 2015 which prescribe the criteria of 7 years experience as an Executive Engineer and a degree in Civil Engineering for promotion to the post of Superintending Engineer.

16. The requirement of a Degree in Civil Engineering with 7 years of experience as Executive Engineer on regular basis for promotion to the higher post of Superintending Engineer has a rational nexus with the object sought to be achieved. In *PU Joshi & Ors Vs. Accountant General, Ahmedabad & Ors.*, reported in (2003) 2 SCC 632, the Apex Court has laid down that it is open and within the competency of the State to change the rules of a service and alter or amend and vary by addition/subtraction of the qualifications and eligibility

criteria and other conditions of the service including avenues of promotion from time to time as an administrative exigency may need or necessitate. It has been also held that there is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. The relevant paragraph 10 of the said decision is extracted hereinbelow:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

17. The wisdom of the rule making authority cannot be questioned. It is also well settled that the service conditions can be altered during the career of an employee unless some vested rights for promotion to the post of Superintending Engineer has been taken away.

18. In this context, it is necessary to refer to the ratio laid down by the Apex Court in the case of *PU Joshi & Ors Vs. Accountant General, Ahmedabad & Ors.*, reported in (2003) 2 SCC 632. The petitioners are not in a position to contend that by virtue of the Recruitment Rules of 2010 and 2015 subsequently, any vested right has been taken away. The department has provided for promotional avenues to the post of Assistant Engineer and Executive Engineer to the incumbents from all the three disciplines, i.e. Civil, Mechanical and Electrical Engineering. However, for promotion to the higher post of Superintending Engineer since the department is primarily engaged in execution of infrastructure work, the rule making authority has, in its wisdom, chosen to lay down the requisite eligibility criteria as 7 years experience in the grade of Executive Engineer with an educational qualification of Bachelor of Civil Engineering. Laying down educational qualification or prescribing an additional educational qualification for promotion to higher post would be permissible keeping in mind the object sought to be achieved which is to man the higher post in the Rural Development Department with incumbents who are qualified with degree in Civil Engineering with seven years experience, since the nature of the works carried under the Rural Development Department related to execution of infrastructure projects.

19. The Apex Court has in a number of decisions held that though equality is the very bulwark of the provisions of the Constitution, in service jurisprudence, classifications are a matter of necessity. Judicial pronouncements have sought to balance the equality principle with the principle of classification, dependent upon the nexus for making the classification. Higher educational

qualifications have been repeatedly emphasized as an aspect which can give exclusive promotion, earlier promotion or for that matter, 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. Similarly, the question whether the difference in educational qualification is sufficient to give preferential treatment to one class of candidates against another, is ordinarily left to the executive authorities to decide as they have expertise in administrative matters. As to who should examine this nexus, it has been left to the wisdom of the administrative authorities, who are best equipped to do so.

20. Therefore, if a classification has been made on the basis of the educational qualification, i.e. degree in Civil Engineering for promotion from the post of Executive Engineer to Superintending Engineer taking into consideration that the department is primarily engaged in execution of infrastructure works and since 2005 even recruitment to the entry level post of Junior Engineer Grade-I and Grade-II have been confined to incumbents holding a degree or diploma in Civil Engineering, the decision of the Executive to prescribe a classification on the basis of the qualification of the incumbents to the post of Executive Engineer for promotion to the higher post of Superintending Engineer in the department cannot be said to be unreasonable or having no nexus with the object sought to be achieved or being discriminatory.

21. Moreover, on facts also none of the petitioners have requisite 7 years of experience counted from the date of grant of ad hoc promotion to the post of Executive Engineer pursuant to the ad hoc promotion policy dated 22nd

June, 2021. Therefore, they also do not qualify in the first criteria of 7 years experience as an Executive Engineer.

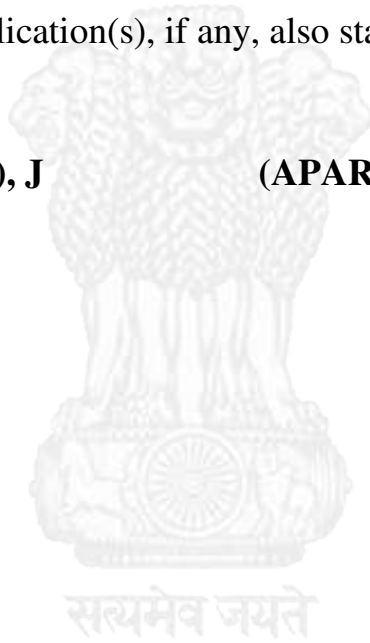
22. Therefore, this court is of the considered view that the petitioners have failed to make out a case for interference in the impugned Recruitment Rules on the ground that they are arbitrary or discriminatory in nature.

23. The writ petition is accordingly dismissed.

Pending application(s), if any, also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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