

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.8499 of 2005
and
W.V.MP.No.4735 of 2016
in/and
W.P.No.19796 of 2013

COMMON ORDER :

These two Writ Petitions relate to promotion to the post of Executive Engineer from the post of Dy.Executive Engineer in the Andhra Pradesh State Police Housing Corporation Limited (for short “the Corporation”), which is a company registered under the Companies Act, 1956 and which is wholly owned by the Government of Andhra Pradesh.

2. The service conditions of the Engineering staff of the Corporation are regulated by service regulations called Andhra Pradesh State Police Housing Corporation Limited Service Regulations, 1979 (for short ‘the Regulations’).

THE SITUATION PRIOR TO 29.3.2003

3. Initially the said Regulations provided for appointment of Diploma Holders (L.C.E) in Engineering as Supervisors and for appointment of Graduate Engineers (B.E (Civil)) in posts of Junior Engineers.

4. The next higher post was Assistant Engineer which was filled up by direct recruitment or by promotion. Junior Engineers with 5

years experience in that post or Supervisors with 10 years experience in that post were eligible for such promotion.

5. The post of Executive Engineer was the higher post after the post of Assistant Engineer. Only Assistant Engineers with 7 years experience possessing B.E (Civil) were eligible for being considered for the said post. Thus Diploma Holders/Supervisors, who had been promoted to the post of Assistant Engineer, were not eligible.

6. Later the post of Supervisor was re-designated as Assistant Engineer, the post of Junior Engineer was re-designated as Assistant Executive Engineer and the post of Assistant Engineer was re-designated as Dy.Executive Engineer.

7. So Diploma Holders could get appointed as Asst.Engineers; B.E (Civil) degree holders/Graduate Engineers could get appointed as Asst.Executive Engineers; the scale of pay of Assistant Engineer was Rs.5000-150-5300-170-6150-200-7150-250-8400-300-9900-350-10600 and the scale of pay of Assistant Executive Engineer was Rs.5980-170-6150-200-7150-250-8400-300-9900-350-11650-450-12100; and both could be appointed as Dy.Executive Engineers by having 5 years experience as Asst.Executive Engineer or by having 10 years experience as Asst.Engineer. But there was no promotion channel for Diploma Holders who had got promoted as Dy.Executive Engineers to post of Executive Engineers and only Graduate Engineers who had got promoted as Dy.Executive Engineers were

eligible for such promotion after putting in 7 years service as Dy.Executive Engineers.

SITUATION AFTER 29.3.2003

8. On the representations of the Diploma Holders/Asst.Engineers/Supervisors, who had been promoted as Dy.Executive Engineers, the Board of Directors of the Corporation, after elaborate consideration and after obtaining permission of the State Government, passed Resolution No.3078 in its Board Meeting held on 29-03-2003 creating a channel of promotion to the post of Executive Engineer for Diploma Holders Dy.Executive Engineer with not less than 12 years of experience of work in that post.

9. This is questioned by the petitioners in W.P.8499 of 2003.

10. A consequential amendment was therefore made to the Regulations dealing with promotion to post of Executive Engineer incorporating this decision of the Board of Directors of the Corporation.

11. Vide letter No.7223/Ser.III(2)/2008 dt.23.06.2008 the Principal Secretary, Home Department of the Government of Andhra Pradesh addressed to the Corporation approving the amendment issued to Service Regulation No.4 (ii) of the Annexure to the service regulations under Engineering Section in Sl.No.2 Column No.6 providing a channel of promotion to the post of Executive Engineers to Diploma Holders/Dy. Executive Engineers with not less than 12

years experience of work in that rank and clarifying that it applies w.e.f 29.03.2003.

CONTENTIONS OF PETITIONERS IN W.P.8499 OF 2005

12. The petitioners are Diploma holders in Engineering and they were initially appointed as Supervisors, which post was later re-designated as Assistant Engineer. On completion of 10 years of service as Assistant Engineers by 09-09-1990, they became eligible for promotion as Dy.Executive Engineer. However, the petitioners were promoted as Dy.Executive Engineers on regular basis w.e.f. 21-05-1993. They seek promotion to the post of Executive Engineer.

13. Alleging that the Corporation cannot make any discrimination between the Diploma Holders and Graduate Engineers in the cadre of Dy.Executive Engineer for the purpose of promotion to the post of Executive Engineer, and the Corporation cannot prescribe a longer period of service for Diploma Holders than for Graduate Engineers in the cadre of Dy.Executive Engineers for promotion to the post of Executive Engineer, the petitioners filed W.P.No.8499 of 2005.

14. It is their contention that there is no independent cadre of Assistant Engineer/Assistant Executive Engineer and at the time of recruitment, based on qualification possessed by the individual who had participated in the selection, designation was given as Assistant Engineer or Assistant Executive Engineer and that a Diploma Holder was designated as Assistant Engineer and a Graduate Engineer was

called as Assistant Executive Engineer. They contend that on appointment, both discharged same duties and responsibilities and the posts were also interchangeable. Though they admit that there was a difference of pay, they contend that there was no difference in the duties and responsibilities being performed by Assistant Engineer/Assistant Executive Engineer.

15. They contend that an Assistant Engineer was required to put in 10 years of service to acquire eligibility for promotion as Dy.Executive Engineer, whereas an Assistant Executive Engineer was required to put in only 5 years of service; thus, the Diploma Holders were required to have 5 years more experience in the cadre of Assistant Engineer to get parity with Assistant Executive Engineers; and on completion of 10 years service, they were entitled to seek promotion to the post of Dy.Executive Engineer. For the post of Dy.Executive Engineer, the post of Assistant Engineer/Assistant Executive Engineer was the feeder cadre and basing on placement assigned in the common seniority list and subject to suitability, the promotions were affected. They contend that the birth mark, which was there at the initial stage of recruitment as Assistant Engineer got wiped out once their longer service was equated to that of graduation and on completion of 10 years service, they became equal in all respects to Graduate Engineers in cadre of Dy.Executive Engineer.

16. They contend that once they reached the level of Dy.Executive Engineer along with Graduate Engineers, there is no justification to

make a further distinction or classification based on their original birth mark in the lower cadre of Assistant Engineer.

17. They contend that though originally there was no promotion channel to the post of Executive Engineer for Diploma holders appointed as Dy.Executive Engineers, once such a channel is provided, requiring Diploma holders in the cadre of Dy.Executive Engineer, who seek promotion as Executive Engineer, to have again a longer experience of 12 years is arbitrary, illegal and unconstitutional.

18. They contend that there is no nexus between the higher experience period prescribed for Diploma holders in the cadre of Dy.Executive Engineer with the object sought to be achieved by providing a promotion channel to them to the post of Executive Engineer.

19. They contend that once an Assistant Engineer had got promoted as Dy.Executive Engineer, he loses his birth mark and gets merged with the regular stream of Dy.Executive Engineer ; and there ought to be no discrimination made for considering the persons like the petitioners, who were Diploma holders, and who have reached the cadre of Dy.Executive Engineer *and* others, who are Graduate Engineers in the cadre of Dy.Executive Engineer; and so promotion ought to be made to the post of Executive Engineer as per their seniority in the cadre of Dy.Executive Engineer and merit without reference to the educational qualifications held by them. They

contend that prescription of 12 years experience for Diploma holder Dy.Executive Engineer to get promoted to the post of Executive Engineer confers an undue advantage to the Graduate Engineers in cadre of Dy.Executive Engineer and is intended to eliminate Diploma holders.

CONTENTIONS OF CORPORATION/RESPONDENT NO.1

20. The 1st respondent, however, refuted the above contentions.

21. The 1st respondent stated that the qualification prescribed for the post of Assistant Engineer is a Diploma in Civil Engineering or any equivalent, whereas the qualification prescribed for the post of Assistant Executive Engineer is graduation in Civil Engineering or any equivalent examination; the scales of pay of Assistant Engineer and Assistant Executive Engineer were not equal from the date of their appointment; there is a gap of 3 years in getting qualified between the Graduate engineer and Diploma engineer and duration of study for a Graduate Engineer is 16 years (10+2+4) while the duration of study for a diploma holder is only 13 years (10+3). It is also stated that the post of Assistant Executive Engineer was being treated as a Gazetted post in Government Department while the post of Assistant Engineer was not a Gazetted post.

22. According to the respondents, the qualification prescribed for the post of Assistant Engineer and Assistant Executive Engineer is different, and there was no cadre strength fixed for the Assistant

Engineer and Assistant Executive Engineer from the beginning. Both posts were not interchangeable and even if an Assistant Engineer was posted in the post of Assistant Executive Engineer, he would not be called as Assistant Executive Engineer, but will be called only as Assistant Engineer; and even promotion from the post of Assistant Engineer/Assistant Executive Engineer to the post of Dy.Executive Engineer is not based on the common seniority as alleged by petitioners, but that separate seniority lists of Assistant Engineer and Assistant Executive Engineer were being prepared.

23. They contended that as per the Service Regulations, for promotion to the post of Dy.Executive Engineer, an Assistant Executive Engineer is required to possess experience of not less than 5 years while an Assistant Engineer is required to possess an experience of not less than 10 years; that prior to the decision of the Board of Directors on 29-03-2003, only candidates possessing Bachelors Degree in Civil Engineering with minimum experience of not less than 7 years in the cadre of Dy.Executive Engineer were eligible for promotion to the post of Executive Engineer and there was no provision for Dy.Executive Engineers, possessing only Diploma qualification, to seek promotion to the post of Executive Engineer.

24. They contend that petitioners in W.P.No.8499 of 2005 joined as Dy.Executive Engineers only on 07-06-1993 and 30-06-1993 and they would become eligible for the post of Executive Engineer on 08-06-2005 and 01-07-2005 after they complete 12 years of service

and since they filed W.P.No.8499 of 2005 in April, 2005, they had not been considered for promotion to the post of Executive Engineer by that date and others had obtained the eligibility for promotion

25. They contend that Diploma holders can never claim to be equal to Graduate Engineers and in the interest of efficiency of service, the Corporation is not precluded from requiring Diploma holders in the cadre of Dy.Executive Engineers to have more experience in the said cadre than Graduate Engineers in the cadre of Dy.Executive Engineer for consideration for promotion to the post of Executive Engineer. It is stated that eligibility determination was made by cumulative criteria of prescribing an educational qualification with minimum service experience.

26. They contend that the choice before the Corporation was either to recognise the Diploma holders eligible for promotion or to exclude them, and that if the Corporation had only prescribed educational qualifications as conferring eligibility for promotion without the period of service, then the petitioners would have complained about discrimination, but since that has not been done, they cannot have any grievance.

27. It is contended that it is matter of policy adopted by the Corporation to prescribe more service experience to Diploma holders in the cadre of Dy.Executive Engineer than for the Graduate Engineers in the same cadre for seeking promotion to the post of

Executive Engineer and no rights of the petitioners have been violated. It is stated that the petitioners were actually benefitted by provision of a channel of promotion from the post of Dy.Executive Engineer to the post of Executive Engineer.

The Board Resolution dt.13.5.2013

28. Through a Board Resolution contained in Resolution No.3988 dt.13.5.2013, Board of Directors of the Corporation resolved that the ratio among the Graduate Engineers and Diploma Engineers for promotion to the post of Executive Engineers should exist and such a ratio would be fixed after studying the practices prevailing in other Government departments and corporations.

W.P.No.19796 of 2013.

29. Challenging the Resolution dt.13.5.2013, the 1st petitioner in W.P.No.8499 of 2005 and another person, who is also a Diploma holder in the cadre of Dy. Executive Engineer in the Corporation, filed W.P.No.19796 of 2013.

30. They contend that when W.P.No.8499 of 2005 questioning the action of the Corporation for prescribing a different period of experience for Diploma holders in the cadre of Dy. Executive Engineers to that possessed by Graduate Engineers in the same cadre for promotion to the post of Executive Engineers was pending, it was not open to the Corporation to pass another resolution to fix a ratio among the Graduate Engineers and Diploma Engineers in the cadre of

Dy. Executive Engineers for promotion to the post of Executive Engineers. They contend that the Corporation cannot be allowed to make a mini classification among the same group of Engineers working in the cadre of Dy. Executive Engineers for the purpose of further promotion to the post of Executive Engineer. They contend that once a Diploma holder gets promoted as a Dy. Executive Engineer by serving for a longer period of five years than the Graduate Engineers in the post of Assistant Engineer, and the longer period is treated as equivalent to the Degree in Engineering, both Graduate Engineers and Diploma holders attain parity in the cadre of Dy. Executive Engineer and there is no justification to introduce any ratio among them for promotion to the post of Executive Engineer. They contend that in the A.P. Irrigation Engineering Services Rules notified vide G.O.Ms.No.32, dt.12.04.2000, the A.P. Roads and Buildings Engineering Services Rules notified vide G.O.Ms.No.103 dt.22.05.1996 and the A.P. Housing Board and the A.P. State Road Transport Corporation Service Rules, promotion to the post of Executive Engineer is provided as per seniority in merit without reference to the education qualification. They contend that the Resolution dt.13.5.2013 is passed without application of mind and that it is intended to confer undue advantage to the Graduate Engineers in the cadre of Dy. Executive Engineers and to eliminate Diploma holders in the same cadre for further promotion to the post of Executive Engineer. They contend that introduction of the ratio, almost ten years after the amendment to the Service Rules for

promotion to the post of Executive Engineer from the post of Dy. Executive Engineer for Diploma holders, is arbitrary and that the respondents should be directed to consider the claims of the Diploma holders/Dy. Executive Engineers strictly in accordance with the seniority and eligibility without reference to their educational qualification.

31. Though counter affidavit is not filed in this Writ Petition, counsel for Corporation reiterated the stand taken by the Corporation in W.P.No.8499 of 2005.

32. Counsel for the Corporation has also pointed out that on 25.3.2014 Vide Resolution No.4064, the ratio was fixed as 2:1 among the Graduate Engineers and Diploma holders in the cadre of Dy. Executive Engineers for promotion to the post of Executive Engineer.

33. He also stated that after 2006, no regular promotions to the post of Executive Engineers were made and only in-charge promotions were made.

34. Counsel for the Corporation also admitted that in the cadre of Dy. Executive Engineer, there is no difference in duties between the Diploma holder promotees and Graduate Engineer promotees from the post of Assistant Engineer and Assistant Executive Engineer and that there is also no difference in pay in the cadre of Dy. Executive Engineer between these two categories of promotees. He contended that the Diploma holders cannot equate themselves with Graduate

Engineers and prescribing long period of service for Diploma holders in the cadre of Dy. Executive Engineers as compared to Graduate Engineers and prescribing a ratio among Graduate Engineers and Diploma holders is not arbitrary and cannot be questioned by the petitioners. It is stated that it is necessary in the interest of efficiency of services and is a matter of policy.

THE CASES CITED BY COUNSEL FOR PETITIONERS

35. The counsel for petitioner reiterated their contentions and relied upon *Bhudhan Choudhry and others, v. State of Bihar*¹, *N. Abdul Basheer v. K. K. Karunakara*², *V.Srinivasa Reddy v. Government of Andhra Pradesh rep. by its Principal Secretary, Panchayat Raj and Rural Development Department and others*³, which was confirmed by the Supreme Court of India in Special Leave to Appeal (Civil) No.4115 of 2009 on 27.02.2009.

THE CASES CITED BY COUNSEL FOR RESPONDENTS

36. The counsel for Corporation and the other respondents contended that classification on the basis of qualification and quota has been upheld by the Supreme Court in *The State of Jammu & Kashmir v. Triloki Nath Khosa and others*⁴, *P.Murugesan and others v. State of T.N. and others*⁵, *Shamkant Narayan Deshpande v. Maharashtra Industrial Development Corporation and another*⁶, *State of M.P. and*

¹ AIR 1955 SC 191

² AIR 1989 SC 1624

³ 2009(2) ALT 478 (DB)

⁴ AIR 1974 SC 1

⁵ 1993(2) SCC 340

⁶ AIR 1993 SC 1173

*another v. Dharam Bir*⁷, *T.R.Kothandaraman and others v. Tamilnadu Water Supply & Drainage BD and others*⁸, *Food Corporation of India and Others v. Om Prakash Sharma and others*⁹, *Union of India and another v. R.Iyyaswamy and others*¹⁰, *K.R. Lakshman v. Karnataka Electricity Board*¹¹ and *Roop Chand Adlakha and others Vs. Delhi Development Authority*¹²

OTHER EVENTS WHICH OCCURRED DURING THE PENDENCY OF THE WRIT PETITIONS

37. Petitioners in W.P.No.8499 of 2005 filed W.P.MP.No.37077 of 2005 to direct the respondents to consider their cases for promotion to the post of Executive Engineers in the existing vacancy as per the seniority, eligibility and suitability on the ground that they completed the eligible service of 12 years by 08.06.2005 and 01.07.2005.

38. On 14.09.2012 this Court directed that until further orders, no promotion to the post of Executive Engineers would be undertaken by the Corporation.

39. Certain Graduate Engineers filed applications WP.MP.No.47469 of 2012 and WP.MP.No.47604 of 2012 to implead themselves in W.P.No.8499 of 2005 which were ordered on 24.1.2013. W.V.MP.Nos.205 and 206 of 2013 were filed by the impleaded respondents to vacate the said order.

⁷ 1998(6) SCC 165

⁸ 1994(6) SCC 282

⁹ 1998(7) SCC 676

¹⁰ 1997(7) SCC 727

¹¹ AIR 2001 SC 595

¹² AIR 1989 SC 307

40. On 30.01.2013, the order dt.14.09.2012 in WP.MP.No.37077 of 2005 was modified in WV.MP.Nos.205 and 206 of 2013 directing the Corporation to consider the case of the petitioners as well as unofficial respondents for promotion apart from others who are eligible for promotion to the post of Executive Engineers. The Court further directed that such promotions would be subject to the result in the Writ Petition.

41. In W.P.No.19796 of 2013, the petitioners filed WP.MP.No.9441 of 2014 to direct the respondents to consider their cases for promotion to the post of Executive Engineer in the existing vacancies as per their seniority and eligibility, by suspending the Resolution 3988 dt.13.5.2013 pending disposal of the Writ Petition.

42. On 20.03.2014, this Court directed the Corporation to undertake the exercise of affecting promotions to the cadre of Executive Engineers without reference to the ratio sought to be fixed by their Resolution No.3988 dt.13.5.2013.

43. WP.MP.Nos.18464 of 2014 and 8988 of 2015 were filed by the Graduate engineers seeking impleadment in this Writ Petition supporting the stand of the Corporation.

44. These applications were allowed on 22.11.2016.

45. Counsel for the impleaded parties Sri P.Gangi Rami Reddy, Sri J.R.Mohan Rao, and Sri M.Ratna Reddy supported the stand of the Corporation.

46. W.V.MP.No.4735 of 2016 is filed by the respondents 3 and 4 in W.P.No.19796 of 2013 to vacate the order dt.20.03.2014 in WP.MP.No.9441 of 2014.

THE POINTS FOR CONSIDERTATION

47. On the basis of the above contentions, the following points arise for consideration:

- (a) *Whether the Corporation's action in prescribing for Diploma Holders in the category of Dy.Executive Engineers, a longer period of 12 years experience in the said post for seeking promotion to the post of Executive Engineer while prescribing only 7 years to Graduate Engineers in the same category is valid or not?*
- (b) *Whether the Corporation's action in deciding to prescribe a ratio among Graduate Engineers and Diploma holders in the category of Dy.Executive Engineer for promotion to the post of Executive Engineer is valid or not?*

THE CONSIDERATION BY THE COURT

Point (a)

48. I shall first consider whether the Corporation was right in prescribing a longer period of experience of 12 years for Diploma holders in the category of Dy.Executive Engineer for promotion to the post of Executive Engineer when compared to the Graduate Engineers in the same category.

49. Learned Standing Counsel for the Corporation had stated categorically that there is no difference in pay scales for Diploma holders and Graduate Engineers in the category of Dy.Executive Engineer and that there is also no difference in the nature of the duties. It is also not the case of the Corporation that for discharging the duties in the post of Executive Engineer, a higher graduate qualification is necessary.

50. If so, merely because Graduate Engineers and Diploma holders form separate channels i.e. Assistant Executive Engineers and Assistant Engineers for promotion to the post of Dy.Executive Engineer, and the former need have only 5 years experience, while the latter should have 10 years experience for such promotion, and they were earmarked posts in the ratio 2:1 in the category of Dy.Executive Engineer, the question arises whether the Corporation would be justified in persisting with the birthmark even for the next higher post of Executive Engineer.

51. It is settled law that Article 14 of the Constitution of India forbids class legislation, but it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, viz., (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that such differentia must have a rational relation to the object sought to be

achieved by the statute in question. The classification may be founded on different bases; viz., geographical, or according to objects or occupations or the like. *What is necessary is that there must be a nexus between the basis of classification and the objects of the Act under consideration. This is the ratio in several decisions of the Supreme Court and which was reiterated also in **Budhan Choudhry** (1 supra).*

52. The learned counsel for the petitioner placed strong reliance on the decision in **N.Abdul Basheer** (2 supra). In that case the Supreme Court has considered the special Rules for Kerala Excise and Prohibition Subordinate Service. Special Rule 2 thereof prescribed a ratio between the graduates and non-graduates in the matter of promotion from the post of Excise Preventive Officer to that of Second Grade Excise Inspector. The 3rd respondent, who was a Graduate, was promoted earlier to the petitioner who was a non-Graduate. The petitioner contended that as Graduates and non-Graduates were both regarded as eligible for promotion to the post of Second Grade Excise Inspectors, no differentiation should have been made between them when prescribing a rule of quota for promotion. A learned Single Judge of the Kerala High Court allowed the Writ Petition. The appeal filed by the Graduate officers before the Division Bench of the High Court was dismissed. Before the Supreme Court, the Graduate Excise Inspectors contended that there was good and substantial reason for maintaining the ratio between Graduate and

non-Graduate officers and that the history of the evolution of the service supported the maintenance of such ratio.

53. The Supreme Court rejected the said plea. It held that the history of the evolution of the Kerala Excise and Prohibition Subordinate Service showed no uniformity either in approach or in object; the history had varied with the circumstances prevailing before and after the reorganization of the State on 01-11-1956; originally when more emphasis was laid on the induction of the Graduates, the ratio of Graduate to non-Graduate officers was maintained at 3:1, but from 09-09-1974, the ratio was changed inversely to 1:3; and more non-Graduates were inducted into the service. It noted that the trend ran in favour of absorbing more non-Graduates and a consistent or coherent policy in favour of Graduates was absent, that it was not a case where the cadre of officers was kept in two separate divisions, and that it was a single cadre and they were all equal members of it. It also noted that there was no evidence that Graduate Preventive Officers enjoyed higher pay than non-Graduate Preventive Officers, but the nature of duties of Preventive Officers, whether Graduate or non-Graduate, were identical and non-Graduate Preventive Officers were regarded as competent as Graduate Preventive Officers. There was no evidence of special responsibility being vested in Graduate Preventive Officers and once they were promoted as Excise Inspectors, there was no distinction between Graduate and non-Graduate Excise Inspectors. The Court therefore held that the

prescription of ratio dividing the quota of promotion between Graduate Preventive Officers and non-Graduate Preventive Officers was invalid and violates Article 14 and 16 of the Constitution of India.

54. In the instant case also the respondents have not contended that higher pay was given to Graduate Engineer Dy. Executive Engineers as compared to non-Graduate Dy. Executive Engineers or that nature of duties of Dy. Executive Engineers were different as between Graduates and non-Graduates. It is also not their case that any special responsibility was vested in graduate Dy. Executive Engineers. Thus the ratio of this decision applies to the instant case.

55. There does not appear to be any nexus between the basis of classification i.e., possession of higher educational qualification and the object for providing a promotion channel to Diploma Holder Dy.Executive Engineers to post of Executive Engineer.

56. A Division Bench of this Court in **V.Srinivasa Reddy** (3 supra) took a similar view in relation to promotions from the post of Dy. Executive Engineers to the post of Executive Engineers in the Andhra Pradesh Panchayat Raj and Rural Development Services Rules. It was a converse case where for promotion to the post of Executive Engineer from the post of Dy. Executive Engineer, a ratio of 3:1 as between non-graduates and graduates was prescribed giving preference to non-Graduates. Rule 3 (b) of the said Rules provided that one must possess Bachelor Degree in Engineering for promotion

to the post of Executive Engineer. This Rule was amended vide G.O.Ms.No.314 dt.17-08-2002 providing fixing ratio as between non-graduates and graduates in the cadre of Dy. Executive Engineer as 3:1. The Court held that both graduate and Non-graduate Dy. Executive Engineers perform same duties and responsibilities and an integrated seniority list of Dy. Executive Engineers of all zones will have to be prepared and once a person is promoted from the feeder category i.e Assistant Executive Engineer or Assistant Engineer to the category of Dy. Executive Engineer, the feeder categories have no relevance. It held that once they have been promoted to the post of Dy. Executive Engineer, the distinction between the graduate or non-graduate will disappear and they have to be treated equally for all purposes including promotion to the post of Executive Engineer. Consequently it held that when senior most graduate Dy. Executive Engineers was available for promotion to the post of Executive Engineer, the ratio 3:1 giving preference to a junior most non-graduate Dy. Executive Engineer for promotion to the cadre of Executive Engineer is unjust on the face of it. This judgment was confirmed in S.L.P.No.4115 of 2009 on 27-02-2009.

57. However, the classification on the basis of educational qualification as between Diploma holders and Graduate Engineers for promotion to higher posts was sought to be justified by the learned counsel for respondents on the basis of the decision in **Triloki Nath Khosa** (4 supra).

58. In that case also, provisions of the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1970 dealing with promotions to the post of Executive Engineers from the post of Assistant Engineers from among Diploma holders and Degree holders in Engineering were considered. In that case, promotion to the post of Executive Engineers were allowed to only those Assistant Engineers who possessed a Bachelors Degree in Engineering but there was no opportunity given to Assistant Engineers who were only Diploma holders. There was no dispute that Assistant Engineers who were graduates were being given higher slab of pay. It held that the rule providing that the Graduates would be eligible for promotion from the category of Assistant Engineers to the category of Executive Engineers by excluding Diploma holders does not violate Article 14 and 16 of the Constitution of India. The Court held that if persons drawn from different sources are integrated into one class, they can be classified for purposes of promotion on the basis of their educational qualification. The Court held that judicial scrutiny can extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view and that it cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification. It held that if such enquiry is permissible, it would be open to the Courts to substitute their own judgment for that of the legislature or the rule making authority on the need to classify or the desirability of achieving a particular object. On the facts of the case the Court held that the classification was made with a view to

achieving administrative efficiency in the Engineering services and if this is the object, the classification is clearly correlated to it for higher educational qualifications or at least presumptive evidence of a higher mental equipment.

59. A similar view was taken in **Shamkant Narayan Deshpande** (7 supra), **T.R.Kothandaraman** (9 supra), that educational qualifications could be made the basis for classification of employees in State service in the matter of pay scales, promotion etc.

60. The judgment in **Triloki Nath Khosa** (4 supra) would have been relevant if there was any challenge by the Writ petitioners to prescription of a higher experience of 10 years in the category of Assistant Engineer for Diploma holders as compared to 5 years experience prescribed for the Assistant Executive Engineers/Graduate Engineers for promotion to the cadre of Dy.Executive Engineer.

61. But in my opinion, it would have no relevance when the promotions to the post of Executive Engineer from the post of Dy.Executive Engineer are in issue. This is because in the cadre of Dy. Executive Engineer, both graduates and non-graduates formed a single cadre and were equal members without any difference in pay or nature of duties or responsibilities.

62. In **Roop Chand Adlakha and others** (12 Supra) cited by the respondents, rules prescribed different conditions of eligibility for diploma holders and graduates for promotion from the cadre of Junior

Engineers to that of Assistant Engineers and from the cadre of Assistant Engineers to that of Executive Engineers in the Public Works Department of the Delhi Development Authority. The Court held that such a rule was not discriminatory because an Expert Committee had gone into the issue and given a report recommending infusion of higher academic and technical quality in the personnel requirement in the relevant cadres of engineering services. The Court held that if discrimination was necessary between graduates and non-graduates for maintaining a certain quality of technical expertise in the cadre, then the Court cannot interfere.

63. In the instant case, there is no plea by the respondents that preference to graduates in cadre of Executive Engineer is to infuse higher academic and technical quality. Also there is no opinion of any expert committee relied upon by the respondents to justify their stand. Therefore this decision cannot come to the aid of the respondents.

64. In **P.Murugesan** (6 supra) relied upon by the respondents, again the question of validity of the rule which prescribed longer qualifying period of service for Diploma holders as compared to the Graduate Engineers in the Madras City Municipal Corporation for the post of Assistant Executive Engineer from the post of Supervisor, arose. The Court noted that ever since the decision in **Triloki Nath Khosa** (9 supra) ,it had been holding that even where direct recruits and promotees were integrated into a common class, they could, for the purposes of promotion to the higher cadre, be classified on the

basis of educational qualifications. It held that if Diploma holders can be barred altogether from promotion, it is difficult to appreciate how and why the rule making authority is precluded from restricting the promotion. It opined that the rule making authority may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances, that while it is not necessary to bar the Diploma holders from promotion altogether, their chances of promotion should be restricted. It held that even though Diploma holders Supervisors and Graduate Engineer Supervisors, though belong to one class and perform similar duties and discharge similar responsibilities, they actually represented two different categories and that though both of them were in the same pay scale, the graduates were given a higher start than the Diploma holders initially also and later the pay scales were different. In this view of the matter, it held that since a long time the graduate Supervisors and non-graduate Supervisors were treated differently in the matter of pay, designation and in the matter of promotion though they were discharging identical functions and duties, and so the State was justified in prescribing a longer experience for non-graduate Supervisors for promotion to the post of Assistant Executive Engineer than for Graduate Supervisors and was also justified in fixing a ratio of 3:1 between graduates and Diploma holders.

65. In my considered opinion, this judgment also would not apply to the instant case for it is not the case of the Corporation that either

pay scales or nature of duties and responsibilities of Diploma holder Dy.Executive Engineers are different from Graduate Engineer Dy.Executive Engineers.

66. Learned counsel for respondents relied on the judgment in **Dharam Bir** (8 supra) to contend that experience gained by a person on account of his working in a post for a long time cannot be equated with educational qualifications required to be possessed by him as a condition of eligibility for promotion to higher post. This issue is not relevant in the instant case for such a contention is not advanced by the Writ petitioners at all.

67. In **Om Prakash Sharma** (10 supra), though the principle that classification based on educational qualifications is permissible if it has a nexus with higher efficiency in the promotional post, was accepted, it was however held that there must be material placed by the employer to justify that graduates deserved preferential treatment *vis-a-vis* non- graduates. So prescription of shorter length of service for graduates and longer length of service for non-graduates for promotion to the post of Assistant Grade-I and Assistant Grade-II from the posts of Assistant Grade-III, typist or telephone operator was held to be invalid.

68. In the present case also no material is placed on record by the Corporation to justify that graduates deserved preferential treatment *vis-à-vis* non graduates for the purpose of promotion from the post of

Dy. Executive Engineer to the post of Executive Engineer. Therefore the petitioners stand is also supported by this decision.

69. Therefore for the aforesaid reasons, I hold that the action of the Corporation in prescribing a higher period of experience of 12 years to Diploma Holder Dy. Executive Engineers than period of experience of 7 years prescribed for graduate Dy. Executive Engineers is arbitrary and violative of Article 14 and 16 of the Constitution of India.

70. Point (a) is answered accordingly in favour of the petitioners and against the respondents.

Point (b):-

71. In view of my finding on Point (a) that no discrimination is permissible as between graduates and non-graduates in the category of Dy. Executive Engineer, prescription of any ratio as between graduates and non-graduates is also arbitrary and illegal. Consequently the prescription of 2:1 ratio as between graduates and non-graduates in the cadre of Dy. Executive Engineer for promotion to the post of Executive Engineer is also held to be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

72. Point (b) is answered in favour of the petitioners and against the respondents.

73. In the result, the Writ Petitions are allowed and the action of the Corporation in prescribing higher period of experience to non-graduate Dy. Executive Engineers than for graduate Dy. Executive Engineers for promotion to the post of Executive Engineer and prescription of 2:1 ratio between graduates and non-graduates in the cadre of Dy. Executive Engineer for the post of Executive Engineer is declared as arbitrary and illegal and violative of Article 14 and 16 of the Constitution of India and the respondents are directed to affect promotions to the post of Executive Engineer from the post of Dy. Executive Engineer treating graduates and non-graduates in the said post as equal for all purposes. Consequently, W.V.M.P.No.4735 of 2016 is dismissed. No costs.

74. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 30-12-2016

Vsv/Gra/Kvr