

**Review Application No.139 of 2022****S.VAIDYANATHAN,J.****&****MOHAMMED SHAFFIQ,J.**

Today, when the matter was taken up for hearing, Mr.Silambanan, learned Additional Advocate General-II appearing for the Petitioner submitted that unless a candidate completes 5 years of service in the post of Junior Engineer, he/she is not eligible to be promoted to the post of Assistant Engineer and that the order passed by this Court dated 25.02.2022 in W.A.No.348 of 2022 needs to be reviewed, as the first respondent does not have sufficient years of service in the post of Junior Engineer to be considered for the next higher post.

2. The 1st Respondent/Writ Petitioner, who has completed B.Tech. Degree course through Distance Education in Karnataka State Open University, Mysore in the year 2013-2014, has not been considered for promotion as Assistant Engineer on the ground that in terms of the Government Order in G.O.149, Higher Education (J2) Department dated 22.07.2016, Diploma/B.E. Degree qualification obtained through Distance Education is not equivalent. Challenging the same, the Writ Petition in W.P.No.17575 of 2021 was filed.

3. A learned Single Judge, *vide* order dated 01.09.2021, by relying upon



the Judgment of a Division Bench of this Court in *the Chief Engineer/Personnel & Ors Vs. A.C.Selvamani & 17 others* (W.A.No.3884 of 2019 dated 04.02.2021), granted relief to the Writ Petitioner on the ground that the Writ Petitioner has already enrolled with the Karnataka State Open University during the year 2011-2012 and completed in the year 2013-2014. For the sake of convenience, paragraphs 7 and 8 of the order read as under:

"7. This view has been interpreted by the Division Bench of this Court as referred supra in the case of The Chief Engineer/ Personnel and others Vs. A.C.Selvamani & 17 others. The Division Bench has categorically held that AICTE recognizes the degree and diploma awarded by IGNOU through Distance Education to the candidates who were enrollment with IGNOU upto to the academic sessions 2010-2011 and 2011-2012 would apply.

8. The facts of the case indicate that the petitioner had already enrolled with the Karnataka State Open University during the year 2011-2012 and completed in the year 2013-2014. That being the case, the petitioner is entitled for the relief sought for in the present writ petition."

4. Aggrieved by the same, the review petitioner preferred the Writ Appeal in W.A.No.348 of 2022 and this Court, vide Judgment dated 25.02.2022, dismissed the aforesaid Writ Appeal, as against which the present Review Application came to be filed.



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5. The Additional Advocate General - II submitted that since the writ petitioner/1st respondent was promoted as Junior Engineer from the post of Technical Assistant only in the year 2019, unless he completes 5 years of service in terms of Rule 4 of the Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996, as amended *vide* gazette notification dated 03.03.2016, he is not entitled to promotion.

6. It is settled law that an impugned order passed by an authority cannot be supplemented by way of a counter affidavit *vide Mohinder Singh Gill v Chief Election Commissioner - (1978) 1 SCC 405*], the relevant paragraph of which is profitably extracted below:

“8 The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.....” (emphasis supplied)

It is a fact that the Writ Petitioner had put in sufficient service in the post of Technical Assistant which is a feeder category to be considered for promotion to the post of Junior Engineer. He was deprived of promotion only on the ground that there was no equivalence certificate. However, pursuant to the orders of this



S.VAIDYANATHAN,J.
&
MOHAMMED SHAFFIQ,J.

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Court, the petitioner would be entitled to promotion to the post of Junior Engineer as early as in the year 2014, as he had sufficient years of service in the feeder category as Technical Assistant.

7. Mr.Neelakandan, learned Additional Advocate General-II would submit that he will get further details as to the present status and inform this Court on the next date of hearing.

Post on 28.08.2023.

(S.V.N.,J) (M.S,Q.,J)
17.08.2023

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Review Application No.139 of 2022



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Review Appl.No.139 of

