

Chandravathi P.K. And Ors vs C.K. Saji And Ors on 12 February, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2717, 2004 AIR SCW 1178, 2004 LAB. I. C. 1228, (2004) 3 JT 150 (SC), 2004 (2) SERVLJ 431 SC, 2004 (1) LRI 797, 2004 (2) ACE 376, 2004 (3) SCC 734, 2004 (2) SCALE 487, 2004 (3) JT 150, (2004) 2 KHCACJ 102 (SC), (2004) 2 SERVLJ 431, (2004) 17 ALLINDCAS 404 (SC), 2004 (8) SLT 860, (2004) 2 SCALE 487, (2004) 15 INDLD 562, (2004) 2 KER LT 320, (2004) 2 LAB LN 52, (2004) 1 SCT 876, (2004) 2 SERVLR 763, (2004) 8 SUPREME 860, (2004) 104 FJR 1034, (2004) 101 FACLR 1, 2004 SCC (L&S) 544

Author: S.B. Sinha

Bench: Chief Justice, S.B. Sinha, S.H. Kapadia

CASE NO.:

Appeal (civil) 884 of 2002

PETITIONER:

Chandravathi P.K. and Ors.

RESPONDENT:

C.K. Saji and Ors.

DATE OF JUDGMENT: 12/02/2004

BENCH:

CJI, S.B. Sinha & S.H. Kapadia.

JUDGMENT:

JUDGMENT W I T H CIVIL APPEAL NOS. 885-887, 888, 889 & 890-893 OF 2002 S.B. SINHA, J :

These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

BACKGROUND FACT :

For the said purpose, however, we would note the fact of each matter separately.

CIVIL APPEAL NOS. 884 OF 2002 :

The private parties, at all material times were and still are working with the Kerala Water Authority. The appellants herein are degree-holders whereas the private respondents herein are diploma-holders. The said respondents acquired the qualification of AMIE Part-A and Part-B which is said to be equivalent to the degree while they were in service.

For the purpose of grant of promotion as also other conditions of service governing the service of offices, the Authority had adopted the Kerala Public Health Engineering Service Rules (Rules). It is not in dispute that there exist three categories of posts in the engineering branch, namely, Assistant Engineer, Assistant Executive Engineer and Executive Engineer.

Rule 4 of the said Rules reads as under :

"4. Promotion as Executive and Assistant Engineers :

(a) A person who obtains Degree in Engineering or A.M.I.E. (India) Diploma after appointment as Assistant Engineer shall be eligible for promotion as Executive Engineer only after the claims of all Assistant Engineers who on the date of his obtaining the degree in Engineering or the AMIE (India) Diploma, possessed the qualification mentioned in item (i) in the Annexure have been considered.

(b) Vacancies in the category of Assistant Engineers shall be filled up from among those in categories 1 or 2 in the Kerala Public Health Engineering Subordinate Service in the (ratio of 3 : 1) between (1) Persons possessing any of the qualifications mentioned in item (i) or in section A in item (ii) of the Annexure; and (2) Those possessing any of the qualifications mentioned in section B in item (ii) of the Annexure or those possessing the SMT, Overseers certificate, every 5th vacancy being allotted to the latter and the rest to the former.

A person who while holding (any of the posts in categories 1 and 2 of the Kerala Public Health Engineering Subordinate Service) passes Sections A and B of the AMIE (India) Examination shall be eligible for promotion as Assistant Engineer against the quota allotted for those possessing the qualifications mentioned in item (i) or Sec. A in item (ii) of the Annexure only after the claim of all those who, on the date of his passing the AMIE (India) Examination, possessed the qualifications mentioned item (i) of the Annexure have been considered.

Provided that it will be left to the option of such persons to continue among (those) possessing the qualifications mentioned in Section B in item (ii) of the Annexure and claim promotion against the quota allotted to them."

Rule 5 of the Kerala Engineering Service (General Branch) Service Rules reads thus :

"5. Promotion as Executive and Assistant Executive Engineers.-

(a) A person who obtains the AMIE (India) Diploma or a pass in section A & B of the AMIE of the Institution of Engineers (India) in Civil or Mechanical Engineering after appointment as Assistant Executive Engineer shall be eligible for promotion as Executive Engineer only after the claims of all Assistant Executive Engineers who, on the date of his obtaining the AMIE (India) Diploma or a pass in Section A & B of the AMIE of the institution of Engineers (India) in Civil or Mechanical Engineering, possessed the qualification mentioned in item (i) and section A in item (ii) in the Annexure have been considered.

(b) Vacancies in the category of Assistant Executive Engineers shall be filled up from among Assistant Engineers in the ratio of 75:20:5 respectively from among (1) Persons possessing any of the qualifications mentioned in item

(i) or in section A in item

(ii) of the Annexure.

(2) Those possessing any of the qualifications mentioned in Section B in item (ii) of the Annexure, and (2) Those possessing the Draftsman Certificate of the College of Engineering, Guindy or SMT Overseer's Certificate.

A person, who while holding the post of Assistant Engineer passes Sections A and B of the AMIE (India) Examination or a Degree in Engineering of a recognized University shall be eligible for promotion as Assistant Executive Engineer against the quota allotted for those possessing the qualifications mentioned in item (i) or Section A in item (ii) of the Annexure only after the claims of all those who on the date of his passing the AMIE (India) Examination or a Degree in Engineering of a recognized University possessed the qualifications mentioned in item (i) in the Annexure have been considered.

Provided that it will be left to the option of such person to continue among the Assistant Engineers possessing the qualifications mentioned in Section- B in item (ii) of the Annexure and claim promotion against the quota allotted to them.

Note.-1.The separate quota allotted to the Certificate Holders will be abolished as soon as the holders of the SMT Overseers Certificate and Draftsman Certificate of the College of Engineering, Guindy in service are absorbed as Assistant Engineers.

Thereafter the ratio will revert to 3 :

1 on cadre strength between Degree holders and Diploma holders.

2. The ratio fixed for promotion to the cadre of Assistant Executive Engineers will be applied to the cadre strength of Assistant Executive Engineer as a whole, i.e., to the total number of posts of Assistant Executive Engineers in the Department and not to

vacancies as they arise. Separate seniority lists will be maintained for the purpose in the cadre of Assistant Executive Engineers for degree holders/Diploma holders and certificate holders and promotions and reversions of each category of officers will be continued to the quota allowed for each category within the cadre strength notwithstanding anything contained in the Kerala State and Subordinate Services Rules."

Rule 4 (a) of the Kerala Engineering Service (General Branch) Rules provides for qualifications which is the following terms :

"Qualifications : No person shall be eligible for appointment to the category mentioned in column (1) of the table below unless he possesses the qualifications prescribed in the corresponding entry in column (2) thereof.

TABLE Category Qualifications (1) (2) Superintending Engineers Must possess any degree or diploma mentioned in item (i) or in Section-A under item (ii) in the Annexure Executive Engineers Must possess any degree or diploma mentioned in item (i) or in Section-A under item (ii) in the Annexure.

Assistant Executive Engineers Must possess any degree or diploma mentioned in item (i) or (ii) in the Annexure or Must possess Draftsman's certificate of the College of Engineering, Guindy (2 years course) or SMT Overseers Certificate and must have put in a total service of 25 years in the department out of which 12 = years must be as Assistant Engineer.

Note : In the case of SMT Certificate holders and of those possessing Draftsman's certificate of the College of Engineering, Guindy, for the purpose of calculating the 25 years of total service, continuous Work Establishment Service, if any, put in by such persons shall also be reckoned subject to the condition that this shall not affect the claims of any of the seniors of such persons in the category of Junior Engineers."

The validity of said rule came to be questioned by the respondents by filing a writ petition before the High Court, which was marked as O.P. No.10484 of 1997-W. The matter as regard the validity of the said rule insofar as it applied to the Kerala Water Authority restricting the consideration of the Assistant Engineers who possessed degree/AMIE after the claims of all those who on the date of their passing the AMIE/Degree possessed the qualification mentioned above was referred to the Full Bench of the High Court. The Full Bench of the High Court despite observing that it was not necessary to consider the validity of the rule and that there was no restriction imposed on the Assistant Engineers who acquired degree while they were in the feeder category for promotion as Assistant Engineer, quashed the order impugned in the writ petition holding :

"...It is held that the petitioner is entitled to promotion to the post of Assistant Executive Engineer taking into consideration his entire service as Assistant Engineer in a vacancy which had arisen in the post of Assistant Executive Engineer after the

date of his acquisition of degree qualification viz., September 1996. The petitioner will be granted promotion as Assistant Executive Engineer forthwith, in the vacancy in which the 2nd respondent was promoted. In the category of Assistant Executive Engineer the petitioner will be treated as senior to the 2nd respondent."

The appellants herein were not parties in the said writ petition. They filed this appeal being aggrieved by the said judgment, inter alia, contending that the private respondents were junior to them and furthermore, there were two different quotas for promotion from amongst the diploma-holders and the degree-holders. By way of example, it had been pointed that services of the writ petitioners before the High Court (Private Respondents herein) were regularized on 19.9.1990 and they had passed both Part A and Part B of the Examination only in 1996 whereas the said qualification was acquired by the appellants herein were already holders of the degree qualification at the time of joining of the post as Assistant Engineer on 15.12.1983, 3.5.1986 and 8.7.1986 respectively.

CIVIL APPEAL NO.889 OF 2002 :

The aforementioned appeal has been filed by the Kerala Public Works Department Graduate Engineers Association questioning a judgment and order dated 27.7.1999 of a Full Bench of the Kerala High Court in W.A. No.152 of 1995-A arising out O.P. No.8441 of 1991 whereby and whereunder following the decision of the Full Bench in Manmadhan vs. Kerala State Electricity Board [1999 (1) KLT 37] as also the judgment of a Division Bench in T.R. Krishnan vs. State of Kerala and Others disposed of on 19.2.1990 holding that Rule 5 of the Kerala Engineering Service (General Branch) was ultra vires.

CIVIL APPEAL NOS. 885 TO 888 AND 890 TO 893 OF 2002 :

Civil Appeal Nos.885 to 888 of 2002 have been filed against the judgment and order dated 2.11.1998 passed by the Full Bench in Writ Appeal Nos. 1215, 1155 of 1991, 119 of 1992 and 1154 of 1991. The parties to these appeals, however, are employees in the Harbour Engineering Branch of Kerala Port Trust. The Harbour Engineering Department is an independent department. No rule which are in pari materia with the rules aforementioned govern the terms and conditions of service of the employees working therein. The rules applicable to the Harbour Engineering Branch of the Kerala Port Trust govern the matter relating to promotion to the posts of Assistant Executive Engineer. For the purpose of promotion to the post of Assistant Executive Engineer, the rules provided for grouping of Assistant Engineers into Group-A and Group-B; whereas Group-A comprise of Graduate Assistant Engineers Group-B comprised of Diploma-holder Assistant Engineers. The qualifications for promotion to the post of Assistant Executive Engineer against each Group read thus :

Group-A:

"1. B.Sc. Degree in Engineering (Civil) of a recognized University of India.

2. A minimum period of 3 years service as Assistant Engineer Group-B :

1. Diploma in Civil Engineering or any other qualifications recognized by the Government of Kerala as equivalent thereto.

2. A minimum period of 7 years service out of which 5 years shall be as Assistant Engineer in the Harbour Engineering Branch.

Note : A ratio of 3 : 1 of the total posts of Assistant Executive Engineer shall be applied between candidates possessing the qualifications under Group A and candidates possessing qualifications under Group B in the matter of appointment to the category of Assistant Executive Engineer.

In the absence of candidates possessing qualifications under Group-B vacancies reserved for such candidates shall also be filled up by candidates possessing qualifications under Group- A"

The parties, therefore, are not governed by any rule, where the question as regard acquisition of a higher qualification arises while in service.

Before the learned Single Judge of the Kerala High Court before whom the writ petition came up for hearing, a purported draft rule was placed which reads as under :

"A person, who while holding the post of Assistant Engineer possess Sections A and B of the AMIE (India) Examination or a Degree in Engineering of a recognized University shall be eligible for promotion as Assistant Executive Engineer against the quota allotted for those possessing the qualifications mentioned in item (i) or Section A in item (ii) of the Annexure only after the claims of all those who on the date of his passing the AMIE (India) Examination, or a Degree in engineering of a recognized University possessed the qualifications mentioned in item (i) in the Annexure have been considered."

Having regard to the fact that Rule 5 of the Kerala Engineering Service (General Branch) Rules, as amended on 8.6.1982 was declared ultra vires in T.R. Krishnan (supra), the learned Judge although noticed that the said amendment had not come into force and as such the validity thereof need not be gone into, held :

"If the stand taken by respondents 1 and 2 is accepted, a Diploma holder Assistant Engineer, who has put in long years of service in that cadre will loose the benefit of that experience on his acquiring Degree qualification. He will have to come to Group A as the junior most and then put in service for three years. The experience gained by them cannot be wiped off on the ground that they acquired the degree in Civil Engineering. This is illegal and arbitrary. An Assistant Engineer, who is a Diploma

holder, on acquiring Degree qualification, cannot be compelled to disgorge the benefit of the experience gained by him as Assistant Engineer. He must have credit of the experience. Depending on the rank in the seniority list and the Degree qualification, which he acquired subsequently, as on the date of occurrence of the vacancy must be considered for appointment by transfer to the cadre of Assistant Executive Engineer. Petitioner who took the Degree in 1986 and had put in 6 = years of experience on that date, must be considered as a Graduate Assistant Engineer for being appointed to the post of Assistant Executive Engineer by transfer in the vacancy which arose subsequent to November, 1986. The contrary stand taken by respondents 1 and 2 is illegal."

The appeal against the said order was heard by the Full Bench along with other connected matters and, as noticed hereinbefore, decided by the impugned judgment.

SUBMISSIONS :

Mr. K. Sukamaram, learned Senior Counsel appearing on behalf of the appellants in Civil Appeal No.884 of 2002, Mr. P. Krishnamoorthy, learned Senior Counsel appearing on behalf of the appellant in Civil Appeal No.889 of 2002 and Mr. John Mathew, learned counsel appearing on behalf of the appellants in Civil Appeal Nos.885 to 888 of 2002, would submit that the Full Bench of the High Court committed a manifest error in passing the impugned judgment insofar as it declared the relevant rules as ultra vires without assigning sufficient or cogent reasons in support thereof. The learned counsel would submit that possession of a higher qualification has all along been treated differently in the service rules and, thus, cannot be said to be hit by Article 14 of the Constitution of India. It was further urged that there exists separate channels for promotion to the post of Assistant Executive Engineer and, thus, the appellants herein being degree-holders were seniors to the diploma-

holders who acquired a higher qualification in service and if they intend to avail the promotional avenue meant for the degree-holders, they would be placed at the bottom of the list and, thus, no illegality can be said to have been committed in considering them to be the juniormost in the said channel; particularly keeping in view the fact that despite acquisition of a higher qualification, the officer concerned had an opportunity to exercise his option as regard promotion to the post of Assistant Executive Engineer.

Drawing our attention to the judgment of the High Court in Krishnan's case (supra), the learned counsel would submit that from the factual matrix obtaining therein it would appear that the amendment to Rule 5 was held ultra vires as by reason thereof a right vested in him was sought to be taken away. The said decision, the learned counsel would submit does not lay down the correct law.

Mr. T.L.V. Iyer, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would draw our attention to the fact that earlier there were three categories of officers in the

engineering branch, namely, Junior Engineer, Assistant Engineer and Executive Engineer, which were re-designated as Assistant Engineer, Assistant Executive Engineer and Executive Engineer. The learned counsel would contend that having regard to the fact that by reason of such redesignation the diploma- holders who were originally appointed as Junior Engineers also were redesignated as Assistant Engineers, the impugned rule has rightly been held to be ultra vires and/or inapplicable in the case of the diploma-holders.

Mr. Mathai M. Paikeday, learned Senior Counsel appearing in Civil Appeal No.885-87, 888 and 890-93 of 2002, however, would urge that in the case of Harbour Engineering Branch of the Kerala Port Trust, separate rules exist and having regard to the fact that the purported draft rules never came into being, the concerned employees would be governed by the existing rule in terms whereof, there are separate channels of promotions for the diploma and degree-holders, as contained in Part A and Part B, as referred to hereinbefore. The learned counsel appearing on behalf of the State of Kerala, however, would submit that the proposed amendment although never came into force, but the same was indicative of the fact that the intention of the State had all along been to have two categories of services and if pursuant to or in furtherance thereof the degree-holders and diploma-holders are treated separately, no fault can be found therewith.

QUESTION :

The short question which arises for consideration is as to whether in terms of the scheme of the Kerala Engineering Service (General Branch) Rules, diploma- holders are entitled to claim any weightage in the service rendered by them prior to their acquisition of degree qualification in the matter of promotion or transfer to higher posts when specific quota is fixed for graduates and diploma-holders in the matter of promotion.

ANALYSIS :

It is not in dispute that in terms of the extant rule, appointments to the post of Junior Engineer which had later been re-designated as Assistant Engineer could be made by: (1) direct recruitment of graduate engineers; and (2) promotion from first grade overseers possessing diploma and certificates in the ratio of 5 : 3 : 2. The method of appointment of Assistant Executive Engineer, however, was upon recruitment by transfer from Assistant Engineers in the ratio of 75 : 20 : 5 from amongst the persons possessing degree holders of diploma and certificate respectively. It is also not in dispute that promotion to the post of Executive Engineer is to be made from amongst the Assistant Executive Engineers. Rule 4 of the Kerala Health Engineering Service Rules and Rule 5 of the Kerala Engineering Service (General Branch) Rules, in our opinion, are to be read in their entirety. Clause (a) of the said Rules 4 and 5 respectively refer to acquisition of qualification of Sections A and B in AMIE after appointment as Assistant Engineer/Assistant Executive Engineer whereas clause (b) thereof provides for filling up of vacancies in the cadre of Assistant Executive Engineers, one from amongst the persons who possess any of the qualifications

mentioned in item (i) or in Section-A in item (ii) of the Annexure, which indisputably refer to degree-holders, diploma-holders and certificate-holders. By reason of the said rule, if a person while holding the post of Assistant Engineer (erstwhile Junior Engineer) passes Sections A and B of AMIE or a Degree in Engineering from a recognized University, he would also be eligible for promotion against the quota allotted for those possessing the degree qualification. By reason of the proviso appended to the said rule, however, the concerned Assistant Engineer has been given an option to continue amongst the Assistant Engineers possessing diploma in engineering.

Rule 5(b) was amended on 20.7.1982. Prior to its amendment, the rule provided that an Assistant Executive Engineer who possessed AMIE (India) Examination was to be eligible for promotion as Assistant Executive Engineer in the quota of degree-holders only after promotion of those who were already holding the degree qualification.

In T.R. Krishnan (supra), the question which were formulated read as under :

- "1. Whether the Asst. Ex. Engineers holding degree qualification and diploma qualification are fused into one common category and if so whether the principle laid down in Rajan vs. State of Kerala 1983 KLT 878 would be applicable to the case of the petitioner.
2. Whether the petitioner is entitled to claim parity of treatment like the certificate holders on the basis of Ext.P-7 order.
3. Under the scheme of the Rules of the Kerala Engineering Service General Branch, whether the petitioner is entitled to claim any weightage for the service rendered by him prior to his acquisition of degree qualification.
4. Does the amendment to rule 5 brought in by GO (P) No.79/82 dated 8.6.1982 in reality confer a benefit on diploma Engineers who acquired degree qualification or does it in the guise of conferring a benefit work hardship for them; and
5. On the totality of facts of this case and the position of his colleagues who were also recruited as diploma holder engineers, whether any injustice has been done to the petitioner."

While considering Point Nos.1 to 5 aforementioned, the Division Bench came to the following conclusion :

"...In the absence of a statutory rule, which prescribes maintaining separate seniority lists, it is not open to the government to contend that the Asst. Exe. Engineers who come from the category of diploma holder Engineers and degree holder junior engineers are two different and distinct classes. As the Rules stand, there is only an

insistence upon the minimum number of years of service to become eligible for appointment as Asst. Exe. Engineers. Similarly the rules also contemplate that in the case of promotion to Exe. Engineers a person should satisfy the requirement of having satisfactorily worked for a period of not less than three years as Asst. Exe. Engineer."

Noticing the fact that the amendment in Rule 5 was made on or about 8.6.1982, the Division Bench observed :

"21. If we examine Rule 5 we find that this rule deals with diploma holders who after appointment as Assistant Executive Engineers acquired the degree qualification or AMIE qualification. This rule will not be applicable to the case of the present petitioner who acquired his degree qualification as well as AMIE qualification prior to his appointment as Asst. Exe. Engineer. He acquired his degree qualification in November, 1975 and his AMIE qualification in summer 1975. He was elected as Member of the Institute of Engineers on 11.5.1976, while he was appointed as Asst. Exe. Engineer with retrospective effect from 17.6.1978. This means that the petitioner acquired the degree qualification prior to his appointment by transfer as Asst. Exe. Engineer. He is outside the ambit of the category of persons contemplated under sub-rule (a) of Rule 5.

The way in which Rule 5 has been amended a number of times, and the manner in which in 1982 Notes 1 and 2 are added at the end of the Rule clearly indicates that the amendment is a motivated amendment brought into existence after the petitioner agitated his claim for promotion as Executive Engineer. It is brought into existence with a view to defeat his claim. The petitioner is perfectly justified in his contention that when he succeeded in the various writ petitions and he got his services regularized and got his promotion. In answer to his representation for promotion as Exe. Engineer, the Government introduced the amendment by issuing G.O. (P) No.79/82 dated 8.6.1982 Despite such a finding while considering the Point Nos. 3 and 5 aforementioned, the Division Bench opined :

"27. Point Nos. 3 and 5: The Kerala Engineering Service (General Branch) Rules, as intimated while discussing point nos. 1 and 4, do not provide for giving any weightage to diploma holders for their service rendered as diploma holder Engineers, if they acquire a degree qualification subsequently Rule 5 as it now stands works hardship for diploma holder engineers who subsequently acquired degree qualification. The amendment made in 1977 by G.O. (P) No.185/77/PW dated November 1977 published in SRO No.1163/77 in the Kerala Gazette dated 13.12.1977 does not confer any benefit by enabling such diploma holders for being considered for promotion in the quota of degree holder Asst. Exe.

Engineers. In reality it makes them forgo all their seniority as diploma holder Engineers and compete with such younger people who might not have even studied

engineering by the time these people had entered Government service. Normally where a diploma holder working in a particular category in which degree holders are also working acquires the degree qualification, namely, the higher qualification, justice requires that at least two-thirds or half of his service as diploma holder engineer should be given as weightage for the purpose of reckoning his seniority vis-à-vis graduate engineers. As the Rules now exist, the so-called benefit conferred is not a benefit, but it is more a detriment. We hold point No.3 accordingly.

28. We hasten to add that as the petitioner acquired his qualification of B.Sc. engineering and AMIE prior to his appointment as Asst. Exe.

Engineer, his seniority for the purpose of promotion to the category of Executive Engineer should be reckoned from the first date of his service as Asst. Exe. Engineer, namely, 17.6.1978."

In the aforementioned fact situation, the Division Bench declared that the amendment to Rule 5 introduced by G.O. (P) No.7982 dated 8.6.1982 is arbitrary, discriminatory and unconstitutional as it was found violative of Articles 14 and 16 of the Constitution of India.

The declaration of amendments in Rule 5 as unconstitutional was an obiter dicta.

Therein, the petitioner was awarded seniority in the case of Graduate Assistant Executive Engineer w.e.f. 17.6.1978 i.e. with effect from the date of his appointment, as he had already acquired the qualification of degree in engineering by that time. He was further directed to be promoted to the post of Executive Engineer treating his claim as a graduate degree-holder Assistant Executive Engineer with effect from 17.6.1978 but despite the same, he had not been granted a weightage for his service as Assistant Executive Engineer before he acquired the degree qualification. The decision of the Division Bench of the Kerala High Court in T.R. Krishnan (supra) must also be considered having regard to the factual matrix obtaining therein. In the said writ petition, the writ petitioners alleged mala fide against the authorities concerned which also found favour of the Bench. We have seen earlier that the Division Bench came to the conclusion that the amended rule had no application in his case as he had been treated to be a Graduate Degree-holder Assistant Executive Engineer with effect from 17.6.1978 and in that view of the matter, it was not necessary for the Division Bench to go into the question of validity of Rule 5.

INTERPRETATION OF THE RULES :

A bare perusal of Rules 4 and 5 of the Kerala Engineering Service (General Branch) Rules would clearly go to show that the avenues for promotion for the degree-holders and the diploma-holders were separate. By reason of the amendment incorporated in the rule promotions were sought to be given to those who although were diploma-holders passed the Degree in Engineering examination or Part A and Part B of AMIE by way of accelerated promotions. Only upon acquiring such a degree, the diploma-holder became eligible to exercise his option to be considered for

promotion in the stream of the officers belonging to the degree-holders. As such diploma-holder officers who acquired a higher qualification during service had either to opt for promotion for the degree- holders quota or for diploma-holders' quota. Once he opts for a promotion in the degree-holders' quota, rule of seniority would apply as he acquired the qualification therefor subsequently.

FINDINGS :

The Full Bench of the Kerala High Court while deciding the matters which are the subject-matters of Civil Appeal No.884 of 200, unfortunately did not address itself to the aforementioned question. If its finding to the effect that "for promotion to the post of Assistant Executive Engineer...there is no restriction imposed on the Assistant Engineers who acquired degree while they are in the feeder category for promotion as Assistant Executive Engineer" is correct, the same would make Rule 4(b) of the Kerala Public Health Engineering Service Rules otiose. The said rule has to be read in its entirety. The scheme contained therein must be given its full effect. The purport and object of such an amendment was made in the year 1982 was required to be given deeper consideration. The High Court failed to notice that a conjoint reading of Rule 4 and Rule 5 clearly establishes that a diploma-holder Assistant Engineer who subsequently acquired a degree qualification would be eligible for promotion as Assistant Executive Engineer, only in the event he fulfills the conditions precedent therefor and not otherwise and in terms thereof namely his case could be considered only after the cases of promotion of those who had been holding such degree qualification have been considered. By reason of acquisition of higher qualification only the diploma-holders would not become entitled to be considered for promotion as they in terms of the rules were to be regarded juniormost in the seniority list of the Graduate Assistant Engineers.

The Full Bench of the High Court, furthermore, unfortunately construed Rule 4 in isolation without taking into consideration the effect of Rule 5(b) in terms whereof it has clearly been laid down that the vacancies in the category of Assistant Executive Engineers were to be filled up from amongst the Assistant Engineers in the ratio of 75 : 20 : 5 from amongst the degree-holders, diploma-holders and certificate-holders. There cannot be any doubt whatsoever that as separate seniority lists were being maintained in respect of the degree-holders, diploma-holders and certificate-holders; once a diploma- holder acquiring a qualification of a degree in engineering opts for being included in the stream of the degree-holders, he would have to be placed at the bottom of the relevant seniority list.

We, for the reasons aforementioned, cannot accept the views of the High Court.

However, so far as Civil Appeal Nos.890-93 of 2002 are concerned, it appears that amendment to the rule had never come into force and, therefore, it is difficult to accept the contention of the learned counsel for the State that the degree-holders and

diploma-holders were to be treated at par with the other cases. In fact, in terms of the rules applicable to the case of Harbour Engineering Branch of the Kerala Port Trust, two categories, namely, degree-holders and diploma-holders have been placed separately, namely, Group-A and Group-B and as such the persons holding the respective qualifications would be governed by the rules as existing then. In that view of the matter, the respondents would be in the same position as in the case of T.R. Krishnan (*supra*) inasmuch a right vested in them, in absence of rule having been given a retrospective effect could not have been taken away. The State in exercise of its power under Article 309 of the Constitution of India may give retrospective effect to a rule but the same must be explicit and clear by making express provision therefor or by necessary implication but such retrospectivity of a rule cannot be inferred only by way of surmises and conjectures.

We are, however, not oblivious of the fact that rules framed by different States may be different. Different Rules may also be framed having regard to the nature of the job and other relevant factors.

In *N. Suresh Nathan and Another vs. Union of India and Others* [(1992) Supp. 1 SCC 584], this Court held:

"In our opinion this appeal has to be allowed. There is sufficient material including the admission of respondents diploma-holders that the practice followed in the department for a long time was that in the case of diploma- holder Junior Engineers who obtained the degree during service, the period of three years' service in the grade for eligibility for promotion as degree- holders commenced from the date of obtaining the degree and the earlier period of service as diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paper book.

This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter-affidavit of respondents 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined."

In that case, the scheme under the recruitment rules is almost identical as in terms thereof three years' service in the cadre required for degree-holders as a qualification for promotion in the said category was held to mean three years' service in the grade as a degree-holder.

In *M.B. Joshi and Others etc. vs. Satish Kumar Pandey and Others etc.* [(1993) Supp. 2 SCC 419], the decision in *N. Suresh Nathan* (*supra*) was distinguished holding :

"11. A perusal of the above observations made by this Court clearly show that the respondents diploma- holders in that case has admitted the practice followed in that department for a long time and the case was mainly decided on the basis of past practice followed in that department for a long time. It was clearly laid down in the above case that if the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It was clearly said "it is in this perspective that the question raised has to be determined".

It was also observed as already quoted above that the Tribunal was not justified in taking the contrary view and unsettling the settled practice in the department. That apart the scheme of the rules in N. Suresh Nathan case (1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 :

(1992) 19 ATC 928) was entirely different from the scheme of the Rules before us. The rule in that case prescribed for appointment by promotion of Section Officers/Junior Engineers provided that 50 per cent quota shall be from Section Officers possessing a recognised degree in Civil Engineering or equivalent with three years' service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years' service in the grade. The aforesaid rule itself provided in explicit terms that Section Officers possessing a recognised Degree in Civil Engineering was made equivalent with three years' service in the grade.

Thus, in the scheme of such rules the period of three years' service was rightly counted from the date of obtaining such degree. In the cases in hand before us, the scheme of the rules is entirely different."

It was further observed :

"...The Rules in our case do not contemplate any equivalence of any period of service with the qualification of acquiring degree of graduation in engineering as was provided in express terms in N. Suresh Nathan case (1922 Supp (1) SCC 584 : 1992 SCC (L&S) 451 :

(1992) 19 ATC 928) making three years service in the grade equivalent to degree in engineering. In our opinion, the Rules applicable in the cases before us clearly provide that the diploma-

holders having obtained a degree of engineering while continuing in service as Sub-Engineers shall be eligible for promotion to the post of Assistant Engineer in 8 years of service and quota of 10 per cent posts has been earmarked for such category of persons."

The said decision was followed in Satpal Antil etc. vs. Union of India and another [(1995) 4 SCC 419], D. Stephen Joseph vs. Union of India and Others [(1997) 4 SCC 753], Anil Kumar Gupta and Others vs. Municipal Corporation of Delhi and Others [(2000) 1 SCC 128] and A.K. Raghumani

Singh and Others vs. Gopal Chandra Nath and Others [(2000) 4 SCC 30].

Almost an identical view has been taken by a Bench of which two of us were parties in Pramod K. Pankaj vs. State of Bihar [2002 (9) SCALE 813] = [JT 2003 (9) SC 333], wherein this Court noticing the decisions in N. Suresh Nathan (supra), M.B. Joshi (supra), Satpal Antil (supra) and D. Stephen Joseph (supra) held :

"THE POLICY DECISION :

The policy decision of the State as contained in the resolution of the State Government dated 17.1.1979 is not in question. It is accepted that the said resolution was adopted in the special situation that 20% quota which was earlier reserved for graduate engineers was abolished, as a result whereof they suffered immense prejudice. Clause 'Cha' of the said circular states that the promotion on the vacant posts of Assistant Engineer under the quota mentioned in clause 'Ka' i.e. 3% would be made on the basis of seniority. In absence of any statutory provision or rules made thereunder or under the proviso appended to Article 309 of the Constitution of India, it is trite, that once an incumbent is appointed to a post according to rules his seniority has to be counted from the date of his appointment.

The aforementioned Resolution dated 17.1.1979 was introduced as a special measure. The promotion of the holders of the post of Junior Engineers to the post of Assistant Engineer was not to be done on selection basis. No written examination was to be held nor any oral interview was to be taken. No criteria whatsoever was laid down for selecting the candidates. For the purpose of granting promotion to the post of Assistant Engineer in the aforementioned category, only two conditions which were required to be fulfilled on the relevant date are : (a) the employee must be holder of a degree or must have passed an equivalent examination; (b) he must have completed five years of service in the post of Junior Engineer.

A plain reading of the aforementioned resolution dated 17.1.1979 would clearly go to show that no further requirement was prescribed therefor. Clause 'Cha' of the said resolution merely stated that with regard to inter se seniority of these Junior Engineers, the decision be taken after obtaining opinion from the Personnel Department.

In the aforementioned premise, it was obligatory on the part of the Personnel Department itself to take a firm decision laying down the criteria for fixation of inter se seniority in absence of any statute or rules having the force of law. Admittedly, the Personnel Department did not issue any such order. The said resolution dated 17.1.1979 was an executive order passed by the State of Bihar in terms of Article 162 of the Constitution of India. By reason of the said policy decision, the Personnel Department alone was delegated with the power to lay down the criteria for determining the inter se seniority. The Personnel Department neither in fact delegated the said power to the Water Resources Department nor in law could do the same. The purported order dated 22.12.1992

issued by the Water Resources Department was, therefore, illegal having been rendered by an authority which had no jurisdiction therefor."

It is well settled that classification on the basis of educational qualification is a reasonable one and satisfies the doctrine of equality as adumbrated in Article 14 of the Constitution of India.

In *The State of Jammu & Kashmir vs. Triloki Nath Khosa and others* [AIR 1974 SC 1], a Constitution Bench of this Court held :

"On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineers to Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgment of the rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trail of a higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunity to those possessing higher educational qualifications and we are concerned with the reasonableness of the classification not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded..."

[See also *Government of West Bengal vs. Tarun K. Roy and Ors.*, 2003 (9) SCALE 671] The State as an employer is entitled to fix separate quota of promotion for the degree-holders, diploma-holders and certificate-holders separately in exercise of its rule making power under Article 309 of the Constitution of India. Such a rule is not unconstitutional. The State may, therefore, in our opinion, cannot be said to have acted arbitrarily by giving an option to such diploma-holders who acquired a higher qualification so as to enable them to either opt for promotion in the category of degree-holder or diploma-holder. Such option was to be exercised by the concerned officer only. He, in a given situation, may feel that he would be promoted in the diploma-holders quota earlier than degree-holders quota and vice versa but once he opts to join the stream of the degree-holders, he would be placed at the bottom of the seniority list.

We, therefore, are of the opinion that the impugned judgments cannot be sustained which are set aside accordingly. We direct that the cases of all the concerned employees be considered strictly in terms of the extant rules. This direction shall also govern the appeal preferred by the State of Kerala.

The appeals are disposed of accordingly. No costs.