

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NOS.979/2023, 999/2023 AND
1054/2023**

DISTRICT:- AURANGABAD

O.A.NO.979/2023

Vishvjeet Vasantrya Kulkarni,
Age : 29 years, Occ. Nil,
R/o. Tornagad, Nagar, 13th Cidco Scheme,
House No.R-37/2, Aurangabad,
Tq. & Dist. Aurangabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through it's Principal Secretary,
Public Works Department,
Mantralaya, Mumbai.
2. Chief Executive Engineer And
State Coordination Committee
Public Works Divisional Office, Mumbai,
Public Works Building, 4th Floor,
25 Mazban Path, Fort Mumbai.
3. Milind Shantilal Rathod,
Age : 34 years, Occ : Nil,
R/o. D/304, Amish Park, Miragaon,
Thane-401107.
4. Prasad Dnyaneshwar Jadhav,
Age : 32 years, Occ : Nil,
R/o. Panchshil Nagar, Virag,
Solapur.
5. Prakash Dashrath Nagargoje,
Age : 30 years, Occ : Nil,
R/o. Malegaon Chakala, Ghogas,
Pargaon, Beed, Maharashtra-431130.
6. Vishal Motilal Rathod,

Age : 27 years, Occ : Nil,
R/o. At Post Ektuni,
Tq. & Dist. Aurangabad-431121.

All C/o. Adv. Sangharsh V. Waghmare,
114, Mezzanine Floor, Veena Chambers,
21, Dalal Street, Fort,
Mumbai-400001.

...RESPONDENTS

O.A.NO.999/2023

1. Shivaji Balasaheb Borkar,
Age : 28 years, Occ. Nil,
R/o. At Pokharni Parbhani,
Tq. Parbhani, Dist. Parbhani.
2. Anuraj Sanjay Jadhav,
Age : 25 years, Occ. Nil,
R/o. Block No.16, Chawani, Aurangabad,
Tq. & Dist. Aurangabad.
3. Vikrant Sunil Pawar,
Age : 27 years, Occ. Nil,
R/o. Sarwala Bk., Tq. & Dist. Osmanabad.
4. Kapil Prakash Kamble,
Age : 26 years, Occ. Nil,
R/o. Purna, Tq. Purna, Dist. Parbhani.
5. Utkarsh Prataprao Khandagale,
Age : 25 years, Occ. Nil,
R/o. Panchil Nagar,
Tq. Parali, Dist. Beed.

...APPLICANTS

V E R S U S

1. The State of Maharashtra,
Through it's Principal Secretary,
Public Works Department,
Mantralaya, Mumbai.
2. The Chief Executive Engineer And
State Coordination Committee
Public Works Divisional Office, Mumbai,
Public Works Building, 4th Floor,
25 Mazban Path, Fort, Mumbai.

3. Milind Shantilal Rathod,
Age : 34 years, Occ : Nil,
R/o. D/304, Amish Park, Miragaon,
Thane-401107.
4. Prasad Dnyaneshwar Jadhav,
Age : 32 years, Occ : Nil,
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5. Prakash Dashrath Nagargoje,
Age : 30 years, Occ : Nil,
R/o. Malegaon Chakala, Ghogas,
Pargaon, Beed, Maharashtra-431130.
6. Vishal Motilal Rathod,
Age : 27 years, Occ : Nil,
R/o. At Post Ektuni,
Tq. & Dist. Aurangabad-431121.

All C/o. Adv. Sangharsh V. Waghmare,
114, Mezzanine Floor, Veena Chambers,
21, Dalal Street, Fort,
Mumbai-400001.

...RESPONDENTS

O.A.NO.1054/2023

1. The Association of Subordinate Service
of Engineers, Maharashtra State, Through its
President Shri Unmesh Bahubali Mudbidrikar,
Age : 53 years, Occ. Service, Having Office
address at: 1168, E-Ward, Takala, Kolhapur – 416001.
2. Mr. Saurabh Nandakumar Ugale,
Age : 30 years, Occ. Student,
R/at. Near Datta Mandir Faradpur, P.O. Deopur,
Tq. Sinnar, Nashik-422103
3. Mr. Ganesh Vinayak Kadam,
Age : 21 years, Occ. Student,
R/at. Deshmukhnagar, Sinnar,
Post Sinnar, Dist. Nashik-422103.

...APPLICANTS

V E R S U S

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Public Works Department (PWD),
Mantralaya, Mumbai-32.
2. Chief Executive Engineer cum Chairman,
State Coordination Committee
Public Works Divisional Office, Mumbai,
Public Works Building, 4th Floor,
25 Mazban Path, Fort Mumbai. **...RESPONDENTS**

APPEARANCE : Shri Sachin Deshmukh, Counsel holding
for Shri M.S.Shaikh, Counsel for
Applicant in O.A.979/23.

: Shri S.S.Dambe, Counsel for
Applicants in O.A.999/23.

: Shri Yashodeep Deshmukh, Counsel
holding for Shri Anand Kawre,
Counsel for Applicants in
O.A.1054/23.

: Shri Anand Kawre, Counsel for
Applicants in O.A.1054/23.

: Shri Ajay Deshpande, learned Special
Counsel for respondent authorities in
respective O.As.

: Shri S.V. Waghmare, Counsel for private
respondents in both O.As.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

RESERVED ON : 11-03-2024

PRONOUNCED ON : 13-03-2024

ORDER

(Per : JUSTICE P.R.BORA, VICE CHAIRMAN)

1. Heard Shri Sachin Deshmukh, learned Counsel holding for Shri M.S. Shaikh, learned Counsel for applicant in O.A.No.979/2023, Shri S.S. Dambe, learned Counsel for applicants in O.A.No.999/2023, Shri Yashodeep Deshmukh, learned Counsel holding for Shri Anand Kawre, learned Counsel for applicants in O.A.No.1054/2023, Shri Ajay Deshpande, learned Special Counsel for respondent authorities in respective cases and Shri S.V. Waghmare, learned Counsel for private respondents in respective cases.

2. O.A.No.1054/2023 is filed by the Association of Subordinate Services of Engineers, Maharashtra State ("Association" for short). Learned Special Counsel appearing for the authorities as well as the learned Counsel appearing for the private respondents have strongly opposed entertaining the O.A. filed on behalf of the said Association. It has been argued that, application has not been filed in the proper format and the Association does not have any *locus* as it cannot be held to be an aggrieved person so as to invoke the jurisdiction of this Tribunal. In the affidavit in reply filed on behalf of the respondent no.1 also the objections are raised as about the

maintainability of the O.A. filed by the applicant Association. We, however, do not find much substance in the objections so raised.

3. From the documents filed on record it transpires that the office bearers of this Association were invited by the State to discuss the issue as about the proposed recruitment rules for the Engineering Services in Public Works Department in a meeting to be held on 19-10-2023. Letter dated 18-10-2023 received to the Association is filed on record. Accordingly, the President of the Association attended the said meeting. The Government vide its letter dated 01-11-2023 has forwarded the minutes of the said meeting to the President of the Association.

4. In the affidavit in reply filed on behalf of the State the aforesaid facts have been expressly admitted by the State Government. Considering the facts as aforesaid, it appears to us that the State Government which found it expedient to call the office bearers of the Association to discuss the said matter in the meeting held at Mantralaya, Mumbai and when the minutes of the meeting are also forwarded to the said Association, the Government now cannot raise an objection as about the *locus* of the said Association. We, therefore, reject these objections.

5. Advertisement No. 01/2023 was issued on 10.10.2023 by the Public Works Department of the State inviting applications to fill up 532 posts of Junior Engineer (Civil) (Group-B) (Non-Gazetted) (hereinafter referred to as the 'subject post'). In the advertisement the following qualification was prescribed for the subject post based on the Junior Engineer (Civil) Group 'B' non-gazetted in the Public Works Department and the Irrigation Department (Recruitment) Rules, 1998 (hereinafter referred to as Rules of 1998):-

(i) that the candidate must have passed the 10th examination,

(ii) that the candidate must possess 03 years' Diploma in Civil Engineering recognized by the Government or any other qualification as equivalent thereto,

6. The last date for submitting the applications was 05.11.2023. In the meanwhile the Government introduced the revised Recruitment Rules for the subject post named as Junior Engineer (Civil), Group-B, Non-Gazetted (Recruitment) Rules, 2023. The said Recruitment Rules were notified in the official gazette on 26.10.2023. The said rules were to come into force on the date of publication of said rules in the Government gazette. These rules are hereinafter referred to as 'the Rules of 2023'. Next day after the Rules of 2023 were notified in the

official gazette, the addendum was issued by the respondents to the advertisement published on 10.10.2023.

7. In the Rules of 2023 the educational qualification is provided in clause 3(b)(ii) of the said rules as under:-

“3(b)(ii) Minimum educational qualification – a person holding a minimum Diploma or Degree or higher educational qualification in Civil Engineering.”

8. The applicants are aggrieved by the aforesaid clause in the Rules of 2023. The objections as have been raised against change in the qualification as above are as under:-

(1) that the change made by the State in the Recruitment Rules insofar as clause 3(b)(ii) is concerned and the addendum to that extent published on 27.10.2023, are illegal, arbitrary and *ultra vires*.

(2) that once the recruitment process had commenced, it was impermissible for the Government to change the criteria of educational qualification.

(3) that the Degree and Diploma in Civil Engineering are not the comparable qualifications. The Degree is higher qualification than Diploma and as such, the respondents cannot subject the Diploma holders in Civil Engineering to compete with Degree holders in Civil Engineering or having more higher qualification in Civil Engineering, as it would amount to treating unequals as equals.

(4) that the Diploma holders are not having any other opportunity of recruitment in the Government except the post of Junior Engineer (Civil) (Group-B) (Non-gazetted), whereas the Degree holders can apply for lot many other posts.

(5) that the issue about holding Degree holders eligible for the post of Junior Engineer (Civil) is pending before the Hon'ble Supreme Court and unless the said issue is decided by the Hon'ble Supreme Court the Government could not have brought change in the qualification clause, thereby making the Degree holders also eligible for to be considered for the said post.

(6) that the decision making process adopted by the State does not withstand the test of consistency, transparency and predictability.

(7) Clause 4 of the Rules of 2023 is also alleged to be arbitrary exercise of powers by the State. The decision to fill in only 40% posts by nomination i.e. by recruitment of fresh candidates is patently illegal, discriminatory and violative of articles 14, 16 & 18 of the Constitution of India.

9. The action of the respondent State more particularly by its Public Works Department of making the holders of degree and more higher qualification in Civil Engineering eligible for to be appointed on the subject post is alleged to be arbitrary and

violative of Articles 14, 16 & 21 of the Constitution of India. It has been argued that with the specific purpose the sole qualification of diploma in Civil Engineering was prescribed for the subject post in the rules of 1998. It has also been argued that such exclusive qualification was prescribed having regard to the nature of duties to be performed by the employees appointed on the post of Junior Engineer (Civil). It has also been argued that except the aforesaid post of Junior Engineer (Civil) no other post in the department is exclusively reserved for diploma holders; whereas there are many other posts available for the degree holders in Civil Engineering. It has also been argued that the candidates coming from the weaker section of the society, socially as well as economically who cannot secure the degree of Civil Engineering for financial and like constraints take the admission for the diploma course. In the circumstances, if the degree holders are permitted to compete for the post of Junior Engineer (Civil) it will be a competition between unequals and will substantially reduce the chances of the selection of Diploma holders.

10. As against the argument so made on behalf of the applicants the State has taken a stand that it is well within the power and authority of the State to determine the qualification

for the particular post. According to the State, the change brought in the criteria of educational qualification is with an object to keep pace with the progressive changes in circumstances and the changes in the requirements in the field of Civil Engineering. It is also the contention on behalf of the State that prescription of the higher qualification cannot be held to be a disqualification. The State has not disqualified the diploma holders from competing for the subject post. It has also been argued that to lay down requisite qualification for recruitment to Government services is the prerogative of the Government and hence pertains to the domain of policy. Further it has been argued that change in eligibility conditions and change in the qualifications since are the policy decisions, cannot be ordinarily interfered with by the Courts or Tribunals. It has also been argued that it is not impermissible for the State to bring change in the criteria of educational qualification even after recruitment process has commenced before it is completed. The only obligation which the State has to discharge is to widely publish the said change so that there shall not be any objection that despite possessing the educational qualification as per the changed criteria the candidate concerned was deprived from applying for the said post. The

allegations in regard to arbitrary exercise of powers by the State are denied by the State.

11. The first question, which falls for our consideration is “whether the act on part of the respondent State of making the Degree holders and more higher qualification in Civil Engineering also eligible for to be considered for the appointment on the post of Junior Engineer (Civil), (Group-B) (Non-Gazetted) along with Diploma holders in Civil Engineering, can be held to be arbitrary exercise of powers by the State and violative of the provisions under articles 14 and 16 of the Constitution of India”.

12. The basic issue is who has the right and authority to determine the educational qualification for the posts in the Government services. It is now well settled that it's the prerogative and authority of the State to lay down requisite qualifications for recruitment to the Government service. Invoking the said powers the State had in the year 1998 framed the Recruitment Rules for the subject post. In the Rules of 1998 'Diploma in Civil Engineering' was the sole qualification prescribed for the subject post.

13. It is true that when the aforesaid provision was challenged by the Degree holders in Civil Engineering, in the

matter of **Sangram Ramdas Gholve & Ors. vs. the State of Maharashtra & Ors. (Writ Petition No. 2908/2016** decided on 18.07.2016 with connected writ petitions) alleging the said rule 3(b)(ii) to be arbitrary, unreasonable and unconstitutional, the Division Bench of Hon'ble Bombay High Court rejected the said contention. It further cannot be disputed that in **O.A. No. 750/2021 (Milind Shantilal Rathod & Ors. vs. the State of Maharashtra & Ors.)** the declaration was sought by the petitioners therein, who were Degree holders in Civil Engineering, to the effect that the Degree in Civil Engineering be declared as eligible qualification for the subject post and further relief was also sought seeking directions against the State Government to allow the Degree holders in Civil Engineering to apply for the subject post in pursuance of the advertisement dated 22.07.2019, but both the prayers were rejected by this Tribunal vide its order dated 05.07.2022. Further, it is a matter of record that the challenge to the decision of the Tribunal in O.A. No. 750/2021 was turndown by the Hon'ble Division Bench of Bombay High Court vide judgment delivered in the W.P. No. 8568/2022 on 30.01.2023.

14. Both the aforesaid judgments first in the matter of **Sangram Ramdas Gholve & Ors.** (cited supra) and other in the

matter of **Milind Shantilal Rathod & Ors.** (cited supra), however, cannot be interpreted to mean that the State was restricted or precluded from making any change or modification or addition in the educational qualification for the subject post than prescribed in the Rules of 1998. What is held by the Hon'ble High Court in both these matters and the ratio laid down therein is that the rules framed by the State restricting the eligibility for appointment to the subject post only to Diploma holders in Civil Engineering cannot be held to be arbitrary.

15. It is well settled that to possess a higher qualification cannot be a ground for disqualification or for rejecting the candidature. The Government can prescribe even a higher qualification than prescribed in the rules. The authority to frame the rules contains in it the authority to make the change in the said rules. It is for the Government to decide, which qualification is to be determined considering the nature of duties and responsibilities of a particular post. Since it is the State to decide the qualification required for the subject post, the Court or Tribunal cannot on their assessment decide the merit of the requirement of the qualification so prescribed. In sum and substance, to decide the educational qualifications for the posts in Government service is the domain of the State. Of

course, the qualifications laid down or required must not only be relevant for the post, but also be constitutionally valid.

16. In the instant matter having regard to the settled legal position the change brought by the respondent State in clause 3(b)(ii) of the Rules of 2023, thereby making eligible the holders of Degree and more higher qualification in Civil Engineering eligible for the subject post cannot be held to be an arbitrary exercise of power by the State. It also cannot be accepted that inclusion of the Degree holders in Civil Engineering as eligible candidates for to be appointed on the subject post would amount to competition between unequals. Ordinarily and usually minimum qualification is prescribed for a particular post which means that the person applying for the subject post must be holding minimum qualification as prescribed and if he possesses a higher qualification than the minimum prescribed, that may not be a bar for him to apply for the subject post. Minimum qualification does not and cannot exclude the maximum. Protection of lesser qualification against apprehension of being out-stepped with higher qualification also cannot be a relevant consideration in determining the eligibility.

17. The next question which arises for our consideration is 'whether it was permissible for the respondents to amend the

recruitment rules and more particularly the criteria of educational qualification after issuance of the advertisement on 10-10-2023?’

18. Admittedly, revised recruitment rules have been notified in the official gazette on 26-10-2023 i.e. about 16 days after issuance of the advertisement inviting applications for the subject post. In the revised recruitment rules, respondents have made the holders of degree and more higher qualification in Civil Engineering also eligible to be considered for appointment on the subject post. On the strength of the revised recruitment rules notified on 26-10-2023 addendum was published on 27-10-2023 to the advertisement issued on 10-10-2023. According to the applicants such course was impermissible and change accordingly brought in the educational qualification after commencement of the recruitment process is illegal and *ultra vires*.

19. In support of the contention so raised learned Counsel for the applicants have relied upon the following judgments:

Sr. No.	Parties	Reported in/ WP/SLP
1	N.T.Devin Katti & Ors. V/s. Karnataka Public Service Commission & Ors.	(1990) 3 SCC 157

2	P.M. Latha & Anr. V/s. State of Kerala & Ors.	(2003) 3 SCC 541
3	Secretary, A.P. Public Service Commission V/s. B. Swapna & Ors.	(2005) 4 SCC 154
4	K. Manjusree V/s. State of Andhra Pradesh & Anr.	(2008) 3 SCC 512
5	Prakash Chand Meena & Ors. V/s. State of Rajasthan & Ors.	(2015) 8 SCC 484
6	Zonal Manager, Bank of India, Zonal Office Kochi & Ors. V/s. Aarya K. Babu & Anr.	(2019) 8 SCC 587
7	Sushil Kumar Pandey & Ors. V/s. The High Court of Jharkhand & Anr.	W.P.(C) No. 753/2023

20. Learned Counsel submitted that the aforesaid judgments reveal the settled legal position that, 'once the selection process is initiated by issuing advertisement inviting applications, selection of the candidates for the advertised post normally should be regulated by the rules or order prevailing on the date advertisement was issued.' According to the learned Counsel the ratio laid down in the aforesaid judgments clearly suggest that, after the recruitment process is commenced, it is impermissible to make change in the recruitment rules as it would amount to changing the rules of the game after the game has started. Learned Counsel pointed out that the Hon'ble Apex Court has further laid down that, "subsequent amendment in

the existing rule or order will not affect the pending selection process.”

21. As against the argument so made on behalf of the applicants, learned Special Counsel appearing for the State relying on the judgments in the case of **Zonal Manager, Bank of India, Zonal Office Kochi & Ors. V/s. Aarya K. Babu & Anr.** (*cited supra*) and **Ankita Thakur & Ors. V/s. The H.P.Staff Selection Commission & Ors. [Civil Appeal No.7602/2023]**, submitted that it is not impermissible to amend the recruitment rules and to notify the revised recruitment rules during pendency of the recruitment process. Learned Special Counsel further submitted that as held in the judgments relied upon by him, the State can very well amend or revise the recruitment rules even after commencement of the recruitment process provided that, the recruitment process is not completed and in such case owes an obligation to give wide publicity to the amendment or modification so made in the recruitment rules/ educational qualifications so that no one shall have an objection that though according to the changed qualification, he was eligible to apply for the subject post, he was deprived from making such applications as the change brought in the recruitment rules was not publicized.

22. We have gone through all the aforesaid judgments. There cannot be a dispute about the ratio laid down in the aforesaid judgments. It is, however, trite that, the ratio has to be applied in the facts and circumstances of the individual case concerned. In the case of **N.T.Devin Katty**, *cited supra*, recruitment to the post of Tahsildars was commenced with the notification issued by the Karnataka Public Service Commission on 23-06-1975. Said appointments were to be regulated by the Karnataka Administrative Services (Tahsildars) Recruitment (Special) Rules, 1975. Out of 50 posts advertised, 5 posts were reserved for Ex-Military personnel, 7 for Scheduled Castes (SC), 1 for Scheduled Tribes (ST) and 13 posts for Other Backward Classes (OBC). In the advertisement, it was stated that in the event of non-availability of sufficient number of candidates belonging to Ex-Military personnel, SC, ST & OBCs for filling up reserved vacancies, such vacancies were to be filled up as per rules in force.

23. After having gone through the entire text of the aforesaid judgment, it does not appear to us that the aforesaid judgment supports the argument as has been advanced by the learned Counsel appearing for the applicants. In the said matter, order dated 09.07.1975 was issued by the Government

after the recruitment process was started whereby the procedure for filling up reserved vacancies was modified and the Government directed the Karnataka Public Service Commission to prepare the list of successful candidates by making reservation in accordance with the procedure contained in the said Government order. The appellants therein challenged the validity of the said Government order prescribing different mode for preparing the select list of SC, ST, OBC and Ex-Military personnel before the Hon'ble High Court. The Hon'ble High Court upheld the Government order dated 09-07-1975. The matter was then taken up to the Hon'ble Apex Court. True that the Hon'ble Apex Court set aside the order passed by the Hon'ble High Court and disapproved the method adopted in filling up the reserved seats as per the order dated 09-07-1975, issued during pendency of the selection process, but on the ground that clause 11 of the said Government Order itself was containing the direction that the reservations already made for any category of post or service and advertised before issuance of the said Government Order shall remain unchanged and shall be deemed to have been validly made. The Hon'ble Apex Court has further observed that the direction so given was binding on the Government and the Government had therefore no authority

to give contrary directions as contained in the said Government order.

24. In paragraph 11 of the said judgment, the Hon'ble Apex Court has made the following observations:

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing Rules or Government Orders, and if it further indicates the extent of reservations in favour of Various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and Government Orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by, express provision or by necessary implication, if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the Rules and orders which were in force on the date of advertisement. Determination of

this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant Rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant Rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the Rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of Rules during the pendency of selection unless the amended Rules are retrospective in nature.

(Emphasis supplied)

25. Perusal of the aforesaid observations would reveal that, it is not impermissible to amend the recruitment rules during the pendency of the selection process and the amended rules can also be made retrospectively applicable, whereupon selection would be made in accordance with the amended rules. Further clarification given by the Hon'ble Apex Court leaves no doubt that if the amended rules are made retrospectively applicable, the candidate concerned may not be entitled to exercise the right acquired by him in accordance with the rules existing on the date of advertisement.

26. Insofar as the judgment in the case of **P.M. Latha & Another** (cited supra) is concerned, the qualification prescribed

in the said case for the advertised post was to have passed the course of Teachers Training Certificate (for short TTC), but instead of selecting holders of T.T.C., those holding B.Ed. degree were selected on the basis that B.Ed. is higher qualification than T.T.C. The Hon'ble Supreme Court, however, held that in terms of advertisement B.Ed. degree holders were not eligible for selection. It is thus evident that in the said matter B.Ed. qualification though was not provided in the advertisement the candidates were selected on the basis of the said qualification.

27. In the instant matters the facts are quite distinguishable. Though on the date of advertisement Diploma holders in Civil Engineering only were eligible for to be considered for appointment on the subject post, after commencement of the recruitment process, but before its completion and more precisely even before the last date of submitting the applications in pursuance of the said advertisement, the recruitment rules were modified and accordingly addendum was published giving eligibility even to the Degree holders in Civil Engineer or any other higher qualification in Civil Engineering to apply for the subject post.

28. Secondly, in the said matter the T.T.C. qualification was prescribed for appointment on the Lower Primary/Upper

Primary Government Schools since the T.T.C. course was designed to train the candidates for teaching to the students in the primary schools, whereas the said aspect was lacking in the B.Ed. course. In the present matters though it has been argued that the course of Diploma in Civil Engineering is the only course compatible to the nature of duties to be performed by the candidates appointed as Junior Engineers (Civil), no such convincing material is brought on record that the candidates holding the Bachelor's degree or having any more qualification in Civil Engineering would not be able to handle the duties of the subject post. Moreover, as we have noted hereinabove the settled legal position is that it is the prerogative of the Government to determine the qualifications required for the posts in the Government service and the Courts/Tribunals cannot substitute the said qualifications on their assessment of what the requirement should be.

29. The judgment of the Hon'ble Supreme Court in the case of **K. Manjusree** (cited supra) also is having distinguishable facts which may not have any impact on the instant matters. In the said case the minimum marks were provided only for the written test and not for the interview. The Hon'ble High Court made 02 changes after written examination and interviews were

over. First that, the marks for written examination were proportionately scaled so as to maintain ratio between written examination and interview as 3:1 instead of 4:1 and secondly, criteria of minimum marks was introduced even for interview which was not earlier there. This resulted in reshuffling of the selection list. In the circumstances Hon'ble Supreme Court held that introduction of requirement of minimum marks for interview after entire selection process amounted to change in the rules of game after game was played and hence held it to be clearly impermissible.

30. In the case of **Prakash Chand Meena** (cited supra) the recruitment process was concluded as per the terms and conditions in the advertisement and according to the rules existing when recruitment process began. The recruitment rules came to be amended and were notified much later. In the circumstances, it was held that the amendment subsequently brought, did have no bearing on the recruitment process initiated on the basis of the erstwhile rules, which were in existence on the date of issuance of the advertisement. In the matters in hand the recruitment rules are though changed after commencement of the selection process but before its completion and more precisely even before the last date of

submitting the applications on the basis of the advertisement issued on 10.10.2023.

31. In the case of **Zonal Manager, Bank of India, Zonal Office, Kochi & Ors. Vs. Aarya K. Babu & Anr.** (cited supra) the Hon'ble Supreme Court has held that if any change is made in the qualification criteria after notification is issued but before completion of the selection process and the employer/recruiting agency seeks to adopt the change for the ongoing selection process it would be incumbent on the employer to issue corrigendum incorporating the changes to the notification and to invite applications from those qualified as per the changed criteria and consider the same along with the applications received in response to initial notification. The aforesaid course has been adopted by the respondents in the present matters.

32. The judgment in the case of **Sushil Kumar Pandey** (cited supra) was heavily relied upon by the learned counsel for the applicants. In the said matter petitioner's case was based upon two issues; first that, the decision of full court on the administrative side goes contrary to the recruitment rules, regulations and terms contained in the advertisement and second that after the performance of each of the candidate was known and marks obtained by each of them in two forms of the

examination were disclosed, it was impermissible for High Court Administration to introduce fresh cut-off of marks. In that context the observations have come in the aforesaid judgment that “we shall continue to be guided by the principle “no change in the rules midway” dictum, which has become an integral part of the service jurisprudence. Facts in the present matters are certainly distinguishable and hence, same ratio may not apply to the facts of the present case.

33. The judgments of the Hon’ble Apex Court which we have discussed hereinabove thus lay down that :

- (i) it is the prerogative of the State to determine and lay down the educational qualifications required for the posts in the Government service and to make changes therein as and when required;
- (ii) change in the eligibility conditions/educational qualifications for the purpose of recruitment is a policy decision to be taken by the State;
- (iii) it is not impermissible to change the recruitment rules/educational qualifications even after commencement of the recruitment process;
- (iv) the recruitment rules can be amended retrospectively; and
- (v) if the rules are amended during pendency of the recruitment process but before completion of the said

process and the employer/recruiting agency if seeks to adopt the change it would be incumbent on the employer to issue a addendum incorporating the change in the notification earlier published and invite the applications from those qualified as per the changed criteria and consider them along with the applicants who have applied in response to the initial notification and then the selection shall be made in accordance with the amended rules.

34. In light of the legal provisions as are revealed from the judgments relied upon by the parties it has to be examined whether the acts on part of the respondents State of notifying the amended Recruitment Rules during pendency of the recruitment process and to publish the addendum to the advertisement dated 10.10.2023 on the basis of the changed educational qualification can be sustained? As discussed by us hereinabove, the Recruitment Rules can be modified and/or new Recruitment Rules can be notified even after commencement of the recruitment process on the basis of the rules existing on the date of publishing the advertisement. The crucial question is in what circumstances the amended rules can be made applicable to the pending or ongoing recruitment process? In the present matters admittedly the rules of 2023 are made applicable from the date they were published/notified

in the Government gazette. The said rules are notified in the Government gazette on 26.10.2023. As provided in the said rules, the said rules were made in exercise of powers conferred under proviso to Article 309 of the Constitution of India and in supersession of all other existing rules, orders or instruments issued in that behalf. Thus, on notification of the said rules on 26.10.2023, 1998 Rules were superseded and ceased to exist.

35. On the date of notification of the amended rules recruitment process commenced with publication of advertisement dated 10.10.2023 was at a very initial stage. The last date for submitting the applications was 05.11.2023. On 27.10.2023 the addendum was published declaring that the qualification clause as provided in the advertisement dated 10.10.2023 be read as provided in the said addendum. It is not in dispute that the addendum was in respect of the change in the educational qualification. Thus, 27.10.2023 onwards the eligibility clause in the advertisement published on 10.10.2023 was to be read as per the amended rules and thus, the holders of Degree or any other higher qualification in Civil Engineering also have become eligible to apply for the subject post along with Diploma holders in Civil Engineering. Selection was, thus, liable to be as per the provisions under the amended rules.

36. It has to be stated that the provisions made in the acts, rules and regulations cannot remain static. With the change in circumstances, rules, regulations as well as some of the provisions of the acts are bound to suffer change. Changes are essential to cope with the changing requirements. Many a times, the courts have suggested to take review of the existing provisions in the acts, rules and regulations and to examine whether any change or modification is required therein. Even the Government has issued instructions for taking periodical review of the provisions under the existing acts, rules and regulations and to ascertain whether any provision has become redundant and whether any provision requires to be amended or newly added in the existing provisions.

37. It is also a matter of common knowledge that the educational qualifications prescribed for various posts in the old enactments have been modified and educational qualifications have been revised/enhanced taking into account the current requirements. In fact, it is a continuous process. During the span of more than 25 years, changes in Engineering services have also taken place. In the circumstances, there appears no rationale in saying that, the educational qualification which was prescribed in the rules of 1998 cannot be changed or modified.

38. At the relevant time, perhaps, the legislatures felt the qualification as prescribed therein as the appropriate qualification. After lapse of 25 years, if it is felt by the legislatures to bring some change in the said qualification, that too having regard to the circumstances now prevailing, more particularly, the availability of the candidates having higher qualification and the new challenges which have been arisen, if the candidates possessing higher qualifications are also made eligible, it does not appear to us that to take such course is impermissible. The basic principle which has been time and again reiterated by the Hon'ble Apex Court is that, it is open to the appointing authority to lay down requisite qualifications for recruitment to Government services as it pertains to the domain of policy. Normally, it is for the State to decide the qualifications required and the courts cannot substitute the requirement on their assessment of what the requirement should be. It is the prerogative and authority of the employer State. Change in the eligibility conditions as well as the educational qualifications for the purpose of recruitment has been held by the Hon'ble Apex Court to be a policy decision which cannot be ordinarily interfered with by the courts.

39. The contention raised that if the degree holders are permitted to compete with the diploma holders, it will be a competition between the unequals, in our opinion does not bear much substance. In view of the fact that the Government has now prescribed the eligibility to the degree holders in Civil Engineering even for the post of 'Civil Engineering Assistant Group-C', which is admittedly a lower post than the subject post and falls in Group-C and having further considered that for promotion to the post of Junior Engineer (Civil) Group-B Non-gazetted, Civil Engineering Assistant, Group-C is the feeder cadre, we see no rationale in the oppose made by the applicants for inclusion of degree holders in Civil Engineering to be eligible to apply for the subject post. Possessing a higher qualification cannot be a ground for rejection. Moreover, the Government is not precluded from prescribing higher qualification than those prescribed in the rules.

40. We reiterate that, ultimately, it is the State who has to determine the qualification for the particular post as per its requirements. As such, on the grounds as are canvassed by the applicants, inclusion of the degree or more higher qualification in Civil Engineering as the eligibility for appointment to the post

of Junior Engineer (Civil) cannot be held violative of any Constitutional guarantee.

41. Though it has been argued by the learned counsel appearing on behalf of the association in O.A. No. 1054/2023 that the respondents shall not have brought the revised recruitment rules without adhering to the decision taken in the meeting held on 19.10.2023, it appears to us that merely on that ground it may be unjust to set aside the new recruitment rules made by the respondents invoking the provisions under Article 309 of the Constitution of India. Moreover, the change brought in the criteria of the educational qualification cannot be held to be an arbitrary exercise of power by the State and having considered the fact that it is only the State Government which can determine the educational qualification for the posts in the Government service as per its requirements, we are not inclined to accede to the prayer made by the association to set aside the recruitment rules notified on 26.10.2023 on the aforesaid ground.

42. After having considered the entire facts and circumstances involved in the present matter and having regard to the law laid down by the Hon'ble Apex Court through the

judgments which we have discussed hereinabove, we record our conclusions as follows:

[i] It is the prerogative and authority of the State to determine the qualifications required for recruitment to Government service.

[ii] It is within right and authority of the State to make changes in the existing rules as and when required.

[iii] The State can amend the rules even after commencement of the recruitment process.

[iv] Amended rules can be made retrospectively applicable by the State.

[v] On notification of amended rules on 27-10-2023, 1998 rules cease to exist.

[vi] That the respondent State has discharged its obligation as indicated in the judgment of the Hon'ble Supreme Court in the case of **Zonal Manager, Bank of India & Ors. V/s. Aarya K. Babu & Anr.**, (*cited supra*), by publishing the addendum to the original advertisement on 27-10-2023.

[vii] The amended rules, though, were notified by the State after commencement of the selection process, since it was at the initial stage and the date of submission of the applications was till 05-11-2023, the selections will be governed by the amended rules.

[viii] The applicants have failed in making out any case for quashment of clause 3(b)(ii) in the notification dated

26-10-2023 to the extent of added educational qualification as “or degree or higher qualification”.

[ix] Similarly, no case is made out by the applicants for quashment of the addendum dated 27.10.2023 issued to the advertisement published on 10.10.2023.

[x] No case is made out by the applicants to declare that the notification issued on 26.10.2023 cannot be made applicable to the advertisement No. 1/2023 published on 10.10.2023.

43. For the reasons elaborated above the following order is passed :-

ORDER

All these Original Applications are dismissed, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

LATER ON

44. At this juncture Shri S.S.Dambe, learned Counsel appearing for applicants in O.A.No.999/2023 has prayed for staying the effect and operation of the order passed by this Tribunal today for a week’s period to enable the applicants to approach the Hon’ble High Court. The request is opposed by Shri Ajay Deshpande, learned Special Counsel appearing for the

State authorities as well as by the learned Counsel appearing for the intervenor private respondents.

45. In the present matter there was no interim order in operation during the course of hearing of the present O.As. In the last week, the order came to be passed directing the respondents not to issue the order of appointment having considered the request made by the learned Special Counsel that some more time was required to complete his submissions, which was not possible on the said date. Since we have rejected the contentions raised on behalf of the applicants that making the holders of degree and more higher qualifications in Civil Engineering eligible for to be appointed on the post of Junior Engineer (Civil) Group-B Non-gazetted, is arbitrary, illegal or against the mandate of the Constitutional provisions and upheld the action of the respondents, and more particularly, when it is brought to our notice that the entire recruitment process has been completed and orders of appointment have only remained to be issued, we are not inclined stay the said process any more. Request of the applicants, is therefore, rejected.

MEMBER (A)

VICE CHAIRMAN