

STATE OF U.P. & ORS.

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v.

VIKASH KUMAR SINGH & ORS.

(Civil Appeal No. 6868 of 2021)

NOVEMBER 22, 2021

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**[M. R. SHAH AND B. V. NAGARATHNA, JJ.]**

*Service Law: Promotion of Superintending Engineer to the post of Chief Engineer (Civil) Level-II – Promotion to the post of Chief Engineer (Civil) Level-II is governed by U.P. Service of Engineers (Irrigation Department) (Group A) Service Rules, 1990 – As per r.5(iii) of Rules, 1990, promotion to the post of Chief Engineer shall be from amongst the substantively appointed Superintending Engineers who have completed 25 years of service – Original writ petitioners-Superintending Engineers were not considered for promotion as they had not completed 25 years of service as required by Rules of 1990 – High Court quashed the eligibility lists and issued writ of mandamus commanding the competent authority to grant relaxation in qualifying service, which as such was permissible under r.4 of the Relaxation Rules, 2006 – Hence instant appeal – Held: It is an admitted position that the original writ petitioners did not fulfill the eligibility criteria having not completed 25 years of service – The eligibility lists were prepared by the department absolutely as per r.5(iii) and r.8(iii) of the Rules, 1990 – Therefore, as such, the High Court ought not to have set aside the said eligibility lists, which as such were prepared absolutely in accordance with the Rules, 1990 – The word used in r.8 of Relaxation Rules, 2006 is “May” – Therefore, the relaxation may be at the discretion of the competent authority and cannot be prayed as a matter of right – If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service – High Court committed a grave error in issuing the writ of mandamus – U.P. Government Servants Relaxation in Qualifying Service for Promotion Rules, 2006 – r.4 – U.P. Service of Engineers (Irrigation Department) (Group A) Service Rules, 1990 – r.5(iii).*

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A           **Allowing the appeal, the Court**

**HELD: 1. The eligibility lists were prepared by the department absolutely as per Rule 5(iii) and Rule 8(iii) of the Rules, 1990. The names of the original writ petitioners were excluded from the eligibility list of Superintending Engineer for promotion to the post of Chief Engineer on the ground that they did not fulfil the eligibility criteria as per Rule 5(iii) of the Rules, 1990. Therefore, as such, the High Court ought not to have set aside the said eligibility lists, which as such were prepared absolutely in accordance with the Rules, 1990. [Para 7][364-G-H; 365-A]**

**2. The word used in the Rule 8 of Relaxation Rules, 2006 is “MAY”. Therefore, the relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service. Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were prepared absolutely in consonance with the Rules, 1990 and Rules, 2006. [Para 7.1][365-B-E]**

**CIVIL APPELLATE JURISDICTION: Civil Appeal No.6868 of 2021.**

**From the Judgment and Order dated 24.07.2020 of the High Court of Judicature at Allahabad, Lucknow Bench in Special Appeal (Defective) No.187 of 2020.**

**Sakha Ram Singh, Sr. Adv., Rajeev Kumar Pandey, Ashiwan Mishra, Kamendra Mishra, Advs. for the Appellants.**

**Rana Mukherjee, Sr. Adv., Abhijit Banerjee, Advs. for the Respondents.**

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The Judgment of the Court was delivered by

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**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.07.2020 passed by the Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench) by which the Division Bench of the High Court has dismissed the Special Appeal (Defective Complaint No.187 of 2020) filed by the appellants herein- State of U.P. and Others confirming the judgment and order passed by the learned Single Judge quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019 of the Superintending Engineers (Civil) for promotion to the post of Chief Engineer (Civil) Level-II from the department and further issuing a writ of mandamus, commanding the appellants – competent authority to prepare the eligibility list of the Superintending Engineer (Civil) including the names of the respondents – original writ petitioners for promotion to the post of Chief Engineer (Civil) Level – II by granting them relaxation in minimum length of service in accordance with the U.P. Government Servants Relaxation in Qualifying Service for Promotion Rules, 2006, the State of U.P. and others have preferred the present appeal.

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2. The facts leading to the present appeal in nutshell are as under:-

2.1 The respondents – original writ petitioners (hereinafter referred to as the “original writ petitioners”) are discharging their duties as Superintending Engineers in different places. They claim promotion to the post of Chief Engineer (Civil) Level-II. The recruitment to the post of Chief Engineer (Civil) Level – II is governed by the U.P. Service of Engineers (Irrigation Department) (Group A) Service Rules, 1990 (hereinafter referred to as “Rules, 1990”). As per Rule 5(iii) of the said Rules, promotion to the post of Chief Engineer shall be from amongst the substantively appointed Superintending Engineers in the Civil or Mechanical Branch, as the case may be, who have completed twenty five (25) years of service (including at-least three years’ service as Superintending Engineer) on the first day of the year of recruitment. As per the Office Circular dated 22.03.1984 issued by the State Government laying out the guidelines for selection/promotion to the posts within the purview of the Public Service Commission, the criteria for promotion shall be merit. The State Government have also framed the U.P. Government Servant Relaxation in Qualifying Service for Promotion

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A Rules, 2006 (hereinafter referred to as “the Relaxation Rules, 2006”), which prescribe that in case the required number of eligible persons are not available in the field of eligibility, the prescribed minimum length of service may be relaxed upto 50% by the Government in the Administrative Department in consultation with the Personnel Department excluding the period of probation.

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2.2 The appointing authority determined 26 vacancies of Chief Engineer (Civil) Level-II for the Recruitment Year 2018-2019. The eligibility list was to be prepared in terms of Rule 4 of Uttar Pradesh Promotion by Selection (on posts outside the purview of Public Service Commission) Eligibility List Rules, 1986 (hereinafter referred to as “Rules, 1986”) containing the names of the senior most candidates, as far as possible, three times the number of vacancies. Since there were 26 vacancies of Chief Engineer determined as per Rules, 1986, totaling 78 Superintending Engineers (Civil) were eligible to be considered for promotion to the post of Chief Engineer.

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2.3 On 23.07.2018, an eligibility list of Recruitment Year 2018-2019 of 74 Superintending Engineer (Civil) was prepared. The names of the original writ petitioners found place at Sl. Nos. 60, 63, 64, 67, 72 and 74. However, as they had not completed 25 years of service, which was the requirement as per the Rules, 1990, their cases were not considered for promotion. Again on 07.03.2019, a revised eligibility list for the Recruitment Year 2018-2019 of 59 Superintending Engineers (Civil) was prepared and the names of the original writ petitioners were excluded on the ground that they had not completed 25 years of service. Again on 18.03.2019, another revised eligibility list for the Recruitment Year 2018-2019 of 44 Superintending Engineer (Civil) was prepared in which also the names of the original writ petitioners were excluded. Lastly on 10.05.2019, one other revised list of 41 Superintending Engineers (Civil) was prepared excluding the names of the original writ petitioners. Therefore, the original writ petitioners preferred Writ Petition No.14962 (S/S) of 2019 assailing before the High Court the eligibility lists dated 18.03.2019 and 10.05.2019 of the Superintending Engineer (Civil) for promotion to the post of Chief Engineer (Civil) Level-II in the Department of Irrigation and Water Resources mainly on the ground that they were entitled to the relaxation in minimum qualifying service as per Relaxation Rules, 2006. By judgment and order dated 11.12.2019, the learned Single Judge issued the writ of mandamus commanding the competent authority

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to prepare the eligibility list of Superintending Engineer (Civil) including the names of the original writ petitioners for promotion to the post of Chief Engineer (Civil) granting them relaxation in minimum length of service in accordance with Relaxation Rules, 2006 as amended in the year 2013. Consequently, the learned Single Judge quashed and set aside the eligibility lists dated 18.03.2019 and 10.05.2019 of Superintending Engineer for promotion to the post of Chief Engineer.

2.4 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the State of U.P. filed the Special Appeal before the Division Bench and by the impugned judgment and order, the Division Bench of the High Court has dismissed the special appeal and has confirmed the judgment and order passed by the learned Single Judge.

3. Shri Sakha Ram Singh, learned Senior Advocate has appeared on behalf of the appellants and Shri Rana Mukherjee, learned Senior Advocate has appeared on behalf of the respondents – original writ petitioners.

4. Shri Sakha Ram Singh, learned Senior Advocate appearing on behalf of the State has vehemently submitted that admittedly the original writ petitioners did not fulfil the eligibility criteria as contained in Rule 5(iii) of the Rules, 1990. It is submitted that therefore the names of the original writ petitioners were rightly excluded from the eligibility list of Superintending Engineer (Civil) for the promotion to the post of Chief Engineer (Civil). It is submitted that as such the eligibility list prepared by the competent authority were in conformity with the provisions as contained in Rule 5(iii) of the Rules, 1990.

4.1 It is submitted that grant of relaxation under the Relaxation Rules, 2006 is discretionary and no writ of mandamus can be issued directing the competent authority to grant the relaxation. It is submitted that word used in Rule 4 of Relaxation Rules, 2006 is ‘**MAY**’ and only in a case where the required number of eligible persons are not available in the field of eligibility. It is submitted that no employee can claim the relaxation as a matter of right.

4.2 It is therefore submitted that as admittedly the original writ petitioners did not fulfil the eligibility criteria of having completed 25 years of service, their names were not required to be included in the eligibility list for promotion to the post of Chief Engineer. It is submitted

A that the High Court has erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were in absolute consonance with the statutory provisions of Rule 5(iii) and 8(iii) of the Rules, 1990.

B 4.3 Making above submissions, it is prayed to allow the present appeal.

C 5. Present appeal is opposed by Shri Rana Mukherjee, learned Senior Advocate appearing on behalf of the respondents – original writ petitioners. It is submitted that in the facts and circumstances of the case and on giving cogent reasons the learned Single Judge rightly issued the writ of mandamus commanding the appellants – competent authority to grant relaxation to the original writ petitioners. It is submitted that the learned Single Judge rightly considered that the eligibility list has to be prepared applying the ratio of 1:3 so as to have more meritorious candidates. It is therefore submitted that as solely on technical ground of not completing 25 years of service, the names of the original writ petitioners were excluded and there are specific Relaxation Rules, 2006, which provide for relaxation in qualifying service, the High Court has not committed any error in issuing the writ of mandamus to grant the relaxation as per Rule 4 of the Relaxation Rules, 2006.

E 6. We have heard the learned Senior Advocates appearing for the respective parties at length.

F 7. At the outset, it is required to be noted that the learned Single Judge issued the writ of mandamus commanding the competent authority to grant the relaxation as per Rule 4 of the Relaxation Rules, 2006 in qualifying service and consequently has quashed and set aside the eligibility lists dated 18.03.2019 and 10.05.2019. At the outset, it is required to be noted that as such as per Rule 5(iii) of the Rules, 1990, one of the conditions to be eligible is that the Superintending Engineer must have completed 25 years of service (including at-least three years' service as Superintending Engineer). It is an admitted position that the original writ petitioners did not fulfill the eligibility criteria as they did not have the qualifying service of having completed 25 years of service. Thus, the eligibility lists were prepared by the department absolutely as per Rule 5(iii) and Rule 8(iii) of the Rules, 1990. The names of the original writ petitioners were excluded from the eligibility list of Superintending Engineer for promotion to the post of Chief Engineer on the ground that

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they did not fulfil the eligibility criteria as per Rule 5(iii) of the Rules, 1990. Therefore, as such, the High Court ought not to have set aside the said eligibility lists, which as such were prepared absolutely in accordance with the Rules, 1990. A

7.1 The learned Single Judge thereafter while quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019 has issued the writ of mandamus commanding or directing the competent authority to grant relaxation in qualifying service, which as such was permissible under Rule 4 of the Relaxation Rules, 2006. The word used in the Rule 4 of Relaxation Rules, 2006 is “MAY”. Therefore, the relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service. Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were prepared absolutely in consonance with the Rules, 1990 and Rules, 2006. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are not sustainable in law. B C D E

8. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the Division Bench passed in Special Appeal (Defective Complaint No. 187 of 2020) and the judgment and order passed by the learned Single Judge dated 11.12.2019 passed in Writ Petition No. 14962(S/S) of 2019 are hereby quashed and set aside. Consequently, the writ petition filed by the original writ petitioners being Writ Petition No.14962(S/S) of 2019 stands dismissed. Present appeal is allowed accordingly, however, there shall be no order as to costs. Pending applications, if any, also stand disposed of. F