



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)
Case No. : WP(C)/64/2022

Rupa Taksing
D/o Tapak Taksing,
Resident of Gimba Village, PO/PS Tali, District Kraa Dadi, Arunachal Pradesh and
presently residing at near Polytechnic College, PO/PS Itanagar, Papumpare District,
Arunachal Pradesh

VERSUS

THE STATE OF AP and 3 Ors.

Represented by the Secretary (Non Renewable Energy), Govt. of Arunachal Pradesh,
Civil Secretariat Itanagar, 791111 2:The Chairman Director APEDA

Age: 0

Occupation :

3:The Director

Age: 0

Occupation :

4:Tara Taw Uniya

Age: 0

Occupation

Advocate for the Petitioner : Rintu Saikia

Advocate for the Respondent : GA (AP)

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE
JUDGMENT & ORDER(ORAL)

Heard Mr. R. Saikia, learned counsel for the petitioner. Also heard Mr.
S. Tapin, learned Senior Government Advocate for the respondent Nos. 1,

2 & 3 and Mr. T. Tayeng, learned counsel for respondent No. 4.

2. By instituting this writ petition, the petitioner has challenged the DPC proceedings and its recommendation dated 25.02.2020 and the consequential impugned promotion order dated 26.08.2021 issued by the Director, APEDA, whereby, the respondent No. 4 has been recommended and promoted to the post of Assistant, on the ground of violation of Recruitment Rule, 2013 for Assistant of the Arunachal Pradesh Energy Development Agency (for short, 'APEDA'). Petitioner has also assailed the office memo, dated 11.10.2021 passed by the Director, APEDA, by which the representation of the petitioner has been rejected.

3. The case of the petitioner, in brief, is that she was appointed as Junior Work Assistant (LDC) in APEDA on 08.06.2001 on ad-hoc basis and on the recommendation of the DPC, vide order dated 23.04.2005, the services of the petitioner as Junior Work Assistant (LDC) along with 4 (four) other persons were regularized w.e.f. the date of ad-hoc service i.e. 08.06.2001.

4. The petitioner was promoted to the next higher post of Upper Division Clerk (for short, 'UDC') vide order, dated 29.02.2008 w.e.f. 01.03.2008. The respondent No. 4 was also initially appointed as LDC in the APEDA vide order, dated 06.08.2009 and thereafter, promoted to the post of UDC vide order, dated 19.01.2016.

5. It is contended by the petitioner that the respondent No. 4, admittedly, is junior to the petitioner in both the entry into the service as LDC and in the promotional post of UDC. It is also the contention of the

petitioner that the petitioner has been serving in the post of UDC for 12 years and the respondent No. 4 has been serving as UDC for 4 (four) years only on which year, the DPC was conducted for promotion to the post of Assistant from the post of UDC.

6. It is the contention of the petitioner that as per the Recruitment Rule, 2013 for Assistant, the method of recruitment is 100% by promotion from serving UDC having 5 (five) years continuous service in the grade for degree holders and in case of non-degree holders 8 (eight) years continuous service in the grade. The petitioner having been completed more than 8 years and she being the non-degree holder is eligible to be considered for promotion to the post of Assistant. The respondent No. 4, though a degree holder, had completed just 4 years, having short of 1 (one) year for consideration for promotion to the post of Assistant as the qualifying years of service for degree holder is 5 years.

7. A Departmental Promotion Committee (DPC in short) was constituted for consideration for promotion to different post(s) in the APEDA including the post of Assistant. The DPC has recommended the name of respondent No. 4 who has just completed 4 years in the post of UDC for promotion to the post of Assistant on officiating basis in her own pay scale of UDC till she complete 5 (five) years as she is degree holder and rejected the case of the petitioner on the ground that though the petitioner has completed 8 years in the post of UDC, her qualification being Class-XII pass, which is not in conformity with the government norms of Group-B post issued vide Office Memorandum, dated 29.08.2019, wherein, it is provided minimum

educational qualification as graduate/bachelor degree for Group-B post in the State Government.

8. The petitioner being aggrieved filed a representation against the DPC recommendation as well as the impugned order, dated 26.08.2021, whereby, the respondent No. 4 has been promoted to the post of Assistant by ignoring the case of the petitioner who is entitled to be promoted in accordance with the Recruitment Rule of 2013. The respondent authority has disposed of the representation of the petitioner vide office memorandum, dated 11.10.2021 rejecting the claim of the petitioner and advised her to refrain from unauthentic and unsubstantiated falsehood. Being aggrieved, the present petition has been filed.

9. Mr. R. Saikia, learned counsel for the petitioner, submits that the APEDA has framed Recruitment Rule for the post of Assistant under the Memorandum of Articles of Association of APEDA to regulate the method of recruitment and other conditions of service for the post of Assistant. The service condition of Assistant is governed by Recruitment Rule, 2013. He submits that the APEDA has not amended or modified to give effect to the Office Memorandum, dated 29.08.2019 and the Rules, 2013 framed by the Governing body of the APEDA is still in force. He submits that as per the said Rule, the method of recruitment for the post of Assistant is 100% by promotion from serving UDC having 5 (five) years continuous service in the grade for degree holders and in case of non-degree holders 8 (eight) years continuous service in the grade.

10. He submits that vide Office Memorandum, dated 29.08.2019, the

State Government by an executive instruction has fixed the Bachelor Degree as the basic educational qualification for appointment in Group- A & B post/services for its employees. He submits that the DPC on its own has relied on the Office Memorandum of the State, dated 29.08.2019 and applied the same without their being any formal adoption by the APEDA which is not permissible under the law. The DPC has deprived the petitioner by applying the said office memorandum on the ground that the petitioner, though completed more than 8 years in the post of UDC, her qualification is Class-XII pass, which is not in conformity with the Office Memorandum, dated 29.08.2019 and rejected the case of the petitioner thereby completely ignoring the requirement of Recruitment Rule, 2013 of the APEDA, wherein, it provides that for promotion to the post of Assistant, 5 years continuous service as UDC for degree holder and for non-degree, 8 years continuous service in the grade. The DPC has also ignored the fact that the petitioner has completed 12 years at the time of consideration. In terms of the applicable Rule, 2013, the petitioner is eligible and fit to be promoted to the post of Assistant as she has completed more than 8 (eight) years qualifying service, though she is not a degree holder whereas the respondent No. 4 though having a degree holder has not completed 5 (five) years continuous service. Therefore, he submits that the recommendation of the DPC is illegal and *dehors* the Rules.

11. Mr. R. Saikia, learned counsel, submits that since the Office Memorandum is an executive instruction issued by the State Government and the APEDA being a registered society having its own bye-laws as well

as recruitment rule which regulates the condition of service of its employees, the office memorandum dated 29.08.2019 has no automatic application unless adopted by the APEDA and the rules are amended in terms of Articles of Association of the APEDA. He submits that there is no dispute that the rules have not been amended incorporating the requirement of Bachelor Degree for the post of Assistant rather the rules in force provides that for promotion to the post of Assistant, one must have completed 5(five) years of continuous service as UDC for a degree holders and 8 (eight) years continuous service for non-degree holder. Therefore, he submits that the impugned DPC proceedings, dated 25.02.2020 and the consequential promotion order, dated 26.08.2021 promoting the respondent No. 4 to the post of Assistant is not sustainable and as such, same are liable to be set aside and quashed.

12. Mr. R. Saikia, learned counsel for the petitioner, has placed reliance on the following judgments.

- (i) **Direct Recruit Class-II Engineering Officers' Association-vs-State of Maharashtra and Others; reported in (1990) 2 SCC 715.**
- (ii) **IlikoklaLongchar and Ors.-vs-State of Nagaland and Ors.,reported in 2022 SCC Online SC 1384.**
- (iii) **K. Kuppusamy-vs- State of Tamil Nadu; reported in (1998) 8 SCC 469.**
- (iv) **Bank of Baroda-vs- G. Palani; reported in (2022) 5 SCC 612.**
- (v) **SH. P. Lalnunthara and Ors-vs-State of Mizoram and Ors; reported in 2020 (5) GLT 402.**
- (vi) **State of Tripura and Ors-vs-Nikhil Ranjan Chakraborty and ORS; reported in (2017) S SCC 646.**

13. Per contra, Mr. S. Tapin, learned Senior Government Advocate, submits that APEDA is a State Government Agency and as such, all the policies of the State including any office memorandum/circular shall apply automatically without there being formal adoption. He submits that recruitment Rule, 2013 of the APEDA is a draft Rule and it being the draft rule, it only provides that for promotion to the post of Assistant, it prescribes 5 (five) years of continuous service for a degree holder and 8 (eight) years continuous service as UDC for non-degree holder. The State Government on its own wisdom has taken a policy decision by Office Memorandum, dated 29.08.2019 fixing the minimum qualification of Bacher Degree for Group-A & B posts which would apply to the employees of the APEDA.

14. Mr. S. Tapin, learned Senior Government Advocate, while referring to the order, dated 09.08.2018 by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Govt. of India, submits that a post carrying the pay scale in the pay matrix at the level from 6 to 9 has been classified as Group-B to which the petitioner has no objection, though the draft rule provides that the post of Assistant is Group-C and there is no amendment to the draft rules, therefore, he submits that submission of the petitioner cannot be accepted inasmuch as in one way the Central Government order, dated 09.08.2018, wherein, the post has been classified as Group-B has not been objected (not being amended of the Rules, 2013 as it provides the post to be Group-C) and the application of the O.M. which requires minimum graduate level for

Group-B is sought to be objected on the ground that the same cannot be applied automatically without their being amendment to the Draft Rule, 2013.

15. Mr. S. Tapin, learned Senior Govt. Advocate, submits that the Office Memorandum is by way of supplementing and not supplanting the Draft Rule inasmuch as, the Draft Rules, 2013 is silent on the minimum educational qualification of Bachelor degree for the Group-B post, admittedly, Assistant is a Group-B post. Therefore, it is by way of supplementing which is permissible under the law. He submits that since the Rule is silent to the minimum Education Qualification, the O.M. dated 29.08.2019 is applicable to the APEDA which is State Govt. Agency. He further submits that the DPC has considered the case of the petitioner as well as respondent No. 4 and having considered in accordance with the law, it has recommended for promotion of the respondent No. 4 to the post of Assistant as the respondent No. 4 is a degree holder, on completion of 5 (five) years to the post of UDC in accordance with both the Draft Rules, 2013 as well as O.M., dated 29.08.2019. Since the petitioner is not a graduate, though she has completed 8 (eight) years, her case has been considered and rejected in terms of the O.M. dated 29.08.2019. Accordingly, the respondent authorities had issued the impugned order of promotion to the respondent No. 4 on completion of 5 (five) years to the post of UDC vide order, dated 26.08.2021. Therefore, there is no illegality in recommending and promoting the petitioner to the post of Assistant who have been granted promotion on completion of 5

(five) years.

16. Mr. T. Tayeng, learned counsel for respondent No. 4, while adopting the submissions of learned Senior Govt Advocate and supporting the DPC proceedings and the promotion of respondent No. 4, submits that since the petitioner has no problem with the classification of posts of the Assistant as Group-B without amendment to the Recruitment Rules, 2013, which provides that the Assistant as a Group-C post, she could not have agitated that the O.M., dated 29.08.2019 cannot be applied without their being amendment to the Recruitment Rules, 2013. Therefore, he submits that the DPC recommendation as well as the promotion order, dated 26.08.2021 is perfectly in accordance with the law and the applicable office memorandum as well as the Rules. The learned counsel for the respondent No. 4 Mr. Tayeng has relied on the judgment of Allahabad High Court in the case of **Kalyani Mehrotra-vs-State of U.P;** reported in **2021 SCC Online ALL 288.**

17. Mr. Tayeng, learned counsel for respondent No. 4, submits that the Office Memorandum, dated 29.08.2019 will apply, wherein, it provides that for Group-B post (in this case, Assistant) as it requires minimum Bachelor Degree and since the respondent No. 4 has been recommended to be promoted after completion of 5 (five) years as required under the Recruitment Rules, 2013 and Respondent No. 4, being the graduate, the promotion order, dated 26.08.2021 promoting the respondent No. 4 to the post of Assistant is in accordance with the applicable Office Memorandum and the Recruitment Rules, 2013. Therefore, no

interference is called for.

18. Due consideration has been extended to the rival submissions of the learned counsel for the parties and the materials available on record.

19. The Memorandum of Articles of Association of the APEDA provides that all the appointments to the posts under Group-A & B will be done on the approval of the chairman. The Director shall be Chief Executive Officer of the Agency, subject to the general superintendence, direction and control of the Governing body and as such general or special instruction that the Governing body may lay down, he shall be responsible for convening the meetings; for appointment of staff, creation of vacancies, recruitment and promotion etc., prescribing terms and conditions governing them; for maintenance of records and for communication with all on behalf of Agency. He shall formulate, co-ordinate and supervise the programme and projects of the Agency to ensure their successful implementation. The Director of the Agency may be delegated the power of appointment to the lower post under Group-C & D subject to the sanctioned strength recommended by the General body and approved by the Government. The powers and function of the office bearers of Agency is that the Chairman of the Governing body shall preside over all the meetings of the Governing body. He will also guide and supervise in general the working of the Agency. The chairman may take any decision in the interest of the function of the Agency recording reasonable / proper justification for doing so. He shall seek ex-post facto approval of the Governing body whenever necessary.

20. To appreciate and analyse the present matter, I deem it apposite to refer to the recruitment Rule of the APEDA and the Office Memorandum of the State Government.

21. The recruitment rule for the post of Assistant has been framed by the APEDA vide dated 13.11.2013, which is reproduced hereinbelow:-

SCHEDULE

Recruitment Rule for Assistant

ARUNACHAL PRADESH ENERGY DEVELOPMENT AGENCY(APEDA)

- | | | |
|-----|--|--|
| 1. | Name of post | -Assistant |
| 2. | No. of post | -1(One) post subject to variation. |
| 3. | Classification | - Group -c(Non gazated-Ministerial)APEDA service |
| 4. | Scale for pay | - Rs.9300-34800+4200/-pm |
| 5. | Whether selection post/ non-selection post | - Selection |
| 6. | Age for recruitment | - Not Applicable |
| 7. | Education and other qualification | -Not Applicable |
| 8. | Whether age and educational qualification prescribed for direct recruitment will apply in the case of promotee. | - Not Applicable |
| 9. | Period of Probation | - Not Applicable |
| 10. | Method of recruitment whether by direct recruitment or by promotion or by deputation/ transfer and percentage of the vacancies to be filled by various | -100% by promotion form serving UDC having 5(years) years continuous serving in the grade for degree holders and in case of non-degree holders 8(eight) years continuous service in the grade. |
| 11. | In case of requirement by promotion/ Deputation/transfer grades from which Promotion/deputation/ transfer to be Made | - same as sl.no. 10 |

12. If a departmental promotion committee Exists, what is its composition
- a) Head of office-Chairman
b) Under Secretary (Power & NRE)-Member
c) Deputy Director, APEDA- Member
13. Circumstances in which APPSC is to Be consulted in making recruitment functions)
- As per the provision of Arunachal Pradesh Public Services Commission (limitation of Regulation, 1988 as amended from time to time.
- Chairman
Governing Body APEDA

22. On a bare reading of the aforesaid rules, the classification for the post of Assistant is Group-C (Non-Gazetted, Ministerial)/ APEDA service. It provides that the method of recruitment for the post of Assistant is 100% by promotion from serving UDC having 5 (five) years continuous service in the grade for degree holders and in case of non-degree holders 8 (eight) years continuous service in the grade. It is also noted that the post of Assistant as per the above rules, is selection.

23. The State Government by way of a policy decision has issued the Office Memorandum, dated 29.08.2019 fixing the Graduate/Bachelor Degree as the basic educational qualification for appointment in Group- A & B posts/services for the State Govt. services, which is reproduced hereinbelow:-

NO.AR-74/2013/Vol-II
GOVERNMENT OF ARUNACHAL PRADESH
DEPARMENT OF ADMISNISTRATIVE REFORMS
CIVIL SECRETARIAT 4TH BLOCK, 4TH FLOOR
ITANAGAR

Dated Itanagar, the 29th August, 2019

OFFICE MEMORANDUM

Sub:- Fixation of Graduation/Bachelor Degree as basic

Educational Qualification for appointment in Group 'A' and Group 'B' posts/services-regarding

WHEREAS, the Government of Arunachal Pradesh vide its Office Memorandum NO AR- 74/2013/Vol-II Dated 28/01/2014, has decided that-

I. Fix the minimum educational qualification of Graduation /Bachelor Degree from a recognized University considering appointment to group 'B' and Group-'A' posts/ services either by direct recruitment or on promotion with immediate effect(28-01-2014).

II. To discontinue the relaxation of minimum educational qualification prescribed for a post with immediate effect;and or

III. To carryout amendments in the relevant in the relevant Services Rules/Recruitment Rules Accordingly.

And whereas, the Government of Arunachal Pradesh vide its office Memorandum NO AR- 74/2013 Dated 27/05/2015 has suspended the application of sub-para (i)and(ii)of the office Memorandum NO AR- 74/2013 Dated 28/01/2014b for 4(four)years from date of issue of Memorandum ON Dated 27/05/2015 which shall be reintroduce after expiry of the four years periods. During the course of suspension of 4(four) years period, the Government servants who do not possessa educational qualification of graduation/Bachelor Degree may acquire/ secure the education qualifications of Graduation/Bachelor Degree from any recognized University.

And whereas, the Government vide its office Memorandum NO AR- 74/2013 Dated 18/01/2016 has ordered exemption of possessing Graduation/ Bachelor Degree to the posts/services classified as Group-'B' under the central Civil Services (Revised Pay) Rules 2008 consequent on the implementation of the recommendation of the 6th CPC which are being filled from the holders of Diploma like -Engineering, Architecture, Nursing, Tourism, Hotel Management & Catering technology, Applied Arts & Crafts and Draftsman from the purview and operation of the Memorandum NO AR- 74/2013 Dated 28/01/2014

And WHEREAS, the orders of suspension of application of Office

Memorandum NO AR- 74/2013 Dated 28/05/2014, has expired on 27/05/2019 on completion 4(four) years period which was effected from the date of issue of OM NO.AR74/2013 Dated 24/04/2015.

AND WHEREAS, no claim s and objection has been received from any section of employees of exemption of fixation of Basis Educational qualification Direct recruitment or promotion to group-‘A’ and Group ‘B’ posts /services

NOW THEREFORE, The governor of Arunachala Pradesh is hereby pleased to re-introduced the Fixation of the minimum education qualifications of Graduation/Bachelor Degree form a recognized University for considering appointment Group-‘A’ and Group ‘B’ posts /services either by Direct recruitment or promotion with effect from the date of issue of this Office Memorandum except the Diploma Holders like Engineering, Architecture, Nursing, Tourism, Hotel Management & Catering technology, Applied Arts & Crafts and Draftsman who shall be exempted from the purview and operation of this Office Memorandum.

The Government servant who has already taken admission into Degree courses during the currency of exemption period my continued their cases no permission shall not be required for further study is required under rules for further study.

The above decision are bought to the notice of all the Ministry/Departments/Organizations/Office under the Government of Arunachal Pradesh for information and compliance please.

(By order and in the name of the Governor of Arunachal Pradesh)

Sd/-
(Naresh Kumar), IAS
Chief Secretary to the
Government of Arunachal Pradesh

24. On the perusal of the above office memorandum, it transpires that the State Government has fixed the minimum education qualification as Graduate/Bachelor degree for group A and B posts for the services in the State Government. It also provides that amendment to be carried out in

the relevant Service Rules/Recruitment Rules.

25. Uncontrovertibly, the petitioner was initially appointed as JWA (LDC) on 08.06.2001 and regularised vide order dated 25.04.2005 w.e.f. 08.06.2001 and was promoted to the post of UDC vide order, dated 29.02.2008 w.e.f. 01.03.2008. The respondent No. 4 who was appointed on contract basis as LDC was appointed on officiating basis vide order, dated 06.08.2009 and subsequently promoted to the post of UDC on 19.01.2016 and the order was issued on 25.01.2016. The petitioner is senior to the respondent No. 4 in both entry into the service as LDC and in the promotional post of UDC.

26. It is noticed that Article 34 of the Memorandum of Articles of Association of APEDA provides that the Rules of the agency may be altered or modified at any time by resolution passed by the majority of the members of the Agency in any general body meeting of the Agency which shall be duly convened for the purpose. The modified rules shall be deemed to have come into force on the date on which passed by the resolution. The APEDA is a registered society and its object is to promote, implement, develop and infuse knowledge in various fields of conventional and Non-conventional energy, and in particular to assist Govt. of Arunachal Pradesh and Govt. of India, in the effort to develop and promote Non-conventional, renewable and alternate energy sources and technologies; evolve and promote energy conservation measures; develop the area of energy management as an input to an appropriate environmental policy and generally to deal with problems arising from

depletion of conventional sources of energy and evolve suitable alternatives. It is noted that no amendment or modification has been carried out to the Recruitment Rule, 2013 by the APEDA.

27. It is noticed that the State Government has taken a policy decision vide Office Memorandum, dated 29.08.2019, *inter-alia*, providing the minimum educational qualification for the post of Group-A & B to the services in a State Government as graduate/bachelor degree. It is also noted that the APEDA being a registered society has its own bye-laws. The recruitment Rules, 2013 has been framed which regulates the condition of service of the post of Assistant in the APEDA.

28. It is also taken note that the DPC minutes, dated 25.02.2020 has recommended the name of the respondent No. 4 for promotion to the post of Assistant on officiating basis in her own pay scale of UDC till she completes the minimum qualifying 5 (five) years as UDC considering that the respondent No. 4 is a degree holder. The case of the petitioner has been rejected on the ground that though she has completed 8 (eight) years in the post of UDC, she is only having Class-XII pass, which is not in conformity with the Government norm of Group-B vide Office Memorandum, dated 29.08.2019.

29. The fundamental contention of the petitioner is that the respondent authorities/DPC could not have recommended the name of the petitioner for promotion and consequently promoted the petitioner in violation of the Recruitment Rules, 2013 of the APEDA as the same has not been

amended, wherein, it is clearly provided that for promotion to the post of Assistant 5 (five) years continuous regular service as UDC for degree holders and 8 (eight) years continuous regular service for a non-degree holders.

30. Admittedly, the petitioner having completed 12 years of continuous service as UDC and though not having a degree, she is eligible and fit to be promoted to the post of Assistant whereas, the respondent No. 4, though a degree holder, falls short of 1 (one) year as she did not complete the continuous regular service as UDC and having completed 4 years only and she could not have been recommended for officiating promotion till she completes 5 (five) years continuous service as UDC. It is noted that the DPC has relied on the Office Memorandum, dated 29.08.2019 as well as the Recruitment Rules, 2013.

31. In such view of the matter, issue needs to be considered by this Court is as to whether the Office Memorandum, dated 29.08.2019 would have an automatic application for regulating the service condition of the Assistant of the APEDA, even if the Recruitment Rules, 2013 which regulates the service condition of the Assistant, is not amended by incorporating the policy decision of the State Government.

32. On careful consideration, I find that the Office Memorandum is issued by the State Government vide office Memorandum, dated 29.08.2019 providing a Graduate Bachelor Degree as minimum educational qualification for the post of Group-A & B of the State Government

services and the Recruitment Rules, 2013 which governs the service condition of the Assistant in the APEDA, provides the method of recruitment as 100% by promotion from serving UDC having 5 (five) years continuous service in the grade for degree holders and in case of non-degree holders 8 (eight) years continuous service in the grade and the APEDA being a registered society having its own bye-laws and Rules. There is no amendment or modification of the Recruitment Rules, 2013. Thus, I am of the considered view that the without amendment of the Recruitment Rules, 2013 which provides for method of Recruitment for Assistant to be 100% by promotion from serving UDC having 5 (five) years continuous service in the grade for degree holders and in case of non-degree holders 8 (eight) years continuous service in the grade, the Office Memorandum being an executive order cannot have an automatic application to the registered society, though the society may be under the State Government as the APEDA is having its own governing body. As per the Memorandum of Articles of Association, it provides the powers and function of the governing body and other office bearers and power to frame rules its amendment and modification is provided under Article 34 of Memorandum of Articles of Association.

- 33.** One cannot lose sight of another aspect of the matter that the DPC, having been constituted for consideration of eligible candidates for promotion to the post of Assistant in the APEDA as per applicable Rules, cannot adopt the policy of the State Government/Office Memorandum/instruction on its own without same being adopted by the

APEDA as for promotion to the post of Assistant is undisputedly regulated by the Recruitment rules, 2013 of the APEDA.

34. Regard being had to the submissions of learned Senior Govt. Advocate on supplementing of rules, I am of the firm view that question of supplement does not arise at all as the education qualification is already provided in the Recruitment Rules, 2013 as graduate and non graduate with 5 (five) years and 8 (eight) years qualifying years of service in the grade of UDC.

35. With regard to the submission of the learned counsel for the respondents relating to the classification of post of Assistant as Group-B without their being amendment of the Rules, 2013, this Court is of the considered view that the classification of posts providing the grade pay by the Central Government is in pursuant to the rule framed under proviso to Article 309 of the Constitution and the Office Memorandum of the State Government, dated 29.08.2019 is an executive instruction/ a policy by the State which would not have any automatic application to the Society unless it is adopted by such society, no matter the society may under the State Government.

36. This Court would, now, refer to the relevant case laws relied on by the learned counsel for the petitioner.

37. In the case of **IlikoklaLongchar (Supra)**, this Court has held as under:-.

“20. We have considered the reason as assigned by the learned Single Judge but unfortunately we cannot agree to such proposition of law. It is well settled that the recommendation of the D.P.C. is not binding upon even on the appointing authority. It is merely recommendation and the appointing authority has to examine the recommendation whether those were appropriate or not. The recommendation is an opinion of the expert for consideration of the appointing authority. The appointing authority thought it appropriate to reconvene the D.P.C. for arriving at a decision. It appears from the D.P.C. minutes that there was no consideration of the Nagaland State Council of Educational Research and Training Services Rules as was given effect from 30.04.2007 and hence the D.P.C. in all the cases made recommendation without relevant consideration of the said rules, and their consequences for far regularization of the Sr. Lecturer was concerned and treaded a wrong premise. The D.P.C. did not look into the matter whether the private respondents have completed the required continuous qualifying service of 5 years in the feeder grade or not. Apart that, the law is well settled that the executive is well within its jurisdiction to reconvene to D.P.C. but while operating any regularization retrospectively it has to take care that no prejudice is caused to the incumbent already in the cadre. Moreover, being in the grade on regular appointment. Unless the qualifying service as prescribed is complete in the grade, there cannot be any lawful consideration.

21. Be that as it may in this case, the question that has been taken for consideration by this Court is confined to whether the State-respondents No. 1 and 2 have acted in accordance with the provision of law while accepting the recommendation of the D.P.C. The answer is bound to be in the negative. The relevant provision as to the qualifying service as appearing in the Nagaland State Council of Educational Research and Training Services Rules, 2003, as given effect from 30.04.2007, was not at all considered by the D.P.C. while making recommendations for regularization in the post of Sr. Lecturer and as such both the recommendations of the

D.P.C. as well as the notification, consequent thereupon, dated 08.11.2007 (Annexure-C to the Affidavit in opposition filed by the respondent No. 1.) stand quashed.

38. In the case of **K. Kuppusamy (Supra)**, the Hon'ble Supreme Court has held as under:-

“3... The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule.

39. In the case of **Bank of Baroda (Supra)**, the Hon'ble Supreme Court has held as under:-

“28...Thus joint note/agreement could not have been in derogation of the existing statutory regulations and Regulation 2(s) (c) could not have been given retrospective effect. It is also apparent from the decisions of this Court in P. Sadagopan v. Food Corporation of India²¹, that executive instructions cannot be issued in derogation of the statutory Regulations. The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. In Rajinder Singh v. State of Punjab²², this Court had reiterated that

the settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. In *K. Kuppusamy v. State of T.N.*²³, this Court has observed that statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules, does not mean that the rule stood obliterated. Till the rule is amended, the rule applies".

29. Thus, in our opinion, the Regulations which were in force till 2003, would apply with full force and as a matter of fact, the amendments made in it by addition of Explanation (c) in Regulation 2(s) did not have the effect of amending the Regulations relating to pension, as contained in Regulation 38 read with Regulations 2(d) and 35 of the 1995 Regulations. Even otherwise, if it had the effect of amending the pay and perks "average emoluments", as specified in Regulation 2(d), it could not have operated retrospectively and taken away accrued rights. Otherwise also, it would have been arbitrary exercise of power. Besides, there was no binding statutory force of the so-called Joint Note of the Officers' Association, as admittedly, to Officers' Association even the provisions of Industrial Disputes Act were not applicable and joint note had no statutory support, and it was not open to forgo the benefits available under the Regulations to those officers who have retired from 1-4-1998 till December 1999 and thereafter, and to deprive them of the benefits of the Regulations. Thus, by the Joint Note that has been relied upon, no estoppel is said to have been created. There is no estoppel as against the enforcement of statutory provisions. The Joint Note had no force of law and could not have been against the spirit of the statutory Regulations and the basic service conditions, as envisaged under the Regulations framed under the 1970 Act. They could not have been tinkered with in an arbitrary manner, as has been laid down by this Court in *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly*²⁴ and *DTC v. Mazdoor Congress*"

40. In the case of **SH. P. Lalnunthara(Supra)**, this Court has held as under:-

“34... On going through the various judicial pronouncements of the Apex Court as relied upon by the rival parties, it can be seen that in service jurisprudence, in the absence of statutory rules governing the subject matter, executive or administrative instructions can be applied to supplement the rules holding the field but in no case to supplant them. In other words, administrative instructions/executive instructions cannot override the statutory rules. In the present case, the State respondents have introduced a cut-off date/crucial date for determining the eligibility of officers for promotion to the next higher grade through the Office Memorandums dated 15.07.2010 and 11.05.2012. By the earlier Office Memorandum, 1st of January of the vacancy year was fixed as the crucial date and later, vide the Office Memorandum dated 11.05.2012, 1st of April of the vacancy year was fixed as the crucial date. There is no dispute to the fact that the petitioners participated in the Departmental Examination conducted w.e.f 21st to 24th March, 2017 and that in the results declared on 1st of May, 2017, they cleared all the papers. This Court has also accepted the fact that the Agenda Note for filling up of 2 (two) posts of Senior Grade was prepared and sent to the DP&AR (GSW) on 05.07.2017 and therefore, as on that date, the petitioners had already qualified themselves as required by Rule 22 (5) of the MES Rules i.e., passing the Departmental Examination on Engineering and Accounts. This apart, the finding and decision of a Coordinate Bench of this Court that the cut-off date fixed by the Office Memorandum is more of a form than of substance was upheld by the writ appellate Court when it was challenged by the aggrieved parties. As already noticed, by the time the Agenda Note was prepared and sent to the DP&AR (GSW) on 5.7.2017 and/or when the DP&AR (ARW) had given its approval on 20.06.2017, all the petitioners had cleared the Departmental Examination. Therefore, upon due consideration of the case in its entirety, I find substance in the grievance projected by the petitioners and importantly, in view of the fact that the issue is covered by the decision rendered in WP (C) No. 72/2011 and W.A Nos. 2 & 3/201”.

41. Having perused the case law relied on by the learned counsel for the

respondent No. 4, I find that same does not come to the aid of the respondent No. 4 as it is factually on a different footing and has no application in the present case. The case laws as relied on by the learned counsel for the petitioner are settled principle of law, which, in my view, requires no discussion and application in the facts and circumstances of the present case.

42. Reverting back to the present case, since the DPC has adopted the office memorandum, dated 29.08.2019 on its own without there being any formal adoption by the APEDA by incorporating in the Recruitment Rule, 2013 and strangely recommended the respondent No. 4 who has not completed requisite qualifying years of 5 (five) years, and only on having the bachelor degree by ignoring the petitioner, as she is eligible in terms of the Recruitment Rule, 2013 having completed requisite qualifying 8 (eight) years of service being a non-degree holder, without relevant consideration of the said rules, and consequence of promotion of Respondent No. 4 treaded on a wrong premise, this Court is of the considered opinion that the recommendation, dated 25.02.2020 and its consequential impugned promotion order dated 26.08.2021 of the respondent No. 4 as well as the rejection of the representation of the petitioner by the office memo dated 11.10.2021 are not sustainable.

43. In view of the discussions and conclusion made hereinabove, the impugned DPC proceedings and its recommendation of respondent No. 4 and consequential promotion order as well as rejection order are interfered with. Accordingly, the impugned DPC recommendation, dated 25.02.2020 and its consequential promotion order, dated 26.08.2021 as

well as office memo, dated 11.10.2021 are hereby set and quashed. The respondent authorities are directed to constitute a fresh DPC for consideration of the petitioner and the respondent No. 4 for promotion to the post of Assistant strictly in accordance with the applicable Recruitment rules of the APEDA.

44. The writ petition stands allowed and disposed of with the above direction. No order as to cost(s).

JUDGE

Comparing Assistant