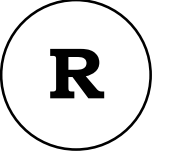


Reserved on : 25.04.2026
Pronounced on : 29.07.2026



IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 29TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.101332 OF 2025 (S - RES)

BETWEEN:

- 1 . SRI VIJAY SHANKAR DESHINGE
AGED ABOUT 39 YEARS,
OCC. AEE,
R/O. C/O. KHB DISTRICT PROJECT OFFICE,
BAGALKOT – 587 101.
- 2 . PRAMODA B. P.,
AGED ABOUT 38 YEARS,
OCC. AEE,
R/O. BEHIND IJOOR POLICE STATION,
KHB DISTRICT PROJECT OFFICE,
RAMANAGARA – 562 159.
- 3 . SAHANA M.,
AGED ABOUT 37 YEARS,
OCC. AEE,
R/O. KHB DISTRICT PROJECT OFFICE,
UDUPI DISTRICT
DAKSHINA KANNADA – 574 118.
- 4 . IRFAN AHMED,
AGED ABOUT 39 YEARS,



OCC. AEE,
TECHNICAL SECTION,
KARNATAKA HOUSING BOARD,
CAUVERY BHAVAN, 3RD FLOOR,
K.G. ROAD, BENGALURU – 560 001.

... PETITIONERS

(BY SRI GURUDAS KHANNUR, SR.ADVOCATE A/W
SRI JAGADISH PATIL, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF HOUSING,
M. S. BUILDING, VIKAS SOUDHA,
BENGALURU – 560 001.
- 2 . KARNATAKA HOUSING BOARD,
REPRESENTED BY ITS COMMISSIONER,
III AND IV FLOOR, CAUVERY BHAVAN,
K. G. ROAD, BENGALURU – 560 009.
- 3 . KARNATAKA HOUSING BOARD,
REPRESENTED BY ITS SECRETARY,
III AND IV FLOOR, CAUVERY BHAVAN,
K. G. ROAD, BENGALURU – 560 009.
4. GANESH H.N.,
S/O NATARAJ H.N.,
AGED ABOUT 40 YEARS
OCC.: ASSISTANT ENGINEER
KHB HEAD OFFICE
BENGALURU.
5. ANITA S.,
W/O VENUGOPAL C.N.,
AGED ABOUT 35 YEARS

ASSISTANT ENGINEER
KHB HEAD OFFICE
BENGALURU.

6. ASHA K.M.,
W/O ASHWIN M.,
AGED ABOUT 37 YEARS
ASSISTANT ENGINEER
KHB, SURYA NAGAR, 4TH PHASE
BENGALURU.
7. BASAVARAJU
S/O HANAMANTHA
AGED ABOUT 36 YEARS
ASSISTANT ENGINEER
KHB, SURYA NAGAR
4TH PHASE, BENGALURU.
8. RAKSHITH GOUDA H.S.,
S/O SOMEGOUDA
AGED ABOUT 35 YEARS
ASSISTANT ENGINEER
KHB, DISTRICT PROJECT OFFICE
CHIKKAMAGALUR.
9. PRADEEP RAO S.,
S/O K.V.SATTANARAYANA RAO
AGED ABOUT 37 YEARS
ASSISTANT ENGINEER
KHB, DISTRICT PROJECT OFFICE
MANGALURU.
10. SUNIL KUMAR B.R.,
S/O RAMASWAMY
AGED ABOUT 36 YEARS
ASSISTANT ENGINEER
KHB, DISTRICT PROJECT OFFICE
CHITRADURGA.

11. AYASH BANU
W/O ASKAR AHMED
AGED ABOUT 39 YEARS
ASSISTANT ENGINEER
KHB OFFICE, MANDYA.
12. C.N.VENUGOPAL
S/O NAGEGOWDA
AGED ABOUT 37 YEARS
ASSISTANT ENGINEER
KHB, DISTRICT PROJECT OFFICE,
MANDYA.
13. ASHA K.S.,
W/O MOHAN S.S.
AGED ABOUT 40 YEARS
ASSISTANT ENGINEER
KHB, HEAD OFFICE
BENGALURU.
14. ROOPA N.,
W/O VINOD KUMAR T.,
AGED ABOUT 40 YEARS
ASSISTANT ENGINEER
KHB, DISTRICT PROJECT OFFICE
BENGALURU.
15. HARISH H.,
S/O HANUMANTHARAYAPPA
AGED ABOUT 36 YEARS
ASSISTANT ENGINEER
KHB, DISTRICT PROJECT OFFICE
UDUPI.
16. SITARA Y.N.,
W/O L.LAXMAN RAO
AGED ABOUT 38 YEARS
ASSISTANT ENGINEER

KHB, DISTRICT PROJECT OFFICE
HUBBALLI.

17. HAREESHA K.,
S/O KENCHAPPA H.,
AGED ABOUT 36 YEARS
ASSISTANT ENGINEER
KHB, DISTRICT PROJECT OFFICE
SHIVAMOGGA.
18. HARISH N.S.,
S/O K.N.SRINIVAS RAO
AGED ABOUT 38 YEARS
ASSISTANT EXECUTIVE ENGINEER
KARNATAKA HOUSING BOARD
3RD FLOOR, E-BLOCK
CAUVERY BHAVAN
BENGALURU – 560 009.
19. SOWMYA V.N.
D/O NINGAPPA V.H.,
AGED ABOUT 38 YEARS
ASSISTANT EXECUTIVE ENGINEER
KARNATAKA HOUSING BOARD
BENGALURU – 560 009.
20. SMT.VASANTH KUMARI C.P.,
AGED ABOUT 55 YEARS
OCC.:AEE, KHB, BALLARY
R/O: C/O:KBB DISTRICT PROJECT OFFICE
S.N.PETE, BELLARY
DISTRICT BELLARY – 583 101.
21. SHRI SUDHEER P.BANARE
S/O PADMANABH N.SHETTI
AGED ABOUT 58 YEARS
OCC.:EXECUTIVE ENGINEER
KARNATAKA HOUSING BOARD

SURYANAGAR, 4TH PHASE
 SWAMY VIVEKANAND YOGA
 UNIVERSITY ROAD
 KONASANDRA, JIGANI
 BENGALURU – 560 105.

... RESPONDENTS

(BY SRI T.HANUMAREDDY, AGA FOR R-1;
 SRI H.R.GUNDAPPA, ADVOCATE FOR R2 AND R3;
 SRI RAJASHEKHAR BURJI, ADVOCATE FOR R4 TO R17;
 SRI NEELENDRA D.GUNDE, ADVOCATE FOR R-18;
 SRI KRISHNA MOHANA REDDY C., AND
 SRI VIJAYKUMAR KOTIN, ADVOCATES FOR R19;
 SRI M.S.BHAGWAT, SR.COUNSEL A/W
 SRI A.D.KULKARNI, ADVOCATE FOR R-20;
 SRI VIJAYKUMAR AND SRI OMKAR L.DESAI,
 ADVOCATES FOR R-21)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) ISSUE A WRIT IN NATURE OF CERTIORARI QUASHING THE IMPUGNED GRADIENT LIST IN OFFICIAL MEMO DATED. 22/01/2025 BEARING NO. KaGruMo/AaSha/01/2025 PASSED BY R2 VIDE ANNEXURE-G AND DIRECT THE 3RD RESPONDENT TO PREPARE FRESH GRADIENT LIST WITH RESPECT TO PETITIONERS IN THE INTEREST OF JUSTICE AND EQUITY; B) ISSUE A WRIT IN NATURE OF CERTIORARI QUASHING THE NOTIFICATION DATED. 01/06/2022 BEARING NO. DOH 59 KHB 2020 ISSUED BY 1ST RESPONDENT VIDE ANNEXURE-B WITH RESPECT TO PETITIONERS IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners, graduate Engineers, in the service of the Karnataka Housing Board (hereinafter referred to as 'the Board'), stand, at the portals of this Court calling in question the legality of the Notification dated **01-06-2022**, whereby the **Karnataka Housing Board (Recruitment and Conditions of Service) (Amendment) Rules, 2022** (hereinafter referred to as 'the Rules') came to be promulgated. The impugned amendment heralds a significant departure from the existing service structure by carving out, for the first time, a promotional avenue enabling diploma-holder Engineers to ascend, to the cadre of Executive Engineer. It is this legislative exercise, perceived by the petitioners as an impermissible obliteration, of a long-recognised distinction between graduate and diploma Engineers, that has propelled them to invoke the extraordinary jurisdiction of this Court.

2. Heard Sri Gurudas Khannur, learned senior counsel appearing for the petitioners; Sri T. Hanumareddy, learned Additional Government Advocate appearing for respondent No.1; Sri H.R. Gundappa, learned counsel appearing for respondents 2 and 3, Sri Rajashekhar Burji, learned counsel appearing for respondent Nos. 4 to 17; Sri Neelendra D Gunde, learned counsel appearing for respondent No.18; Sri Krishna Mohan Reddy, learned counsel appearing for respondent No.19; Sri M.S.Bhagwat, learned senior counsel appearing for respondent No.20 and Sri Vijaykumar and Sri Omkar L. Desai, learned counsel appearing for respondent No.21.

3. Facts adumbrated, are as follows: -

3.1. The petitioners entered the service of the Board as Assistant Engineers on **29-06-2010**. By dint of merit and experience, they earned promotion to the cadre of Assistant Executive Engineer with effect from **01-07-2021**, thereby becoming eligible, in due course, for consideration to the higher cadre of Executive Engineer. Hardly had they entered the promotional stream when the landscape of the service Rules

underwent a fundamental transformation. The amendment of 2022 dismantled the hitherto prevailing scheme by creating an altogether new promotional channel, permitting diploma-holder Assistant Executive Engineers also to compete for elevation to the cadre of Executive Engineer.

3.2. The petitioners, perceiving the amendment to be destructive of the long-standing distinction maintained between graduate and diploma Engineers, did not remain mute spectators. They addressed a series of representations to the authorities, asserting that the creation of such a promotional avenue was contrary to the settled service structure governing engineering establishments. Those representations, however, remained unanswered.

3.3. While matters stood thus, the Board proceeded to notify a **gradation list dated 22-01-2025**, wherein diploma-holder Assistant Executive Engineers and graduate Assistant Executive Engineers came to be arranged in a common seniority list for the purpose of promotion to the cadre of Executive Engineer. The publication of the common gradation list, coupled with the

impugned amendment to the Rules, constitutes the genesis of the present *lis*. Feeling aggrieved by what they perceive to be an erosion of the distinction between unequals and a dilution of their promotional prospects, the petitioners have approached this Court invoking its writ jurisdiction.

SUBMISSIONS:

PETITIONERS:

4. Learned senior counsel Sri Gurudas Khannur representing the petitioners would vehemently contend that nowhere in any of the services of any statutory organization or the Government even a diploma holder is entitled to get promotion beyond the cadre of Assistant Executive Engineer. There is a reason behind the restriction of diploma holders up to the cadre of Assistant Executive Engineer, as they are not qualified to perform complicated manifold engineering functions in the Department. Therefore, the Rules run foul of the hitherto settled practice. He would submit that the petitioners who are degree holders since 2010 are now placed along with the degree holders who began as diploma holders and

completed their degree on 01-07-2021. There is gross disparity in the amendment to the Rules, as unequals are treated as equals. It is not that the petitioners have kept quiet but are agitating when the amendment to the Rules were notified. The Board has not considered those representations. Therefore, this Court must intervene and obliterate the amendment to protect the classification between graduate Engineers and diploma holders as, a practice that has prevailed over five decades is now changed by the Board.

RESPONDENTS IN UNISON:

5. **Contrariwise**, the learned counsel appearing for several respondents in unison contend that it is not that the private respondents who are now beneficiaries of the amended Rules are treated on par with graduate Engineers. In terms of the Rules, an Assistant Executive Engineer would become entitled to consideration for promotion to the cadre of Executive Engineer if he is a graduate with three years of experience and if he is a diploma holder with five years of experience. Therefore, on the experience criteria graduate Engineers will always have a march over diploma holder Engineers. The Rule carves out 25% quota in promotion to

the cadre of Executive Engineer for diploma holder and seventy-five percent quota to graduate Engineers. Therefore, the rule dividing entry to the cadre of Executive Engineer, in the aforesaid manner, cannot be held to be arbitrary. It is a policy of the Government and the wisdom and who should be promoted where cannot be justiciable under Article 226 of the Constitution of India. They would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

CONSIDERATION:

7. The factual matrix, though uncomplicated, requires a closer scrutiny to appreciate the controversy in its proper perspective. The chronology of entry into service of the petitioners and the private respondents assumes considerable significance. For the sake of convenience, the career progression of the **21st respondent** may be taken as illustrative of the class of diploma-holder Engineers.

8. The 21st respondent, possessing a Diploma in Civil Engineering, entered the service of the Board as a **Junior Engineer** on **23-03-1989**. By successive promotions, he reached the cadre of **Assistant Engineer** in the year **2003**, and thereafter ascended to the post of **Assistant Executive Engineer** on **25-07-2007** in terms of the Recruitment Rules then holding the field. Like all similarly situated diploma-holder Engineers, his promotional journey culminated at the post of Assistant Executive Engineer, for the Rules then in force contemplated no further promotional avenue.

9. The petitioners stand on an entirely different footing. They entered service nearly two decades later, in the year **2010**, not as Junior Engineers, but by direct recruitment as **Assistant Engineers**, armed with Bachelor's Degrees in Engineering. By the time they commenced service, the 21st respondent and others similarly situated had already occupied the higher post of Assistant Executive Engineer. Consequently, the diploma-holder Engineers had, by then, accumulated substantial experience in the feeder cadre, having discharged the duties of Assistant Executive

Engineers for well over a decade, before the impugned amendment came into existence.

10. It thus becomes imperative to notice the statutory framework governing the service conditions. Recruitment, promotion and other incidents of service within the Board are regulated by the **Karnataka Housing Board (Recruitment and Conditions of Service) Rules**, framed in exercise of the powers conferred under **Section 74 of the Karnataka Housing Board Act, 1962**. These Rules underwent amendment on **10-08-2005**, marking the first occasion on which diploma-holder Assistant Engineers were permitted to earn promotion to the cadre of Assistant Executive Engineer. It was under the aegis of this amendment that the 21st respondent and several others entered the cadre of Assistant Executive Engineer in the year 2007.

11. Three years thereafter, the petitioners entered the service of the Board, not into the cadre of Assistant Executive Engineer but into the lower cadre of Assistant Engineer through direct

recruitment. Matters remained undisturbed until the year **2022**, when the Government introduced yet another amendment to the Rules. This amendment, unlike its predecessor, travelled a step further. It extended to diploma-holder Assistant Executive Engineers a limited promotional avenue to the cadre of Executive Engineer, thereby altering the service structure that had hitherto prevailed. It is this amendment that has become the epicentre of the present controversy. The Rules that have become the bone of contention read as follows:

**"SCHEDULE-III
(see rule 5)**

Sl. No	Category of Post	Method of recruitment	Minimum qualification
xx	xx	xx	Xx
9.	Executive Engineer	(1) Seventy five percent by promotion from the cadre of Assistant Executive Engineer (Civil) with BE/B.Tech degree in Civil Engineering and (2) Twenty five percent by promotion from the cadre of Assistant Executive Engineer (Civil) with Diploma in Civil Engineering.	For promotion Assistant Executive Engineer (Civil) with Engineering Degree. – (1) Must be a holder of B.E /B.Tech Degree in Civil Engineering from a University established by Law; and (2) Must have put in a service of not less than three years in the cadre of Assistant Executive Engineer (Civil) For Promotion of Assistant Executive Engineer (Civil) with Diploma. – (1) Must be a holder of Diploma in Civil Engineering from a Institute

			recognized by the Government; and (2) Must have put in a service of not less than five years in the cadre of Assistant Executive Engineer (Civil)"
--	--	--	--

The afore-quoted rules create **two distinct channels of promotion** to the cadre of Executive Engineer. The first, constituting **seventy-five per cent** of the promotional vacancies, is reserved for Assistant Executive Engineers possessing a **Bachelor's Degree in Civil Engineering**, who become eligible upon completion of **three years' service** in the feeder cadre. The remaining **twenty-five per cent** is earmarked exclusively for Assistant Executive Engineers holding a **Diploma in Civil Engineering**, who become eligible only after rendering **five years' service** in that very cadre.

12. **A careful reading of the amended Rules dispels any notion that graduate and diploma-holder Engineers have been indiscriminately merged into a single stream. The distinction is consciously preserved. Educational qualifications continue to operate as the basis of**

classification. The period of qualifying service is separately prescribed. The quota itself is distinctly apportioned. The Rule merely recognises that both streams, though entering the promotional avenue through different gateways and on different conditions, ultimately converge upon the common destination of the cadre of Executive Engineer.

13. The question that, therefore, falls for consideration is, not whether the distinction between degree and diploma holders has disappeared—it plainly has not. The real issue is, whether the limited extension of a promotional avenue to diploma-holder Assistant Executive Engineers, by reserving for them a modest twenty-five percent quota, renders the Rule arbitrary, discriminatory or violative of the constitutional guarantee of equality under Article 14. It is this constitutional issue that now engages the attention of the Court.

14. **The avowed object behind the amendment is neither obscure nor elusive. It is to alleviate the stagnation that had overtaken diploma-holder Assistant Executive Engineers who, notwithstanding decades of blemishless service, found the doors of further advancement permanently closed.** Stagnation in public service has never been viewed by constitutional Courts as a desirable incident of administration. **Promotion is not merely an enhancement of rank or emoluments; it is a legitimate instrument for sustaining morale, recognising experience and preserving institutional efficiency. A service, bereft of promotional prospects, inevitably breeds frustration; frustration, if allowed to fester, gradually corrodes administrative vitality. It is for this reason that service jurisprudence has consistently recognised the obligation of the State to endeavour, wherever administratively feasible, to create promotional avenues, so that an employee's career does not culminate in perpetual stagnation.**

15. It is no doubt true that diploma-holder Engineers had already earned two promotions—from Junior Engineer to Assistant Engineer and thereafter to Assistant Executive Engineer. **Equally true, however, is the fact that their journey thereafter reached a constitutional *cul-de-sac*, with no possibility of advancement, irrespective of the length or quality of service rendered.** The Government, perceiving such stagnation, consciously chose to carve out a limited promotional channel by reserving **twenty-five per cent** of the promotional vacancies in the cadre of Executive Engineer for diploma-holder Assistant Executive Engineers possessing longer experience. Such an exercise is quintessentially one of policy.

JUDICAL LANDSCAPE:

16. The question, therefore, is not whether another view was possible or even preferable. The question is whether the policy is so manifestly arbitrary, capricious or constitutionally offensive as to warrant judicial invalidation. It is here that the settled contours of judicial review assume significance. Courts exercising jurisdiction

under Article 226 of the Constitution of India do not sit in constitutional appeal over legislative wisdom. The power of judicial review is directed against illegality, irrationality and procedural impropriety - not against policy merely because another policy appears more attractive.

17. Jurisprudence is replete with judgments of the Apex Court or of this Court with regard to such interference.

17.1. The Apex Court, in **P.U. JOSHI v. ACCOUNTANT GENERAL**¹, has held as follows:

"....

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as

¹ (2003) 2 SCC 632

the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

The Apex Court in **P.U. JOSHI v. ACCOUNTANT GENERAL**, while **delineating the limits of judicial review in matters of service conditions, has unequivocally held that questions concerning the formation of services, restructuring of cadres, prescription of qualifications, eligibility criteria, promotional avenues and conditions of service lie within the exclusive domain of the rule-making authority. Such matters constitute policy choices entrusted to the executive, and constitutional Courts cannot substitute their own perceptions of administrative desirability for those of the employer.** The State remains at liberty to amend service Rules, restructure cadres, alter eligibility conditions and create or modify

promotional avenues to meet changing administrative exigencies, subject only to constitutional limitations.

17.2. The Apex Court, later, in the case of **UNION OF INDIA v. PUSHPA RANI**² has held as follows:

"....

37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

The same principle reverberates through the decision of the Apex Court in **UNION OF INDIA v. PUSHPA RANI**, wherein it is

² (2008) 9 SCC 242

authoritatively declared that matters relating to creation or abolition of posts, restructuring of cadres, prescription of qualifications, sources of recruitment and promotional criteria lie within the exclusive preserve of the employer. Judicial review, in such matters, is an exception, not the rule. Unless the policy is demonstrated to be contrary to a constitutional or statutory mandate, patently arbitrary or tainted by *mala fides*, Courts cannot assume unto themselves the role of administrators. **The constitutional function of judicial review is to examine legality - not to redesign service structures or recalibrate promotional schemes according to judicial notions of fairness.**

17.3. The principle finds further reaffirmation in **SATYA DEV BHAGPUR v. STATE OF RAJASTHAN**³, wherein the Apex Court holds as follows:

"....

15. It is trite that the Courts would be slow in interfering in the policy matters, unless the policy is found to be palpably discriminatory and arbitrary. This Court would not interfere with the policy decision when a State is in a position to point out that there is intelligible differentia in application of policy and that

³ (2022) 5 SCC 314

such intelligible differentia has a nexus with the object sought to be achieved.

... ..

20. It could thus clearly be seen that the Division Bench in *Jagdish Prasad* [*Jagdish Prasad v. State of Rajasthan*, 2016 SCC OnLine Raj 646] after considering the record, has come to the finding that the Government of Rajasthan has conducted several training programmes for the persons working with it on contractual basis, as well as under different schemes. The training programmes mainly pertain to the peculiar working pattern in the rural areas of the State of Rajasthan including tribal and arid zones. The Division Bench has further come to a finding that participation in such a training is mandatory and non-joining of the same would result in non-renewal of service contracts. It has been held that persons having special knowledge in working in the State of Rajasthan form a class different than the persons not having such experience of working in the State. It was found that the benefit extended by the State policy was only that of giving a little more weightage on the basis of experience and all the candidates were required to undergo the rigor of selection process. The Division Bench has clearly held that the experienced candidates in other States cannot be compared with the candidates working in the State of Rajasthan, as every State has its own problems and issues and the persons trained to meet such circumstances, stand on a different pedestal."

The Apex Court cautions Constitutional Courts against entering the thicket of policy making. Judicial restraint, the Court reminds, is the hallmark of constitutional adjudication in matters involving executive policy. Interference becomes permissible only when the policy is palpably discriminatory, bereft of intelligible differentia or lacking any rational nexus with the object sought to be achieved. So long as the

classification rests upon a discernible principle having a reasonable connection with the purpose of the legislation, Article 14 does not stand violated merely because another classification may also have been conceivable.

18. It is in the light of these authoritative pronouncements that the impugned amendment must be tested. The amendment does not indiscriminately obliterate the distinction between graduate and diploma-holder Engineers. Far from doing so, it consciously preserves that distinction by maintaining separate quotas, distinct qualifying service and independent eligibility criteria. The object sought to be achieved is the removal of stagnation amongst diploma-holder/Assistant Executive Engineers without unsettling the predominant promotional advantage enjoyed by graduate Engineers. The means adopted bear a direct and rational nexus with that objective. Such a policy choice can scarcely be characterised as arbitrary, merely because it introduces a limited promotional opportunity where none existed before.

19. The submission that no other Department of the State permits diploma-holder Engineers to rise to the cadre of Executive Engineer is equally devoid of constitutional substance. Equality under Article 14 does not operate by compelling uniformity across all departments of Government. **Service Rules are framed having regard to the peculiar administrative needs of each establishment. What may be appropriate for one organisation need not necessarily govern another. The Constitution does not mandate mechanical uniformity; it insists only upon the absence of arbitrariness.**

20. The challenge, therefore, cannot succeed merely because the impugned Rules depart from what has historically prevailed elsewhere. Constitutional adjudication is concerned with legality, not with comparative administrative practices. **The wisdom of the policy belongs to the Government; its legality alone falls within the province of this Court.**

JUDICIAL RECOGNITION OF CLASSIFICATION:

21.1. The Apex Court in the case of **CHANDRAVATHI P.K. v. C.K. SAJI**⁴ recognizes this classification and puts its imprimatur in the following paragraphs:

"....

41. 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.

... ..

43. 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 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 officer concerned 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."

21.2. Later, the Apex Court in the case of **DILIP KUMAR GARG v. STATE OF U.P.**⁵, has held as follows:

"....

⁴ (2004) 3 SCC 734

⁵ (2009) 4 SCC 753

11. In *P. Murugesan v. State of T.N.* [(1993) 2 SCC 340: 1993 SCC (L&S) 445: (1993) 24 ATC 149] this Court held up the validity of the rule prescribing the ratio of 3:1 between graduates and diploma-holders in promotion as also the longer qualifying period for service for diploma-holders. While noting the earlier decisions a three-Judge Bench of this Court observed: (SCC p. 350, para 14)

"14. This decision clearly supports the appellants' contention and goes to sustain the validity of the impugned amendment. If the diploma-holders can be barred altogether from promotion, it is difficult to appreciate how and why is the rule-making authority precluded from restricting the promotion. The rule-making authority may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances that while it is not necessary to bar the diploma-holders from promotion altogether, their chances of promotion should be restricted. On principle, there is no basis for the contention that only two options are open to a rule-making authority—either bar the diploma-holders altogether or allow them unrestricted promotion on par with the graduates."

12. In *J. Ranga Swamy v. Govt. of A.P.* [(1990) 1 SCC 288 : 1990 SCC (L&S) 76 : AIR 1990 SC 535] and in *State of Rajasthan v. Lata Arun* [(2002) 6 SCC 252 : 2002 SCC (L&S) 859 : AIR 2002 SC 2642] this Court observed that the eligibility qualification for admission to a course or for recruitment or promotion in service are matters to be considered by the appropriate authority, and not by the courts.

13. In the present case, what we find is that Rule 5(ii) of the 2004 Rules has done away with the requirement of passing a qualifying examination for the diploma-holder Junior Engineers for promotion as Assistant Engineers, and they have been placed on a par with degree-holder Junior Engineers for this purpose. We see no unconstitutionality or illegality in the same. It is entirely for the authorities to decide whether the degree-holders and diploma-holders should be treated on a par or not for the purpose of promotion from the post of Junior Engineer to the post of Assistant Engineer.

14. Shri Bobde, learned counsel for the appellants submitted that degree-holder Junior Engineers have always been treated differently from Junior Engineers who are only diploma-holders for the purpose of promotion, and that the latter have always been required either to get the requisite qualification or pass the qualifying examination. In our opinion, merely because in the past they have been treated differently does not mean that they cannot be treated identically subsequently.

15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a court of appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. (See *Union of India v. Pushpa Rani* [(2008) 9 SCC 242 : (2008) 2 SCC (L&S) 851] and *Official Liquidator v. Dayanand* [(2008) 10 SCC 1] .)

16. The decision to treat all Junior Engineers, whether degree-holders or diploma-holders, as equals for the purpose of promotion is a policy decision, and it is well settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute. We find no such violation in this case.

17. In *Tata Cellular v. Union of India* [(1994) 6 SCC 651: AIR 1996 SC 11] it has been held that there should be judicial restraint in administrative decision. This principle will apply all the more to a rule under Article 309 of the Constitution.”

21.3. The Apex Court, again, in **STATE OF UTTARAKHAND**

v. S.K. SINGH⁶ has held as follows:

⁶ (2019) 10 SCC 49

"....

6. The diploma-holders in the post of JEs felt aggrieved as it would result in some of their juniors, who had degrees, being promoted earlier and, thus, on their ultimate promotion to the post of AE, would rank senior to them. This was also stated in the context of the fact that for further promotions from AE upwards, the essential qualification was only a diploma, without any quota or accelerated promotion being carved out for degree-holders. These would be all promotion posts without any direct recruitment."

21.3.1. The Apex Court, in **CHANDRAVATHI P.K. v. C.K. SAJI**, unequivocally recognized that classification founded upon educational qualification is a reasonable classification satisfying the mandate of Article 14. The Court further declared that the State, in exercise of its rule-making power, is competent to prescribe distinct promotional quotas for degree-holders, diploma-holders and certificate-holders. Such differentiation is neither alien to constitutional philosophy nor offensive to the equality clause. **The judgment thus affirms that educational qualification remains a constitutionally permissible basis for structuring promotional avenues.**

21.3.2. The constitutional position is rendered even more explicit in **DILIP KUMAR GARG v. STATE OF UTTAR PRADESH**. The controversy before the Apex Court bore striking resemblance to the issue that arises in the case at hand. **There too, diploma-holder Junior Engineers questioned the promotional framework governing higher posts. Repelling the challenge, the Apex Court held that the rule-making authority possesses ample competence either to deny promotion altogether, restrict promotional opportunities, or place degree-holders and diploma-holders on an equal footing, depending upon the administrative exigencies of the service.** The Court observed that if the authority is empowered to exclude diploma-holders altogether from promotional consideration, there exists no constitutional impediment in conferring upon them only a restricted promotional opportunity. The choice lies exclusively with the rule-making authority and not with the constitutional Court.

21.3.2.1. The Apex Court proceeded to sound a note of judicial restraint of enduring significance. It observed that eligibility qualifications for recruitment or promotion are matters lying

squarely within the province of the employer. Merely because degree-holders and diploma-holders were treated differently in the past, does not create an immutable constitutional mandate that they must forever continue to be so treated. To stretch Article 14 to such an extent, the Court cautioned, would render the functioning of administration virtually impossible. Courts are not appellate authorities over executive policy. They do not determine promotional methodology; they merely examine whether the policy travels beyond constitutional boundaries.

21.3.3. The same jurisprudential thread continues in **STATE OF UTTARAKHAND v. S.K. SINGH**. The Apex Court noticed the grievance of diploma-holder Junior Engineers that, degree-holders, though juniors in service, were obtaining accelerated promotions on account of separate promotional quotas. Yet, the Court upheld the legislative wisdom underlying such a scheme and reiterated that the mere existence of differential promotional channels does not, by itself, infringe Article 14. Service jurisprudence recognises that promotional avenues may legitimately be designed to balance educational qualifications, experience, efficiency and administrative

requirements. Absolute parity has never been the constitutional command; reasonable classification alone is.

22. The cumulative effect of the aforesaid precedents leaves little room for debate. **They uniformly proclaim that the architecture of a service, the structuring of promotional avenues and the balancing of competing interests between different classes of employees are matters pre-eminently falling within executive wisdom. Judicial review intervenes only where constitutional boundaries are transgressed. It does not substitute administrative discretion with judicial preference.**

23. Much emphasis was laid by the learned senior counsel for the petitioners upon judgments recognising the distinction between graduate Engineers and diploma-holder Engineers. There can indeed be no quarrel with the propositions enunciated therein. The distinction between educational qualifications has repeatedly received judicial recognition. Equally, however, those very authorities acknowledge the competence of the rule-making

authority to create separate promotional channels or earmark quotas for distinct classes of employees whenever administrative necessity so demands.

24. The judgments relied upon by the petitioners cannot, therefore, be read divorced from the factual and statutory contexts in which they were rendered. Precedents are not statutes. They illuminate principles; they do not fossilise service Rules for all time to come. Every judgment speaks to the facts before it, and every rule-making authority retains the constitutional freedom to remodel service conditions so long as the resulting policy does not descend into arbitrariness.

25. In the case at hand, the impugned amendment preserves the distinction between degree-holders and diploma-holders. It does not obliterate it. Separate quotas continue to exist. Distinct eligibility conditions continue to operate. Differential qualifying service continues to be insisted upon. The amendment merely introduces a carefully calibrated promotional avenue for

diploma-holder Assistant Executive Engineers with the avowed object of mitigating career stagnation. Such an exercise, far from being arbitrary, reflects a conscious balancing of competing service interests.

26. This Court searches in vain for any palpable unreasonableness, hostile discrimination or constitutional infirmity in the amended Rules. The policy neither treats unequals as equals nor obliterates intelligible differentia. On the contrary, it harmonises the competing claims of educational qualification and long administrative experience by preserving a substantial seventy-five percent promotional quota for graduate Engineers while carving out a limited twenty-five percent avenue for diploma-holder Engineers. Such legislative calibration cannot be branded as arbitrary merely because another arrangement may equally have been possible.

EPILOGUE:

27. Before parting, it requires emphasis that constitutional Courts exercise the power of judicial review with institutional restraint. Service Rules are not to be tested on the anvil of individual hardship or comparative advantage, but on the touchstone of constitutional validity. If every alteration in promotional policy were to be subjected to microscopic judicial re-evaluation merely because one class of employees perceives itself to be disadvantaged, the delicate balance between judicial review and executive governance would stand irretrievably disturbed. The Constitution entrusts policy to the executive and legality to the judiciary. Neither institution can usurp the province of the other without unsettling the constitutional equilibrium.

28. Tested on that touchstone, the impugned amendment withstands scrutiny. It neither broods over palpable arbitrariness nor transgresses the mandate of

Article 14. The petitioners have failed to demonstrate that the amendment is unconstitutional, irrational or actuated by *mala fides*. Interference under Article 226 of the Constitution would, therefore, amount not to judicial review but to judicial substitution of policy - a course impermissible in constitutional adjudication.

29. In the result, finding no merit in the challenge, this Court declines to exercise its extraordinary jurisdiction under Article 226 of the Constitution. The Writ Petition, being devoid of merit, stands **dismissed**.

No order as to costs.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT: MJ