

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6358 OF 2019

1. Sanjay S/o Arvindrao Choudhari
Aged :- 45 years, Occu. Service,
R/o Plot No.310, Subhedar Layout,
Out, Nagpur – 440 024
Date of Birth : 13.12.1973,
Mob. No: 9823721599,
Email: sanjaychoudhari0099@gmail.com
Pan No.AGPHC3071a
Aadhar No.: 280634894149
2. Narendra S/o Gopalrao Wankar
Aged:-50, Occ. Service,
R/o 50, Pipla Road,
Bhole Nagar, Nagpur 440034
Date of Birth 17.01.1968
Email : narndrawakar@gmail.com,
Pan No.AALPW1504 G
Aadhar No.485895077206
3. Govind S/o Manoharrao Naik
Aged: 50, Occu: Service,
R/o Nathkripa, 40, Rani Indirabai,
Misanevihar, Tulshi Bagh,
Nagpur 440032
Date of Birth : 16.11.1968,
Mob. No.9422127496
Email govindnaik11@rediffmail.com,
Pan No.ACIPN87574
Aadhar No.4456626220374
4. Lobhesh S/o Pundlikrao Bobde
Aged 52, Occu. Service,
R/o Plot No.45, Ayodhya Nagar,
New Subhedar Layout Road,
Nagpur 440024
Date of Birth 01.03.1967,
Mob. No.9823721367,
Email : Lobheshbobde1967@ gmail.com,
Pan No. AFZPB8900 N.
Aadhar No.728844710798

5. Subhash S/o Gajanan Pande
Aged 51, Occ. Service,
R/o Plot No.03, Gala No.209,
Narmada Apartment, Milind Society,
Khamla Nagpur 440025
Date of Birth 30.05.1968
Mob. No.9764480008
Email sgpande@gmail.com
Pan No.AEOPP2842R
Aadhar No.66660439199

6. Atul S/o Ramesh Rao Mendule
Aged 48, Occ. Service,
R/o Shri Ganesh Bhavan,
Near Khobaragade Hospital,
Ganeshpeth, Nagpur 440018
Date of Birth 27.6.1971,
Mob. No.9823180212,
Email. atulmendule7171@gmail.com
Pan No.ABZOM5488I,
Aadhar No.322335077673

7. Shrikant s/o Shivajirao Tambekar
Aged 44 year, Occu. Service,
R/o Ayodha Nagar Nagpur 440024
Date of Birth 5.11.1974,
Mob. No.9822470801,
Email:stambekar55@gmail.com,
Pan No.AAPT9324N
Aadhar No.4608 8590 6985

... Petitioners

-vs-

1. State of Maharashtra,
through its Principal Secretary, U.D. - 1,
Mantralaya, Mumbai 400 032
2. Nagpur Improvement Trust
through its Chairman,
Civil Lines, Nagpur
3. Shrawan S/o Kisanrao Dhone
Aged : Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur

4. Narendra S/o Patiram Malewar
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
5. Rajesh S/o Suryabhan Mahajan
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
6. Bhagwant S/o Shankarrao Harne
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
7. Jagdish S/o Govindrao Nasare
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
8. Mukesh S/o Mahadv Naikwade
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
9. Shrawan S/o Kisanrao Dhone,
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
10. Vinod S/o Bhaurao Khulane
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
11. Chandrakant S/o Dharamdar Nagrale,
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur

12. Nitin S/o Vasantrao Rahate,
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
13. Dilip S/o Narsingrao Kene
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
14. Ramrao S/o Raghobaji Patil
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
15. Bhimrao S/o Bajirao Magare,
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
16. Kailash S/o Babarao Pohare
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
17. Rajpal S/o Jiwalaji Tupe
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
18. Shirish S/o Shivaji Deshmukh
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
19. Manohar S/o Bhaskar Patil
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur

20. Kiran S/o Sahdev Rau
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
21. Narendra S/o Gulab Porkute
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
22. Devrao S/o Ramkrishna Barapatre
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
23. Sanjay S/o Ramchandra Mathanikar
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
24. Deepak S/o Sudhakar Dhakate
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur
25. Mahesh S/o Devraoji Chaudhary
Aged Major, Occu. Service,
R/o C/o NIT Office,
Near Liberty Cinema, Sadar,
Nagpur

... Respondents

Shri T. D. Mandlekar, Advocate for petitioners.

Ms Tajwar Khan, Advocate for respondent No.1-State.

Shri Sudhir M. Puranik, Advocate for respondent No.2-NIT.

Shri Anand Parchure, Advocate for respondent Nos.3 to 11 and 13 to 24.

Shri D. U. Thakare, Advanced for respondent No.25.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

ARGUMENTS WERE HERD ON : September 09, 2022.

JUDGMENT IS PRONOUNCED ON : September 23, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

In view of notice for final disposal issued earlier the learned counsel for the parties have been heard by issuing Rule and making the same returnable forthwith.

The petitioners are Civil Engineering Assistants working with the Nagpur Improvement Trust (hereinafter 'NIT') since last more than twenty years. On the basis of their qualification they claimed to be entitled to be promoted to the post of Junior Engineer (Civil). In the meeting of the Departmental Promotion Committee held on 28/08/2019 promotions were sought to be effected on the basis of the Nagpur Improvement Trust Services (Recruitment and Service) Rules, 2019 (for short, the Rules of 2019). While doing so eight posts of Junior Engineer (Civil)-Degree were available from the 'Open' category. Since the NIT did not receive appropriate instructions from the State Government in the matter of requisite eligibility and qualification for effecting promotions, only five posts were filled in and three posts were kept open for that reason. Similarly, for the post of Junior Engineer (Civil)-Diploma, five posts from the 'Open' category were to be filled but no promotions therein were effected. The petitioners claimed entitlement to such promotion and therefore made

a representation to the NIT on 12/09/2019. Since the relief claimed by the petitioners in the said representation has not been considered by the NIT the present writ petition has been filed.

2. When the writ petition was filed the petitioners had sought a declaration that respondent Nos.3 to 25 are not qualified to be considered for being promoted to the post of Junior Engineer in view of the fact that the degree qualification obtained by them has been held to be invalid by the Honourable Supreme Court in its decision in *Orissa Lift Irrigation Corporation vs. Rabi Sankar Patro & Ors. (2018) 1 SCC 546* dated 03/11/2017. The learned counsel for the petitioners however submitted that the relief sought by prayer clause-(i) now does not survive and the same is not being pressed. Yet another prayer as made in prayer Clause-(iii) was to restrain the State Government from passing any Ordinance/Notification/Officer Order under Section 121 of the Nagpur Improvement Trust Act, 1936 (for short, the Act of 1936) during pendency of the writ petition so as to dissolve the Trust. The learned counsel for the petitioners submitted that the relief sought by prayer clause-(iii) also does not now survive.

3. Prayer clause-(ii) which has been now pursued in the writ petition reads as under :

“ (ii) Direct the respondent No.2 to give promotion to the petitioners w.e.f. 28.8.2019 to the post of Junior Engineer by altering and upgrading the seniority list dated 1.1.2019 after considering the judgment passed by the Honourable Supreme Court in Civil Appeal No.17869-17870/2017 dated 3.11.2017.”

4. The learned counsel for the petitioners submitted that the Honourable Supreme Court in its decision in *Orissa Lift Irrigation Corporation* (supra) had held that the All India Council of Technical Education Regulations, 1994 were applicable to the Deemed to be Universities and such Deemed to be Universities were not justified in introducing any new courses in technical education without the approval of the All India Council of Technical Education (for short AICTE). As a result, Degree in Engineering awarded by the concerned Deemed to be Universities were held to stand suspended. The Urban Development Department through its Secretary on 12/11/2020 issued a communication to the Chairman, NIT in which it was stated that the aforesaid decision of the Honourable Supreme Court did not refer to Diplomas obtained from such Deemed to be Universities and hence such Diplomas were valid. It is submitted that pursuant to the aforesaid decision, the AICTE issued a Circular on 30/12/2020. By that Circular it was stated by the AICTE that it has not given an approval for conducting Diploma courses in Engineering through

distance education mode to any technical institution. As a result AICTE could not validate Diplomas awarded by such institutions. Reference in that Circular was made to the Deemed to be Universities which were :

- i) JRN Rajasthan Vidyapeeth, Rajasthan.
- ii) Institute of Advanced Studies Education, Rajasthan (IASE)
- iii) Allahabad Agricultural Institute (AAI) and
- iv) Vinayak Mission's Research Foundation, Tamil Nadu (VMRF)

5. In view of the Circular issued by the AICTE on 30/12/2020 the Urban Development Department on 27/12/2021 issued another communication to the Chairman, NIT and stated that since the AICTE had issued the Circular dated 30/12/2020 the words “ the Honourable Supreme Court had not passed any order with regard to Diploma holders and hence such Diplomas were valid” were being deleted from the earlier communication dated 12/11/2020. It is on this basis that the petitioners urge that the qualifications obtained by them are legal and valid which makes them eligible for being promoted to the post of Junior Engineer (Civil). However, the Departmental Promotion Committee wrongfully excluded them from consideration and instead proceeded to keep some posts vacant till appropriate guidance was

received by the NIT. Inviting attention to the qualification as prescribed for being eligible for promotion, it is submitted that insofar as the qualification of graduation or Diploma was concerned, the matter stood clarified. Insofar as the aspect of obtaining an equivalent qualification was concerned, it was submitted that under the Recruitment and Promotion Rules of 2005, passing of examination conducted by Engineering Staff College, Nashik was held to be an equivalent qualification. This position continued till the Rules of 2019 came into force. In response to the communication dated 07/09/2019 issued on behalf of the NIT to the Public Works Department (PWD), it was clarified by the said department vide communication dated 09/09/2019 that Diplomas obtained from Engineering Staff College, Nashik were considered as a requisite qualification for promotion on the post of Junior Engineer. Since petitioner Nos.2 and 3 had obtained such Diploma which was considered as equivalent by the PWD, same should also be so considered by the NIT. Reference was also made to the Notification dated 01/01/1998 which was issued by the PWD treating the candidates who had passed the qualifying examination for the post of Junior Engineer conducted by the Engineering Staff College, Nashik as eligible. It was submitted that on 24/04/2021 and 27/12/2021 the position had been clarified by the State Government and hence there was no impediment in granting promotion to the

petitioners. The NIT through its Departmental Promotion Committee was not justified in denying promotion to the petitioners and hence the prayer made in that regard vide prayer clause-(ii) ought to be granted.

6. The learned counsel appearing for the NIT referred to the Circular issued by the AICTE on 30/12/2020 and submitted that Diploma in Engineering obtained from the deemed to be Universities was not within the purview of the decision in *Orissa Lift Corporation Ltd.* (supra) and AICTE had not validated such Diplomas. In view of the fact that the Rules of 2019 were now in force, the promotions were liable to be effected in accordance therewith. He referred to the additional affidavit filed on behalf of NIT as well as the communications dated 12/04/2021 and 27/12/2021 issued by the Urban Development Department in the matter. Since the Diplomas obtained from the Engineering Staff College, Nashik would not held to be equivalent and the examination conducted was only a qualifying examination, such Diplomas could not be considered to be equivalent. As and when the next meeting of the Departmental Promotion Committee would be held, the matter would be considered. It was also submitted that the writ petition as filed was premature and prayer clause-(ii) could not be granted.

The learned counsel appearing for respondent Nos.3 to 11

and 13 to 24 opposed the grant of prayer clause-(ii) by submitting that such relief cannot be granted under Article 226 of the Constitution of India. At the highest only a direction to consider grant of promotion to an eligible candidate could be issued and the NIT could not be directed to promote the petitioners.

The learned counsel for respondent No.25 submitted that said respondent was duly eligible for grant of promotion to the post of Junior Engineer and he could not be deprived of the same at the behest of the petitioners. He referred to the affidavit in reply filed on behalf of the NIT dated 14/07/2020 in that regard.

7. We have heard the learned counsel for the parties at length and with their assistance we have perused the material on record. It is seen that the Departmental Promotion Committee in its meeting held on 28/08/2019 considered the matter with regard to grant of promotion on the post of Junior Engineer (Civil). The claim of promotion of Degree holders as well as Diploma holders were considered. Thereafter three posts of Junior Engineer from the cadre of Degree holder were kept vacant while five posts from the cadre of Junior Engineer with Diploma were kept vacant. The reason assigned was that clarification sought by the NIT from the State Government pursuant to the judgment of the Honourable Supreme Court in *Orissa*

Lift Irrigation Corporation Ltd. (supra) as well as the Circular dated 30/12/2020 issued by the AICTE was awaited. Since the claim of the petitioners for promotion was not considered, they had moved a representation dated 12/09/2019 addressed to the Chairman of NIT. After this representation was made, the Urban Development Department on 12/04/2021 has issued a communication to the Chairman, NIT in response to the query made on 18/12/2020 in the matter of equivalence of qualification. In that communication dated 12/04/2021 it has been stated that the examination conducted by the Engineering Staff College, Nashik was in the nature of a qualifying examination and that examination could not be treated to be equivalent to Engineering Diploma. Thereafter on 27/12/2021 there is another communication issued by the Urban Development Department to the Chairman of NIT which is in response to the communication dated 03/12/2020. Therein after referring to the Circular issued by the AICTE on 30/12/2020 it has been stated that the Degree/Diploma/Post Graduate Degree obtained from (1) JRN Rajasthan Vidyapeeth, Rajasthan, (2) Institute of Advanced Studies in Education, Rajasthan, (3) Allahabad Agricultural Institute, Allahabad and (4) Vinayaka Mission Research Foundation, Tamil Nadu were not approved by the AICTE. There is yet another communication issued by the Public Works Department of the State Government to the NIT on 09/09/2019

in which it has been stated that promotions in the Public Works Department are granted after passing requisite qualifying examination conducted by the Engineering Staff College, Nashik. It is also been noted that the Rules of 2019 in the matter of recruitment and other service aspects have come into force after publication in the Gazette on 03/06/2019. The stand of the NIT in its additional affidavit dated 31/03/2022 also makes it clear that as and when appropriate clarification would be received from the State Government, the matter with regard to promotions of Junior Engineers would be considered.

8. In these facts we find that the interests of justice would be met by directing the Chairman, NIT to take a decision on the petitioners' representation dated 12/09/2019 especially in view of the fact that now the State Government has clarified the matter as indicated in the communications dated 12/04/2021 and 27/12/2021. It cannot be disputed that in exercise of jurisdiction under Article 226 of the Constitution of India, the writ Court would only direct the concerned Authority to consider the claim for promotion as made in accordance with the prevailing Rules and no directions at the first instance would normally be issued to promote a claimant. The promotions on some posts were not effected since the Departmental Promotion Committee was awaiting response from the State

Government. As such response has now been received, the matter can be well considered by the NIT.

9. In the light of aforesaid directions and in consideration of prayer clause (ii) in the writ petition, it is directed that the respondent No.2 shall consider the petitioners' representation dated 12/09/2019 in accordance with law and after giving due opportunity to the petitioners to put forth their say in support thereof. Consequent upon such decision, the NIT would be free to proceed further in the matter of considering the grant of promotions to be made on the post of Junior Engineer from amongst Degree holders as well as Diploma holders. The necessary decision on the aforesaid representation be taken within a period of six weeks from receipt of copy of this judgment.

It is clarified that this Court has not examined the entitlement of the petitioners to be promoted and the said matter shall be considered on its own merits and in accordance with law.

Rule is disposed of in aforesaid terms with no order as to costs.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)