

Puneet Sharma vs Himachal Pradesh State Electricity ... on 7 April, 2021

Equivalent citations: AIR 2021 SUPREME COURT 2221, AIR ONLINE 2021 SC 230

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Bench: Ashok Bhushan, R. Subhash Reddy, S. Ravindra Bhat

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REPORTA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO (S). 1318-1322 OF 2021
(ARISING OUT OF SLP (C) NOS. 10533- 10537 OF 2020)

PUNEET SHARMA & ORS. ETC

....APPELLANT(S)

VERSUS

HIMACHAL PRADESH STATE
ELECTRICITY BOARD LTD. & ANR. ETC.

....RESPONDENT(S)

WITH

CIVIL APPEAL NO (S). 1323-1324 OF 2021
(ARISING OUT OF SLP (C) NOS. 10538- 10539 OF 2020)

AND

WRIT PETITION (CIVIL) NO. 1028 OF 2020

ORDER

S. RAVINDRA BHAT, J.

1. Leave granted. With consent of counsel, the appeals and petition were heard finally.

2. Whether a degree in Electrical Engineering/Electrical and Electronics Engineering is technically a higher qualification than a diploma in that discipline and, whether degree holders are eligible for appointment to the post of Junior Engineer 17:04:24 IST Reason:

(Electrical) under the relevant recruitment rules, is the issue that falls for decision in these appeals arising out of a common judgment of the Himachal Pradesh High Court¹. As is evident, this issue is not novel and has an almost endemic tendency requiring judicial attention, albeit in myriad and diverse contexts.

3. The Himachal Pradesh Staff Selection commission (“HPSSC” hereafter), acting on the requisition sent by the Himachal Pradesh State Electricity Board Ltd., (“HPSEB” hereafter) advertised 222 posts of Junior Engineer (Electrical- hereafter referred to as “JE”) on 27.06.2018. Degree-holders in the concerned discipline applied for the post; after qualifying the written examination, they were called for verification of documents but the final result was not declared. They approached the High Court in writ proceedings, claiming that since they possessed educational qualifications that were higher than the prescribed minimum (and advertised) qualifications, they could not be denied consideration. The diploma holders opposed this claim, and argued that that the qualifications possessed by degree holders was neither higher nor can be considered in teeth of the recruitment rules as also on the basis of the advertisement issued by the Himachal Pradesh Staff Selection Commission. The HPSEB adopted a neutral position; however, it highlighted that per the applicable regulations, the minimum essential qualification provided for recruitment to the post of Junior Engineer (Elect.) was "matriculation with Diploma in Electrical/ Electronics/Electronics and Communication/ Computer Science from the recognized Institution/ Board/University duly recognized by the Central or State Government". HPSEB further stated that the HPSSC could not traverse beyond the regulations, and was bound to make recruitments in accordance with them. The HPSSC, which issued the advertisement and conducted the selection, opposed the petitions and asserted that degree holders could not be considered for recruitment.

¹ In CWP No. 138/2020, CWPOA No. 3601/2019 and CWPOA No. 3633/2019 filed by the degree-holders (hereafter 'degree-holders') claiming the right of consideration, and CWPOA No. 6534/2019 and CWPOA No. 6252/2020 have been filed by the diploma holders (“diploma-holder”) opposing the claim of the degree-holders.

4. By the impugned judgment, the High Court considered the parties’ submissions, the position in the recruitment rules, and various decisions of this court ² besides its own decisions³, and concluded that:

“40. It would be noticed that the Hon'ble Supreme Court has categorically held that normal rule would be that candidate with higher qualification is deemed to be fulfilled the lower qualification prescribed for the post. But that higher qualification has to be in the same channel, which is not the position in the present case. Therefore, the guiding factor while considering the case of higher qualification is that it must be in the same line. The degree in engineering is not in the same line as diploma in engineering and it, therefore, cannot be considered to be a higher

qualification.

41. Judged in light of the aforesaid exposition of law, a Diploma in Engineering and Degree in Engineering are two distinct qualifications and a degree in the field in question cannot be viewed as a higher qualification when compared to Diploma in that field.

Consequently, the degree holder petitioners cannot be permitted to urge that they possess higher qualification which would meet the requirement of specific qualifications specified in the rules or advertisement.

42. In addition to the aforesaid, it would be noticed that the respondent Electricity Board has itself not considered the degree in Electrical Engineering/ Electrical & Electronics Engineering to be superior to the diploma and rather treated these to be two separate and distinct qualifications and that is why its vide notification dated 03.06.2020 has amended the Recruitment and Promotion Rules for the post of Junior Engineer (Electrical/Junior Engineer (IT) Class III (Non Gazetted) in the following manner....” Arguments of the degree holders 2Jyoti KK v Kerala Public Service Commission (2010) 15 SCC 596; State of Uttarakhand and others vs. Deep Chandra Tewari and another (2013) 15 SCC 557; State of Punjab v Anita {(2015) 2 SCC 170} Parvaiz Ahmad Parry v State of Jammu and Kashmir &Ors (2015) 17 SCC 709 Zahoor Ahmad Rather v Sheikh Imtiyaz Ahmad {(2019) 2 SCC 404; Maharashtra Public Service Commission, v Sandeep Shriram Warade&ors 2019 (6) SCC 362; Zonal Manager, Bank of India Zonal Office, Kochi &Ors v Aaraya K. Babu &Anr (2019) 8 SCC 587 3Himachal Pradesh Staff Selection Commission &Ors v Pawan Thakur 2019 (3) Shim. L.C. 1676; Bhupinder Sharma v State of HP &ors(CWP No. 161/2019); AvinashKoundal v Himachal Pradesh Staff Selection Commission (CWP No. 1155/2020)

5. Ms. Kavita Wadia, appearing for the degree holder appellants, contended that the expression “minimum”⁴ was deliberately used without any bar under the rules and did not prevent appointment of degree holders to the post of JE (Elect.) in HPSEB, and that diploma was only a minimum requirement. This, she argued is established beyond doubt from Clause 11 of the Rules for appointment to higher promotional post of Assistant Engineers (Elect.) where under 5% quota is provided for those who possessing degree at the time of their appointment as JE (Elect.) and 5% separately for those who acquired degree during their service as JE (Elect.) after their confirmation. She relies on the decision of this court in Govt of A.P. vs P. Dalip Kumar⁵ which held that the expression ‘minimum’ entitles the employer to choose a person with higher qualification. A minimum acts as a cut-off filter for the same, and does not debar recruitment of higher qualified candidates.

6. Ms. Wadia submits that the arguments of diploma holders, i.e. that the “with” in the rules, is disjunctive (in column 7) - while providing that the qualification stipulated would be “Minimum Matriculation with diploma in electrical engineering/electrical & Electronics Engineering ...”-defies logic because if ‘with’ were disjunctive and expression ‘minimum’ was used for making matriculation as a minimum educational requirement, then there was no need to use the expression “minimum” since to pursue the diploma course a candidate has to have passed matriculation as is

reflected in the requirements for admission to diploma courses in prospectuses of government colleges. In other words, contends Ms. Wadia, the minimum qualification would only be matriculation in that case, defeating the purpose of the rule, which is that those diploma holders with matriculation would be considered as possessing the minimum or threshold qualification. It is submitted that “minimum” was intentionally used without any bar under the Rules concerning the 4 Occurring in the rules, (The HPSEB amendments in Column – 2, 7 & 10 of the Recruitment and Promotion regulations to the post of Junior Engineer (Elect.) Notified by notification No. HPSEC (SECTT) R&E/106-10/2006- 93342-562 dated 13.12.2006 and further amended by Notification No. HPSEC (SECTT)R&E/106-10/2010-22792-991 dated 25.05.2010) which read as follows:

“Minimum matriculation with diploma in Electrical Engineering/ Electrical & Electronics Engineering from a recognized institution/ Board University duly recognized by the Central/State Government for JE (Elect.) post.” 51993(2)SCC 310 (Ref. Para 13 and 15) appointment of degree holders to the Post of JE (Elect.) in HPSEB, making diploma as only a minimum requirement. This is established beyond doubt from Clause 11 of the Rules for appointment to higher promotional post of Assistant Engineers (Elect). The expression ‘minimum’ entitles the employer to choose a person with higher qualification as ‘minimum’ acts as a cut off filter for the same and does not debar recruitment of those who are higher qualified.

7. It is also argued that the term “with” in Clause 7, (reproduced above) is adjunctive in the said group of words, since it adds to the meaning of a sentence but when removed, makes no harm to its grammar. As a noun, an adjunctive joins two components of same weight such as co-ordinating conjunctions. It is further urged that, the decision in A.K Raghmani Singh & ors v. Gopal Chandra Nath & Ors 6 is inapplicable since the issue there was whether experience required with the qualification equivalent to degree was subsequent to attaining the degree or prior to it. To have held that the experience was to be attained after acquiring the degree would have led to “with” being read as “subsequent to”. Further, this court held that “with” has to be contextually interpreted and was to be a disjunctive in the context of the said rule. It is argued, that in the present case, if the term were to be interpreted contextually to mean that the diploma would not be a minimum while matriculation would be, - a construction that renders the expression ‘minimum’ useless, for diploma cannot be pursued without matriculation and at the same time renders otiose the co- related Clause 11(v). This is contrary to purposive interpretation of the Rules, which ought to apply to gather the intention of the lawmaker. The appellant relies on CHD V. Usha Kheterpal Waie⁷ where this court observed that so long as the qualification prescribed by the employer is reasonably relevant and has a rational nexus with the function and duties attached to the post, and are not violative of the provisions of Constitution or the statute and Rules, it must be upheld. Counsel submitted that the impugned judgment fell into error in distinguishing, and not following Jyoti K.⁸

6 2000(4) SCC 30 7 2011 (9) SCC 645 8 Supra, note 2

8. It was lastly argued that the High Court erred in applying the judgment of this court in Zahoor Ahmad (supra) since it pertained to appointments to the Post of Technician III which is relatable more to field jobs, and restricted the consideration of ‘ITI’ Certificate holders for the said Post to the

exclusion of diploma holders. In the present case, the relevant post is a higher post of JE (Elect.) of which the promotional post is that of AE (Elect.). Also, in Zahoor Ahmad (supra) no expression viz “minimum” was used in the Rules and the same was mentioned in a note in the advertisement therein, which was interpreted by this court. It was lastly urged that it is not in dispute that the appointing authority cannot defy the rules or make appointments and, or support a view contrary to the governing and applicable rules. However, in the present case the applicable rules ought to be read meaningfully, purposively and in a way that is not destructive of the entire scheme and balance sought to be maintained in the Rules, keeping in mind the needs of the posts and the State as well as domiciles. It is submitted that the interpretation of the earlier rules and the 2020 Rules in Para 40 to 42 of the impugned order is destructive and does complete violence to the intent of the rule makers.

9. On behalf of the contesting respondents, i.e. the diploma holders, Mr. Maninder Singh, learned senior counsel requested this court not to interfere with the well-reasoned judgment of the High Court. It is submitted that the expression “minimum” is used with the academic qualification, i.e. matriculation and not the essential technical qualification, viz. a diploma. A diploma in electrical engineering can be obtained after pursuing a three years course. That should be preceded by a matriculation or after completing a two years study- after 10th standard in school. Therefore, a candidate to be eligible should have obtained a diploma after matriculation or after 10+2. This clearly eliminated degree holders from the zone of eligibility.

10. It was argued that the use of “with” between minimum “matriculation” and diploma operates as a disjunctive. It cannot be read with the word diploma. It is submitted that only diploma holders such as the contesting respondents could be considered for selection; their selections were finalized on 02.09.2020 and the select list was prepared by the Commission. Having fulfilled the eligibility conditions and after getting selected through a valid and legal selection process, the entire recruitment process was valid. Accordingly, such of the contesting respondents who qualified in the exam and were successful deserved to be appointed.

11. Learned counsel relied upon the relevant rules to submit that direct recruitments are made to select category of posts by the Board, i.e. the Sub-Station Attendant, Electrician and Lineman for whom the essential educational qualifications are matriculation with ITI. For these categories of posts, there was conscious change in the rules with effect from 03.05.2018 when the words “or any other higher qualification in the same trade” were deleted. Thus, from 03.05.2018 diploma holders were ineligible for consideration for the post of Sub-Station Attendant, Electrician and Lineman. Secondly, for the post of Junior Engineer (Electrical), the essential qualification – which is under challenge, is reserved only for diploma holders. Thirdly, direct recruitment is possible for Assistant Engineers with regular/full time degree in electrical or electronic engineering or AMIE or those with full time computer science and electronics and electrical engineering or its equivalent. Therefore, diploma holders cannot be directly recruited either in the lower grade of Sub-Station Attendants with effect from 03.05.2018 or as Assistant Engineers.

12. It is pointed out that 15 government polytechnic colleges offer diploma courses in Himachal Pradesh whereas only three government colleges offer degree courses in electrical engineering. The

student intake in the diploma course college is as much as 400, whereas the intake in degree courses in electrical engineering in government colleges is 170 students. Keeping this in mind, if the degree holders were permitted to compete with diploma holders, the latter would suffer severely and would be disadvantaged.

13. It is submitted that a close look at the recruitment rules for the HPSEB would further reveal that even in respect of higher posts of Assistant Engineer, degree holders are entitled to 36% direct recruitment; diploma holders are entitled to be promoted in a quota of 64%. The relevant portions of the recruitment rules, it is submitted indicate the following:

[(i) Junior Engineers/ Junior Engineer (Sub-station)/ Junior Engineer (C/Room)/ Junior Engineer (Power House)/ Junior Engineer (Test)/ Junior Engineer (Installation)/ Junior Engineer (Telephone)/ Foreman in the trade concerned, who are Diploma Holder with 7 years' service in the grade, to the extent of 40%

(ii) Junior Engineers/ Junior Engineer (Sub-station)/ Junior Engineer (C/Room)/ Junior Engineer (Power House)/ Junior Engineer (Test)/ Junior Engineer (Installation)/ Junior Engineer (Telephone)/ Foreman in the trade concerned, i.e. persons who are ITI qualified having 12 years' service in the trade.

(b) Junior Engineers/ Junior Engineer (Sub-station)/ Junior Engineer (C/Room)/ Junior Engineer (Power House)/ Junior Engineer (Test)/ Junior Engineer (Installation)/ Junior Engineer (Telephone)/ Foreman in the trade concerned, i.e. non – ITI holders with 15 years' service in the grade (a) + (b) = 10%.

(iii) From amongst those persons who pass/acquire the qualification of AMIE (Section A & B) or who acquire Full time/Regular Degree in Electrical Engineering/ Electrical & Electronic Engineering/ Computer Science Engineering. Electronics & Communication Engineering & Information Technology in service after confirmation to service to the extent of 5%.

(iv) Drawing Staff Circle Head Draftsman with diploma in Electrical Engineering or Diploma Certificate of draftsmanship from a recognized institute with 5 year service in the grade having which 10 years' service as Draftsman/ Circle Head Draughtsman and with combined 15 years' service in the Draftsman Cadre: 4%

(v) Before joining the service as JE who possess Regular/ Full time degree in Electrical Engineering/ Electrical & Electronic Engineering/ Computer Sciences Engineering Electronics and Communication Engineering & Information Technology from a recognised University approved by AICTE, Ex Servicemen who have the relevant qualification equivalence to a recognised degree in Electrical Engineering or Electrical & Electronic Engineering stream/ discipline recognized by Govt of India or person who possess AMIE qualification in above stream/ discipline from Institute of Engineers (India Calcutta) after confirmation of service = 5%.]

14. It is submitted that the break-up of promotional quota shown with that of the total promotional quota show that 59% is clearly set out for diploma holders and those Junior Engineers having a degree, can apply in the 5% quota. This also implies that some degree holders can be appointed provided they also had a diploma. Reliance is placed upon certain extracts of a seniority list, setting out names of nine individuals, who have both diploma and B. Tech /AMIE qualifications. It is submitted that such individuals were recruited not on the basis of degree qualifications but rather because they held the requisite diploma qualifications.

15. It is submitted furthermore that there is nothing in the recruitment rules, either express or implied, which permitted the state authorities to consider and process the candidature of those possessing degrees in electrical engineering but not possessing diploma. It is submitted that the impugned judgment quite correctly surmised that the decision in Jyoti K.K. (supra) was no longer a binding authority in view of the later judgment of this Court in Anita (supra) and Zahoor Ahmad Rather (supra). Those decisions held that the prescription of a minimum qualification does not (absent given compelling circumstances) permit candidates possessing higher qualifications in the discipline, to apply and be considered for appointment.

16. The HPSEB submits that the rule in question should be so interpreted and applied to permit degree holders a chance at selection. It is submitted that any interpretation of rules to exclude better qualified persons is irrational and robs the employer the chance of choosing a better qualified candidate. It is also argued that the post of Junior Engineer (Electrical) is technical and public interest demands that the interpretation of the rule extends consideration to someone holding degree.

17. Counsel for the HSEB argued that it is the inherent right of the employer to seek out better qualified individuals for public appointment; furthermore equivalence of qualification is not a matter for the courts to determine. HSEB argued that the High Court in the present case decided that a degree is not a better qualification than a diploma, without any expert view and contrary to settled law. It further argued that the notification dated 03.06.2020 is an outcome of an attempt to rationalize the recruitment norms throughout the State Government for technical posts in all departments and is an outcome of an exercise beginning in the year 2019 and has nothing to do with the present litigation, and that notification is applicable prospectively. It cannot, at any rate be challenged before this court for the first time merely on the ground that an erroneous interpretation has been taken qua the said notification by the High Court.

Analysis and Conclusions:

18. The relevant rules stipulating essential qualifications for the post of JE, were framed and brought into force on 13.12.2006; they repealed the then existing rules framed by HPSEB in 1996. The notification to the extent it is relevant is extracted below:

7 Minimum Educational and other Essential qualification required to direct recruits
I) Minimum matriculation with diploma in Electrical/Electronics and
Communication / computer Sciences from the recognised

institution/Board/University duly recognised by the Central or State Government.

Desirable II) Knowledge of customs, manners and dialects of Himachal Pradesh & suitability for appointment in peculiar conditions prevailing in the State.

10 Method of Recruitment whether by Method of Recruitment direct recruitment or by promotion, deputation, transfer i. 80% by direct recruitment on regular or on contract basis through the HPSSB or the recruiting agency including Departmental Recruitment Committee as constituted by the Board from time to time.

ii. 20% by Promotion.

18 Power to Relax Where the Board is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing relax any of the provisions of these rules with respect of any class or category of persons or posts, the competent authority shall be the WTM's of the Board.

19. On 12.01.2007, the All-India Council for Technical Education (AICTE) prescribed that a student acquires a diploma in Engineering through a minimum of 3 years of institutional study (after 10+2 Secondary Examination). Diploma holders were to be academically equivalent to students who passed the first year of the 4 year engineering degree programme. On 24.05.2010 by Clause 11 the Recruitment and Promotion Regulations applicable to HPSEB were amended; they provided for essential qualifications for promotion from the post of Junior Engineer (Electrical) to the post of Assistant Engineer (Electrical). Effective from 21.06.2012, the rules of recruitment and regulations were amended- inter alia, to the cadre of Assistant Engineer, by HPSEB providing two distinct quotas in the promotion quota (from amongst serving Junior Engineers). The existing quota of 6% available to those who acquired AMIE/Degree in Electrical Engineering qualifications etc. in service with minimum one years' regular service after confirmation was reduced to 5% quota by the amendment. In addition, the promotional quota to the post of Assistant Engineer, from the cadre of Junior Engineers (with which the present dispute is concerned) was to the extent of 5% eligible for consideration. This quota was specifically identified as those who had completed their engineering degree "before joining the service of Junior Engineer." The relevant extract of amendments- of 2012 are set out below:

"ASSISTANT ENGINEER (E) COL. 7 (Direct Recruitment) Minimum educational and other qualification required for direct recruits.

Existing Provisions	Amended Provision
i) Recognized Degree in Electrical Engineering or electrical & Electronics Engineering from recognized Institution/University duly recognized by the Central/State Govt. for AE(E)posts.	i) Regular/Full time Degree in Electrical Engineering or electrical & Electronics Engineering from recognized Institution/University duly approved by the AICTE or AMIE from Institution of Engineers (India Calcutta) or Ex-servicemen who have the relevant equivalence to a recognized Degree in
ii) Recognized Degree in Computer	

Science Engineering or Electronic & Communication Engineering or Information technology OR its equivalent from recognized by the Central /State Govt. for AE (IT) post.

Desirable

- (a) Experience of working in Design/Construction in hilly areas.
- (b) Knowledge of Customs, manners and dialects of Himachal Pradesh & Suitability for appointment in Peculiar conditions prevailing in the state.

above stream/ discipline recognized by the Govt. of India for AE(E) posts.
ii) Regular/Full time Degree in Computer Science Engineering or Electronic & Communication Engineering or Information technology OR its equivalent from a recognized Institution/ University duly approved by the AICTE or AMIE in above stream/ discipline recognized by the Govt. of India for AE (E) post.

Desirable

- (a) Experience of working in Design/Construction in hilly areas.
- (b) Knowledge of Customs, manners and dialects of Himachal Pradesh & Suitability for appointment in Peculiar conditions prevailing in the state.

ASSISTANT ENGINEER (E)

Col. No. 11 (iii) (iv) & (v)

In case of recruitment by promotion, deputation, transfer, grades from which promotion/deputation/transfer is to be made.

Existing Provision

(iii) from amongst those persons who pass/acquire the qualification of AMIE/Degree in Electrical Engineering/ Electrical & Electronic Engineering/ Computer Science Engineering, Electronic & Communication Engineering & Information Technology in Service having minimum one year regular service after confirmation to service

= 6%

(iv) Drawing Staff:

Circle Head Draftsman possessing Diploma in Elect. Engineering or Diploma Certificate of Draftsmanship from a recognized Institute having 5

Amended Provisions

(iii) from amongst those persons who pass/acquire the qualification of AMIE (Section A & B) or who acquire Full time/ Regular Degree in Electrical Engineering/ Electrical & Electronic Engineering/ Computer Science Engineering. Electronics & Communication Engineering & Information Technology in service after confirmation to service. = 5%

(iv) Drawing Staff:

Circle Head Draftsman possessing Diploma in Elect. Engineering or Diploma Certificate of Draftsmanship from a recognized Institute having 5 years' service

years' service in the grade failing which in the grade failing which 10 years' service 10 years' service as Draftsman/Head as Draftsman/Head Draughtsman/Circle Draughtsman/Circle Head Head Draughtsman and failing both total Draughtsman and failing both total 15 15 years services in the Draftsman cadre.

years services in the Draftsman cadre.

=3%

= 4%

(v) Before joining the service as JE who possess degree in Electrical Engineering/ Electrical & Electronic Engineering/ Computer Science Engineering. Electronics & Communication Engineering & Information Technology from a recognized university including AMIE & having minimum one year regular service in the cadre of JE after confirmation in the service. =5%

(v) Before joining the services as JE who possess Regular/ Full time degree in Electrical Engineering/ Electrical & Electronic Engineering/ Computer Science Engineering. Electronics & Communication Engineering & Information Technology from a recognized university approved by the AICTE. Ex-servicemen who have the relevant qualification equivalence to a recognized Degree in Electrical Engineering or Electrical & Electronic Engineering Stream/ discipline recognized by the Govt. of India or person who possesses AMIE qualification in above stream/ discipline from Institute or Engineers (India Calcutta) after confirmation to service. =5%

Note: other terms and conditions shall remain unchanged. These amendments will be applicable with immediate effects.

20. By the advertisement in question, HPSEB invited applications for direct recruitment to 222 vacancies in the cadre of JE (Electrical). Several candidates including the present appellants (who are degree holders) applied. They were allowed to participate in the written test and many of them were even called for an interview and verification of documents - sometime in April 2019. When matters stood thus, diploma holders preferred an application 9 before the State Administrative Tribunal. By order dated 21.12.2018 the tribunal interdicted the recruitment process. As there was some conflict and confusion with respect to the interpretation of the rules on the question i.e. whether degree holders could compete for the post of Junior Engineer, other writ petitions were preferred. The High Court 10 constituted an expert committee to examine all issues of equivalence of academic/technical qualification and also whether persons possessing equal qualifications were eligible for the advertised post. The committee by this report dated 15.06.2019; influenced by this Court in Zahoor Ahmad Rather (supra) expressed the opinion that candidates possessing higher qualifications were not eligible for consideration. Other writ petitions too were preferred before the High Court.

21. During pendency of the litigation, on 03.06.2020, the HPSEB further amended the Rules inserting a provision enabling candidates with a minimum matriculation with diploma in Computer Science Engineering or Electronic & Communication Engineering as well as those with degrees. The amendment reads as follows:

“Diploma or degree in Computer Science Engineering or Electronic Engineering & Communication Engineering or Information Technology from recognised Institute/ University established by Law by the State/ Central Govt. OR AMIE from Institution of Engineers (India) (only those candidates who are enrolled for AMIE with the

Institute of Engineers (India) Kolkata will be permanent recognition up to 31.05.2013) would be eligible.” After taking into account the submission of the parties, the High Court by the impugned judgment, endorsed the opinion of the committee and was of the view that only those with matriculation and holding diploma in the relevant subject are 9 O.A. 7397 of 2018 10 By an order dated 21.05.2019 considered eligible for the post of Junior Engineer. In W.P (C) 1028/2020, the Petitioners argue that the notification of 03.06.2020 is arbitrary as it is prospective; in the alternative, they claim that it should be read as clarificatory and therefore always applicable.

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 & Anr. v. State Of Kerala & Ors.* 11, 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 & ors v. Government of NCT Delhi & Ors* 12 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. & Ors. v. Kerala Public Service Commission & Ors.* 13, 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 11 (2003) 3 SCC 541 12 (2003) 3 SCC 548 13 (2010) 15 SCC 596 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. In that view of the matter the order [Jyothi K.K. v. Kerala Public Service Commission, Original Petition No. 9602 of 1998, order dated 30-3-

2000 (Ker)] of the High Court cannot be sustained. 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.”

24. It is evident therefore, that this Court was of the opinion that for the post of Sub-Engineer (which can be termed as comparable to the post of Junior Engineer in the present case), the Kerala State Electricity Board felt that those possessing degree as well could be considered. This Court upheld the contention.

25. In Anita (supra) this court was concerned with JBT teachers, where the minimum qualification was two years’ junior basic teachers’ training. Those with MSc, B.Ed. and MA qualifications were held ineligible, looking at the nature of the job i.e. teaching primary classes. Jyoti (supra) was distinguished because the appointing authority had the option of considering appointment of persons with higher qualifications.

26. In Zahoor Ahmad Rather (supra) the post in question was “Technician-III” in the Power Development Department in the State of Jammu and Kashmir. The relevant stipulation with respect to qualification was “Matric with ITI in the relevant trade.” The appellants held diploma in Electrical Engineering and were included in the list of disqualified candidates. This resulted in litigation which ultimately culminated in the judgment of this court. This court held in its judgment¹⁴:

“Under the above provisions as well as in the advertisement which was issued by the Board, every candidate must possess the prescribed academic/professional/technical qualification and must fulfil all other eligibility conditions. The prescribed qualifications for the post of Technician III in the Power Development Department is a Matric with ITI in the relevant trade. The Board at its 116th meeting took notice of the fact that in some districts, the interviews had been conducted for candidates with a Diploma in Electrical Engineering while in other districts candidates with a diploma had not been considered to be eligible for the post of Technician III. Moreover, candidates with an ITI in diverse trades had also been interviewed for the post. The Board resolved at its meeting that only an ITI in the relevant trade, namely, 14 (2019) 2 SCC 404 the Electrical trade is the prescribed qualification specified in the advertisement.”

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. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] in the subsequent decision in Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] 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. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] 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 [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] 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, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] 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. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] 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. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned.”

28. 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.

29. In the present case, what is evident from the rules is that direct recruitment to the post of JEs in HPSEB is to the extent of 72%. Undoubtedly, eligibility is amongst those who passed in matriculation or 10+2 or its equivalent qualification. However, this Court is of the opinion that the diploma holders’ contention that the minimum qualification is matriculation and that the technical qualification is diploma is incorrect. The minimum qualification for the post cannot be deemed to be only matriculation but rather that only such of those matriculates, or 10+2 pass students, who are diploma holders would be eligible. The term “with” in this category has to be read as conjunctive.

30. As far as the merits of the main question i.e. whether degree holders too can apply for the post of JEs, a close examination of the rules shows 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%. Of the balance 64%, various sub-quotas have been stipulated for feeder cadres; the largest percentage being for Junior Engineers. For a long time, even on the date of the advertisement, two distinct quotas (of 5%) had been set apart for promotion of Junior Engineers holding degree qualifications in the concerned subject.

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.

33. The court's opinion is fortified by the latest amendment brought about on 03.06.2020. This clarifies beyond doubt that even for the post of Junior Engineers, those individuals holding higher qualifications are eligible to compete. In the opinion of this Court, though the amending rules were brought into force prospectively, nevertheless, being clarificatory, they apply to the recruitment that is the subject matter of the present controversy. Such a position (i.e. clarificatory amendments operative retroactively, despite their enforcement prospectively) has been held in several previous judgments of this court. In *Zile Singh v. State of Haryana*¹⁵ this Court examined the various authorities on statutory interpretation and concluded:

(SCC pp. 8-9, paras 13-14) "13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the Rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only--'nova constitutio futuris formam imponere debet non praeteritis'--a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004 at page 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication

especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., page 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69)."

34. In *Vijay v. State of Maharashtra*¹⁶, this court held as follows:

"12. The appellant was elected in terms of the provisions of a statute. The right to be elected was created by a statute and, thus, can be taken away by a statute. It is now well settled that when a literal reading of the provision giving retrospective effect does not 15(2004) 8 SCC 1 16(2006) 6 SCC 289 produce absurdity or anomaly, the same would not be construed to be only prospective. The negation is not a rigid rule and varies with the intention and purport of the legislature, but to apply it in such a case is a doctrine of fairness. When a law is enacted for the benefit of the community as a whole, even in the absence of a provision, the statute may be held to be retrospective in nature. The appellant does not and cannot question the competence of the legislature in this behalf.

35. Likewise, in *Manish Kumar v Union of India*¹⁷, it was held that:

"Declaratory, clarificatory or curative Statutes are allowed to hold sway in the past. The very nature of the said laws involve the aspect of public interest which requires sovereign Legislature to remove defects, clarify aspects which create doubt. The declaratory law again has the effect of the legislative intention being made clear. It may not be apposite in the case of these Statutes to paint them with the taint of retrospectivity."

36. It would also be relevant to notice that in the appeal, it has been specifically averred that the HPSEB has been making contractual appointments from amongst degree holders in the cadre of Junior Engineers, and that an order was issued upon the recommendation of the Screening Committee, which through its meeting held on 11.04.2018 had cleared the regularization of 28 such candidates. These degree holders are equivalent to Junior Engineers, and had been working for periods ranging between 4 to 6 years. A copy of that order has been produced as Annexure P-10 in the Special Leave Petition.¹⁸

37. The considerations which weighed with this court in the previous decisions i.e. P.M. Latha, Yogesh Kumar, Anita (Supra) were quite different from the facts of this case. This court's conclusions that the prescription of a specific qualification, excluding what is generally regarded as a higher qualification can apply to certain categories of posts. Thus, in Latha and Yogesh Kumar as well as Anita (supra) those possessing degrees or post-graduation or B.Ed. degrees, were not considered eligible for the post of primary or junior teacher. In a similar manner, for "Technician-III" or 17(2019) 8 SCC 416 18 SLP (C) 10533-37 of 2020 lower post, the equivalent qualification for the post of Junior Engineer i.e. diploma holders were deemed to have been excluded, in Zahoor Ahmed Rather (supra). This court is cognizant of the fact that in Anita as well as Zahoor (supra) the stipulation in Jyoti (supra) which enabled consideration of candidates with higher qualifications was deemed to be a distinguishing ground. No such stipulation exists in the HPSEB Rules. Yet, of material significance is the fact that the higher post of Assistant Engineer (next in hierarchy to Junior Engineer) has nearly 2/3rds (64%) promotional quota. Amongst these individuals, those who held degrees before appointment as a Junior Engineers are entitled for consideration in a separate and distinct sub-quota, provided they function as a Junior Engineer continuously for a prescribed period.

This salient aspect cannot be overlooked; it only shows the intent of the rule makers not to exclude degree holders from consideration for the lower post of Junior Engineers.

38. As noticed previously, in addition to the above considerations, an amendment to the rules was made on 03.06.2020 declaring that those with higher qualifications are also entitled to apply or be considered for appointment. This amendment was brought in to clear all doubts and controversies and, in that sense, the amending provisions should be deemed to have been inserted from inception.

39. For the foregoing reasons, these batches of appeals by the degree holders have to succeed. The respondent HPSEB is directed to process the candidature of all applicants, including the degree holders who participated, and depending on the relative merits, proceed to issue the final selection list of all successful candidates, after holding interviews, etc. The impugned judgment is accordingly set aside; the appeals are allowed and writ petition is allowed partly, in the above terms, without order on costs.

.....J. [UDAY UMESH LALIT]J. [S. RAVINDRA BHAT] New Delhi, April 07, 2021.