

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on 17th of February, 2023
Pronounced on 29th March, 2023**

Civil Writ Petition No.385 of 2015 (O&M)

Tarsem Lal GargPetitioner

Versus

State of Punjab and othersRespondents

Civil Writ Petition No.8465 of 2020 (O&M)

Davinder Singh RandhawaPetitioner

Versus

State of Punjab and othersRespondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Chetan Mittal, Senior Advocate with
Mr. Puneet Gupta, Advocate,
Mr. Anil Rana, Advocate and
Mr. Himanshu, Advocate
for the petitioner(s) in CWP No.385 of 2015.

Mr. Sunish Bindlish, Advocate,
Mr. Udit Jain, Advocate and
Mr. Sagar Ratusaria, Advocate
for the petitioner in CWP No.8465 of 2020.

Mr. Rajesh Mehta, Addl. Advocate General, Punjab.

Mr. Puneet Jindal, Senior Advocate with
Mr. Parambir Singh, Advocate
for respondents No.2 and 3 in CWP No.385 of 2015 and
for respondent No.4 in CWP No.8465 of 2020.

Mr. Gurminder Singh, Senior Advocate with
Mr. Jatinder Singh Gill, Advocate
for respondent No.5 in CWP No.385 of 2015.

Mr. Sanjeev Sharma, Advocate
for respondent No.5 in CWP No.8465 of 2020.

PANKAJ JAIN, J.

The petitioner has assailed order dated 8th of January, 2015 whereby the petitioner was ordered to be reverted back to the post of Executive Engineer from the promotional post of Superintending Engineer holding him to be ineligible and unqualified to hold the promotional post in terms of Punjab State Agricultural Marketing Board Service (Class-I) Rules 1988 (for short, '1988 Rules').

2. The brief facts that need to be noticed are that the petitioner joined Punjab State Agricultural Marketing Board (hereinafter referred to as 'the Board') as Draftsman on 4th of October, 1989. He was promoted as Assistant Engineer (Civil) [later on re-designated as Sub Divisional Officer (Civil)] on 7th of December, 1989 from the quota of Junior Engineer/Draftsman-AMIE. He was further promoted as Executive Engineer (Civil) w.e.f. 11th of December, 1998. He further rose to the rank of Superintending Engineer on 5th of July, 2010. While he had already worked for 4 ½ years on the post of Superintending Engineer he was ordered to be reverted back vide impugned order. The relevant part of the order is being reproduced herein below :-

“Sh. Tarsem Lal Garg was promoted by the Punjab Mandi Board to the post of the Superintending Engineer from the post of the Executive Engineer on 05.07.2010 solely on the basis of his

qualification of A.M.I.E., whereas as per Serial No.5 of the Appendix B of Rule 8 of the Punjab State Agricultural Marketing Board Service (Class -1) Rules, 1988 the qualification for promotion to the post of Superintending Engineer from the post of Executive Engineer "Degree in Engineering and should have an experience of working as an Executive Engineer in the Board for a minimum period of 7 years" has been prescribed. Accordingly Sh. Tarsem Lal Garg was not eligible for promotion since he did not possess the qualification of Degree in Engineering as per the provisions of Rules. Therefore the Department had given him promotion on the post of Superintending Engineer by going beyond the provisions of Rules, for which he was not entitled."

3. The petitioner has impugned the aforesaid order in the instant writ petition.
4. Notice of motion was issued vide order dated 12th of January, 2015, which reads as under :-

"The petitioner, who possesses the qualification of A.M.I.E., was promoted as Superintending Engineer vide order dated 05.07.2010. Vide impugned order dated 08.01.2015, he has been ordered to be reverted to the post of Executive Engineer relying on a decision of this Court passed in CWP No. 23675 of 2012 decided on 05.12.2014, wherein it has been held that a person who possesses the certificate from the Mechanical Engineering India, Mumbai cannot be considered to be a qualified for the post of Superintending Engineer in terms of Punjab State Agricultural Marketing Board (Class I) Service Rules, 1988.

Learned counsel for the parties state that as of now, to their knowledge, no appeal has been filed against that decision.

Hence, taking that decision to be operative and governing the case of petitioner, the only grouse of the petitioner is that as he stood promoted as Superintending Engineer way back in the year

2010 and such promotion was effected by the Department as per its understanding of the legal position, the petitioner should not be reverted consequent upon later pronouncement by this Court that a person who possesses AMIE is not qualified to be promoted as Superintending Engineer.

For this, learned counsel for the petitioner relies on a decision of Hon'ble the Supreme Court in **Vikas Pratap Singh and others vs. State of Chhattisgarh and others 2013 (14) SCC 494.**

On oral request of Mr. J.S. Mannipur, Advocate, Mr. Kulwant Kumar Sharma son of Shri Sri Krishan, Executive Engineer, Punjab Mandi Board Division, Sangrur, resident of # 3581, Sector 69, Mohali (Punjab) – caveator, is impleaded as respondent No.4.

Notice of motion for 10.02.2015.

Liberty is granted to learned counsel for petitioner to serve respondents No. 1 and 2 through dasti process.”

5. Aggrieved of non consideration of his interim prayer, petitioner preferred *Intra Court Appeal* i.e. LPA No.69 of 2015 which was decided vide judgment dated 28th of January, 2015 in the following terms :-

“12. We wish to say no more than that the matter requires consideration. The various authorities on the subject would require to be analyzed. The effect of the communications of the Government of India and Government of Haryana, which we have referred to in detail, would require serious consideration. This is not a case of the Court determining equivalence but the court considering whether the authorities concerned and the Government of Haryana have considered the AMIE qualification to be equivalent to the degree in engineering which is a qualification for the post of Superintending Engineer by promotion. Added to the above are certain other important facts that require the grant of interim relief pending further orders in the writ petition before the

learned Single Judge. The petitioner was promoted to the post on the basis of his qualification, namely, AMIE. He has, thus, occupied the post now for almost five years. The authorities have always proceeded on the basis that the qualification of AMIE was sufficient for being considered for promotion to the post of Superintending Engineer. Others have also been promoted to the post of Superintending Engineer on the basis of same qualification. Some of them have even retired as Chief Engineers i.e. next promotional post.”

6. Ld. Senior Counsel representing the petitioner submits that the order of reversion passed against the petitioner cannot be sustained. The same has been passed solely relying upon judgment passed by this Court in the case of **Gurinder Singh Chahal vs. State of Punjab – CWP No.23675 of 2012**. In that case the question was raised w.r.t. Degree obtained from Institute of Mechanical Engineers (India) Mumbai i.e. IME. So far as qualification possessed by the petitioner is concerned, the same is from Associate Member of Institute of Engineers (India). The issue w.r.t. both the Degrees came up for consideration before Division Bench of this Court in the case of **Kartar Singh vs. State of Punjab, 2012(4) S.C.T. 741**, wherein it was held as under :-

“201. The Regulations framed by the Corporate Members of Institution of Engineers provides for annual subscription payable by the various classes of members. For Indian Associate Member, the yearly subscription is Rs.300/-, whereas One Time Membership fee is Rs.1900/- as per Table IV.

202. In terms of such Charter, Bye-Laws and Regulations, the Institution of Engineers conduct examinations for in-service diploma holders, as such institution has been established to promote the general advancement of engineering and engineering sciences. The All India Council for Technical Education Act, 1987, does not act to repeal, abrogate or vary the earlier statute, the statute incorporating Institution of Engineers. Therefore, the certificates granted by such Institution have been rightly declared to be equivalent by the Central and the State Governments to the degree course. **The AMIE has been declared equivalent to degree course for the purposes of promotion and not for the purposes of direct recruitment. Such classification cannot be said to be illegal or unwarranted in any manner. It is for the State to consider the equivalence of Section 'A' & 'B' examinations conducted by the Institution of Engineers. Therefore, we do not find that there is any justification in seeking equivalence to the degree for the purposes of direct recruitment or that the said examination and the membership cannot be rated as equivalent to the degree course for the purpose of promotion.**

203. In view of the above provisions of the statute, we respectfully endorse the view taken by the Division Bench in Jagtar Singh's case (supra) that qualification of AMIE is relevant for the purposes of promotion and not for direct recruitment, as an Associate Member becomes eligible for Membership only if he is engaged in engineering profession.”

7. He thus submits that the position w.r.t. the qualification possessed by the petitioner having been fully clarified by the Division Bench in the case of **Kartar Singh** (supra), the impugned order cannot be sustained. He further argues with eloquence that Govt. of India vide letter dated 6th of August, 1978 and dated 11th of September, 1964

has already held AMIE Certificate to be equivalent to Degree and the Rules also recognize the same. The Certificate possessed by the petitioner being equivalent to Degree in Engineering, the petitioner cannot be said to be unqualified for holding the post of Superintending Engineer and, thus, the impugned order being palpably wrong and illegal deserves to be set aside.

8. Reliance has been placed upon Rule 2 of 1988 Rules which defines recognized University or Institute to contend that the Institute from where the petitioner has attained the qualification being a recognized Institute the qualification of the petitioner needs to be recognized by respondent-Board. It has been further claimed that before the promotion of the petitioner and thereafter, in number of instances the incumbents possessing AMIE qualification have been promoted treating them to be qualified to hold post of Superintending Engineer and further promotional post of Chief Engineer. He further raises plea of 'malice in law' claiming that just after petitioner retired on attaining the age of superannuation the relevant Rule was amended which itself shows the intention of the Authority to victimize the petitioner. Further reliance has been placed upon **Tarsem Lal Garg vs. State of Punjab and others-L.P.A No.69 of 2015 (DB)**, **Tarsem Lal Garg vs. State of Punjab and others-L.P.A. No.66 of 2015 (DB)**, **Om Parkash Chopra vs. Gurinder Singh Chahal and others-L.P.A**

No.1262 of 2015 (DB), Dilip Kumar Garg and another vs. State of U.P. and others - Civil Appeal No.5122 of 2007 (Supreme Court), Jagtar Singh vs. State of Punjab and others, LPA No.1378 of 2009 (DB), Dhan Raj Singh vs. State of Haryana, 1994 (2) S.C.T. 205 (DB), Rajesh Kumar vs. State of Haryana and another-1995(4) RSJ 877 (DB), Som Dutt vs. State of Haryana and another-1984(1) ILR (Punjab) 400 (Full Bench), Narender Kumar and another vs. Haryana Public Service Commission, 2014(8) R.C.R.(Civil) 458 (P&H), Ajit Sen vs. State of Haryana and others-CWP No.1681 of 2002 (DB), Karam Pal Singh vs. State of Haryana and others-CWP No.19973 of 2002 (P&H), Municipal Corporation of Delhi vs. Gurnam Kaur (1989)1 SCC 101, State of U.P. & another vs. Synthetics and Chemicals Ltd. & another-(1991)4 SCC 139, Prabhu Ram vs. State of Haryana and others-2012(1) ILR (Punjab) 339 (P&H), Rabindra Nath Bose and others vs. Union of India and others-(1970)1 SCC 84, Sadhu Singh vs. State of Punjab-2002(1) S.C.T. 647 (DB) and Ajit Singh vs. State of Punjab-(1999) 7 SCC 209.

9. Mr. Sunish Bindlish, Advocate representing the petitioner in CWP No.8465 of 2020 has argued the case on the same line as argued by learned Senior Counsel in CWP No.385 of 2015.

10. Per contra, Senior Counsel representing the respondent-

Board submits that judgment rendered in the case of **Gurinder Singh Chahal** (supra) was in fact an alarm bell for the authorities to check their course of action and to make sure that unqualified people are not promoted. Board being a Public Authority governed by Rule of Law has to adhere to the relevant Rules. It has been claimed that Rule governing the promotion from the post of Executive Engineer to Superintending Engineer provides that it is only a Degree holder with the relevant experience who can be considered for the post of Superintending Engineer. The petitioner does not possess the qualification prescribed under the Rules and thus no fault can be found with the order of reversion. He further submits that the allegation *viz-a-viz* consideration of similarly qualified incumbents to the post of Superintending Engineer after *Gurinder Singh Chahal's* judgment, is misplaced. Only those employees who possess Degrees in Engineering have been considered for promotion. He submits that after attaining AMIE qualification various employees further acquired ME Degree. Since Rules provide for 'Degree in Engineering' as requisite qualification, they have been considered on the strength of their ME Degree and not on the strength of AMIE qualification.

11. Mr. Gurminder Singh, learned Senior Counsel appearing for respondent No.5 submits that a careful perusal of the relevant Rules leads to inevitable conclusion that the Rule Making Body was alive to

the qualification of AMIE. Wherever AMIE qualified person was to be considered for promotional post the same has been specifically provided. The Rule Making Body in its own wisdom considered only Degree Holders to be eligible to the posts of Superintending Engineers and was well within its right to do so. It has been thus claimed that the petitioner being not a Degree holder cannot be allowed to persuade this Court to add to the Rules. He thus submits that no fault can be found with the impugned order.

12. I have heard counsel for the parties and have gone through records of the case.

13. The question relates to eligibility of the petitioner to be considered for promotion to the post of Superintending Engineer. The same is governed by Rules. It will be apposite to peruse the relevant Rules and evolution thereof :-

1988 RULES BEFORE AMENDMENT

Sr. No.	Designation of the post	Method of recruitment	Qualification for recruitment			Remarks
			By direct appointment	By promotion	By transfer on deputation	
1	2	3	4	5	6	7
4	Chief Engineer	By transfer on deputation			From amongst the regular Superintending Engineers (Civil) in the Departments of the Government of Punjab who have an experience of working as such for a minimum period of **[three years]	

Sr. No.	Designation of the post	Method of recruitment	Qualification for recruitment			Remarks
			By direct appointment	By promotion	By transfer on deputation	
5	Superintending Engineer	(i) By promotion; or (ii) By transfer on deputation		Degree in Engineering and should have an experience or working as an Executive Engineer in the Board for a minimum period of [seven years]	From amongst the regular Superintending Engineer (Civil) [working in the departments of Government of Punjab or in the State Government undertakings] who have an experience of working as such for a minimum period of *[one] year.	
11	Executive Engineer (Civil)	[(i) By promotion; or (ii) By transfer or by taking a person on deputation]		[From amongst the (Civil) and Assistant Engineers (Civi) working in the Board who have an experience of working on either of these posts for a minimum period of eight years.]	From amongst the regular Executive Engineers (Civil) in the Departments of the Government of Punjab [or in the State Government undertakings] who have an experience of working as such for a minimum period of two years.	

1st AMENDMENT 1988 RULES dated 25.07.1990

“(ii) under column 5, for the existing entries, the following shall be substituted, namely :-

“From amongst the Sub-Divisional Officers (Public Health) and Assistant Engineers (Public Health) working in the Board who have an experience of working on either of these posts for a minimum period of eight years.”; and

xxxx

- (d) against Serial No. 11, -
- (i) under column 3, for the existing entries, the following entries, the following entries shall be substituted, namely :-

“(i) By promotion ; or

“(ii) By transfer or by taking a person on deputation.” ;

(ii) under column 5, for the existing entries, the following shall be

substituted, namely :-

“From amongst the Sub-Divisional Officers (Civil) and Assistant Engineers (Civil) working in the Board who have an experience of working on either of these posts for a minimum period of eight years.”; and

(iii) under column 6, after the words “in the Departments of the Government of Punjab,” the words “or in the State Government Undertakings” shall be added;

2nd AMENDMENT 1988 RULES dated 24.11.2021

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF AGRICULTURE AND FARMERS' WELFARE

(MANDI BRANCH)

NOTIFICATION

The 24th November, 2021

No. G.S.R. 163/P.A.23/1961/S.43/Amd.(31)/2021.- In exercise of the powers conferred by section 43 of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No. 23 of 1961), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab State Agricultural Marketing Board (Group-A) Service Rules, 1988, namely :-

RULES

1. (1) These reules may be called the Punjab State Agricultural Marketing Board (Group-A) Fifth Amendment Service Rules, 2021.
(2) They shall come into force on and with effect from the date of their publication in the Official Gazette.
2. In the Punjab State Agricultural Marketing Board (Group-A) Service Rules, 1988, in Appendix 'B', against serial No. 5, under column 5, the following shall be substituted, namely :-
2. In the Punjab State Agricultural Marketing Board (Group-A) Service Rules, 1988, in Appendix 'B', against serial No. 5, under column 5, the following shall be substituted, namely:-

“From amongst the Executive Engineers, who possess a degree (Graduate, Post Graduate or Higher) in Engineering or A.M.I.E. from a recognized university or institution, and who have an experience of working as such for a minimum period of five

years.”

14. Thus the Rule as it stood on the relevant date read as
under :-

“**Definitions.-** In these rules unless the context otherwise requires,

-

- (a) xxxx
- (b) xxxx
- (c) xxxx
- (i) 'recognised university or institute' means, -
 - (i) any university or institute incorporated by law in India;
 - (ii) in the case of degrees, diplomas or certificates obtained as a result of examinations held before the 15th August, 1947, the Punjab, Sind or Dacca University; and
 - (iii) any other university or institute which is recognised by the Government for the purposes of these rules;

xxxxxx

8. Method of recruitment and qualifications.- (1)

Subject to the provisions of sub-rule (4), appointments to the Service shall be made in the manner specified in Appendix 'B'.

Provided that if no suitable person is available for appointment by promotion to a post in the Service, such post shall be filled in by transfer or by taking a person on deputation, as the appointing authority may decide in this behalf.

(2) No person shall be appointed to a post in the Service unless he possesses the qualifications and experience as specified against that post in Appendix 'B'.

(3) All appointments by promotion to the Service, shall be made by selection on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of

seniority alone.

(4) The following percentage of posts in the Service shall be reserved for each method of appointment indicated for categories mentioned thereunder, namely :-

- (a) By direct appointment :
- (i) for members of the Scheduled Castes 25 per cent

(ii) for members of the Backward Classes 5 per cent

(iii) for Ex-servicemen 15 per cent
- (b) By promotion :
- (i) for members of the Scheduled Castes 14 per cent

(ii) for members of the Backward Classes : 2 per cent

Provided that percentage of reservation in the case of sportsmen, handicapped persons, freedom fighters or for any other category of persons shall be such percentage as may, from time to time, be specified by the Government of Punjab for the Service and posts under it.

APPENDIX 'B'

[See Rule 8]

Sr. No.	Designation of the post	Method of recruitment	By direct appointment	By promotion	By transfer on deputation	Remarks
1	2	3	4	5	6	7
4	Chief Engineer	(i) By promotion; or (ii) By transfer on deputation;		From amongst the Superintending Engineers working in the State Agricultural Market Board, who have an experience of working as such for a minimum period of three years.	From amongst the regular Superintending Engineers (Civil) in the Departments of the Government of Punjab who have an experience of working as such for a minimum period of ** [three years]	
5	Superintending Engineer	(i) By promotion; or (ii) By transfer on deputation		Degree in Engineering and should have an experience of working as an Executive Engineer in the Board for a minimum period of ‡[Seven years.]	From amongst the regular Superintending Engineers (Civil) ‡ [Working in the Departments of the Government of Punjab of in the State Government Undertaking] who have an experience of working as such for a minimum period of * [one] year.	

Sr. No.	Designation on of the post	Method of recruitment	By direct appointment	By promotion	By transfer on deputation	Rem arks
11	Executive Engineer (Civil)	‡[(i) By promotion; and (ii) By transfer on deputation]		‡[(i) Twenty-five percent of the posts from amongst the Sub-Divisional Officers (Civil) and Assistant Engineers (Civil) who possess degree in Civil Engineering of a recognised University of its equivalent qualifications and who have an experience of working on either of] these posts for a minimum period of † [Eight years]; and (ii) Twenty-five percent from amongst the Sub-Divisional Officers (Civil) and Assistant Engineers (Civil) who possess diploma in Civil Engineering and who have an experience of working on either of these posts for a minimum period of † [Eight years.]	From amongst the regular Executive Engineers (Civil) in the Departments of the Government of Punjab ‡[or on the State Government Undertakings] who have an experience of working as such for a minimum period of two years.	

15. The post of Sub Divisional Officer (Civil) which is feeder cadre for Executive Engineer being Class-II post is governed by the Punjab State Agricultural Marketing Board (Class-II) Service Rules, 1988 which read as under :

“PUNJAB MANDI BOARD
SCO NO.149-52, SECTOR – 17 C, CHANDIGARH

Office Order No.C-422 (2006)

The Punjab State Agricultural Marketing Board (Class-II) Service Rules 1988 which were notified in the year 1988. That the provisions for promotions of Assistant Engineer(C)/Sub Divisional Officer (C) at Sr. No.3 of Appendix B under Rule 8 are as mentioned below:-

Sr. No.	Designation	by Promotion
3	Sub Divisional Officer (Civil/Design/Planning)	1) From amongst the Junior Engineer working in the Board who possess Degree in Engineer (C) of a recognised University or Institute and who have an experience of working as such for a minimum period of three years. 2) From amongst the Junior Engineer (C) working in the board who possess Diploma in Engineer (C) of a recognised University or Institute and who have an Experience of working as such for a minimum period of ten years. 3) From amongst the Draughtsman working in the Board who possess Diploma in Engineer (Draftsman) and who have an experience of working as such for a minimum period of ten years; and 4) From amongst the Junior Engineers and Draftsman working in the Board who possess Associates Members of Institute of Engineering of recognised University or Institute and have an experience of working as such for a minimum of five years.

XXXX”

16. Thus for the initial cadre of Sub Divisional Officer (Civil) that we are concerned there are four sources for recruitment by promotion. Junior Engineers and Draftsman working in the Board who possess AMIE Certificate and possess experience of five years is one of the source separate from the other source of Degree-holders in

Engineering who have experience of working for three years. The next promotional cadre is Executive Engineer, here 25% of the posts are to be filled from amongst Sub Divisional Officers (Civil) who possess Degree in Civil Engineering or its equivalent qualification and have experience of working on the aforesaid post of eight years. 25% quota by way of promotion has to come from amongst Sub Divisional Officers and Assistant Engineers who possess Diploma in Civil Engineering and have an experience of working on the said post for a minimum period of eight years. Further higher step in the hierarchy is Superintending Engineer. For Superintending Engineer the requisite qualification is Degree in Engineering along with an experience of working as an Executive Engineer in the Board for minimum period of seven years. The net effect is that only degree holders are eligible for promotion as Superintending Engineer. Ex. Engineers who are Diploma-holders and those possessing qualification equivalent to that of Degree in Engineering have been left out. It is clear from the Rule that the same neither recognizes equivalent qualification nor diploma. It only recognizes Degree in Engineering. Thus, the issues that arise for consideration of this Court is :

- (i) Can the Certificate of AMIE be said to be a Degree ?
- (ii) Can this Court read the relevant Rule by adding word 'equivalent'?

17. On being specifically asked as to whether AMIE Certificate is a Degree or it is its equivalent? Ld. Senior Counsel representing the petitioner is candid in his reply. He submitted that though it is not Degree but is at par with Degree. Thus, this Court has no hesitation in holding that AMIE Certificate may be an equivalent to degree but is not a Degree. I am fortified in my view by the observations made in **Kartar Singh's** case (supra) wherein Division Bench held as under :-

“The AMIE has been declared equivalent to degree course for the purposes of promotion and not for the purposes of direct recruitment. Such classification cannot be said to be illegal or unwarranted in any manner. It is for the State to consider the equivalence of Section 'A' & 'B' examinations conducted by the Institution of Engineers. Therefore, we do not find that there is any justification in seeking equivalence to the degree for the purposes of direct recruitment or that the said examination and the membership cannot be rated as equivalent to the degree course for the purpose of promotion.”

18. A lot of stress has been laid down by the Senior Counsel to submit that AMIE Certificate is equivalent to Degree and for that he relies upon various communications issued by Govt. of India and further adopted by State of Punjab. Nobody disputes the said fact and even the Board has not taken a stand that AMIE is not equivalent to the Degree. However all this further supports the finding that AMIE Certificate may be equivalent but is not a Degree. Rather the analysis

of Rules in question can be read to infer that the Rule Making Body was aware of AMIE Certificate and has specifically provided for the same as sufficient qualification for promotion in Class-II post of Sub Divisional Officer from amongst the Junior Engineers and Draftsman. However, even in that Rule also AMIE Certificate was not considered as equivalent to Degree in Engineering. For Junior Engineers working in the Board possessing Degree in Engineering requisite experience prescribed is of working for minimum period of three years whereas for the Junior Engineers/Draftsman holding AMIE Certificate the requisite experience prescribed is five years; for Diploma holders the same is ten years. For the next promotional step in the hierarchy i.e. Executive Engineer (Civil) the Rule prescribes for equivalence and 25% of the posts are to be filled by the promotion from amongst Sub Divisional Officers (Civil) and Assistant Engineers (Civil) who possess degree in Civil Engineering or its equivalent qualification. It is thus, for the post of Executive Engineer only that the Degree and its equivalent qualification has been recognised and prescribed. For the next promotional step of Superintending Engineer the requisite qualification is Degree in Engineering and a minimum experience of seven years of working as an Executive Engineer in the Board. So for the post in question i.e. Superintending Engineer the requisite educational qualification is only Degree in Engineering. The Rule does not

prescribe for its equivalent.

19. Coming on to the second question as to whether the equivalent of Degree in Engineering can be read into the Rule, this Court finds that once Rule is unambiguous, Court cannot add or subtract any word to the provision enacted by competent Rule Making Body. Three Judges Bench in the case of **Nasiruddin and others vs. Sita Ram Agarwal, (2003) 2 SCC 577** held as under :-

“37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.”

20. Ld. Senior Counsel representing the petitioner has exhaustively read and heavily relied upon the law laid down by Co-ordinate Bench of this Court in **Rakesh Kumar Krail vs. State of**

Punjab and another – CWP No.22823 of 2017 decided on 24th of November, 2020 wherein interpreting the similar provision the Coordinate Bench held that in view of overwhelming recognition of the qualification of AMIE being equivalent to a Degree in Engineering for the promotion to the post of S.E.(s), there is no valid and constitutionally sustainable basis for not considering the qualification of AMIE in the case of writ petitioners. The Bench held that since the Rule provided for a Degree in Engineering from an institution and the Degree is not Bachelor's Degree the Institution of Engineers being a Statutory Institute, certificate issued thereby cannot be kept out of zone of consideration.

21. The whole argument raised by Senior Counsel representing the petitioner and the law cited is to impress upon this Court that AMIE certificate has been recognized by the Govt./State authorities as a qualification equivalent to Degree. Whereas the issue is not this, the precise issue is *“that in a situation where the Rules governing the promotion that petitioner has laid claim to do not recognize the equivalent qualification but only Degree, can Writ Court read the Rule to include AMIE certificate as well that too in the absence of challenge to the Rules?”*

22. I have carefully perused the order passed by Co-ordinate Bench. In my considered opinion once there is an express exclusion of

equivalent qualification and the Rule is unambiguous, equivalent qualification cannot be read into the Rule by implied inclusion. Law is settled that till the Court finds a provision to be ambiguous the Court cannot read into the same. Scheme of Rules is clearly founded on the classification based on educational qualification which as per settled law has been held to be reasonable. Reference can be made to law laid down by Five Judges Bench of Apex Court in the case of **the State of Jammu & Kashmir vs. Shri Triloki Nath Khosa and others, (1974) 1 SCC 19** wherein the question for consideration before the Full Bench was : *'If persons drawn from different sources are integrated into one class, can they' be classified for purposes of promotion on the basis of their educational qualifications?'*

23. While answering the same it was held that -

“50. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate articles 14 and 16 of the Constitution and must be upheld.”

24. While coming on to the aforesaid conclusion the Bench observed that :

“35. Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of

classification. In *State of Mysore v. P. Narasing Rao* (9) where the cadre of Tracers was reorganized into two, one consisting of matriculate Tracers with a higher scale of pay and the other of non-matriculates in a lower scale, it was held that articles 14 and 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down qualifications for the post in question. Therefore, it was open to the Government to give preference to candidates having higher educational qualifications. In *Ganga Ram v. Union of India* (10), it was observed that "The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for promotion in its different departments." In *The Union of India v. Dr. (Mrs.) S. B. Kohli* (11), a Central Health Service Rule requiring that a professor in Orthopaedics must have a post-graduate degree in the particular speciality was upheld on the ground that the classification made on the basis of such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". The argument that a degree qualification was not the only criterion of suitability was answered laconically as strange".

25. The scheme of the Rules is clear at the stage of SDO level. An AMIE Certificate holder has been made eligible for appointment by way of promotion. On to the next step in the hierarchical system i.e. Executive Engineer they have been equated to Degree holders as the Rule prescribes Degree in Civil Engineering or its equivalent qualification. At this stage diploma holders have been weeded out. For the next step i.e. for Superintending Engineer, the Rule prescribes only a degree-holder, consciously a person possessing equivalent

qualification has been left out. Once the Rule Making Body in its own wisdom restricted the employees possessing a particular qualification even though equivalent beyond a particular level, this Court while exercising writ jurisdiction cannot add thereto and the employer is well within its right to insist upon the precise qualification prescribed under the Rule. Reference can further be made to law laid down by Full Bench of this Court in **Som Dutt vs. State of Haryana and another** 1983(3) SLR 141 wherein the Full Bench held as under :-

“10. Now what has been said above would apply equally and indeed with greater force where the qualifications are prescribed by an Act itself or by statutory rules framed thereunder. In such a situation, the respondent-State would have the added ground of claiming that a literal or strict compliance with the statute be adhered to. It is an ordinary and indeed a sound canon of construction that one should not normally add or subtract from a statutory prescription. The wisdom or the policy of both the legislature and their delegates in the framing of rules thereunder (which on the authority of State of Uttar Pradesh & Ors. v. Babu Ram Upadhya, AIR 1961 Supreme Court 75, become part and parcel of the Act.) is not to be easily questioned and overridden and therefore, it is not for the court to intrude into this somewhat sensitive field. Way back in **Banarsi Das and others v. The State of Uttar Pradesh and others, 1956 S.C.R. 357**, it was held as axiomatic that it is clear that the Government is within its rights to lay down certain qualifications for the new recruits, and again in University of Mysore v. C.D. Govinda Rao & another, AIR 1965 Supreme Court 491, their Lordships even in the absence of statutory rules had observed that on the aspect of academic qualifications, the courts would naturally hesitate to intervene particularly when the matter has been duly considered by the

persons authorised to do so. Therefore, once qualifications have been laid down by binding statutory provisions, then the concept of strict compliance therewith would entitle the State to insist that these be meticulously satisfied and extraneous considerations like qualifications other than those prescribed being either the exact equivalents, or technically higher than those, would be irrelevant to the issue and indeed may well be contrary to the statutory prescription.”

26. Apart from the aforesaid two reasons I think that while deciding **Rakesh Kumar Krail's** case (supra) Section 22 of University Grants Commission Act, 1956 (hereinafter referred to as 'the UGC Act') was not brought to the notice of the Bench. The expression 'Degree in Engineering from any University or Institution' used in Rules as its genesis in Section 22 of the UGC Act which reads as under :-

“22. Right to confer degrees.—(1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, “degree” means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.”

27. Sub Section (3) of Section 22 defines the word 'degree' which means any degree which is specified by University Grants Commission in the Official Gazette with the approval of the Central Government or the Institution specially empowered by an Act of Parliament to confer or grant degree. It does not include the Institution which is authorized or empowered to grant certificate. AMIE is not an institution empowered by any act of parliament to confer or grant degrees. Thus, the certificate issued by AMIE cannot be held to be a degree as held by Co-ordinate Bench. It is for these reasons that I place on record respectful disagreement to the law laid down in **Rakesh Kumar Krail's** case (supra) and refuse to be persuaded by the same. So far as the contention raised w.r.t. appointment of other AMIE Certificate holders on the promotional post of Superintending Engineer and further Chief Engineer is concerned, the same is also misfounded. As per the affidavit filed on behalf of the Board pursuant to order dated 14th of October, 2020 passed by this Court by way of CM No.14170 of 2020 it is evident that the persons who have been considered acquired Master's Degree in Engineering after obtaining AMIE Certificate. Thus on the day they were considered they cannot be said to be without the Degree of Engineering. There is a difference between a simple AMIE and a person who possesses Masters in Engineering though after AMIE.

28. Thus, the question as framed in Para No.21 *ibid* is answered that where the Rules governing the promotion do not recognize equivalent qualification but insist upon a specific qualification, Writ Court cannot read the rule to include the equivalent qualification as well. Moreover in the absence of challenge to the vires of the Rules the scheme of the Rules cannot be interfered. The certificate issued by AMIE is admittedly not a degree and the Rule does not recognize the same.

29. As a sequel of the discussion held hereinabove this Court does not find any merit in the plea raised by counsel for the petitioners. Resultantly, the present writ petitions are ordered to be dismissed.

30. Pending application(s), if any, shall also stand disposed off.

31. A copy of this order be kept on the file of other connected case.

March 29, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No