

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 283 OF 2010

Shri S. Lekshmanan,
Executive Engineer,
(Elect.), Electricity Department,
Government of Goa,
Vidyut Bhavan,
Panaji, Goa.

... Petitioner

V e r s u s

1. The Chief Electrical Engineer,
Government of Goa,
Electricity Department,
having office at Vidyut Bhavan,
Panaji Goa.

2. The State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Bardez Goa.

... Respondents

Mr. D. Pangam, Advocate for the Petitioner.

Ms. Sapna Mordekar, Addl. Government Advocate for the Respondents.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : 1st September, 2015

ORAL JUDGMENT (Per F. M. Reis, J.)

Heard Shri Pangam, learned Counsel appearing for the Petitioner and
Ms. Sapna Mordekar, learned Addl. Government Advocate appearing for the
Respondents.

2. The above Writ Petition seeks for a writ of mandamus or any other
writ in the nature of mandamus or appropriate Order of direction to the
Respondents to treat the Petitioner's service from the year 2004 or if not from

29.07.2005 as regular service to the post of Executive engineer.

3. Briefly, the facts of the case are that the Petitioner was appointed as a Junior Engineer (Electrical) on 04.06.1979 and subsequently promoted to the post of Asst. Engineer on 15.07.1996. According to the Petitioner, he completed eight years of regular service in the post of Asst. Engineer in the year 2004 and, as such, the Petitioner was eligible for promotion to the post of Executive Engineer. It is further his contentions that the Respondents did not fill in the vacancy for the post of the Executive Engineer and, as such on 21.04.2004 and 04.11.2004, the Petitioner made a representation to consider the case of the Petitioner for promotion to the post of Executive Engineer and, thereafter, on 29.07.2005, the Petitioner was promoted on adhoc basis to the post of Executive Engineer though there was no impediment in filling the said vacancy on regular basis and, as such, the Petitioner continued to work in the said post uninterrupted. On 28.03.2008, the Respondents promoted the Petitioner to the post of Executive Engineer (Electrical) on regular basis and the Petitioner was promoted for the vacancy of the year 2004. Thereafter, the Petitioner made a representation to the Respondent to treat the Petitioner promoted w.e.f 29.07.2005. It is further his contention that the next promotion post for the Petitioner is that of the Superintendent Engineer and, as the Petitioner was no appointed on regular basis from the year 2004, he did not comply with the eligibility criteria to get such promotion. It is further the contention that the Respondents have not made regular appointment to the post of Superintendent Engineer as the Petitioner did not have the qualifying service as he was not appointed in the year 2004. Consequently, the Petitioner filed the above Petition, inter alia, for the reliefs stated herein above.

4. An affidavit in reply came to be filed by the Respondents. It is contended by the Respondents that the entire Petition is without basis and that the entire basis of the Petition is that the Petitioner services in the cadre of Executive Engineer should be counted from 29.07.2005. It is further their case that the Petitioner was promoted on 28.03.2008 and his services in the cadre of Executive Engineer are therefore required to be appointed only from 28.03.2008. It is also their case that the promotion of the Petitioner on 29.07.2005 was on adhoc basis and not a regular promotion and, as such, does not bestow any right on the Petitioner. It is further their contention that to be eligible to the post of Executive Engineer, an Executive Engineer has to have an experience of five years regular service in the cadre and, as the Petitioner had just completed two years and three months, he was not eligible for such promotion.

5. The Petitioner has thereafter filed a rejoinder, inter alia, contending that the Petitioner has been appointed to the vacancy in the year 2004 and that the Respondent failed to fill the vacancy in time i.e. in the year 2004 though the petitioner was fully eligible in the year 2004 for promotion against the said vacancy. It is further contended that the Respondents have failed to fill up the vacancy in time without there being any reason whatsoever and, as such, cannot now be permitted to claim the benefit of their wrong doing by not convening the DPC in time. It is further contended that when DPC found the Petitioner fit for promotion for the vacancy of 2004, the question of contending that the period when the Petitioner was working on adhoc basis, cannot be counted, is without any substance. It is further his contention that as the Petitioner was eligible in the year 2004 for promotion, the Petitioner should be considered to be working on regular

basis from the said date.

6. The Respondents filed another affidavit in reply, inter alia, contending that the Petitioner joined services on 04.06.1979 and was promoted as Asst. Engineer on 15.07.1996. It is further contended that the Petitioner got his degree in Electrical Engineering in the year 1999 and that as per the relevant Recruitment Rules for a candidate having a degree in Engineering (Elect.) to be promoted to the post of Executive Engineer, he is required to have completed eight years of regular service. It is further contended that the Petitioner was eligible only in the year 2007 and not 2004 as alleged by the Petitioner. It is further contended that for the service in the cadre of Asst. Engineer, the Petitioner was having three years service w.e.f. 15.07.1996 to 29.07.1999 with diploma qualifications and the remaining five years service w.e.f. 13.09.1995 in degree qualifications. It is further contended that for a degree holder as Executive Engineer, the qualifying service is eight years as a degree holder or twelve years as a Diploma Holder and, as such, the Petitioner was not qualified for promotion in the year 2005.

7. Shri Pangam, learned Counsel appearing for the Petitioner, has pointed out that as per the recommendations of the DPC in the year 2008, the Petitioner was appointed for the regular post of the year 2004. Learned Counsel further pointed out that the delay in calling the DPC cannot in any way affect the right of the Petitioner to be promoted as the Respondents cannot take advantage of their own wrong. The learned Counsel further pointed out that as the Petitioner was appointed to the post of Asst. Engineer in the year 1996 and he had completed his degree in the year 1999, the Petitioner was eligible for promotion in the year

2004 as he had completed eight years which is the required service for such promotion. The learned Counsel further pointed out that in fact the Petitioner was promoted in the year 2005 on adhoc basis and considering the recommendation of the DPC, that the Petitioner is appointed for the post of 2004, the promotion of the Petitioner to the post of Executive Engineer has to be treated from the year 2005. Learned Counsel has thereafter taken us through the Recruitment Rules to point out that as far as the qualifying service for promotion to the post of Executive Engineer having a degree, such period is of eight years whereas for Diploma holders, the qualifying service is upto twelve years and as the Petitioner was a Degree holder, the Petitioner was entitled for promotion in the year 2004. Learned Counsel further pointed out that the Petitioner can be promoted with retrospective effect that the Petitioner has worked on such promotional post on adhoc basis from 2005 and as the Petitioner was eligible on that date. Learned Counsel has further taken us through the records of the proceedings to point out that the correspondence to point out that the contention that the Petitioner has completed his Degree in the year 1999 and, as such, was not eligible to be promoted in the year 2005 as he did not have the requisite qualified services, deserves to be rejected. Learned Counsel has relied upon the Judgment of the Apex Court reported in **(2004) 1 SCC 245** in the case of **P. N. Premachandran vs. State of Kerala & Ors.** and **(2000) 7 Supreme Court Cases 561** in the case of **Suraj Parkash Gupta & Ors. vs. State of J & K & Ors.**

8. On the other hand, Ms. Mordekar, learned Addl. Government Advocate appearing for the Respondents, has pointed out that the contention of the Petitioner that he was eligible to be promoted in the year 2005 is totally farfetched

as, according to her, the Petitioner had not completed eight years of service with a Degree qualification as on that date. Learned Addl. Government Advocate further pointed out that immediately after the DPC had cleared the name of the Petitioner for promotion, he was duly promoted as from the date of the Order of promotion. Learned Counsel further submits that the Petitioner is not entitled for any reliefs in the above Petition as, on going through the relevant Recruitment Rules, it clearly provides that in cases of a candidate being a Degree holder, he has to complete a qualifying service of eight years with such Degree qualification. Learned Addl. Government Advocate further submits that as the Petitioner has completed his Degree only in the year 1999, it cannot be said that the Petitioner was eligible for promotion in the year 2005 when he was given a promotion on adhoc basis. Learned Addl. Government Advocate further pointed out that it is well settled that such adhoc promotion cannot bestow any right to the Petitioner and, in any event, in such letter of appointment of the Petitioner on adhoc basis, it was clearly mentioned that the petitioner cannot claim any rights based on such adhoc promotion. Learned Addl. Government Advocate has relied upon the Judgment reported in **(2015) 1 SCC 474** in the case of **K. K. Dixit & Ors. vs. Rajasthan Housing Board & anr.**

9. We have considered the submissions of the learned Counsel. We have also gone through the records. On the basis of the material as referred to herein above, the records reveal that the Petitioner was promoted as an Asst. Engineer in the year 1996 and the Petitioner had completed his Degree course in the year 1999. In terms of the Government of Goa office of the Chief Electrical Engineer, group 'A' and 'B' Gazetted post, Recruitment Rules of 1988 for the post of

the Executive Engineer (Electrical), the requisite educational qualifications in case of recruitment by promotion is that the Asst. Engineer who has a Degree (Electrical) with eight years regular services in the grade or an Asst. Engineer having a diploma with twelve years service in the grade.

10. On going through the eligibility for the post of Executive Engineer (Electrical), a person has to have eight years with a Degree in Electrical. Admittedly, in the present case, the Petitioner acquired his Degree in the year 1999 and eight years will be completed only in the year 2007. In such circumstances, the contention of the learned Counsel appearing for the Petitioner that the Petitioner was eligible to be appointed to the post of Executive Engineer (Electrical) in the year 2005 when he was appointed on adhoc basis, cannot be accepted.

11. In the judgment of the Apex Court reported in **(2007) 5 SCC 535** in the case of ***Shailendra Dania and others V/s S. P. Dubey and others***, the Apex Court has observed at paras 43, 44 and 45 thus :

“**43.** Taking into consideration the entire scheme of the relevant Rules, it is obvious that the diploma-holders would not be eligible for promotion to the post of Assistant Engineer in their quota unless they have eight years' service, whereas the graduate Engineers would be required to have three years' service experience apart from their degree. If the effect and intent of the Rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then

induction to the cadre of Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma-holders to any further requirement of having a further qualification of two years' service. At the time of induction into the service to the post of Junior Engineers, Degree in Engineering is a sufficient qualification without there being any prior experience, whereas diploma-holders should have two years' experience apart from their diploma for their induction in the service. As per the service rules, on the post of Assistant Engineer, 50% of total vacancies would be filled up by direct recruitment, whereas for the promotion specific quota is prescribed for a graduate Junior Engineer and a diploma-holder Junior Engineer. When the quota is prescribed under the Rules, the promotion of graduate Junior Engineers to the higher post is restricted to 25% quota fixed. So far as the diploma-holders are concerned, their promotion to the higher post is confined to 25%. As an eligibility criterion, a degree is further qualified by three years' service for the Junior Engineers, whereas eight years' service is required for the diploma-holders. Degree with three years' service experience and diploma with eight years' service experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma-holder Junior Engineer. Three years' service experience as a graduate Junior Engineer and eight years' service experience as

a diploma-holder Junior Engineer, which is the eligibility criteria for promotion, is an indication of different quality of service rendered. In the given case, can it be said that a diploma-holder who acquired a degree during the tenure of his service, has gained experience as an Engineer just because he has acquired a Degree in Engineering. That would amount to say that the experience gained by him in his service as a diploma-holder is qualitatively the same as that of the experience of a graduate Engineer. The Rule specifically made difference of service rendered as a graduate Junior Engineer and a diploma-holder Junior Engineer. Degree-holder Engineer's experience cannot be substituted with diploma-holder's experience. The distinction between the experience of degree-holders and diploma-holders is maintained under the rules in further promotion to the post of Executive Engineer also, wherein there is no separate quota assigned to degree-holders or to diploma-holders and the promotion is to be made from the cadre of Assistant Engineers. The Rules provide for different service experience for degree-holders and diploma-holders. Degree-holder Assistant Engineers having eight years of service experience would be eligible for promotion to the post of Executive Engineer, whereas diploma-holder Assistant Engineers would be required to have ten years' service experience on the post of Assistant Engineer to become eligible for promotion to the higher post. This indicates that the Rule itself

makes differentia in the qualifying service of eight years for degree-holders and 10 years' service experience for diploma- holders. The Rule itself makes qualitative difference in the service rendered on the same post. It is a clear indication of qualitative difference of the service on the same post by a graduate Engineer and a diploma-holder Engineer. It appears to us that different period of service attached to qualification as an essential criterion for promotion is based on administrative interest in the service. Different period of service experience for degree-holder Junior Engineers and diploma-holder Junior Engineers for promotion to the higher post is conducive to the post manned by the Engineers. There can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialised job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualifying person would be qualitatively different.

44. After having an overall consideration of the relevant Rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineers

cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. When the claim is made from a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The 25% specific quota is fixed for degree-holder Junior Engineers with the experience of three years. Thus, on a plain reading, the experience so required would be as a degree- holder Junior Engineer. 25% quota for promotion under the rule is assigned to degree-holder Junior Engineers with three years' experience, whereas for diploma-holder Junior Engineers eight years' experience is the requirement in their 25% quota. Educational qualification along with number of years of service was recognised as conferring eligibility for promotion in the respective quota fixed for graduates and diploma-holders. There is watertight compartment for graduate Junior Engineers and diploma-holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. Fixation of different quota for promotion from different channels of degree-holders and diploma-holders itself indicates that service required for promotion is an essential eligibility criterion along with degree or diploma,

which is service rendered as a degree-holder in the present case. The particular years of service being the cumulative requirement with certain educational qualification providing for promotional avenue within the specified quota, cannot be anything but the service rendered as a degree-holder and not as a diploma- holder. The service experience as an eligibility criterion cannot be read to be any other thing because this quota is specifically made for the degree-holder Junior Engineers.

45. As a necessary corollary, we are of the view that the diploma-holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers.”

12. Taking note of the said observations, we find that the diploma-holder Junior Engineer who has obtained a degree during the tenure of service would be required to complete the requisite number of years to be eligible for promotion after having obtained a degree to become eligible for promotion to the higher post.

13. Considering the above and applying them to the facts of the present case, we find that the Petitioner has not completed the requisite number of years as a degree- holder in the grade of Asst. Engineer in the year 2005 and as such, the contention of Mr. Pangam, learned counsel appearing for the Petitioner that the Petitioner has to be given promotion with retrospective effect from the year 2005 cannot be accepted. The recommendation of DPC that the Petitioner is to be appointed for the post available in the year 2004 would not by itself suggest nor bind this Court to accept that the Petitioner had attained the eligible criterion for such post in the year 2004 when the fact on record suggest otherwise.

14. The contention of Mr. Pangam, learned counsel appearing for the Petitioner to the effect that adhoc promotion should not be encouraged as it would affect the period of qualifying service for subsequent promotion would have to be examined in the context that it is well settled that the promotion takes effect from the date it is granted and not from the date of occurrence of vacancy or creation of post. The adhoc services of the promotee in some circumstances cannot be treated as no-est merely because DPC was not consulted in respect of the continuous of adhoc services for a long period of time. In such circumstances, such period in specific circumstances can be examined as from the date when there is a clear vacancy to the promotional post and the promotee satisfies the eligibility and suitability criterion. Consequently, in the present case, we find that the Petitioner was working on adhoc basis to such post from the year 2005 and in fact, the petitioner satisfies the eligibility and suitability criterion for promotion from the year 2007 and as such, the Petitioner is entitled to be treated as promoted to the regular post as an Executive Engineer as on 2007. To that extent, the petition would

succeed.

15. In view of the above, we pass the following :

O R D E R

- (i) The petition is partly allowed.
- (ii) The Petitioner who has retired shall be treated as promoted in the year 2007 for the purpose of computing his last pay and getting his pensionary benefits in accordance with law.
- (iii) Rule is made absolute in above terms.
- (iv) The petitions stands disposed of accordingly.

K. L. WADANE, J.

F. M. REIS, J.

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