AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.226 of 2024

Kamal Kumar Behera .... **Petitioner**
Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC
Mr. M.K. Mishra, Senior Advocate for Interveners
Mr. Gautam Mishra, Senior Advocate for Caveators
Mr. J.R. Deo, Advocate for Caveators
Ms. Pami Rath, Senior Advocate for Interveners

W.P.(C) No.218 of 2024

Rutumbhara Rani Bisoyi .... **Petitioner**
Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.219 of 2024

Subrata Pradhan .... **Petitioner**
Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.221 of 2024

Soubhagya Kumar Behera @ Souvagya Kumar Behera .... **Petitioner**

Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... **Opposite Parties**

Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.227 of 2024

Aditya Bijaya Lenka .... **Petitioner**

Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... **Opposite Parties**

Mr. Saswat Das, AGA
Mr. M.K. Mishra, Senior Advocate for Interveners
Mr. Jyoti Ranjan Deo, Advocate for Caveators
Mr. Goutam Mishra, Senior Advocate for Caveators

W.P.(C) No.228 of 2024

Anshuman Mishra .... **Petitioner**

Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... **Opposite Parties**

Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.276 of 2024

Bhupesh Kumar Sahoo .... Petitioner
Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.277 of 2024

Pragnya Raj Bisoyi .... Petitioner
Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.284 of 2024

Sudhansu Mohan Guru and others .... Petitioners
Mr. Budhadev Routray, Senior Advocate

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC
Mr. Subir Palit, Senior Advocate for Interveners
Mr. J.R. Deo, Advocate for Caveators
Mr. Goutam Mishra. Senior Advocate for Caveators

W.P.(C) No.722 of 2024

Satya Sundar Samantara and others .... Petitioners
Ms. Subhasree Mohanty, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.746 of 2024

Ritesh Kumar Kharsel .... Petitioner
Mr. Susanta Kumar Baral, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.782 of 2024

Anand Kumar Rout and another .... Petitioners
Mr. Gopal Krushna Mohanty, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.941 of 2024

Sameer Ranjan Sahoo and others .... Petitioners
Ms. Sujata Jena, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC
Mr. M.K. Mishra, Senior Advocate for Intervener
Mr. Goutam Mishra, Senior Advocate for Caveator

W.P.(C) No.1311 of 2024

Mangala Prasad Das and others .... Petitioners
Mr. Aparesh Bhoi, Advocate

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC
Mr. Gautam Mishra, Senior Advocate for Interveners
Mr. J.R. Deo, Advocate for Interveners
Ms. Sucheta Gumansingh, Advocate for Interveners
Ms. Pami Rath, Senior Advocate for Interveners

W.P.(C) No.1315 of 2024

Punyasha Seeyaram and others .... Petitioners
Mr. Prafulla Kumar Rath, Senior Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC
Mr. Gautam Mishra, Senior Advocate for Caveators
Mr. J.R. Deo, Advocate for Caveators
Ms. Pami Rath, Senior Advocate for Interveners

W.P.(C) No.1316 of 2024

Abhishek Pati .... Petitioner
Mr. Sukanta Kumar Dalai, Advocate and Associates

-Versus-

State of Orissa and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1322 of 2024

Priyadarshinee Behera and others .... Petitioners
Mr. B. Routray, Senior Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1330 of 2024

Suryakanta Nayak and another .... Petitioners
Mr. Sukanta Kumar Dalai, Advocate and Associates

-Versus-

State of Orissa and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1338 of 2024

Paraga Bibhaba and others .... Petitioners
Mr. Susanta Kumar Baral, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1339 of 2024

Anup Kumar Sahoo and others .... Petitioners
Mr. Subir Palit, Senior Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC
Ms. Sucheta Gumansingh, Advocate for Intervener
Ms. Pami Rath, Senior Advocate for Intervener

W.P.(C) No.1356 of 2024

Rashmi Ranjan Mohapatra and others .... Petitioners
Mr. Pabitra Kumar Nayak, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1398 of 2024

Farha Quadri and another .... Petitioners
MD. Golam Madani, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1401 of 2024

Swayamjeet Sethi and others .... Petitioners
Mr. Susanta Sekhar Mohapatra, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1402 of 2024

Arya Debabratta Behera and others .... Petitioners
Mr. Susanta Sekhar Mohapatra, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1430 of 2024

Prashanta Kumar Sethi and others .... Petitioners
Mr. Amit Kumar Patra, Advocate

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1432 of 2024

Lipsa Rani Pagada and Others .... Petitioners
Mr. Satabdi Samantray, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1433 of 2024

Mohammed Hedayat Rabbani and others .... Petitioners
Mr. Amit Kumar Patra, Advocate

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1445 of 2024

Choudhury Saubhagya Mohan Dash .... Petitioners
and another

M/s. Subhashree Mohanty, Advocate and Associate

-Versus-

State of Odisha and another .... Opposite Parties

Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1448 of 2024

Bhubana Mohan Padhi and others .... Petitioners

Mr. Subash Chandra Acharya, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties

Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1450 of 2024

Snehasish Nayak and others .... Petitioners

M/s. Subhasree Mohanty, Advocate and Associate

-Versus-

State of Odisha and another .... Opposite Parties

Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1478 of 2024

Anisha Anindita and others .... Petitioners

Mr. Satabdi Samantray, Advocate and Associate

-Versus-

State of Odisha and another .... Opposite Parties

Mr. Saswat Das, AGA

Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1517 of 2024

Niranjan Das and another .... Petitioners

Ms. Sujata Jena, Advocate and Associate

-Versus-

State of Odisha and another .... Opposite Parties

Mr. Saswat Das, AGA

Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1518 of 2024

Shobhan Kumar Banerjee and others .... Petitioners

M/s. Subhasree Mohanty, Advocate and Associate

-Versus-

State of Odisha and another .... Opposite Parties

Mr. Saswat Das, AGA

Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1522 of 2024

Pratik Sahoo and others .... **Petitioners**
M/s. Subhasree Mohanty, Advocate and Associate

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1525 of 2024

Albert Surin .... **Petitioner**
Mr. Viswajeet Mallick, Advocate

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1528 of 2024

Elina Ankita Surin .... **Petitioner**
Mr. Viswajeet Mallick, Advocate

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1532 of 2024

Alka Mahima Surin .... **Petitioner**
Mr. Viswajeet Mallick, Advocate

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1559 of 2024

Raghunandan Bahinipati and others .... **Petitioners**
Mr. Susanta Kumar Baral, Advocate and Associates

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1686 of 2024

Bishwajit Lenka and others .... **Petitioners**
Mr. Susanta Sekhar Mohapatra, Advocate and Associate

-Versus-

State of Odisha and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1724 of 2024

Santosh Kumar Sahoo and others .... Petitioners
Mr. Susanta Sekhar Mohapatra, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.1845 of 2024

Bikash Kumar Baliarsingh .... Petitioner
Mr. Rabindranath Barik, Advocate

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.2727 of 2024

Puspanjali Das .... Petitioner
Mr. Pradeep Kumar Das, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.2742 of 2024

Smaraka Patra and others .... Petitioners
Mr. Kshirod Kumar Rout, Advocate and Associates

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.2769 of 2024

Shiloosmita Mohanta .... Petitioner
Mr. Prafulla Kumar Mohapatra, Advocate and Associate

-Versus-

State of Odisha and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.2849 of 2024

Jayadev Bhoi .... Petitioner
Mr. Sukanta Kumar Dalai, Advocate and Associates

-Versus-

State of Orissa and another .... Opposite Parties
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

W.P.(C) No.2852 of 2024

Rushikesh Majhi .... **Petitioner**
Mr. Sukanta Kumar Dalai, Advocate and Associates

-Versus-

State of Orissa and another .... **Opposite Parties**
Mr. Saswat Das, AGA
Mr. Sanjib Swain, Advocate for OSSC

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:03.12.2024

1. Since a common question of law is involved inter se parties, the matter is disposed of by the following order.

2. For the sake of brevity, facts pleaded on record in each of the writ petitions are not separately described.

3. In the present batch of cases, the moot question, which is involved is, whether, the petitioners having degree qualification in Engineering should be allowed to apply and participate in the selection process in connection with the Combined Technical Services Recruitment Examination, 2023 for appointment to the posts of Junior Engineer in respect of the establishments concerned?

4. Bereft of unnecessary details, the facts of the case are that the Orissa Staff Selection Commission (shortly referred to as 'the OSSC') issued an advertisement dated 8th December, 2023

inviting online applications from prospective candidates vis-à-vis the recruitment in respect of various posts including Junior Engineer followed by a corrigendum dated 18th December, 2023 and addendum dated 26th December, 2023. As per the advertisement, the candidates applying for the posts of Junior Engineer must possess the educational qualification, such as, Diploma in Engineering from any institution with higher qualification but also to have Diploma in the same stream (for JE, Mechanical under Directorate of Ports & Inland Water Transport); Diploma in Engineering from any institution and must be a computer literate (for JE, Civil under the Director of Municipal Administration, H&UD Department); Diploma in Engineering or an equivalent qualification from any institution recognized by the Odisha Council of Technical Education and Vocational Training (in short 'the OCTE&VT') (for JE, Civil under Panchayati Raj & Drinking Water Department). The final date of online registration was 19th January, 2024 which was extended till 21st January, 2024. In the meantime, interim orders allowing the Degree Engineers to apply for the examination were passed by this Court. The examination pursuant to the advertisement was deferred but finally, the OSSC was allowed to proceed with the selection for all other posts advertised except the posts of Junior Engineer (Civil) and Junior Engineer (Mechanical).

5. Heard learned Senior Advocates and learned counsels appearing for the respective parties.

6. Succinctly stated, as per the Diploma holders, the advertisement does not allow candidates having higher qualification to apply for the posts of Junior Engineer with an exception to JE (Mechanical) under Directorate of Ports & Inland Water Transport) but subject

to having diploma qualification as well besides higher degrees. It is contended that neither the relevant rules nor the advertisement has been challenged. The plea is that the rights of the Diploma holders would be taken away, if the candidates with degree qualification are allowed to participate. It is pleaded that the Odisha Diploma Engineer Service (Methods of Recruitment and Conditions of Service) Rules, 2012 (hereinafter referred to as 'the Rules, 2012') has not been superseded by the Combined Technical Services Recruitment Examination Rules, 2022 (hence called as 'the Rules, 2022'), rather, both are to be read together and in harmony. As further pleaded, the purpose of admission of the students in Degree Engineering programmes as per All India Council for Technical and Education Regulations, 2007 (shortly as 'the Regulations, 2007') in declaring three years Diploma in Engineering after matriculation as academically equivalent to the students of 1st year of degree in Engineering course after +2 is related to lateral entry only. Reference is made to the clarification of the Government dated 13th January, 2023 in Water Resources Department with a plea that the same has not been questioned ever. It is further contended that the All India Council for Technical Education (AICTE) is not competent to declare equivalency and in so far as, the Diploma holders are concerned, all possess the qualification in terms of Rule 2(k) of the Rules, 2012 recognized by the State Council for Technical and Vocational Training and that part, there is no hierarchical relationship between the Diploma and Degree Engineers.

7. According to the State, separate rules for Degree Engineers and Diploma holders have been framed to strike a balance between them and as to the instructions on equivalency, it shall have to be in terms of Rule 22 of the Rules, 2012. The further pleading is that

the Rules, 2012 provides no minimum qualification, rather, it is Diploma Engineering or equivalent with specific additional degrees permissible for JE (Mechanical) but with a diploma qualification in hand. As far as promotion of Diploma Engineers to the higher cadre is concerned, for the said purpose, degree qualification is not essential as per the Rules, 2012. So, to speak, the contention is that the Degree Engineers cannot be allowed to appear the examination for the posts advertised, which are exclusively earmarked for the Diploma holders.

8. In reply and response to the above, the Degree holders claim that Rule 4(b) of the Rules, 2022 prescribes minimum educational qualification and hence, there is no restriction provided therein to allow the candidates with higher qualification. In the past, as pleaded further, in the recruitment held for the posts of Junior Engineer, the candidates having higher qualification were considered not eligible. In absence of any such stipulation in the impugned advertisement, the contention is that it can never be said that the Degree Engineers shall not be allowed to offer their candidature with respect to the advertised posts. The further contention is that the Degree Engineers are not aggrieved of the advertisement or the rules, for that matter, rather, claim eligibility on the basis thereof, while applying for the posts of Junior Engineer. The claim of taking away the rights of the Diploma holders is responded with a plea that the Degree Engineers are not ineligible but are only possessed of qualification academically higher and may appear along with the Diploma holders in the examination and since the assessment would be based on the performance and suitability for the posts, no prejudice would, therefore, occasion to the Diploma holders. It is pleaded that the minimum qualification is Diploma in Engineering or with such

equivalent qualification prescribed without any restriction or bar whatsoever for the candidates of higher qualification. So far as the Regulations, 2007 is concerned, as against the plea that the same is only for lateral entry, it is claimed, such a provision, as to a candidate having Diploma in Engineering after matriculation is treated academically equivalent with a student of Engineering of 1st year cannot be ignored. With regard to the clarification of the Water Resources Department, Government of Odisha dated 13th January, 2023, the response is that Diploma Engineering Institutions recognized by the State Council for Technical and Vocational Training and a candidate having three years course certificate followed by a Degree in Engineering are allowed to participate in the recruitment process and in view of the Regulations, 2007, the candidates, who have completed Diploma and also acquired degree in addition to the Diploma qualification are eligible to participate in the examination, hence, such qualification cannot be utilized against the Degree holders. The further contention is that the claim of having no hierarchical relationship between the Degree and Diploma holders is incorrect as the former are initially appointed to the post of Junior Engineer and subsequently, considered eligible for promotion to the post of Assistant Executive Engineer in view of Rule 4(1)(a) of the Odisha Engineering Service (Methods of Recruitment and Conditions of Service) Rules, 2012 (in short 'the OES Rules'). It is pleaded that an Assistant Engineer with Diploma in Engineering qualification is appointed to the post of Assistant Executive Engineer in the Engineering Service cadre, for which, under Rule 4(2) of the OES Rules, 33% of the total posts are reserved to be filled up by way of promotion and therefore, it would not be correct to claim that no hierarchical relationship exists. So far as equivalency in qualification is concerned, Rule 22 of the Rules,

2012 confers the power to the Government to issue instructions consistent with the provisions of the Rules and in the present case, according to the Degree holders, there is no such instructions and therefore, the norms and regulation prescribed by AICTE is to prevail, which has been accepted by the Government in the Skill Development and Technical Education Department, Odisha by notification dated 4th June, 2018. With the above facts pleaded, the Degree holders demand that there is no bar for them to appear the examination to be held pursuant to the advertisement issued by the OSSC for the Combined Technical Services Recruitment Examination, 2023.

9. The petitioners are the Degree holders, who joined the course directly after +2 and supposedly do not have the qualification of Diploma. The recruitment and conditions of service are separate for Diploma holders and Degree Engineers. Rule 2(h) of the Rules, 2012 defines 'Service' as the Odisha Diploma Engineers' Cadre Service. As per Rule 2(k), 'Diploma' is defined as a three-years course conducted by the Odisha State Council for Technical Education and Vocational Training. Rule 3 thereof deals with the constitution of service with Junior Engineer being the feeder cadre post. Rule 6(a) of the Rules, 2012 stipulates the eligibility criteria for direct recruitment possessing qualification in Diploma Engineering or equivalent to the Diploma to be considered provided the same is recognized by the OCTE&VT. Rule 22 of the Rules, 2012 deals with the power to issue instructions by the Government which shall not be inconsistent with the provisions of the rules to regulate the matters not specifically covered by the rules. As to the OES Rules, the entry cadre post is Assistant Executive Engineer as per Rule 3(1)(vii) thereof. According to Rule 4(1)(a), the Assistant Executive Engineer post shall be filled up by

direct recruitment and promotion from the Assistant Engineer from the cadre of Odisha Diploma Engineering Service. The relevant provision for the direct recruitment with minimum qualification is prescribed in Rule 6. Admittedly, there is no requirement to have a Degree in Engineering for being considered to the post of Assistant Executive Engineer by way of promotion. In the case at hand, the recruitment to the posts of Junior Engineer is to be held with a Preliminary Examination (Stage-I) and Main Written Examination (Stage-II) followed by Stage-III for the purpose of Certificate Verification. As per schedule-I of the Rules, 2022, for the selection and appointment to the posts of Junior Engineer, the provisions of the Rules 2012 shall be followed. Having discussed about the rules in place, the Court is to examine, whether, the plea of the Degree Engineers is acceptable.

10. Rule 6 of the Rules, 2012 stipulates that the educational qualification in case of direct recruitment to the posts of Junior Engineer, a candidate must have a Diploma in Engineering or equivalent qualification from an institution recognized by OCTE&VT. As per the advertisement, since, it is governed by the Rules 2012, a candidate having Diploma in Engineering is considered eligible but the same is challenged with a plea that higher qualification is not excluded. What is the role of a Court while dealing with such a question exercising powers of judicial review? It is settled law that the State as the employer is to consider the essential qualification for a post. Can the Court expand and include a higher qualification allowing the Degree holders to apply for the posts advertised carrying prescribed qualification? In **The Maharashtra Public Service Commission Vrs.**

Sandeep Shriram Warade and others (2019) 6 SCC 362, it is held and concluded by the Apex Court in the following words:

> "9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The Court cannot lay down the conditions of eligibility, much less, can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law, the matter has to go back to the appointing authority, after appropriate orders, to proceed in accordance with law. In no case, can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."

11. So, as per the ratio decided in the decision (supra), as readily understood, the essential qualifications for appointment to a post lies in the discretion of the employer, who may prescribe such required qualifications including any preferences. The employer is normally considered to be at the helm of affairs and primarily responsible to choose the qualification for a particular assignment, as to what a candidate should possess according to the needs and nature of the job involved and the Court cannot really prescribe the conditions of eligibility by resorting to interpretation thereby rewriting the advertisement. The question of equivalence is also

held to fall outside the domain of judicial review and in case of any doubt with respect to the language of the advertisement, one has to fall back upon the appointing authority to take a decision in accordance with law but under no circumstances, the Court exercising the powers of judicial review to interpret the eligibility conditions of the advertisement. While concluding so, the Apex Court in the decision (supra) approved the view expressed in **Department of Health & Family Welfare Vrs. Anita Puri (1996) 6 SCC 282**, the relevant extract of which, needs a mention, hence, reproduced herein below:

> "14. The view taken by the Tribunal finds approval in Secretary (Health), Department of Health & F.W. and Another vs. Dr. Anita Puri and Others 1996 (6) SCC 282 observing as follows:
>
> "7. Admittedly, in the advertisement, which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is a higher qualification than the minimum qualification required for the post and Respondent 1 was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination, it can be construed to mean that a higher qualified

> person automatically is entitled to be selected and appointed. XXX In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S. qualified person like Respondent 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed."

12. As per the above cited decisions, the State is the employer and it shall have the responsibility to deal with and prescribe the essential qualifications for appointment to a post and a Court is not to tinker with the same with an interpretation employed and the same is also the legal position with regard to equivalence, which is beyond the purview of judicial review. The Degree Engineer do not have the Diploma qualification, unless otherwise, possessed by any, a qualification allowed for the posts of Junior Engineer (Mechanical) under Directorate of Ports & Inland Water Transport) and the only way for them to be considered eligible for the posts of Junior Engineer (Civil), pursuant to the Rules, 2012, if they possess a qualification equivalent to the Diploma in Engineering from any or recognized institutions, as the case may be. In fact, SCT&VT has issued a clarification by letter No.1963 dated 14th September, 2023 addressed to the Water Resources Department, Govt. of Odisha stating therein that +2 course of the CHSE, Odisha has not been declared as equivalent to any of its Diploma courses by SCTE&VT, Odisha. As per the above clarification, the notification dated 16th November, 2013 of the CHSE, Odisha recognizing three year Diploma in Engineering having subjects like, Physics, Chemistry, Mathematics and English as foundation course conducted by the SCTE&VT as equivalent with +2 Science course, however, the vice versa is not declared by

SCTE&VT or CHSE, Odisha. So, therefore, to advance a plea on the basis of the notification of the CHSE dated 16th November, 2013, as according to the Court, is quite misplaced as mere recognition of Diploma in Engineering equivalent to +2 Science by the CHSE does not result in reciprocal equivalency.

13. The appointment to any Government post advertised, the provisions of the rules as applicable are to be considered and no candidature can be entertained for a particular post unless the eligibility criteria prescribed therein are satisfied. Pure and simple, it may be said that if one is not possessed of a Diploma in Engineering or equivalent, he or she would not be allowed to appear for the post of Junior Engineer. It is to reiterate that fixation of qualification to determine eligibility is a matter of recruitment policy and squarely lies within the domain of the employer. It is only the State which can prescribe the educational qualification as the condition of eligibility for a post. It is the State which can determine the suitability of a qualification vis-à-vis a post and which of the qualifications to be equivalent to the prescribed. In several judicial pronouncements, apart from the case laws cited and discussed herein before, such rights of the State with regard to the eligibility criteria have been discussed with a conclusion in unanimous that the same should not be encroached upon and the ambit is not to be expanded by way of judicial interpretation. In this context, the relevant paragraph of the decision of the Apex Court in **Zahoor Ahmad Rather and others Vrs. Sheikh Imtiyaz Ahmad and others (2019) 2 SCC 404** needs a reference and the same is as hereunder:

> "26. We are in respectful agreement with the interpretation which has been placed on the judgment in *Jyoti K.K.* in the subsequent

decision in Anita. The decision in *Jyoti K.K.* turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in *Jyoti K.K.* turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench."

14. The decision (supra) has been quoted with approval in **Unnikrishnan CV and others Vrs. Union of India and others** decided on 28th March, 2023 in Civil Appeal No.7188 of 2013, wherein, it is held and observed as follows:

"15. In Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Others, it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications,

course content leading up to the acquisition of various qualifications, etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine."

15. It is, hence, to be held that the State being the employer, it had fixed the criteria for the posts of Junior Engineer to be filled up from among the candidates having the qualification of Diploma in Engineering and a Degree Engineer can be considered eligible provided he has the Diploma qualification for a particular post of Junior Engineer (Mechanical) and not for the posts of Junior Engineer (Civil). A decision of the Apex Court in **Puneet Sharma and others Vrs. Himachal Pradesh State Electricity Board Limited (2021) 16 SCC 340** is further relied on to contend that the Degree Engineers are eligible. According to the Diploma holders, the decision is distinguishable and hence, not applicable, since it was based on the relevant rules, which allowed the Graduate Engineers to compete. The Court is inclined to refer to the relevant paragraphs of the decision in **Puneet Sharma** to understand the context in which it was delivered and the same are extracted below:

"22. The question whether the stipulation or prescription of the particular academic qualification excludes an applicant who possesses what is termed as a higher qualification, from their candidature to the concerned post has often arisen for consideration by this Court. In P.M. Latha & Another v. State of Kerala & others, the issue which arose for consideration was whether, for primary class teachers, the prescribed (and advertised) qualification Trained Teacher Certificates (TTC), included those who held B.Ed. degrees. This court was forthright in holding that the B.Ed. qualification could not be

considered as a higher qualification than the TTC and that the TTC qualification was "given to teachers especially trained to teach small children "primary classes", whereas those with B.Ed. were trained to impart education to students of "higher classes". A similar view was expressed in Yogesh Kumar & others v. Government of NCT Delhi & Ors vis-a-vis the same stipulation i.e. B.Ed. and TTC qualifications. The Court further held in Yogesh Kumar (supra) that "a specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding B.Ed. degree."

23. The next judgment is Jyoti K.K. & others v. Kerala Public Service Commission & others, where the issue was whether degree holders could be considered for the post of Sub-Engineer (Electrical) in the Kerala State Electricity Board, which had prescribed diploma in Electrical Engineering or SSLC or its equivalent as the eligibility criteria. This Court took into consideration Rule 10A and inter alia observed as follows:

"6. Rule 10(a)(ii) reads as follows:

"10(a)(ii)- Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or standing orders of Government as equivalent to a qualification specified for a post in the Special Rules and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post."

7. It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant Rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the Rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has



acquired higher qualifications in the same faculty, such qualifications can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case, it may not be necessary to seek far.

8. Under the relevant Rules, for the post of Assistant Engineer, degree in Electrical Engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of Sub-Engineer. In that view of the matter, the qualification of degree in Electrical Engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post.

9. In the event the Government is of the view that only diploma-holders should have applied to post of Sub-Engineers but not all those who possess higher qualifications, either this Rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree-holder shall not be eligible to apply for such post. When that position is not clear but on the other hand the Rules do not disqualify per se the holders of higher qualifications in the same Faculty, it becomes clear that the Rule could be understood in an appropriate manner as stated above. XXX In this case, we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory Rules have been published and those Rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such Rules or make himself aware of the Rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of the appellants would amount to fraud on the public."

16. On a proper reading of the decision (supra), it is abundantly clear that unless the relevant rules accommodate the Degree

Engineers, they cannot be allowed to appear in an examination meant for the Diploma holders and others having equivalent qualification. It can be understood that a qualification in the same field may be perceived higher or lower than another but while considering recruitment, possession of a higher qualification must presuppose the acquisition of lower prescribed for the post advertised with a specific provision in the rules applicable. According to Court, degree qualification does not presuppose a diploma as both operate independently with different set of rules. In the said decision, the conclusion reached at in **Zahoor Ahmad Rather** has been taken judicial notice of in the following paragraph, such as:

> "27. Thereafter, the Court discussed the previous rulings in *P.M. Latha, Jyoti K.K. and Anita* (supra), then concluded that the candidature of the diploma holders was correctly rejected and held as follows:
>
> "26. We are in respectful agreement with the interpretation which has been placed on the judgment in *Jyoti K.K.* in the subsequent decision in *Anita*. The decision in Jyoti K.K. turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in *Jyoti K.K.* turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification.

The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment (Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936) of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision (Imtiyaz Ahmad v. Zahoor Ahmad Rather) of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services.

Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in *Jyoti K.K.* must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. turned."

17. The decision in **Unnikrishnan CV** deserves an attention, in which, the Apex Court had the occasion to examine the issue in debate with regard to qualification and equivalence and held and observed which is stated hereunder:

"5. XXX However, on a careful perusal of the extant Rules as applicable for promotion to the post of Superintendent BR Grade-II, said contention has to be necessarily rejected for reasons more than one. Firstly, before the High Court appellants attempted to justify

their claim contending "Diploma" is equivalent to a "Degree" and as such being entitled for promotion which has been negatived by the High Court and rightly so. Secondly, appellants tried to justify their claim contending rule as applicable for direct recruitment would be applicable for recruitment by promotion, which has not been accepted by the High Court. In so far as the contention regarding qualification for promotion, the rule itself is explicit and clear, namely, it prescribes for promotion to Superintendent BR Grade-I only, those candidates possessing Diploma in Civil Engineering with 5 years regular service in the grade in General Reserve Engineering Force would be eligible. No doubt, said rule is silent with regard to Diploma in Civil Engineering being either 3 years or otherwise. It is an undisputed fact that appellants possess 'Diploma in DED' and not 'Diploma in Civil Engineering'. It is trite law that courts would not prescribe the qualification and/or declare the equivalency of a course. Until and unless rule itself prescribes the equivalency namely, different courses being treated alike, the courts would not supplement its views or substitute its views to that of expert bodies.

6. In Guru Nanak Dev University v. Sanjay Kumar Katwal & Another, this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. Dealing specifically with whether a distance education course was equivalent to the degree of MA (English) of the appellant university therein, the Court held that no material had been produced before it to show that the distance education course had been recognized as such.

7. In Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Ors, it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. Judicial

> review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine."

18. So far as the constitution of service is concerned, Rule 3(1) of the Rules, 2012 stipulates the following grades, namely, (i) Junior Engineer and (ii) Assistant Engineer, a promotional post, which shall be filled up only by way of promotion from the grade of Junior Engineer of Odisha Diploma Engineers' Service as per Rule 4(1)(b) thereof. No provision therein is available to allow degree holders to apply for such post which is exclusively meant for Junior Engineers upon promotion. But in **Punit Sharma** case, the Apex Court on examination of the relevant rules noticed that a lion's share of the posts at the JE level is set apart for direct recruitment, however, when it is at the level of the higher post i.e. Assistant Engineer, which is a promotional post, direct recruitment is only to the extent of 36% and of the balance 64%, various sub-quotas have been stipulated for feeder cadres, the largest percentage being for Junior Engineers. As was further noticed, for a long time, even on the date of advertisement, two distinct quotas of 5% each had been set apart for promotion of Junior Engineers holding degree qualification in the subject concerned and held as follows:

> "30. It would be also useful to notice a later judgment of this court, in Chief Manager, Punjab National Bank and Another v Anit Kumar Das 2020 SCC On Line SC 897 where the issue was, whether for the post of peon in the appellant Bank, a degree holder (graduate) could be appointed, given the conscious decision of the employer, that only those who held 10+2 pass qualifications would be considered and those with graduation qualification could not be considered. This court held that the

appointment of the respondent, who was a graduate, after he suppressed the fact that he held a degree, and did not disclose it, was unsupportable. In this context, it was observed that as to what qualifications are applicable to what class of posts, is a matter of discretion to be exercised by the employer, which the courts would be slow to interdict. This decision too supports the conclusions in the present case, since the employer, HPSEB asserts that it considers degree holders eligible for appointment to the post of JE."

31. This Court is conscious that the issue in question is whether the minimum qualification of a diploma in electrical or electronic engineering or other prescribed qualifications includes a degree in that discipline. However, the rules have to be considered as a whole. So viewed, the two sub-quotas are:

(1) 5% enabling those diploma holders who acquire degree qualifications during service as Junior Engineers; and

(2) 5% enabling among those who hold degrees before joining as Junior Engineers;

32. The latter (2) conclusively establishes that what the rule making authority undoubtedly had in mind was that degree holders too could compete for the position of JEs as individuals holding equivalent or higher qualifications. If such interpretation were not given, there would be no meaning in the 5% sub-quota set apart for those who were degree holders before joining as Junior Engineers-in terms of the recruitment rules as existing."

And in the meanwhile, an amendment was introduced clarifying the doubt that even for the post of Junior Engineer, individuals holding higher qualification are eligible and the Apex Court concluded that though the same to be prospective in nature, nevertheless, since clarificatory, held to apply to the recruitment in view of its decision in **Zile Singh Vrs. State of Haryana (2000) 8 SCC 1**.

19. In the case at hand, there is no such rule to justify participation of the degree holders in the recruitment of Junior Engineers, which is to be held as the Rules, 2012 and it allows direct recruitment for the feeder cadre post from among the Diploma Engineers or one with equivalent qualification and to the promotional post, only from the Junior Engineers by promotion without any such quota as was available in **Puneet Sharma** case wherein as per rules sub-quotas allow those who acquire degree qualification either before joining service or during the service as Junior Engineers. As per the advertisement dated 8th December, 2023, for the post of Junior Engineer (Mechanical) under the Directorate of Port & Inland Water Transport, essential qualification is Diploma in Mechanical Engineering from any recognized institution, however, the candidates having higher qualification, such as, Degree/B-Tech/BE are also allowed to apply for the post provided they must possess Diploma in Mechanical Engineering, unlike for the posts of Junior Engineers (Civil) under Municipal Administration, H&UD; and Panchayati Raj & Drinking Water Departments, for which, Diploma in Civil Engineering or equivalent is the qualification, hence, there lies a distinction but to hold that degree holders are equally eligible would be an incorrect view.

20. The decision in **Jyoti K.K. Vrs. Kerala Public Service Commissioner (2010) 15 SCC 596** is also in the light of the specific provisions of the relevant rules which specified that having a higher qualification pre-supposes the acquisition of a lower qualification prescribed for a post shall be sufficient to apply for the post. The above decision has been distinguished by the Apex Court in the State of **State of Punjab and others Vrs. Anita and others (2015) 2 SCC 170** and in the case of **Zahoor Ahmad Rather**

(supra). So, to say, the decision in **Jyoti K.K.** is applicable only to such cases, where a specific provision exists in the rules to accommodate candidates of higher qualification with pre-supposition of having a lower qualification prescribed for a post. In **Ankita Thakur and others Vrs. H.P. Staff Selection Commission and others (2023) SCC Online SC 1472**, it is held by the Apex Court that when the advertisement does not recognize any other or higher qualification meeting the eligibility criteria prescribed therein, a candidate of higher qualification cannot be allowed to apply for the post advertised. Referring to the decision in **Zahoor Ahmad Rather**, it is concluded therein that absence of any such rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another albeit lower qualification. The view that prescription of a qualification for a post is a matter of recruitment policy is also affirmed in **Anita Thakur** (supra).

21. In the case at hand, no such provision has been made for the Degree Engineers. As per the advertisement, a Diploma holder or a candidate with equivalent qualification is eligible to apply for the posts of Junior Engineer (Civil). As earlier stated, Degree Engineering is not an equivalent qualification as per the Rules for having passed out plus two to be treated at par with Diploma. To claim that Diploma and Degree Engineers having a hierarchical relationship is also misconceived. For instance, as has been argued and illustrated, rightly so, an M.Tech candidate is higher to B.Tech and anyone having the former qualification shall automatically have the latter and hence, can be said to have a hierarchy. However, it is justified to distinguish and claim that Diploma and Degree courses do not have any such hierarchy. Any person having a degree does not necessarily possess a Diploma

qualification. That apart, there is no relation between the courses as both run in respective field and are mutually exclusive. The Court is, hence, in clear agreement and of the view that the plea of higher degree having hierarchical relationship with Diploma in Engineering bears no logic.

22. To add further, the plea that the Diploma course to be equivalent to +2 Science, hence, therefore, a Degree Engineer is eligible to appear would be a grossly erroneous conclusion. If such an argument is accepted, it would defy common sense. In such an eventuality, even a +2 Science student would also be eligible to apply for a post claiming equivalency with Diploma. The notification of the CHSE dated 25th November, 2013 is, therefore, to be considered only for the purpose of admission into courses. By creating an equivalence in +2 and Diploma, it only opened the Diploma holders to pursue other courses, which are equally allowed for +2 students. That apart, UCG and AICTE have clarified the position in this regard. According to AICTE's circular dated 10th November, 2020 under the heading Policy and Academic Bureau, it is stated that AICTE as per the policy in place is not providing equivalence to the qualification obtained from approved institutions departments at any level for higher education purpose as well as for employment and it is up to the employer to decide the suitability for a particular post and institution for higher studies. The UGC with a public notice on equivalency of degrees dated 19th July, 2016 made it clear that equivalence of degree, diploma etc. are not determined by it and in case of higher education, equivalence is decided by the University concerned and for employment, promotion etc., the same is declared by the employing organization. So therefore, to plead that a Degree holder is having equivalent qualification with

reference to the notification of the CHSE cannot be accepted to hold that a Graduate Engineer fulfills the criteria to participate in the selection process.

23. In course of hearing, it is claimed that some of the intervenors and caveators are not having the required qualification recognized by the State Council of Technical Education and Vocation Training in terms of the Rules, 2012. The question is, whether, the Degree Engineers may be allowed to appear the examination and not the qualification, if any possessed by the intervenors and caveators. Such qualification, whether, is possessed by any of the candidates to apply for posts are to be examined by the employer in terms of the advertisement and rules. A reference has been made to Rule 2(k) of the Rules, 2012 and the qualification prescribed as per Rule 6(b) thereof. The Court is not concerned with any such question regarding qualification of the intervenors and caveators, whether, to be consistent with the provisions of the rules. If a candidate has the qualification or otherwise duly recognized, it lies within the realm of the employer to verify and in case, the same is found not in conformity with the Rules, the candidature may be rejected at the time of document verification or even at any stage thereafter.

24. An argument is advanced, as far as equivalence of the Degree is concerned, on the basis of a document on National Credit Framework, which is basically a policy statement. On a sincere reading of the same, the Court finds that by such a policy, as rightly pointed out, the credit of one post is carried forward to the next in order to ensure flexibility and mobility for the students, which is nothing to do with equivalence and the reference to the same is having no relevance. At the of cost of repetition, it is to be stated that as to the Regulations, 2007 by notification dated 12th

January, 2007 of the AICTE, the eligibility criteria mentioned therein is relatable to the lateral entry to Engineering degree programme at the second or third semester level with a stipulation that a candidate, for the said purpose, must have passed the Diploma in Engineering in the relevant branch with a minimum of 60% in aggregate and only candidates fulfilling the same would be eligible to appear the entrance test. It does not mean, by any stretch of imagination, that such condition prescribed as per the Regulations, 2007, a Degree Engineer would be equivalent to a Diploma holder, who is allowed to appear in a selection vis-à-vis lateral entry. As per the Regulation 6.1(b), a student, who has acquired a Diploma in Engineering through a minimum of three years of institutional study after 10+2 can be considered to be academically equivalent to one, who has passed the 1st year of the four-year Engineering degree course, for which, the qualifying examination is of +2 level. But it does not mean that a Degree holder is to be allowed and to be considered at par with a Diploma for the purpose of selection to the post of Junior Engineer and therefore, the plea advanced with reference to the Regulations, 2007 is of no assistance either.

25. Referring to an order in SLP(C) No(s).12843 of 2024 of the Apex Court dated 7th June, 2024 in **Shubham Chandra Tripathy and others Vrs. UP Sub-ordinate Staff Service Commission and others**, it is submitted that the Degree holders should be allowed to apply for the post but such interim arrangement is made considering the dichotomy in the Rules as under one set of Rules, the diploma holders and holders of National Certificates in Civil Engineering awarded by the AICTE are eligible and in another pertaining to Group-B Engineers in UP Irrigation Department, Degree holders to be considered for the purpose of promotion

and therefore, such contention as put forth cannot be accepted and that apart, it has not been demonstrated with reference to rules involved.

26. The language of advertisement is clear and conspicuous to the effect that a candidate must have the qualification of Diploma in Engineering or equivalent. If the language is unambiguous, there can be no quarrel over the qualification as prescribed in advertisement. Unless there is a specific provision and rules dealing with any such higher qualification, a Degree in Engineering cannot claim for and participate in the recruitment process. The relevant rules for the Degree Engineers may have the provision to enable the Diploma holders to avail promotion but by itself would not justify to hold that the prescribed qualification includes the higher one. The +2 qualification as has been held equivalent by the CHSE is for a limited purpose which cannot be borrowed to seek equivalence. The Diploma holders are having the rules independent of the B.Tech Engineers. A particular qualification whether to be equivalent should be left to the decision of the employer. Considering the circular of the AICTE and clarification by UGC, it has to be held that the equivalence in qualification is to be determined by the Universities and institutions. It is to be restated that a Court cannot have a judicial review with regard to the qualification prescribed for a particular post to be suitable and also on the aspect of equivalence of a course. A rule must be very clear to prescribe equivalence and therefore, the employer should be left with the wisdom to exercise. Considering the subject matter in proper perspective, the Court is reluctant to accept the view as advanced from the side of the Degree holders.

27. Hence, it is ordered.

28. In the result, the writ petitions stand dismissed. As a necessary corollary, the interim orders are hereby vacated. IAs, if any, pending are disposed of accordingly.

(R.K. Pattanaik)
Judge

TUDU

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Reason: Authentication
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