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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 14724/2024**

SUNIL KUMAR & ORS.

.....Petitioners

Through: Mr. Ankit Roy and Mr. Aditya
Agarwal and Mr. Rishav Rai, Advocates.

versus

LT. GOVERNOR, NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza Aam and Mr.
Mohnish Sehrawat, Advocates for Mrs. Avnish
Ahlawat, Standing Counsel, GNCTD.

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+ **W.P.(C) 14730/2024**

RAJESH KUMAR GUPTA & ORS.

.....Petitioners

Through: Mr. Ankit Roy and Mr. Aditya
Agarwal and Mr. Rishav Rai, Advocates.

versus

LT. GOVERNOR, NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza Aam and Mr.
Mohnish Sehrawat, Advocates for Mrs. Avnish
Ahlawat, Standing Counsel, GNCTD

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

21.10.2024

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CM APPL. 61849/2024 in W.P.(C) 14724/2024

CM APPL. 61860/2024 in W.P.(C) 14730/2024

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.



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3. This writ petition is preferred on behalf of the Petitioners seeking a direction to Respondent No.2 to conduct departmental examination in accordance with Section 78(1) of the Delhi Agricultural Produce Marketing Regulation Act, 1998 ('1998 Act') and in the alternative declaring that departmental examination is not required for promotion to the post of Assistant Engineer (AE) (Civil), invoking the doctrine of '*desuetude*'.

4. As averred in the writ petition, Petitioners are diploma holders in Civil Engineering and are employed with Respondent No.2/Delhi Agricultural Marketing Board ('DAMB'), which is a statutory body under the Administrative control of Government of NCT of Delhi. Petitioner No.1 was appointed as Junior Engineer (JE) (Civil), vide order dated 28.12.2006, while Petitioner No.2 was appointed as Work Assistant (Civil) vide order dated 03.02.1988 and promoted to the post of JE (Civil) vide order dated 17.04.2008. Petitioner No.3 was appointed to the post of JE (Civil) vide order dated 12.01.2007.

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5. This writ petition is preferred on behalf of the Petitioners seeking a direction to Respondent No.2 to conduct departmental examination in accordance with Section 78(1) of 1998 Act and in the alternative declaring that departmental examination is not required for promotion to the post of Assistant Engineer (AE) (Civil/Electrical), invoking the doctrine of '*desuetude*'.

6. As averred in the writ petition, Petitioner No.1 holds diploma in Civil Engineering and has passed Bachelors of Engineering (Civil) in 2000. Petitioners No.2 and 3 are diploma holders in Civil Engineering. Petitioner



No.1 was appointed as JE (Civil) vide order dated 12.01.1999, while Petitioner No.2 was appointed as JE (Civil) vide order dated 09.08.1995. Petitioner No.3 was appointed to the post of JE (Electrical) on 03.04.1996.

7. Common grievance of the Petitioners in both these writ petitions is that Respondent No.2 is not holding departmental examinations as provided under Section 78 (1) of 1998 Act. The contention is that as per Annexure-1 of Delhi Agricultural Marketing Service Regulations, 2004, Petitioners are required to complete 8 years of regular service as JEs (Civil/Electrical) for promotion to the next higher post of AE and despite Petitioners having completed the eligibility period years ago, their cases have not been considered for promotion. Relying on the judgment of the Supreme Court in *Ajai Kumar Shukla v. Arvind Rai, (2022) 12 SCC 579*, it is urged that while there is no fundamental right to promotion, but an employee has a right to be considered for promotion in accordance with relevant Rules and Respondent no.2 has denied this valuable right to the Petitioners.

8. Without prejudice to this submission, Petitioners urge that DAMB had vide Resolution No. 55/2010 in Agenda No. 19 approved the proposal for deletion of departmental examination as a pre-condition for promotion and even this Resolution has not been taken to its logical end. In a nutshell, Petitioners contend that either the departmental examination should be held at the earliest or the Resolution should be given effect to and Petitioners should be considered for promotion without the examination.

9. Issue Notice.

10. Ms. Laavanya Kaushik, learned counsel accepts notice on behalf of Respondents and submits that Respondent No.2 will treat these writ petitions as representations from the Petitioners and take a decision at the earliest



with respect to the promotions of the Petitioners to the post of Assistant Engineer (Civil/Electrical).

11. These writ petitions are disposed of at this stage, without entering into merits of the case, with a direction to Respondent No.2 to take a decision in regard to promotions of the petitioners to the post of Assistant Engineer (Civil/Electrical) considering that as per the applicable Regulations minimum period of eligibility is 8 years and Petitioners claim that they are eligible. It is open to Respondent No.1 to decide whether to do away with the requirement of the departmental examination or to hold the same and consider the Petitioners. The decision shall be taken within a period of six weeks from the date of receipt of this order. Depending on the outcome of the decision, Respondent No.2 shall proceed to consider the Petitioners for promotions in accordance with law. In case, the decision is not in favour of the Petitioners, a reasoned and speaking order shall be passed, which shall be communicated to the Petitioners and they will be at liberty to take recourse to legal remedies, if so advised.

12. Petitions stand disposed of.

JYOTI SINGH, J

OCTOBER 21, 2024/YA/shivam/jg