



**AFR
RESERVED**

Court No. - 4

1. **Case :-** WRIT - A No. - 24273 of 2018

Petitioner :- Deepak Singh And 9 Others

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Siddharth Khare, Ashok Khare, Shri Ashok Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Archit Mandhyan, Kailash Singh Kushwaha, Santosh Kr. Singh Paliwal, Sunil Kumar Misra, Vipin Kumar Singh, Vivek Saran

WITH

2. **Case :-** SPECIAL APPEAL No. - 1133 of 2018

Appellant :- Yogendra Singh Rana And 6 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Siddharth Khare, Shiv Kumar Maurya, Shri Ashok Khare

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha, Seemant Singh

WITH

3. **Case :-** SPECIAL APPEAL No. - 1192 of 2018

Appellant :- Prabhat Kumar Chauhan

Respondent :- State Of U.P. And 6 Others

Counsel for Appellant :- Shantanu Khare, Shri Ashok Khare

Counsel for Respondent :- C.S.C., K.S. Kushwaha

WITH

4. **Case :-** SPECIAL APPEAL No. - 1246 of 2018

Appellant :- Premjeet Yadav

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Alok Kumar Yadav, Sudhakar Yadav

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

5. **Case :- SPECIAL APPEAL No. - 1258 of 2018**

Appellant :- Tanveer Alam And Another

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Jitendra Kumar Tripathi, Vinod Kumar

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

6. **Case :- SPECIAL APPEAL No. - 1274 of 2018**

Appellant :- Alok Kumar Srivastava

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Krishna Kant Singh

Counsel for Respondent :- C.S.C.

WITH

7. **Case :- SPECIAL APPEAL No. - 9 of 2019**

Appellant :- Himani Singh

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Hari Bans Singh

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

8. **Case :- SPECIAL APPEAL No. - 184 of 2019**

Appellant :- Ashish Mishra And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Sanjay Kumar Dwivedi

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

9. **Case :- SPECIAL APPEAL No. - 289 of 2019**

Appellant :- Ajaz Ahmed @ Ajaz Amahad Khan

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Mohd. Shamim, Gautam

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

10. **Case :-** SPECIAL APPEAL No. - 415 of 2019

Appellant :- Sarita Yadav

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Ajay Yadav, I. N. Singh

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

11. **Case :-** WRIT - A No. - 671 of 2009

Petitioner :- Ajay Kumar Singh

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Manoj Mishra

Counsel for Respondent :- C.S.C., Pushpendra Singh, V.P. Mathur

WITH

12. **Case :-** WRIT - A No. - 21453 of 2018

Petitioner :- Ravi Shanker Tiwari And 3 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

13. **Case :-** WRIT - A No. - 25236 of 2018

Petitioner :- Saurabh Kumar And Another

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Sunil Kumar Singh

Counsel for Respondent :- C.S.C., Madan Mohan Chaurasisa

WITH

14. **Case :-** WRIT - A No. - 25790 of 2018

Petitioner :- Shubham Shukla And 3 Others

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Gaurav Tripathi

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha, Pranjali Mehrotra, Rajesh Kumar Yadav, Vivek Saran

WITH

15. **Case :-** WRIT - A No. - 485 of 2019

Petitioner :- Bhartendu

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Siddharth Khare, Ashok Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., M.N. Singh

WITH

16. **Case :-** SPECIAL APPEAL DEFECTIVE No. - 885 of 2018

Appellant :- Ritika Chauhan And 10 Others

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Shantanu Khare, Sri Ashok Khare

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

17. **Case :-** SPECIAL APPEAL DEFECTIVE No. - 895 of 2018

Appellant :- Bharat Singh Chauhan And 3 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Siddharth Khare, Shri Ashok Khare

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

18. **Case :-** SPECIAL APPEAL DEFECTIVE No. - 897 of 2018

Appellant :- Amit Kumar And 5 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Siddharth Khare

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha, Seemant Singh

WITH

19. **Case :-** SPECIAL APPEAL DEFECTIVE No. - 905 of 2018

Appellant :- Chandan Singh Yadav And 3 Others

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Sanjay Kumar Yadav, Ajay Singh Yadav

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

WITH

20. **Case :-** SPECIAL APPEAL DEFECTIVE No. - 925 of 2018

Appellant :- Brijesh Kumar Yadav

Respondent :- Union Of India And 4 Others

Counsel for Appellant :- Jagdish Prasad Mishra, Shesh Narain Mishra

Counsel for Respondent :- A.S.G.I., Kailash Singh Kushwaha

WITH

21. **Case :-** SPECIAL APPEAL DEFECTIVE No. - 929 of 2018

Appellant :- Manish Nigam

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Sanjay Kumar Nigam

Counsel for Respondent :- C.S.C., Kailash Singh Kushwaha

Hon'ble Bala Krishna Narayana,J.

Hon'ble Ramesh Sinha,J.

Hon'ble Pankaj Bhatia,J.

Judgement Text :-

Hon'ble Pankaj Bhatia,J.

Questions arising and framed in the following three orders are referred to this Bench for its considerations: (i) order dated 29.11.2018 passed in Writ – A No. 24273 of 2018 (Deepak Singh And 9 others vs. State of U.P. and 8 others), (ii) order dated 12.1.2009 passed in Civil Misc. Writ Petition No. 671 of 2009 (Ajay Kumar Singh vs. State of U.P. and another) and (iii) order dated 15.2.2019 passed in Special Appeal No. 09 of 2019 (Himan Singh vs. State of U.P. and 8 others).

In Writ A No. 24273 of 2018, the learned Single Judge was confronted with the question as to whether degree holders in Engineering Discipline would be eligible for seeking appointment to the post of Junior Engineer and Foreman wherein the essential eligibility criteria specified, was “Diploma Holders in Engineering Discipline”. The learned Single Judge took note of the fact that the Commission issued a Notification for selection of Junior Engineers and Foreman, the advertisement specified the eligibility for selection to the post of Junior Engineers and Foreman as

“Diploma Holders in Engineering Discipline”. The petitioners, in the said petition, were admittedly degree holders in Engineering and agitated that they have been wrongly ousted as being degree holders in Engineering, they were higher than diploma holders in Engineering Discipline and as such they ought to have been considered as eligible. The Commission had cited before the learned Single Judge that this Court, in Service Single No. 6655 of 2016 (Alok Kumar Mishra vs. State of U.P.) and as affirmed by a Division Bench in Special Appeal No. 229 of 2016 (Kartikey vs. State of U.P.) to buttress the proposition that the degree holders were rightly ousted.

Learned counsel for the petitioner, therein, on the other hand, had argued that the said two judgements relied upon by the Commission should be held as not having laid down the correct proposition of law, in the light of the decision of the Supreme Court in case of **Parvaiz Ahmad Parry vs. State of Jammu & Kashmir, 2016 (1) ESC 54 (SC)**.

Learned Single Judge, in his referring order dated 29.11.2018, held that the decision in the case of Alok Kumar Mishra vs. State of U.P. relied upon the decision of the Supreme Court in the case of **Jyoti K.K. And others vs. Kerala Public Service Commission and others, 2010 15 SCC 596**. The said judgement, rendered in the case of Alok Kumar Mishra (supra), was upheld in an appeal in the case of Kartikey vs. State of U.P. and was also upheld in **Special Leave to Appeal (Civil) No. 17219 of 2016**. The learned Single Judge noted the argument of learned counsel for the petitioner that the judgement of the Hon'ble apex Court in the case of **Parvaiz Ahmad Parry** was a clear authority for the proposition that a higher qualification cannot be viewed as disqualification and consequently it must be held that the degree holders cannot be ousted. Learned Single Judge further recorded that in the case of **Parvaiz Ahmad Parry** the question raised before the Supreme Court was whether a person who is holding a degree of M.Sc. in forestry would be eligible to apply for a post where the minimum requirement was B.Sc.

in the subject concerned.

In the backdrop of the judgement of the Apex Court in the case of **Parvaiz Ahmad Parry vs. State of Jammu & Kashmir and others**, the learned Single Judge referred the matter to the present larger Bench framing the following questions:

- A. Whether a Degree in the field in question is entitled to be viewed as a higher qualification when compared to a Diploma in that field?
- B. Whether the decisions in Alok Kumar Mishra and Kartikey lay down the correct position in law when they hold that a Degree holder is excluded from the zone of consideration for appointment as a Junior Engineer?
- C. Whether a degree holder can be held to be ineligible to participate in a selection process for Junior Engineer in light of the relevant statutory rules?
- D. Whether the exclusion of degree holders from the zone of consideration would meet the tests as propounded by the Supreme Court in State of Uttarakhand Vs. Deep Chandra Tewari?

The second reference order was passed in Civil Misc. Writ Petition No. 671 of 2009 wherein the learned Single Judge was posed with the question regarding the appointment to the post of Junior Engineers advertised vide Advertisement dated 29.12.2007 wherein the petitioners were found to be ineligible as they were degree holders whereas the eligibility condition for appointment to the post of Junior Engineer (Civil) Irrigation was “Diploma in Engineering”.

The learned Single Judge disagreed with another judgement rendered by a Single Judge in **Writ Petition No. 7012 (S/S) of 2001 (Anup Ratan Awasthi vs. Public Service Commission, Allahabad & Ors.)** wherein the learned Single Judge held that the degree holders were not eligible for the said post. The learned Single Judge while referring the matter to the larger Bench disagreed with the learned Single Judge judgement given in the case of **Anup Ratan Awasthi** for the following reasons:

“(1) The petitioner as a graduate engineer with B.E. in Civil Engineering from University of Pune (1994) has earlier applied for the post of Junior Engineer in the Minor Irrigation Department in pursuance to the Advertisement No. 3 of 1998-99. He was selected for appointment and was allotted hill cadre, which later fell in the State of Uttaranchal. The U.P. Public Service Commission or the State Government did not reject his candidature on the ground that he did not possess the requisite qualifications. The Supreme Court has vide judgement in **State of Uttaranchal vs. Siddharth Srivastava & Ors., (2003) 9 SCC 336** and the judgement in the **State of U.P. vs. Raj Kumar Sharma & Ors., Civil Appeal No. 1433 of 2006, dated March 3rd, 2006** directed that since all the post in the plain cadre has been filled up there was no scope for appointment of non-official respondents. The relaxation was given for a period of three years for applicants, when applications were invited for selection by UPPSC or Uttaranchal State Public Service Commission. The relaxation is to be granted when fresh applications are invited. The U.P. Public Service Commission and the State of U.P. are therefore stopped on the principles of constructive resjudicata to question the qualification of the petitioner to appear in the subject selections. The question whether the petitioner holds minimum qualification or required qualification was neither raised for considered and thus the UPPSC and the State Government cannot be permitted to raise the plea again and to reject the candidature of the petitioner.

(2) A graduate degree in Civil Engineering is a higher qualification possessed by candidate for the post than the qualification prescribed under the rules. A candidate possessing higher qualification cannot be discriminated and held ineligible on the ground that he does not possess required qualifications.

(3) In **T.R. Katha N. Daraman vs. Tamil Nadu Water and Drainage Board, (1994) & SCC 282** it was held that a harmony has to be struck in maintaining reasonableness in the ratio between the call of the social justice and the need of higher education without in any way jeopardising the principal object of qualification. The reasonableness of the ratio will depend upon the facts of each case. In this case the graduate engineer is not claiming any benefit, weightage or preference in appointment to the post of Junior Engineers. They are claiming to be eligible as they hold higher qualification in the subject, which is being treated as required qualification.

(4) *In Union of India Vs. D. Sundera Rama, (1997) 4 SCC 664* the Supreme Court upheld the shortlisting of the candidates possessing higher qualification. It was held that prescribed essential qualification is minimum qualification and that mere possession of minimum qualification does not entitle a candidate to be called for interview.

(5) A large number of State and private engineering colleges are turning out thousands of graduate engineers. They are finding it difficult to get jobs. The Courts have to balance their rights to be qualified for the jobs for which a lower qualification is the essential qualification. It would not serve public interest to allow graduate engineers to remain unemployed and to offer jobs of Junior Engineer to diploma holders.

(6) There has been a gradual fall of standards in education and quality of work performed by Junior Engineers. With the availability of large number of graduate engineers the department may find persons with higher qualifications, more competent and suitable for the post of Junior Engineers. It is admitted that the job of Junior Engineers can be performed by degree holders and that it is not necessary that only a diploma holder is suitable for the job.”

In view of the difference of opinion expressed on the reasons given as above, the matter is referred to the larger Bench. The papers shall be placed by the officer before Hon'ble the Chief Justice to nominate a larger bench to decide the matter.

The third matter referred before this Court arises out of order 15.02.2019 wherein the Division Bench of this Court allowed a review application in Special Appeal No. 9 of 2019 (Himani Singh Vs. State of U.P. and 5 others). The question that arose in the said case, was that the petitioner held a Post Graduate Diploma in Computer Application and had applied for selection in the Group 'A' and 'B' Post pursuant to the Advertisement of the U.P. Subordinate Service Selection Commission, Lucknow wherein the eligibility criteria was possessing 'O' level Diploma in Computer Application. The Division Bench while allowing the review application also referred to the judgment rendered in the case of **Parvaiz Ahmad Parry vs. State of Jammu & Kashmir and others** and was also

impressed by the argument that a similar question has already been referred to the larger Bench by order dated 5.12.2018 in in Writ Petition No. 24273 of 2018.

We have heard Sri Ashok Khare, Senior Advocate, assisted by Sri Siddharth Khare, learned counsel appearing on behalf of the petitioners, Sri M.C. Chaturvedi, learned Additional Advocate General, assisted by Sri Rajeshwar Tripathi, Chief Standing Counsel, Sri Suresh Singh, learned Additional Chief Standing Counsel, Sri Hari Keshav, Standing Counsel and Sri Gyanendra Kumar Srivastava, Standing Counsel appearing on behalf of the State as well as Sri Kailash Singh Kushwaha, learned counsel for the U.P. Public Service Commission.

Before we advert to the arguments raised at the bar, it is essential to note the facts in brief in Writ Petition No. 24273 of 2018. The U.P. Subordinate Services Selection Commission, Lucknow notified the Combined Junior Engineer Sanganak and Foreman (General Recruitment) Competitive Examination-2018. In the note of the said advertisement, it was provided as under:

विशेष नोट :-

रिट याचिका संख्या – 6655 आफ 2016 एवं अन्य रिट याचिकाओं में माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 02.05.2016 के क्रम में अवगत कराना है कि सम्मिलित अवर अभियन्ता, संगणक एवं फोरमैन (सामान्य चयन) प्रतियोगात्मक परीक्षा – 2018 के अन्तर्गत विज्ञापित पदों हेतु डिप्लोमाधारक अभ्यर्थी ही पात्र हैं, इसके अतिरिक्त उक्त पद हेतु डिग्रीधारक अभ्यर्थी पात्र नहीं हैं। अतः डिग्रीधारक अभ्यर्थी आवेदन न करें”

This advertisement itself specifically provided eligibility to candidates having diploma in Civil/Electrical/mechanical Engineering alone. The petitioners were aggrieved as they were possessing Graduate Degree in Civil/Electrical/Mechanical Engineering and were excluded for being considered under the said advertisement, which led to the filing of the writ petition and subsequent reference order dated 29.11.2018.

Sri Ashok Khare, Senior Counsel, argued that in a procedure for Combined Selection for several departments, the recruitment rules of each department separately specify the qualifications, with regard to some of the departments, the qualification of Diploma in Engineering is specified as “minimum qualification”, while with regard to other department, diploma in Engineering is specified as “required qualification” and as the petitioners were applicants for some of the departments where the Diploma in Engineering was also specified at the “minimum qualification”, a higher qualification cannot be a bar for them being considered for appointment. Sri Ashok Khare, in the alternative, submits that even with regard to the departments where the qualification is the only specified qualification even then such specification does not exclude the higher qualifications in the same stream of studies. He has relied upon the following judgements:

- (i) **2006 (11) SCC 153**
(State of Haryana v. Abdul Gaffar Khan)
- (ii) **2013 (15) SCC 557**
(State of Utrakhand v. Deep Chand Tiwari)
- (iii) **2010 (15) SCC 596**
(Jyoti K.K. & others V Kerala Public Service Commission)
- (iv) **2016 (1) ESC 54 (SC)**
(Parvaiz Ahmad Parry v. State of Jammu & Kashmir and others)
- (v) Judgement of learned Single Judge dated 16.9.2016 passed in Writ-A No. 30313 of 2016 (Abha Tripathi & Ors. vs. State of U.P. & Ors.)
- (vi) **2011 (1) ESC 115** (A full Bench of Punjab & Haryana High Court) (Manjit Singh v. State of Punjab & Ors.)
- (vii) **(2019) 2 SCC 404**
(Zahur Ahmad v. Sheikh Imtiyaz Ahmad)
- (viii) **2015 (2) SCC 170**
(State of Punjab v. Anita)
- (ix) **2012 (3) SCC 129**
(Chandrakala Trivedi v. State of Rajasthan)
- (x) **2000 (2) SCC 606**

(Mohd. Riazul Usman Gani v. District & Sessions Judge)

(xi) **2003 (3) SCC 541**

(P.M. Latha v. State of Kerala)

(xii) **2003 (3) SCC 548**

(Yogesh Kumar vs. Govt. of National Capital Territory)

(xiii) **2002 10 SCC 588**

(Rajpal v. State of Haryana)

(xiv) **2005 (7) SCC 567**

(Dilip Kumar Ghosh v. Chairman)

Sri M. C. Chaturvedi, learned Additional Advocate General, on the other hand, has placed extensive reliance upon the case of **Zahoor Ahmad Rather (Supra)**. He has further argued that Graduation in Engineering cannot be termed as a qualification in progression of Diploma in Engineering. He asserts that the curriculum for Diploma in Engineering is very different in relation to curriculum for Graduation in Engineering. He further submits that it is the recruitment body which has the sole discretion of specifying the eligibility criteria and the same cannot be faulted with.

In view of the submissions made at the bar and the judgements relied upon, the first two questions being Question Nos. A & B in referring order dated 29.11.2018 and the question referred in WRIT - A No. 671 of 2009 are being taken up together and a decision is to be recorded as to whether a degree in the field in question will be viewed as a higher qualification when compared to that diploma in that field.

A diploma in engineering essentially is designed to impart practical aspect of the engineering and the mere perusal of the syllabus reveals that the Diploma in Engineering is aimed to equip the candidates, who can cater to the practical requirement of engineering with emphasis on the practical works. In short, it aims to train persons for execution of the works and handling of equipments, etc. whereas the graduates in Engineering are taught with syllabus which provides theoretical training in the field of Engineering with low emphasis on the practical part of the

engineering.

In India, Diploma Course in Engineering, is offered to the students and is a short duration course with the focus on training a person in a particular field. The curriculum includes basic theoretical knowledge and extensive practical knowledge and the diploma can be conferred by various institutes who may or may not be affiliated to the University Grants Commission (hereinafter referred to 'UGC') or All India Council for Technical Education (hereinafter referred to 'AICTE'). The same can be offered even to students after passing their Class-X Examination, in contrast, the Bachelor in Technical Education is offered to students after their completion of Class-XII Examination. A 'degree' can be granted only by the Institutes affiliated to UGC or AICTE. The duration of the course is longer (at present 4 years) and the emphasis in the curriculum is on academics. Thus, in India, focus and the aim of the two streams of education is entirely different with stress on extensive practical knowledge in the case of diploma holders and major emphasis on academic in the case of degree holders. Thus, the Diploma in Engineering and Degree in Engineering cater to different situations and, in view thereof, a degree in the field, in question, cannot be viewed as a higher qualification when compared to a diploma in that field.

Sri Ashok Khare, learned Senior Counsel, in his usual eloquence, has taken us through the various judgements, he has relied upon in **State of Haryana v. Abdul Gaffar Khan, 2006 (11) SCC 153** wherein the Apex Court was confronted with the selection to the post of Unani Dispenser wherein the educational qualification prescribed was:

- (i) Unani Dispenser from any recognised University/Institution or Board or Faculty of Indian System of Medicine established by law in India or Up-Vaidya having the knowledge of Urdu:
- (ii) Matric or its equivalent.
- (iii) Knowledge of Hindi and English upto Matric standard.

The respondents, in the said matter, possessed a qualification of Bachelor of Unani Medicine and Surgery from Kanpur University and were denied appointment for the reasons that they did not possess the qualification of Dispenser of Unani Medicine or Up-Vaidya from a recognised university. The Hon'ble Supreme Court while dealing with submissions recorded as under:

“We have perused the order passed by the High Court. As rightly pointed by the High Court and as per Haryana Ayurvedic/Homeopathic and Unani Technical Group (C) Service Rules, 1997, they do not expressly exclude the degree in Unani Medicine and Surgery for the post of Unani Dispenser. Admittedly, the respective contesting respondents in these appeals possess required qualifications from a recognized University/Institution or Board and are thus, in our opinion, eligible for appointment to the posts of Unani Dispenser. A close scrutiny of the advertisement issued does not anywhere stipulate the diploma as the required qualification. We, therefore, affirm the order passed by the High Court and direct the appellant-State of Haryana to appoint the respective respondents to the posts of Unani Dispenser within a period of one month from the date of receipt of the order from this Court or on production of the same by the respective respondents herein whichever is earlier. The appeals are accordingly dismissed. There shall be no order as to costs.”

We are afraid that the said judgement has no application to the facts of the present case inasmuch as in the present case the specified required qualification was “Diploma in Engineering” and Degree Holders were specifically excluded.

The next case relied upon by Sri Ashok Khare is **State of Uttarakhand and others vs. Deep Chandra Tewari and another, (2013) 15 SCC 557**. In this case, the Apex Court was confronted with a case where the requirement for appointment as a Assistant Teacher was Bachelor's Degree in any of two subjects Geography, Economics, Political Science and History from any University established by law in India whereas the respondents had the qualification of B.Ed. with specialization in vocational education. It was argued before the Hon'ble

Supreme Court that there is no marked difference between B.Ed. degree and the B.Ed. degree with specialisation in vocational education. The Hon'ble Supreme Court held as under:

“We notice, however, for the post in question i.e. Assistant Teacher (General), the qualification is simply Bachelor's degree in any of two subjects, Geography, Economics, Political Science and History from any university established by law in India, or LT Diploma from any training institution/degree college. If B.Ed with specialisation in vocational education was the required qualification, then it would have been specifically mentioned in the notification, which has not been done. Consequently, we have to take it that the B.Ed degree mentioned in the advertisement is B.Ed degree simpliciter, and not B.Ed with specialisation in vocational education. The post to be filled up ie. Assistant Teacher (General) nowhere indicates that for the purpose of appointment to the said post, specialisation in vocational education is a necessary requirement.”

Although a question raised before the Hon'ble Supreme Court was with regard to the difference in between B.Ed. with specialisation in vocational course and B.Ed. in specified subjects, the Supreme Court recorded the general principle as under:

“We are conscious of the principle that when particular qualifications are prescribed for a post, the candidature of a candidate possessing higher qualification cannot be rejected on that basis. No doubt, normal rule would be that candidate with higher qualification is deemed to fulfil the lower qualification prescribed for a post. But that higher qualification has to be in the same channel. Further, this rule will be subject to an exception. Where the prescription of a particular qualification is found to be relevant for discharging the functions of that post and at the same time, the Government is able to demonstrate that for want of the said qualification a candidate may not be suitable for the post, even if he possesses a “better” qualification but that “better” qualification has no relevance with the function attached with the post.”

The Apex Court, further, while allowing the appeal, held as under:

“In the present case, we find the situation falling in

this excepted category. As pointed out above, the Assistant Teacher is meant to impart education to students at primary level. For teaching primary students, subjects studied while doing basic BEd degree would be relevant and appropriate. For teaching such students, BEd with specialisation in vocational education would be of no use as those students are not imparted vocational education, which is the thrust in the degree obtained by the respondents herein. In the instant case, proficiency in the basic subjects taught at primary level is required and thus vocational training would not serve any purpose. Thus, when we find that in the instant case, essential education qualification is BEd degree which is prescribed in the relevant rules, having statutory flavour, the action of the Government cannot be faulted with, in rejecting the candidature of the respondents because of the reason that they do not have the qualification, as mentioned in the advertisement viz. BEd degree simpliciter.”

The above referred case relied upon by Sri Ashok Khare, in fact, strengthens the proposition that where the qualification is specified, there should be no deviation from the said specified requirement.

The next case relied upon by Sri Khare is **Jyoti K.K. And others vs. Kerala Public Service Commission and others, (2010) 15 SCC 596**. In the said case, the Hon'ble Apex Court was confronted with the question pertaining to the post of Sub-Engineers (Electrical) in the Kerala State Electricity Board as per the Notification dated 21.6.1994 which provided for the following qualifications:

" 1. SSLC or its equivalent

2. Technical qualifications -

(a) Diploma in electrical engineering of a recognised institution after 3 years course of study.

Or

(b) A certificate in electrical engineering from any one of the recognised technical school's shown below with five years service under Kerala State Electricity Board.

(Not fully extracted as not relevant) Or

(c) MGTE/KGTE in electrical light and power (higher) with five years experience as II grade overseer (electrical) under the Board."

The appellants, before the Supreme Court, were holders of B.Tech. degree in Electrical Engineering or Bachelor's degree in Electrical Engineering were non-suited by the Commission. The Apex Court relied upon Rule 10 (a)(ii) which was as under:

"Notwithstanding anything contained in these rules or in the special rules, the qualifications recognised by executive orders or 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."

On the basis of the said Rule 10 (a)(ii) of the Kerala State and Subordinate Services Rules, 1958, the Apex Court held as under:

"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 qualification 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.

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.”

The Court also noted that there was no exclusion to candidates to possess a higher qualification. The above referred decision in **Jyoti K.K. (supra)** turned on the provisions of Rule 10 (a)(ii). In the present case, there is no equivalent Rule akin to Rule 10(a)(ii). A perusal of the said Rule 10(a)(ii) clearly presupposes and provides that the acquisition of a higher qualification would presuppose the acquisition of the lower qualifications prescribed for the post. In the present case, there being no such Rule, we are afraid that the presumption is not available to the petitioners.

The next case relied upon by Sri Ashok Khare in **Parvaiz Ahmad Parry vs. State of Jammu & Kashmir and others, [2016 (1) ESC 54 (SC)]**. In the said case, the matter related to appointment to the post of J & K Forest Service Range Officers, Grade-I, wherein the prescribed qualification was B.Sc. (Forestry) or its equivalent from any University recognised by the Indian Council of Agricultural Research (hereinafter referred to as the 'ICAR'). The appellants, in the said case, had a qualification of B.Sc. with Forestry as one of the major subjects and Master in Forestry i.e. M.Sc. (Forestry) on the date when he applied for the post in question, the Apex Court allowed the appeal holding as under:

“In our considered view, firstly, if there was any ambiguity or vagueness noticed in prescribing the qualification in the advertisement, then it should have been clarified by the authority concerned in the advertisement itself. Secondly, if it was not clarified, then benefit should have been given to the candidate rather than to the respondents. Thirdly, even assuming that there was no ambiguity or/and any vagueness yet we find that the appellant was admittedly having B.Sc. degree with Forestry as one of the major subjects in his graduation and further he was also having Masters degree in Forestry, i.e.,

M.Sc. (Forestry). In the light of these facts, we are of the view that the appellant was possessed of the prescribed qualification to apply for the post in question and his application could not have been rejected treating him to be an ineligible candidate for not possessing prescribed qualification.

In our view, if a candidate has done B.Sc. in Forestry as one of the major subjects and has also done Masters in the Forestry, i.e., M.Sc.(Forestry) then in the absence of any clarification on such issue, the candidate possessing such higher qualification has to be held to possess the required qualification to apply for the post. In fact, acquiring higher qualification in the prescribed subject i.e. Forestry was sufficient to hold that the appellant had possessed the prescribed qualification. It was coupled with the fact that Forestry was one of the appellant's major subjects in graduation, due to which he was able to do his Masters in Forestry."

The said case has no applicability to the facts of the present case inasmuch as Diploma in Engineering and B.Tech in Engineering are two different courses and thus the ratio of the judgement in the case of **Parvaiz Ahmad Parry vs. State of Jammu & Kashmir and others** has no applicability to the facts of the present case.

Sri Ashok Khare, Senior Counsel, has next relied upon a Full Bench of Punjab and Haryana High Court in the case of **Manjit Singh vs. State of Punjab and others, [2011 (1) 115 (P&H) (FB)]**. In the said case, the advertisement for appointment to the post of the Physical Training Instructor, the minimum qualification prescribed was C.P.Ed. whereas the candidates possessing B.P.Ed or M.P.Ed. were rejected. The Punjab and Haryana Full Bench held as under:

"From the facts on record and dictum of above noticed judgements, it emerges that the candidate possessing higher qualification in the same line cannot be excluded from consideration for selection. It is a different matter that he/she may not be entitled to any additional weightage for higher qualification, but cannot be denied consideration at par with a candidate possessing minimum prescribed qualification. Denying consideration to a candidate having better and higher qualification in the same

line and discipline would definitely result in breach of Articles 14 and 16 of the Constitution of India.”

Thus, higher qualification in same line is the guiding factor. In the present case, we have already held that Diploma in Engineering is not in same line as Graduate in Engineering

The next case relied upon by Sri Khare is the judgement of the Apex Court in the case of **Zahoor Ahmad Rather and others vs. Sheikh Imtiyaz Ahmad and others, (2019) 2 SCC 404**. The Apex Court was confronted with the question regarding the appointment to the post of Technician III wherein the qualification prescribed was Matriculation with ITI in Electrical Trade whereas the persons non-suited were Diploma Holders in Electrical Engineering/Electronics & Communication. The Apex Court, after discussing the various judgements including the judgement of the Supreme Court in the case of Jyoti K.K. (supra), held as under:

“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 KK 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 KK turned.

Ms Wadia sought to draw sustenance from the fact that the holder of an ITI certification can obtain lateral entry to the diploma course. The point of the matter, however, is that none of the appellants fit the

description of candidates who had secured an ITI certification before seeking a lateral entry to a diploma course. Plainly, when an ITI with matric is required, a person who does not hold that qualification is not eligible.

The submission based on Note 12, urged by Ms Wadia, cannot be accepted. The stipulation that the qualification prescribed is the bare minimum requirement of the job emphasises that it is an essential requirement, a threshold which cannot be dispensed with. Under Note 12, the Board is entitled to assign additional weightage for a higher qualification. Whether such a weightage should be assigned is a matter for the Board to determine. The SSSB did not assign an additional weightage for a higher qualification. In not exercising an enabling power, no fault can be found with the SSSB. An enabling provision postulates a discretion which may or may not be exercised. A candidate has no vested right to assert that the Board must as a mandate assign an additional weightage to a higher qualification. Whether to do so or not is a matter for the Board to determine. All that Note 12 postulates is that the mere possession of the prescribed qualification will not entitle a candidate to be called for the written test or interview. The Board may shortlist among eligible candidates by granting a weightage to a higher qualification in the relevant line or discipline. But the words "as may be decided by the Board" in Note 12 indicate that the Board is vested with a discretion in pursuance of an enabling power which it may or may not exercise."

Sri Ashok Khare, Senior Counsel, submits that the said judgement in the case of Zahoor Ahmad (supra) failed to take into account the earlier decision of the Coordinate Benches of the Supreme Court and the law declared by the Coordinate Benches will have to be treated as a binding precedent. He has placed reliance upon the case of **Shanker Raju vs. Union of India, 2011 (2) SCC 132** and the judgement of the Apex Court in the case of **Sandeep Kumar Bapna Vs. State of Maharashtra, 2014 (16) SCC 263** to press that the judgement in the case of Zahoor Ahmad (supra) should not be followed by this Court. To test the said argument of Sri Ashok Khare, it is essential to revert to the judgement of the Apex Court in the case of Shanker Raju (supra) wherein the Supreme Court

held as under:

*“(9). It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim "stare decisis et non quieta movere", which means "to stand by decisions and not to disturb what is settled." Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace." The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible. This has been aptly pointed out by Chandrachud, C.J. In **Waman Rao v. Union of India, (1981) 2 SCC 362** at pg. 392 thus:*

"40. ... for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis."

*(10) In **Manganese Ore (India) Ltd. v. Regional Asstt. CST, (1976) 4 SCC 124**, at page 127, it was opined that the doctrine of stare decisis is a very valuable principle of precedent which cannot be departed from unless there are extraordinary or special reasons to do so.*

In the other case, **Sandeep Kumar Bapna Vs. State of Maharashtra** as cited by Sri Khare, the Supreme Court has held as under:

“19. It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the

application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam. Validation of Ratio in Niranjana Singh:

20. We must now discuss in detail the decision of a Two-Judge Bench in Rashmi Rekha Thatoi vs. State of Orissa, (2012) 5 SCC 690, for the reason that in the impugned Order the Single Judge of the High Court has proclaimed, which word we used intentionally, that Niranjana Singh is per incuriam. The 'chronology of cases' mentioned in Rashmi Rekha elucidates that there is only one judgment anterior to Niranjana Singh, namely, Balchand Jain vs State of M.P. (1976) 4 SCC 572, which along with the Constitution Bench decision in Gurbaksh Singh Sibbia, intrinsically concerned itself only with anticipatory bail. It is necessary to give a salutary clarion caution to all Courts, including High Courts, to be extremely careful and circumspect in concluding a judgment of the Supreme Court to be per incuriam. In the present case, in the impugned Order the learned Single Judge appears to have blindly followed the incorrect and certainly misleading editorial note in the Supreme Court Reports without taking the trouble of conscientiously apprising himself of the context in which Rashmi Rekha appears to hold Niranjana Singh per incuriam, and equally importantly, to which previous judgment. An earlier judgment cannot possibly be seen as per incuriam a later judgment as the latter if numerically stronger only then it would overrule the former. Rashmi Rekha dealt with anticipatory bail under Section 438 and only tangentially with Sections 437 and 439 of the CrPC, and while

deliberations and observations found in this clutch of cases may not be circumscribed by the term obiter dicta, it must concede to any judgment directly on point. In the factual matrix before us, Niranjana Singh is the precedent of relevance and not Gurbaksh Singh Sibbia or any other decision where the scope and sweep of anticipatory bail was at the fulcrum of the conundrum.

21. Recently, in Dinesh Kumar, this conundrum came to be considered again. This Court adhered to the Niranjana Singh dicta (as it was bound to do), viz. that a person can be stated to be in judicial custody when he surrendered before the Court and submits to its directions. We further regretfully observe that the impugned Judgment is repugnant to the analysis carried out by two coordinate Benches of the High Court of Bombay itself, which were duly cited on behalf of the Appellant. The first one is reported as Balkrishna Dhondurani vs Manik Motiram Jagtap 2005 (Supp.) Bom C.R.(Cri) 270 which applied Niranjana Singh; the second is by a different Single Bench, which correctly applied the first. In the common law system, the purpose of precedents is to impart predictability to law, regrettably the judicial indiscipline displayed in the impugned Judgment, defeats it. If the learned Single Judge who had authored the impugned Judgment irrepressibly held divergent opinion and found it unpalatable, all that he could have done was to draft a reference to the Hon'ble Chief Justice for the purpose of constituting a larger Bench; whether or not to accede to this request remains within the discretion of the Chief Justice. However, in the case in hand, this avenue could also not have been traversed since Niranjana Singh binds not only Co-equal Benches of the Supreme Court but certainly every Bench of any High Court of India. Far from being per incuriam, Niranjana Singh has metamorphosed into the structure of stare decisis, owing to it having endured over two score years of consideration, leading to the position that even Larger Benches of this Court should hesitate to remodel its ratio."

It is no doubt true that the Court is bound by the judgements of the Coordinate Benches delivered prior in point of time, however, in the present case, there is no such binding judgement of the Apex Court laying down the law that Degree in Engineering is in the same line of progression as Diploma in Engineering, the Apex Court while deciding

the case in Zahoor Ahmad (supra) referred to the earlier judgement in the case of Jyoti K.K. (supra) and distinguished the same on the ground that the analogy of the judgement in the case of Jyoti K.K. (supra) hinged around interpretation of Rule 10(a)(ii) of the Kerala State and Subordinate Services Rules, 1958. Thus, we have no option but to repel the argument as raised by Sri Khare to the effect that the judgement of the Apex Court in case of Zahoor Ahmad (supra) should not be followed.

The next judgement relied upon by Sri Khare is the judgement in the case of **State of Punjab and others v. Anita and others, 2015 (2) SCC 170** wherein the issue related to the appointment to the post of JBT Teacher wherein the qualification prescribed under Rules was Matric with two years' course in JBT Training and knowledge of Punjabi and Hindi language of Matriculation standard or its equivalent. The Managing Committee while advertising the said post prescribed a different qualification from what was prescribed under Rules and the Apex Court held that the persons appointed did not have the requisite qualification as prescribed under Rules, the Supreme Court recorded as under:

“While examining the advertisement, which has been extracted hereinabove, we are satisfied that applications were not invited from candidates possessing the qualification depicted in the appendix to the 1981 Rules, pertaining to the posts of JBT/ETT teachers. It is also apparent, that none of the private respondents possess the qualification of JBT/ETT, and as such, none of them can be stated to be possessed of qualifications statutorily prescribed and delineated in the appendix of the 1981 Rules. None of the private respondents was therefore per se eligible for appointment to the posts of JBT/ETT teachers. This was one of the pointed reasons why the State Government did not grant its approval to the selection and appointment of the private respondents. In our considered view, no infirmity can be found in the aforesaid determination at the hands of the State Government.”

Interestingly, in the said judgement also, the Supreme Court clarified the basis of the judgement of the Supreme Court in the case of

Jyoti K.K. (supra) which was delivered in the context of Rule 10(a)(ii) of the relevant Rules and was held not to be applicable in the case in question i.e. **State of Punjab and others v. Anita and others** for the simple reason that there was no similar statutory provision authorising the person with higher qualification. The above referred judgement relied upon by Sri Khare in fact lays down categorically that a higher qualification cannot be basis for determining eligibility unless there is enabling provision which is absent in the present case.

The next judgement relied upon was delivered in the case of **Chandrakala Trivedi vs. State of Rajasthan and others, (2012) 3 SCC 129** wherein the Supreme Court considered the word “equivalent”. The said judgement has no applicability to the present case as Diploma in Engineering and Bachelors of Technology can never be termed as equivalent for the simple reason that they are in the different streams as already held by us.

The next case relied upon by Sri Khare is the judgement in the case of **Mohd. Riazul Usman Gani and others v. District & Sessions Judge, Nagpur & others, 2000 (2) SCC 606** which pertain to appointment to the post of peons wherein the prescribed qualification was education upto Standard VII and the persons possessing higher education, that is more than Standard VII were non-suited, the said judgement held it to be irrational. The above case will have no applicability to the facts of the present case as it is clear that the candidate who has received education over Class-VII by necessary implication must have completed the criteria of Class-VII, in another words, the qualifications were directly comparable, hence, it was possible to determine higher and lower qualifications. However, in the present case, we have already held that a Diploma in Engineering and a degree are not comparable and further we are afraid that the said judgement has no applicability as the judgement itself clarified that the findings were on the facts of the case in hand and should not be understood as laying down a rule of universal application.

Para 20 & 21 of the judgement is being quoted hereinbelow:

“If an employee does not perform the duties attached to the post disciplinary proceedings can certainly be taken against him. An employer cannot throw up his hands in despair and devise a method denying appointments to a person who otherwise needs the requisite qualifications on the ground that if appointed, he would not perform his duties. Qualification prescribed is minimum. Higher qualification cannot become a disadvantage to the candidate.

A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possess qualifications equivalent to SCC examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application.”

The next judgement relied upon by Sri Khare in the case of **PM. Latha and another vs. State of Kerala and others, (2003) 3 SCC 541** wherein the question of recruitment to the lower post of Primary/Upper Primary Teachers in the Government Schools was in consideration, the qualification prescribed was “pass in TTC” whereas the holders of B.Ed. degree were not-suited. The Supreme Court held as under:

“We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of appellants, it is pointed out before us that Trained Teachers Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with

TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for post of primary teachers as only TTC and not B.Ed. Whether B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates, for the present vacancies advertised, as eligible.

The division bench in the impugned order upheld the decision of the single judge that in terms of the advertisement, B.Ed. candidates were not eligible to take up the selection and to be included in the rank list. We fail to understand that having thus upheld the decision of the learned single judge what was the justification for the division bench to refer to statutory recruitment Rules applicable to teachers in private primary schools, aided by the Government and the judgments rendered by the High Court in their cases, for reversing the judgment of the Single Judge and maintaining the Rank List including names of the B.Ed. candidates and their appointments on the basis of rules yet to be framed.”

In the said decision, the Supreme Court had clearly held that a degree of B.Ed. does not necessarily implies pass in 'TTC' and thus the holders of B.Ed. were denied the relief. The said case, in fact, re-enforces our findings that the Graduates in Engineering are not entitled to be considered as it cannot be implied that a Graduate in Engineering has the qualifications of a Diploma in Engineering.

The last case relied upon by Sri Khare is **Rajpal v. State of Haryana, 2002 10 SCC 588** wherein the question before the Court was whether the person who had passed Matriculation Examination conducted by Varanaseya Sanskrit Vishwavidyalaya, however, the candidate had a certificate of 10+2 of an examination held by Haryana Education Board, which was the requisite prescribed qualification. In that context, the Supreme Court held that the appellants possess the requisite qualification

as was prescribed. We are afraid that the facts and the judgement in the case of Rajpal vs. State of Haryana has no applicability to the facts of the present case as the qualification was held to be equivalent of what was prescribed in the advertisement which is not the case in the present case.

Thus, our answer to the first two questions, is clear that a degree in the field in question, cannot be viewed as a higher qualification compared to Diploma in that field and that the judgement in the case of Alok Kumar Mishra vs. State of U.P. and Kartikey vs. State of U.P. lay down the correct position in law while holding that a degree holder is excluded from the zone of consideration for appointment of a Junior Engineer.

The second aspect, as argued by Sri M.C. Chaturvedi, that is to be considered, is whether the State, as an employer, is free to prescribe qualifications, as a condition of eligibility, after taking into consideration, the nature of jobs, required, can be subjected to a judicial review.

In the case in hand, the only qualification prescribed was “Diploma in Engineering” and it was not the minimum qualification, in fact, the State, as an employer, specifically excluded “Graduate in Engineering”.

This aspect of the matter has been duly adverted to by the Hon'ble Supreme Court in **Zahoor Ahmad Rather and others Vs. Sheikh Imtiyaz Ahmad and others** wherein the Apex Court held as under:

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. 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. turned.

28. Ms Wadia sought to draw sustenance from the fact that the holder of an ITI certification can obtain lateral entry to the diploma course. The point of the matter, however, is that none of the appellants fit the description of candidates who had secured an ITI certification before seeking a lateral entry to a diploma course. Plainly, when an ITI with Matric is required, a person who does not hold that qualification is not eligible.

29. The submission based on Note 12, urged by Ms Wadia, cannot be accepted. The stipulation that the qualification prescribed is the bare minimum requirement of the job emphasises that it is an essential requirement, a threshold which cannot be dispensed with. Under Note 12, the Board is entitled to assign additional weightage for a higher qualification. Whether such a weightage should be assigned is a matter for the Board to determine. The SSSB did not assign an additional weightage for a higher qualification. In not exercising an enabling power, no fault can be found with the SSSB. An enabling provision postulates a discretion which may or may not be exercised. A candidate has no vested right to assert that the Board must as a mandate assign an additional weightage to a higher qualification. Whether to do so or not is a matter for the Board to determine. All that Note 12 postulates is that the mere possession of the prescribed qualification will not entitle a candidate to be called for the written test or interview. The Board may shortlist among eligible candidates by granting a weightage to a higher qualification in the relevant line or discipline. But the words "as may be decided by the Board" in Note 12 indicate that the Board is vested with a discretion in pursuance of an enabling power which it may or may not exercise."

In subsequent decision of the Hon'ble Supreme Court in Civil Appeal No. 4597 of 2019 (arising out of SLP (Civil) Nos(s). 8494 of 2018) (The Maharashtra Public Service Commission vs. Sandeep Shriram Warade and others) held as under:

"The essential qualifications for appointment to a

post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

In view of the above referred judgements, we have no hesitation in holding that the State, as an employer, is well equipped to decide the desirable qualification or may prescribe additional qualification including any grant of preference. The Court cannot lay down the conditions of eligibility much less, it can go into the question of desirable qualification being at par with the essential qualification.

Now, coming to the third question i.e. Question No. (C) that is whether the degree holder can be held to be ineligible to participate in a selection process for Junior Engineer in the light of the relevant statutory Rules.

Sri Khare, in support of his submissions made earlier, has contended that in some of the statutory Rules, Diploma in Engineering is specified as the minimum qualification while with regard to some of the Departments, Diploma in Engineering is specified as required qualification. Be that as it may we have already held that Diploma in

Engineering being distinct from Graduate in Engineering, no benefit flows from the advertisement whether the Diploma in Engineering is prescribed as a 'minimum qualification' or 'required qualification'.

Testing the said arguments as raised by Sri Khare although on record no Rules have been placed, however, in view of the finding recorded by us that Diploma in Engineering is not the same as Bachelor in Engineering and also the finding recorded by us that the State is well equipped to prescribe the requisite required qualification keeping in view the requirement of posts for which the advertisements are issued, we hold that whether Diploma in Engineering is specified as a minimum qualification or a required qualification, Graduates in Engineering would not be entitled to be considered and will be out of zone of consideration unless a candidate possess both the qualifications to explain it further suppose a candidate after acquiring Diploma in Engineering also passes Graduation in Engineering he would be eligible, in view of the fact that he has Diploma in Engineering which is the required qualification for applying to the post and cannot be denied to participate only because he has any qualification additional to the prescribed qualification. However, the State Government is free to provide for equivalence as was done by the Kerala State while incorporating Rule 10(a)(ii). Since there is nothing on record in the present case to show that there was any Rule or Directive of the State Government to provide equivalence, it is only logical to conclude that degree holders are ineligible to participate in the selection process for Junior Engineer in the light of the specific provisions incorporated under the advertisement in question.

Reverting the Question No. D whether the exclusion of degree holders from the zone of consideration would meet the tests as propounded by the Supreme Court in the **State of Uttarakhand and others vs. Deep Chandra Tewari and another**. It is essential that the relevant observations in the case of Deep Chandra Tewari (supra) are reproduced which are as under:

“We are conscious of the principle that when particular qualifications are prescribed for a post, the candidature of a candidate possessing higher qualification cannot be rejected on that basis. No doubt, normal rule would be that candidate with higher qualification is deemed to fulfil the lower qualification prescribed for a post. But that higher qualification has to be in the same channel. Further, this rule will be subject to an exception. Where the prescription of a particular qualification is found to be relevant for discharging the functions of that post and at the same time, the Government is able to demonstrate that for want of the said qualification a candidate may not be suitable for the post, even if he possesses a “better” qualification but that “better” qualification has not relevance with the function attached with the post.”

Thus, the Supreme Court itself clarified that as a normal Rule, the candidate with higher qualification is deemed to fulfill the lower qualification prescribed for a post but the higher qualification has to be in the same channel, we have already held that Diploma in Engineering and Graduate in Engineering cannot be held to be in the same channel and also that Graduate in Engineering cannot be deemed to fulfil the qualification which are prescribed for grant of Diploma. Thus, we have no hesitation in holding that the exclusion of degree holders from the zone of consideration in respect of advertisement in question meets the test as laid down by the Supreme Court in the case of **State of Uttarakhand and others vs. Deep Chandra Tewari and another.**

Now we proceed to deal with the reference in the case of **Himani Singh vs. State of U.P. and 5 others**, the advertisement in question prescribed the qualification of Graduate in Commerce 'O' level Diploma issued by any Government Recognised Institution. The petitioners were non-suited as they hold a Post-Graduate Diploma in Computer Application. Thus, the claim of the petitioners, before the learned Single Judge, was that their qualifications are superior to the prescribed qualification i.e. 'O' level Diploma in Computer Application. In the said case, the Uttar Pradesh Subordinate Services Selection Commission,

Lucknow had issued a Notification on 27.8.2018 notifying that the 'O' level Diploma in Computer Application had been specified as essential eligibility qualification and it further provided that there does not exist any Government Order specifying the equivalent of qualification with 'O' level Diploma in Computer Operation and that National Institute of Electronics and Information Technology (hereinafter referred to 'NIELIT'), earlier DOEAC Society had informed that apart from NIELIT no other institution was authorized to grant 'O' level Certificate in Computer Operation. The learned Single Judge, in his judgement dated 04.12.2018, rejected the contention of the petitioners therein relying upon the earlier decision of the learned Single Judge in Civil Misc. Writ Petition No. 19687 of 2018 (Yogendra Singh Rana and 15 others vs. State of U.P. and others). While dismissing the said writ petition, learned Single Judge held that the assessment with regard to the suitability of the higher qualification with a higher proficiency in the field of Computer Operation is in the field of policy and would not justify interference by the Writ Court. Before the Special Appeal Court, the petitioners had argued that the judgement of the Yogendra Rana (supra) is subject matter of pending appeal in which interim order has also been passed. It was thus argued before the Special Appeal Court that in view of decision in the case of Jyoti K.K. (supra) and Parvez Ahmad Parry (supra), the matter requires to be considered by the larger Bench that is how the matter was referred vide order dated 15.2.2019.

In view of the facts in the case, it is clear that there was no clarification/notification by the State Government providing for equivalence of any other qualification as equal to 'O' level Diploma in Computer Application. There being no material on record either before the learned Single Judge or before us to show that qualification possessed by the petitioners was in the same line of progression and also there being no material on record to show that the entire syllabus as is prescribed for grant of 'O' level Diploma in Computer Application was also the syllabus

studied by the students for grant of Post Graduate Diploma in Computer Application (hereinafter referred to 'PGDCA'). In view of the said facts, we record that the degree PGDCA does not pre-suppose the qualification of 'O' level Computer Operation as is awarded by *NIELIT*.

Coupled with the said fact, we have already held that it is the State Government which has the powers to prescribe the requisite qualification required for the efficient discharge of duties for the post for which the advertisement is issued and that being outside domain of judicial review as held by the Hon'ble Supreme Court in the case of *Zahoor Ahmad (supra)* and *Maharashtra Public Service Commission vs. Sandeep Shriram Warade and others (supra)*. We hold that the persons having PGDCA cannot be presumed to be having the qualification of 'O' level Diploma in Computer Application.

Order :-

By the Court :- Thus, our answers to the questions posed before the Full Bench are as under:

1) 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.

2) The decision in the case of *Alok Kumar Mishra (supra)* and *Kartikey (supra)* laid down the correct position in law holding that the degree holder is excluded from the zone of consideration for appointment as a Junior Engineer with regard to the Diploma in question.

3) The degree holder is held to be ineligible to participate in the selection process of Junior Engineer in the light of the Advertisement issued.

4) The exclusion of the degree holders from the zone of consideration is in consonance with the tests propounded by the Supreme Court in case of **State of Uttarakhand and others vs. Deep Chandra**

Tewari and another.

5) The State Government, while prescribing the essential qualifications or desirable qualifications are best suited to decide the requirements for selecting a candidate for nature of work required by the State Government and the courts are precluded from laying down the conditions of eligibility. If the language in the Rules is clear judicial review cannot be used to decide what is best suited for the employer.

6) The 'O' level Diploma granted by *NIELIT* is not equivalent to Post Graduate Diploma in Computer Application and there is no presumption available to hold that the PGDCA possess the necessary qualification as prescribed for 'O' level Diploma accorded by *NIELIT*.

The questions referred are answered as above, the files are relegated to the court concerned for adjudication in terms of the questions answered by us.

Order Date: 23.7.2019

Puspendra

(Bala Krishna Narayana,J.)

(Ramesh Sinha,J.)

(Pankaj Bhatia,J.)