

A T. VALSAN (D) THR. LRS. & ORS.

v.

K. KANAGARAJ & ORS.

(Civil Appeal No. 3466-3468 of 2023)

B MAY 08, 2023

**[SANJAY KISHAN KAUL, ABHAY S. OKA AND
MANOJ MISRA, JJ.]**

C *Electricity Department, Group B (Technical) Assistant Engineer (Electrical) Recruitment Rules, 1979 – Promotion to the post of Assistant Engineer (Electrical) – Under the Rules, 80% of the vacancies for the post of Assistant Engineer were to be filled up by promotion and 20% by direct recruitment – Out of this 80%, 50% were earmarked for those Junior Engineers who possessed Degree in Engineering with regular service of 3 years and the other 50%*
D *for those possessing Diploma with regular service of 7 years – Junior Engineers-private respondents, who were originally Diploma holders and had acquired degree during service, were promoted as Assistant Engineers immediately after acquiring their degree without insistence on 3 years of continuous service from the date of acquisition of the degree – Challenged by appellants who had joined the service as*
E *Junior Engineers, having already acquired an Engineering Degree prior to the said appointment – CAT held partly in favour of the appellants relying on Shailendra Dania case – High Court held in favour of the Respondents relying on D. Stephen Joseph case – Issue referred by two-Judges Bench opining that D. Stephen Joseph case*
F *did not reflect the correct opinion as while construing almost identical Rules, the three-Judges Bench in Shailendra Dania case had opined to the contrary – Answering the reference, held: View taken in D. Stephen Joseph case is the applicable law – Under the Rules, the distinction is between the diploma holder and the degree*
G *holder and the period of service rendered as a Junior Engineer without any distinction between the years served prior to or after having obtained the degree – View taken by High Court upheld – Service Law.*

Service Law – Seniority – Held: In the absence of any statutory provision or rule made thereunder or under the proviso appended

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to Article 309, once an incumbent is appointed to the post according to rules, their seniority has to be counted from the date of appointment – Constitution of India – Article 309. A

Service Law – Promotion – Two channels for promotion – Incentive to acquire the higher degree – Discussed.

D. Stephen Joseph v. Union of India & Ors. (1997) 4 SCC 753 : [1997] 3 SCR 1040 – held applicable. B

C. Chakkaravarthy & Ors. v. M. Satyavathy, IAS & Ors. (2015) 16 SCC 652 – relied on.

Shailendra Dania & Ors. v. S.P. Dubey & Ors. (2007) 5 SCC 535 : [2007] 5 SCR 190; M. B. Joshi v. Satish Kumar Pandey (1993) 2 Suppl. SCC 419 : [1992] 2 Suppl. SCR 1; K. K. Dixit & Ors. v. Rajasthan Housing Board & Anr. (2015) 1 SCC 474 : [2014] 10 SCR 397; Anil Kumar Gupta v. Municipal Corporation of Delhi (2000) 1 SCC 128 : [1999] 4 Suppl. SCR 553; C

Chandravathi P. K. & Ors. v. C. K. Saji & Ors. (2004) 3 SCC 734 : [2004] 2 SCR 330; Satpal Antil v. Union of India (1995) 4 SCC 419 : [1995] 1 Suppl. SCR 1; A. K. Raghumani Singh v. Gopal Chandra Nath (2000) 4 SCC 30 : [2000] 2 SCR 943; Pramod K. Pankaj v. State of Bihar (2004) 3 SCC 723 : [2003] 5 Suppl. SCR 916 – referred to. D E

Case Law Reference

[2007] 5 SCR 190	referred to	Para 7	
[1997] 3 SCR 1040	held applicable	Para 7	F
[1992] 2 Suppl. SCR 1	referred to	Para 10	
[2014] 10 SCR 397	referred to	Para 12	
[1999] 4 Suppl. SCR 553	referred to	Para 17	
[2004] 2 SCR 330	referred to	Para 17	G
(2015) 16 SCC 652	referred to	Para 19	
[1995] 1 Suppl. SCR 1	referred to	Para 22	
[2000] 2 SCR 943	referred to	Para 22	
[2003] 5 Suppl. SCR 916	referred to	Para 22	H

A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3466-3468 of 2023.

From the Judgment and Order dated 08.11.2010 of the High Court of Judicature at Madras in WP Nos. 26525 of 2009, 221 and 7165 of 2010.

B Raghavendra S. Srivatsa, Venkita Subramoniam T. R., Likhi Chand Bonsle, Rahat Bansal, Ms. Komal Mundhra, Advs. for the Appellants.

Anurag Dubey, Bhupendra Kumar Bhardwaj, Ms. Anjali Tiwari, Ms. Geetanjali Setia, Ms. Divya Bhardwaj, S. R. Setia, Aravindh S., Ms. Uma Bhuvaneswari C., Abbas B., Advs. for the Respondents.

C The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. Leave granted.

D 2. The Appellants herein joined the service as Junior Engineers in the Electricity Department of the Government of Puducherry, having already acquired an Engineering Degree prior to the appointment to the post of Junior Engineer. On the other hand, the private Respondents joined the service as Junior Engineers with a Diploma and, in the course of service, obtained an Engineering Degree.

E **Factual Background:**

F 3. As per the Government of Pondicherry, Electricity Department, Group B (Technical) Assistant Engineer (Electrical) Recruitment Rules, 1979 (hereinafter referred to as '*the Rules*') for the post of Junior Engineer, 50% of the vacancies are to be filled by *promotion*, and the remaining 50% are to be filled by *direct recruitment*. The next avenue of promotion is to the post of Assistant Engineer (Electrical).

G 4. *Under the said Rules, 80% of the vacancies for the post of Assistant Engineer are to be filled up by 'promotion' and 20% by 'direct recruitment'. The promotion is made among Junior Engineers with three years of regular service for those with a Degree in electrical engineering and seven years of regular service for those with only a Diploma in electrical engineering. A subsequent amendment dated 07.10.1982 was made to Rule 4 read with Paragraph 11 of the Recruitment Rules on the subject of 'promotion'. Thereafter, the amended Rules earmarked 50% for*

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those Junior Engineers who possess Degree in Engineering with regular service of 3 years. The other 50% was earmarked for those Junior Engineers who possess Diploma with regular service of 7 years.

<p>Recruitment for Junior Engineers:</p> <ol style="list-style-type: none"> 1. 50% by promotion 2. Remaining 50% through direct recruitment <p>Desirable qualification for direct recruits: Degree in Electrical & Electronics Engineering</p> <p>Essential Qualification: Diploma in Electrical and Electronics with three years' experience</p>		<p>Promotion to the post of Assistant Engineers</p> <ol style="list-style-type: none"> 1. 20% by Direct Recruitment with degree as qualification 2. 80% by Promotion. Out of this 80%, <ol style="list-style-type: none"> a. 50% for Junior Engineer with 3 years regular service in the grade and possessing an Engineering Degree and b. 50% for Junior Engineer with 7 years regular service in the grade and possessing a Diploma in Electrical Engineering. 		<p>B</p> <p>C</p> <p>D</p> <p>E</p> <p>F</p>
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5. Significance of the aforesaid is that in order to earn their promotion to the post of Assistant Engineer, a Junior Engineer, possessing an Engineering Degree, has to have fewer years of service while in the case of a Diploma holder, the requisite period for service, to be eligible for promotion, was more. We may notice that while working as a Junior Engineer, there is no difference between a Degree holder and a Diploma holder. The moot point, thus, which arises, is whether, for a Diploma holder, who acquires a degree during the course of employment, the period of service as a Junior Engineer prior to acquiring the degree is to

- A be excluded for computing the eligible period of service for promotion to the post of an Assistant Engineer.

6. The Puducherry administration construed the Rules to mean that as long as the Diploma holder acquires a degree, the period spent in service as a Junior Engineer, before the acquisition of an engineering degree, would be counted. The Appellants, thus, approached the Central Administrative Tribunal, Madras Bench (hereinafter referred to as '*the CAT*') in O.A. No. 355/2008, challenging the decision of the Puducherry administration to promote the Junior Engineers, who were originally Diploma holders and acquired degree during service, as Assistant Engineers under the Degree quota, immediately after they acquired their degree without insisting on a three-years of continuous service from the date of acquisition of the degree. This was alleged to have resulted in denying promotion to the Junior Engineers, who joined the service as Degree holders.

D **Procedural History:**

Before the Central Administrative Tribunal

7. The CAT, vide an order dated 20.11.2009, partly found in favour of the Appellants and opined that the qualifying service for Junior Engineers, who obtained their degree during their service for the purposes of promotion to Assistant Engineer under the Degree quota, would have to be considered from the date when they obtained the degree. This view of the CAT was based on *Shailendra Dania & Ors. v. S.P. Dubey & Ors.*¹. The CAT opined that the Rule in question in the present case is almost identical to the Rule in the aforesaid case and, thus, concluded that the Degree and Diploma holders are distinct, and both are entitled to promotion in their respective quota. The CAT, in its wisdom, did not consider the case of *D. Stephen Joseph v. Union of India & Ors.*² on the ground that the issue requires fresh consideration in view of the subsequent judgment of this Court in *Shailendra Dania & Ors.*³

8. The aforesaid view resulted in multiple writ petitions⁴ being filed before the High Court by several employees of the Puducherry

¹ (2007) 5 SCC 535

² (1997) 4 SCC 753

³ (supra)

H ⁴ W.P. No. 26525 of 2009 and W.P. Nos. 221 & 7165 of 2010

Electricity Department, who were affected by the order but were not A
impleaded as a party before the CAT.

Arguments Before the High Court

9. In the proceedings before the High Court, the two parties relied B
upon the aforesaid two judgments – the Appellants on *Shailendra Dania & Ors.*⁵ case while the Respondents on *D. Stephen Joseph*⁶ case. *Shailendra Dania & Ors.*⁷ case is undisputedly a latter judgment and C
pertains to a different Rule, albeit it is stated to be almost similar, while *D. Stephen Joseph*⁸ case deals with the very same Rules, in question, as in the present case. The submission of the Respondents was that in the Rules in question, there is nothing stipulated that the experience gained after the acquisition of the Degree in Electricity Engineering was alone to be considered.

10. The High Court held in favour of the Respondents by allowing D
the writ petition while relying on the judgment in *D. Stephen Joseph*⁹ case. In this behalf, the judgment in *M.B. Joshi v. Satish Kumar Pandey*¹⁰ was also relied upon by the High Court, which had been cited in *D. Stephen Joseph*¹¹ case qua the aspect of interpretation of service E
rules. The said case opined that when a Rule is quite specific, it would not be proper to count the experience only from the date of acquisition of the superior educational qualification because such an interpretation will violate the purpose to incentivise the employee to acquire higher education. The relevant past practice followed by the Department being to the same effect, the practice of considering the tenure of a Junior Engineer as a whole was said to have acquired the status of a Rule of the department. Simultaneously, it was also observed that since the very Rule, in question, had been interpreted by this Court, it was not open for F
the CAT to have relied upon the decision qua some other Rules. In the context of the two judgments of the Supreme Court so discussed, it was observed that *Shailendra Dania & Ors.*¹² case, being the latter judgment

⁵ (supra)

⁶ (supra)

⁷ (supra)

⁸ (supra)

⁹ (supra)

¹⁰ (1993) Supp. (2) SCC 419

¹¹ (supra)

¹² (supra)

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A of three-Judges, had distinguished itself from the earlier judgment in ***D. Stephen Joseph***¹³ case, being the judgment of two-judges, on the true interpretation of that Rule, in question.

11. The aforesaid resulted in the Special Leave Petition being filed before this Court.

B **Initial Proceedings Before this Court**

12. The two-Judges Bench of this Court, in terms of the order dated 30.01.2018, referred the issue to be considered by a larger Bench. While making the reference, the two-Judges Bench opined that ***D. Stephen Joseph***¹⁴ case apparently was not reflecting the correct opinion as while construing almost identical Rules, a larger Bench of three-Judges had opined to the contrary in ***Shailendra Dania & Ors.***¹⁵ case as also in ***K.K. Dixit & Ors. vs. Rajasthan Housing Board & Anr.***¹⁶, wherein this Court had opined that the period of experience must be reckoned from the date of acquisition of the Degree. This is how the matter came up before the three-Judges Bench, as now constituted for our consideration in the reference.

The debate before us

13. On behalf of the Appellants, it was sought to be canvassed that the interpretation of the Rule ought to be governed by the two principles:

- i. The prescription of an educational qualification and a certain number of years of experience in the designated post is a cumulative requirement. A higher educational qualification makes a qualitative difference in the service rendered by the incumbent. Therefore, such prescription of a lesser number of years of experience for promotion has a rational nexus to the object sought to be achieved, namely, achieving efficiency at work.
- ii. Watertight compartments are created for the two classes of employees - the ones with the higher educational qualification requiring lesser number of years of service, and the ones

¹³ (supra)

¹⁴ (supra)

¹⁵ (supra)

H ¹⁶ (2015) 1 SCC 474

with lesser educational qualification requiring higher number of years of service. This demarcation has a direct nexus with the object stated above, and any breach of such demarcation will amount to treating unequal's as equals, thereby defeating the purpose of the Rule. A

14. It was submitted that the three-Judges Bench in *Shailendra Dania & Ors.*¹⁷ case had taken into account the aforementioned principles and had interpreted an almost identical Rule. That judgment had been further followed and relied upon by this Court in *K.K. Dixit & Ors.*¹⁸ case. It was further submitted that the two-Judges Bench judgment in *D. Stephen Joseph*¹⁹ case had no precedential value, and it is *sub silentio* as to the actual text of the Rule and the difference in the quality of service rendered by a Degree holder Junior Engineer vis-à-vis a Diploma holder Junior Engineer was neither placed nor covered by this Court. That judgment was stated to be completely based only on the arguments of a past practice and not as to the actual meaning and interpretation of the relevant Rule. B C D

15. While referring to the Rule, it was submitted that the plain and dictionary meaning of the word “with” is “*accompanied by*”. The synonyms in the dictionary are “*accompanied by, escorted by, alongside, in addition to, as well as*”. Thus, the submission of the Appellants was that irrespective of the use of the word “with” or “and”, it is a conjunctive phrase and in the light of settled principles, the requirement of educational qualification and service experience is a cumulative requirement. E

16. The Appellants contended that they had qualified as Junior Engineers holding Degrees for a much longer period of time than the private Respondents, who had entered the service only as Junior Engineers holding Diplomas and actually earned their promotions almost immediately once they acquired their Degrees by coming into the Degree quota. This was stated to permit the private Respondents to infiltrate into the quota meant for the Degree holders based on a wrong interpretation of the Rule and relying on the earlier judgment of this Court in the case of *D. Stephen Joseph*²⁰. F G

¹⁷ (supra)

¹⁸ (supra)

¹⁹ (supra)

²⁰ (supra)

A 17. On the other hand, it was urged on behalf of the Respondents while commending the view taken in *D. Stephen Joseph's*²¹ case that the view in that case and *Shailendra Dania & Ors.*²² case is really not in variance. The Rule was stated to be different. Apart from that, observations made in *Shailendra Dania & Ors.*²³ case, which would show that the view taken in *D. Stephen Joseph*²⁴ case has not been faulted. A reference was also made to two other judicial pronouncements of this Court in *Anil Kumar Gupta v. Municipal Corporation of Delhi*²⁵ and *Chandravathi P.K. & Ors. v. C.K. Saji & Ors.*²⁶, which had also endorsed the view taken in *D. Stephen Joseph*²⁷ case and, thus, that case cannot be said to be a *sub silentio*. These two judgments are once again of a three-Judges Bench, and the latter judgment had set down the principles to be followed as regards the counting of the service period of Diploma holders.

D 18. The effect of the aforesaid pronouncements was stated to be that in case of the Electricity Department of the Union Territory of Puducherry, the principle that has emerged in respect of the Rules is that for the purpose of the eligibility for promotion as Assistant Engineer, Diploma holders can count their service prior to the acquisition of their degree.

Analysis of the aforesaid judgments and our view:

E 19. On examining the controversy in the context of the arguments urged and the judicial precedents, we can say that actually, the issue is no more *res integra* in view of the judgment of this Court in *C. Chakkaravarthy & Ors. v. M. Satyavathy, IAS & Ors.*²⁸ Though it is a two-Judges Bench view, the very issue has been examined, which is really sought to be debated before us. It was observed in para 10 as under:

“There is, in our opinion, considerable merit in that submission of the petitioners. There is no gainsaying that this Court has

G ²¹ (supra)

²² (supra)

²³ (supra)

²⁴ (supra)

²⁵ (2000) 1 SCC 128

²⁶ (2004) 3 SCC 734

²⁷ (supra)

H ²⁸ (2015) 16 SCC 652

unequivocally declared that promotion to the post of Assistant Engineers in the service shall be on the basis of merit and merit alone and that seniority of the candidates cannot be taken as an input for determining such merit. This Court has also very clearly rejected the procedure followed by the Government whereby the date on which the candidate had acquired his degree qualification was taken as a determining factor. That being so, and given the large number of candidates eligible for consideration the Government was entitled to adopt the method of restricting the zone of consideration based on the number of vacancies. Inasmuch as the Government relied upon the DoPT guidelines for achieving that objective it committed no fault. The question, however, is whether the Government could draw-up a list of eligible candidates not by reference to the length of service in the cadre but by reference to the date on which the candidates acquired the eligibility which, as noticed earlier, was itself dependent upon the date on which the candidate acquired the degree qualification. Since, however, the acquisition of a degree qualification itself was not based on any consistently uniform criterion, test or procedure, the date on which such a qualification was acquired and resultantly the date on which the candidate attained their eligibility was also bound to be anything but uniform and non-discriminatory. As between the date of acquiring eligibility and the date of entering service as a Section Officer/Junior Engineer the latter was, in our opinion, a more intelligible, fair and reasonable yardstick to be applied for drawing-up the list of eligible candidates by the review DPC. Inasmuch as the review DPC relied upon the date of acquiring eligibility as the basis for preparation of the list of eligible candidates, it committed a mistake which needs to be corrected.”

20. A reading of the aforesaid paragraph shows that the promotion to the post of Assistant Engineer was to be based on merit and merit alone. The seniority of candidates could not be taken into account for determining such merit. In this merit-based selection, there was a qualifying prescription to be so considered on merits. The time period spent in the service as Junior Engineer was at variance dependent on whether the person had a qualifying Degree or a qualifying Diploma. There was no necessity for a Degree to perform the job of a Junior Engineer, and all persons were alike. The distinction only came into play when the merit-based promotion had to take effect. Thus, as to when

- A the person obtained the degree as a method of advancement of his knowledge and entitling him to an earlier consideration in the time period would not be relevant.

21. The Department of Personnel and Training, “Instructions and Guidelines on Seniority”, have been placed before us. As far as the seniority of promotees is concerned, the relevant portion is as under:

“2.2. SENIORITY OF PROMOTEES

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- 2.2.1 Where promotions to a grade are made from more than one grade and quotas have been laid down for each feeder grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades. The officers in each grade, assessed as fit by the Departmental Promotion Committee shall be interpolated in the ratio prescribed for each grade in the recruitment rules for the post.”

22. A three Judges Bench of this Court in *Chandravathi P.K. & Ors.*²⁹ referred to a number of earlier judgments on the issue, including *D. Stephen Joseph*³⁰, *Satpal Antil v. Union of India*³¹, *Anil Kumar Gupta*³², *A.K. Raghumani Singh v. Gopal Chandra Nath*³³ and *Pramod K. Pankaj v. State of Bihar*³⁴ and quoted with approval of the last of these judgments. The principle laid down is that in the absence of any statutory provision or rule made thereunder or under the proviso appended to Article 309 of the Constitution of India, once an incumbent is appointed to the post according to rules, their seniority has to be counted from the date of appointment.

23. In *Shailendra Dania & Ors.*³⁵ case, it was noticed in para 36 that the past practice would be a relevant aspect while construing the service rule. The aforementioned judgment distinguished itself from *D. Stephen Joseph*³⁶ case on the ground that the interpretation of the rules

²⁹ (supra)
³⁰ (supra)
³¹ (1995) 4 SCC 419
³² (supra)
³³ (2000) 4 SCC 30
³⁴ (2004) 3 SCC 723
³⁵ (supra)
³⁶ (supra)

would be determined on a case-to-case basis, and the wordings of the rules as well as past practices are important criteria. Similarly, in the present case, the Electricity Department has a past practice of considering the years of service prior to the acquisition of the degree. A

24. The principle of past practice being of significance has also been noticed in *M.B. Joshi*³⁷ case. This judgment also discusses the aspect where there are two channels for promotion (as in the present case) and illustrates that if the total time period of service was not to be counted, then there could not be said to be any incentive to acquire the higher degree except as an academic pursuit. The incentive is that if you acquire a higher degree as compared to a diploma, you come into a channel which entitles consideration, albeit on merit, in a fast lane with less number of years of service required in the cadre. B C

25. In our view, one of the important aspects is the wording of the Rule itself. According to the Rules, 50 percent of the promotion quota is from Junior Engineers with three years of regular service in the grade “and” possessing a degree in Electrical Engineering. The Rule does not say from which date the time period of regular service has to be counted, but there is a twin requirement of three years of regular service as also a degree. As against this, the second scheme of 50 percent promotion from Junior Engineers uses the word “with” seven years of regular service in the grade and possessing a diploma in Electrical Engineering. Thus, the distinction is between the diploma holder and the degree holder and the period of service rendered as a Junior Engineer without any distinction between the years served prior to or after having obtained the degree. Accepting the plea of the Appellant would amount to insertion into the requirement of the Rules, which is not stipulated. Further, this is how the Rule has been understood by the Department, the framers of the Rules, and accordingly, the Rules have been uniformly implemented in the Electricity Department over a period of time. In view of the above, due weightage must be given to the view of the framers of the Rules. D E F

Conclusion:

26. In view of the aforesaid, we uphold the view taken by the High Court opining that there is no distinction between the time period served before or after the acquisition of the degree so long as the degree is acquired and is the basis for consideration of the promotion. We are, G

³⁷ (supra)

A thus, of the view that for all the aforesaid reasons for the Department in question, the view taken in *D. Stephen Joseph*³⁸ is held to be applicable law, and we answer the reference accordingly.

27. The appeals are accordingly dismissed.

Divya Pandey
(Assisted by : Shevali Monga, LCRA)

Appeals dismissed.

³⁸ (supra)