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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4428 of 2015**

1. Rajeev Verma S/o Jawahar Lal Verma, Aged About 50 Years R/o S -1, A 39, Vasundhara Vihar Colony, Godhanpur, Ambikapur, District Surguja Chhattisgarh
2. Suresh Kumar Mishra, S/o Shri Ramadhar Mishra, Aged About 50 Years R/o Block Colony, Ramanujganj, District Ramanujganj Balrampur Chhattisgarh
3. Shashi Kumar Sahu, S/o Haldhar Prasad Sahu, Aged About 52 Years R/o Ring Road Namnanakala, Near Maya Womens Hostel, Ambikapur, District Surguja Chhattisgarh
4. T.K. Chakrawarty, S/o Late Shri M.L. Chakrawarty, Aged About 52 Years R/o Shukla Complex, Sector I, Shankar Nagar, Raipur Chhattisgarh

---- **Petitioners****Versus**

1. State of Chhattisgarh Through The Secretary, Public Works Department, Mantralaya New Raipur, Police Station Rakhi, Civil And Revenue District Raipur, Chhattisgarh
2. Secretary, General Administration Department, Mantralaya, Mahandi Bhawan, Naya Raipur District Raipur Chhattisgarh
3. Engineer In Chief, Public Works Department, Raipur Chhattisgarh

---- **Respondents**

For Petitioners	:	Shri P.P.Sahu, Advocate.
For Respondent/State	:	Shri Prafull N Bharat, Additional Advocate General

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Order on Board****Per Navin Sinha, Chief Justice****30/11/2015**

1. The challenge in this writ application is to Item No. 9, Schedule II framed under Rule 6 of the Chhattisgarh Public Works Engineering (Executive) Service Recruitment Rules, 2015 (hereinafter called 'the Rules'). Rule 6 provides the procedure for entry in service. Item 9 in Schedule II provides for appointment and promotion to the post of Assistant Engineer (Civil) having a

strength of 259 posts. Under Rule 6(1)(a), 27% of the posts have been reserved for direct recruitment and 73% of posts under Rule 6(1)(b) have been reserved to be filled up by promotion from amongst persons in the promotional category. In the promotional category, 70% posts are to be filled up by promotion from the post of Sub Engineer and 3% posts are to be filled up from Draughtsman cadre.

2. Learned Counsel for the Petitioners made two-fold submission in challenging the Rules. It was submitted that the Rules were arbitrary and discriminatory. In support of the submission that the Rules were arbitrary, it was submitted that the essential qualification for appointment as Sub Engineer was a Diploma in Engineering while that for the post of Assistant Engineer was Degree in Engineering. The minimum qualifying service for promotion was 10 years. Those who may have been appointed as Sub Engineers on the basis of being Diploma holders and those who have have acquired Degree of Engineering while working as Sub Engineer during this eligibility period of 10 years formed separate class and they cannot be clubbed together while being considered for promotion to the next higher post of Assistant Engineer. Earlier in 1998, the Madhya Pradesh Public Works Engineering (Gazetted) Service Recruitment Rules, 1969 were amended providing for direct recruitment on the post of Assistant Engineer to the extent of 25% and 50% were to be filled up from Sub Engineer holding Diploma, 20% posts were reserved for Sub Engineers who acquired Degree of Engineering while working as Sub Engineer and 5% posts were to be filled up from Draughtsman cadre. The present amendment is therefore *per se* arbitrary as it does away with the earlier categorization between Diploma and Degree holder Sub-Engineers without any justification. It was lastly submitted that ITI holders are also eligible to be promoted as Sub Engineer and then to be considered for promotion to the post of Assistant Engineer. Putting ITI holders at par with Degree holders for promotion as Assistant Engineer is palpably arbitrary. No changes have

however been made in the Draughtsman cadre quota.

3. In support of the ground of discrimination, it was submitted that the Public Works Department to which the Petitioners belong has amended the Rules as aforesaid, even while the procedure as provided in 1998 amendment referred hereinabove is being continued by the Irrigation Department.

4. Learned Additional Advocate General opposing the writ application submitted that fixation of criteria for promotion is the prerogative and privilege of the State Government. Merely because earlier criteria may have been changed does not make it arbitrary. Promotion being a matter of chance, if opportunities get reduced due to increased area of competition it cannot be termed as arbitrary. ITI holders are required to put in 10 years of service on the subordinate post before they become eligible to be considered for promotion to the post of Sub Engineer. The minimum eligibility on the post of Sub Engineer to be considered for promotion as Assistant Engineer is also 10 years. It is therefore wrong to contend that ITI holders were per se being put at par with Degree holders. It was lastly submitted that the question of discrimination with regard to different policies being followed by different departments of the Government in promotion, so long as they remain within the confines of Article 14 of the Constitution cannot be a ground to urge indiscrimination.

5. We have considered the submissions on behalf of the parties.

6. Persons holding minimum qualification of ITI trained are eligible to be considered for promotion from Draughtsman after completion of 10 years to the post of Sub Engineer. Likewise, a Diploma holder eligible to be appointed as Sub Engineer becomes eligible to be considered for promotion to the post of Assistant Engineer after 10 years of service. A person holding a Degree in Engineering is eligible for direct recruitment to the post of Assistant Engineer.

7. There may be persons who were appointed as Sub Engineers on basis of their holding minimum eligibility qualification of Diploma in Engineering. While working in that capacity, they may have acquired qualification of a Degree in Engineering. Mere acquisition of degree does not render them eligible to be considered for promotion unless they complete the minimum qualifying period of service also. Earlier, the post of Assistant Engineer was to be filled up by direct recruitment to the extent of 25% by promotion from Diploma holder Sub-Engineers to the extent of 50%, and from amongst Sub Engineers who acquired qualification of Degree in Engineering while working in that capacity to the extent of 20% and 5% was reserved for Draughtsman cadre. The effect of doing away with the separate category of persons acquiring qualification of Degree while in service and putting all Sub Engineers in one category subject to fulfillment of minimum eligibility of 10 years service, in our opinion, does not make the Rules arbitrary. There is no denial of right to be considered for promotion. Promotion itself is a matter of chance. The Petitioners are Degree holders having acquired that qualification while working as Sub Engineer. That does not guarantee them a promotion in the open competition that shall now follow or even as earlier. A Diploma holder may still steal a march over them based on his performance. It is precisely this which is disliked by the Petitioners as it undoubtedly increases the zone of consideration making it more competitive for them instead of the safe haven of 20% that persons like the Petitioners had earlier, providing them a safe passage and cocoon with no other competitors in the arena. Merely because the Petitioners may have to face more competition and their chances of promotion may get reduced with more competitors in the fray, it cannot be said that the Rules are arbitrary.

8. We are also not in concurrence with the Petitioners that the ITI holders are being put at par with the degree holders in consideration for promotion to the post of Assistant Engineers. This argument overlooks the fact that the ITI

certificate holders are also required to fulfill the eligibility requirement of 10 years service before they can be promoted as Sub Engineer followed by 10 years eligibility on the latter post before they can be eligible to be considered for the post of Assistant Engineer.

9. The next submission of discrimination also does not appeal to us. If different departments have framed different criteria for promotion, the question of equality in recruitment Rules between two different departments which may be having different needs and requirements does not arise.

10. The fixation of eligibility for appointment, promotion etc. is the employer's privilege and it is not for the Court to decide in what manner the employer shall run its administration unless the Court finds the conduct of the employer falling foul of any constitutional requirements which is not the case presently.

11. We therefore find no merit in the writ application. The writ application is dismissed.

12. Notwithstanding the dismissal of the writ petition by us nothing precludes the Respondents in their wisdom from considering any representation by the Petitioners, if they so desire.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE