

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

WRIT PETITION NO.1575 OF 2023 (S-RES)
C/W

WRIT PETITION NOS.19636 OF 2022, 22241 OF 2022
AND 2236 OF 2023

IN WP 1575 OF 2023

BETWEEN:

SRI RANGARAMU M.R.
S/O RAMEGOWDA M.R.
AGED ABOUT 32 YEARS
WORKING AS ASSISTANT ENGINEER
CITY MUNICIPAL COUNCIL
MADIKERI – 571201.

...PETITIONER

(BY SRI. M.S.BHAGWAT, SENIOR COUNSEL FOR
SRI. SATISH K., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF URBAN
DEVELOPMENT
REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY
VIKAS SOUDHA
BENGALURU – 560001.
2. SRI. SHIVAKUMAR
S/O SRI AMARESH

AGE 30 YEARS
WORKING AS JUNIOR ENGINEER
(CIVIL)
TOWN MUNICIPAL COUNCIL,
SHIGGAON, HAVERI DISTRICT.

3. SRI S.V. PURUSHOTHAM
S/O K.VENKATEGOWDA
AGE 34 YEARS
WORKING AS JUNIOR ENGINEER
(CIVIL)
ZONAL OFFICE -8
MYSORE CITY CORPORATION
UDAYAGIRI
MYSURU.
4. SRI RAMANNA K.
S/O KEMPANNA
AGE 34 YEARS
WORKING AS JUNIOR ENGINEER
(CIVIL)
ZONAL OFFICE-04
THEREAFTER,.RA.SU CIRCLE
MYSURU CITY CORPORATION
MYSURU.
5. SRI RAJATH KUMAR H.S.
S/O SHIVASHANKARAI AH H.G.
AGE 30 YEARS
WORKING AS JUNIOR ENGINEER
(CIVIL)
ZONAL OFFICE -03
SHARADADEVI NAGAR CIRCLE
SHARADA DEVI NAGAR
MYSURU
MYSURU DISTRICT.
6. SRI VEERESH
S/O MOUNESHAPPA KALAPOOR

AGE 32 YEARS
 WORKING AS JUNIOR ENGINEER
 (CIVIL)
 HUBBALLI DHARWAD MUNICIPAL
 CORPORATION, DDTP SECTION
 DHARWAD.

7. SRI MITHUN
 S/O SHUBHAKARA
 AGE 32 YEARS
 WORKING AS JUNIOR ENGINEER
 (CIVIL)
 MANGALORE CITY CORPORATION
 LALBAUG, M.G. ROAD
 MANGALORE,
 DAKSHINA KANNADA DISTRICT.
8. SRI KIRANA A R.
 S/O RANGASWAMY
 AGE 29 YEARS
 WORKING AS JUNIOR ENGINEER
 (CIVIL)
 ZONAL OFFICE -01
 MYSORE CITY CORPORATION
 THYAGARAJA ROAD
 MYSURU.
9. SRI VENKATESH PALAGATTI
 S/O BHARAMAPPA
 AGE 30 YEARS
 WORKING AS JUNIOR ENGINEER
 (CIVIL)
 VANI VILAS WATER WORKS
 WATER SUPPLY AND UGD DIVISION
 MYSORE CITY CORPORATION
 MYSURU.

....RESPONDENTS

(BY SRI M.S.NAGARAJA, AGA FOR R1;
 SRI VIJAYAKUMAR, ADVOCATE FOR R2 TO R9)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT IMPUGNED KARNATAKA MUNICIPAL CORPORATIONS (COMMON RECRUITMENT OF OFFICERS AND EMPLOYEES) RULES, 2011 PUBLISHED VIDE NOTIFICATION DATED 11.04.2011 BEARING NO.UDD 156 ACB 2009 BY THE RESPONDENT (ANNEXURE-A) INsofar AS PROVIDING FOR FILLING UP OF 25% OF THE POST OF ASSISTANT EXECUTIVE ENGINEER (CIVIL) FROM THE CADRE OF JUNIOR ENGINEER (CIVIL) IS ILLEGAL UNCONSTITUTIONAL AND VOID AND OPPOSED TO ARTICLES 14 AND 16 OF THE CONSTITUTION OF INDIA AND ETC.

IN WP 19636 OF 2022

BETWEEN:

1. SRI SUDHEENDRA NAIK
S/O BALU NAIK
AGED ABOUT 30 YEARS
WORKING AS ASSISTANT ENGINEER(CIVIL)
IN THE OFFICE OF
TUMAKURU CITY CORPORATION
TOWN HALL, TUMAKURU-572102
R/O SUDHA NILAYA
3RD CROSS, S S PURAM
TUMAKURU - 572102.
2. SRI VINOD BAICHABAL
S/O BALAPPA BAICHABAL
AGED ABOUT 30 YEARS
WORKING AS ASSISTANT ENGINEER(CIVIL)
IN THE OFFICE OF
VANIVILAS WATER WORKS
MYSORE CITY CORPORATION
MYSURU-570020.

PRESENTLY R/AT NO.1072,
4TH 'A' MAIN, 10TH CROSS,

VIJAYANAGAR I STAGE
MYSURU-570017.

- 3 . SMT. POORNASHREE S
W/O CHARAN M.
AGED ABOUT 28 YEARS
WORKING AS ASSISTANT
ENGINEER(CIVIL)
IN THE OFFICE OF
MYSORE CITY CORPORATION
MYSURU-570020.

PRESENTLY R/AT NO.438
SATHYA MARGA
OPP. GEETHA SCHOOL
SIDDARTHA LAYOUT
MYSURU - 570011.

4. SMT. MEGHANA H.S.
W/O POORNACHANDRA A.M.
AGED ABOUT 28 YEARS
WORKING AS ASSISTANT ENGINEER(CIVIL)
IN THE OFFICE OF
VANIVILAS WATER WORKS
MYSORE CITY CORPORATION
MYSURU-570020.

PRESENTLY R/AT DOOR NO.2,
SSS APARTMENT
NEXT TO RELIANCE FRESH MART
SANGAM CIRCLE
VIJAYANAGAR II STAGE
MYSURU-570017.

...PETITIONERS

(BY SRI SRIKANTH M.P., ADVOCATE)

AND:

1. STATE OF KARNATAKA
URBAN DEVELOPMENT DEPARTMENT
VIKASA SOUDHA
DR. AMBEDKAR ROAD
BENGALURU -560 001.
2. THE DIRECTOR
MUNICIPAL ADMINISTRATION
DEPARTMENT
VISVESVARAYA TOWER
DR.AMBEDKAR ROAD
BENGALURU – 560 001.

...RESPONDENTS

(BY SRI M.S. NAGARAJA, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE PROVISION OF 25% AVENUE MADE TO THE PERSONS FROM THE CADRE OF JUNIOR ENGINEERS HAVING PUT IN 05 YEARS OF EXPERIENCE TO THE CADRE OF ASSISTANT EXECUTIVE ENGINEERS AS MADE IN SCHEDULE III TO THE KARNATAKA MUNICIPAL CORPORATIONS (COMMON RECRUITMENT OF OFFICERS AND EMPLOYEES) RULES, 2011, ISSUED BY THE FIRST RESPONDENT VIDE ANNEXURE-B AS THE SAME IS ARBITRARY, PERVERSE AND UNSUSTAINABLE AND ETC.

IN WP NO.22241 of 2022**BETWEEN**

SRI. VINAYAK BHARANI M.S.
S/O SAGANI GOWDA T.
AGED ABOUT 28 YEARS
WORKING AS
ASSISTANT ENGINEER

TUMKUR MAHANAGARA PALIKE
 R/AT NO.IBANNI NILAYA
 VAKKALIGARA HOSTEL ROAD
 VIJAYAPURA
 CHIKAMAGALURU
 KARNATAKA-577 101.

...PETITIONER

(BY SRI ANISH ACHARYA, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
 REPRESENTED BY ITS
 PRINCIPAL SECRETARY
 URBAN DEVELOPMENT DEPARTMENT
 M.S. BUILDING
 BENGALURU – 560 001.
2. THE DIRECTOR
 DIRECTORATE OF
 MUNICIPAL ADMINISTRATION
 9TH FLOOR, VISHVESWARAYA TOWER
 AMBEDKAR VEEDHI
 BENGALURU – 560 001.
3. HUBBALLI-DHARWAD MUNICIPAL
 CORPORATION
 SRI SIDDAPPA KAMBLI ROAD
 HUBLI
 KARNATAKA-580 024
 REPRESENTED BY ITS
 COMMISSIONER.
4. CITY MUNICIPAL CORPORATION
 RABAKAVI
 BANAHATTI
 RABAVI, BAGALKOT,

KARNATAKA-587 314
REPRESENTED BY ITS COMMISSIONER.

5. TUMAKUR CITY CORPORATION
TOWNHALL,
BHAGAWAN MAHAVEER ROAD
NEAR RAILWAY STATION
TUMAKUR
KARNATAKA – 572 102.
REPRESENTED BY ITS COMMISSIONER.
6. KANAKAPURA TOWN MUNICIPAL
CORPORATION, M.G. ROAD
NEAR TALUK OFFICE, KANAKAPURA
BENGALURU
KARNATAKA-562 117
REPRESENTED BY ITS COMMISSIONER.
7. BRUHAT BENGALURU MAHANAGARA
PALIKE
HUDSON CIRCLE
BENGALURU – 560 002.
REPRESENTED BY ITS COMMISSIONER.
8. BELLARY CITY CORPORATION
GADIGICHENNAPPA CIRCLE
OPP.ROYAL THEATRE
BALLARI, KARNATAKA -538 101.
REPRESENTED BY ITS COMMISSIONER.
9. SHIVAMOGGA CITY CORPORATION
OPP. TO GANDHI PARK
SHIVAMOGGA
KARNATAKA – 577 201
REPRESENTED BY ITS COMMISSIONER
10. BELAGAVI CITY CORPORATION
CTS NO.4821/27 A, R.S.NO.1005
SUBHASH NAGAR, BELGAUM

KARNATAKA -590 016
REPRESENTED BY ITS COMMISSIONER.

11. MANGALURU CITY CORPORATION
M.G.ROAD LALBAGH,
MANGALURU-575 003
KARNATAKA
REPRESENTED BY ITS COMMISSIONER.
12. VIJAYAPURA CITY CORPORATION
BAGALKOTE ROAD
VIJAYAPURA
KARNATAKA-586 101
REPRESENTED BY ITS COMMISSIONER.
13. KALABURAGI CITY CORPORATION
TANK BUND ROAD
NEAR JAGAT CIRCLE
KALABURAGI
KARNATAKA-585 101.
REPRESENTED BY ITS COMMISSIONER.
14. BALLARI CITY CORPORATION
GADIGICHENNAPPA CIRCLE
OPP. ROYAL THEATRE
BALLARI – 538 101.
KARNATAKA
REPRESENTED BY ITS COMMISSIONER.

...RESPONDENTS

(BY SRI M.S. NAGARAJA, AGA FOR R1 AND R2;
SRI GURUDEVI I GACHINAMATH, ADVOCATE FOR R3;
SRI LOKESH MALAVALLI, ADVOCATE FOR R4;
SRI SUBRAMANYA R., ADVOCATE FOR R5;
SRI B.L.SANJEEV, ADVOCATE FOR R7;
SRI H.R.SHOWRI, ADVOCATE FOR R9;
SMT. SUMANA BALIGA M., ADVOCATE FOR R10;

SRI HAREESH BHANDARY T., ADVOCATE FOR R11;
R12 IS SERVED BUT UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE (METHOD OF RECRUITMENT AND QUALIFICATION) OF KARNATAKA MUNICIPAL CORPORATIONS (COMMON RECRUITMENT OF OFFICERS AND EMPLOYEES) RULES, 2011 (ANNEXURE-A) TO THE EXTENT THAT IT PROVIDES FOR RESERVING 25% OF POST FOR DIRECT PROMOTION FROM CADRE OF JUNIOR ENGINEER TO THE CADRE OF ASSISTANT EXECUTIVE ENGINEER SPECIFIED UNDER SL.NO.5 IN SCHEDULE III AS UNCONSTITUTIONAL VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION OF INDIA; AND ETC.

IN WP NO.2236 OF 2023

BETWEEN

SMT. KAVYASHREE K.D.
W/O SRI VIVEK H.S.
AGED ABOUT 31 YEARS

PRESENTLY WORKING AS
ASSISTANT ENGINEER
(CIVIL)
ON POST BASED TRANSFER
IN OFFICE OF DIRECTOR OF
MUNICIPAL
ADMINISTRATION, V.V.
TOWERS
DR. AMBEDKAR VEEDHI
BENGALURU-560 001.

R/O NO.378/5, 21ST CROSS
1ST AND 3RD BLOCK

EAST JAYANAGAR
BENGALURU- 560 011.

....PETITIONER

(BY SRI K.N.PHANINDRA, SENIOR COUNSEL FOR
SMT. VAISHALI HEDGE, ADVOCATE)

AND

1. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
CUM ADDITIONAL CHIEF
SECRETARY
URBAN DEVELOPMENT
DEPARTMENT
VIKASA SOUDHA
DR. AMBEDKAR ROAD
BENGALURU -560 001.
2. DIRECTORATE OF MUNICIPAL
ADMINISTRATION
REPRESENTED BY ITS DIRECTOR
V.V.TOWERS, 9TH AND 10TH FLOOR
DR. AMBEDKAR ROAD
BENGALURU-560 001.
3. SRI SHIVAKUMAR
NAME OF FATHER: NOT KNOWN
AGE: NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
SHIVAMOGGA CITY MUNICIPAL
CORPORATION
SHIVAMOGGA DIVISION
SHIVAMOGGA-577 201.

4. SRI S.V. PURUSHOTHAM
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
MYSORE CITY MUNICIPAL
CORPORATION, MYSORE
DIVISION, MYSURU-570 001.
5. SRI RAMANNA K.
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
MYSORE CITY MUNICIPAL
CORPORATION
MYSORE DIVISION
MYSURU-570 001.
6. SRI RAJATH KUMAR H.S.
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
MYSORE CITY MUNICIPAL
CORPORATION
MYSORE DIVISION
MYSURU-570 001.
7. SRI MOHAMMAD MOSIN HASAN
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
KALBURGI CITY MUNICIPAL
CORPORATION
KALABURAGI DIVISION
KALABURAGI-585 001.

8. SRI VEERESH
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
HUBLI-DHARWAD CITY MUNICIPAL
CORPORATION
HUBLI-DHARWAD DIVISION
HUBLI-580 020.
9. SRI MITHUN
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
MANGALORE CITY MUNICIPAL
CORPORATION
MANGALORE DIVISION
MANGALURU - 575 001.
10. SRI ADITHYA M. JOSHI
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
DAVANGERE CITY MUNICIPAL
CORPORATION
DAVANGERE DIVISION
DAVANGERE-577 001.
11. SMT. RANJITHA
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
MYSORE CITY MUNICIPAL
CORPORATION, MYSORE DIVISION
MYSURU-570 001.

12. SRI. SHIVANANDA BUDYAL
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
KALABURGI CITY MUNICIPAL
CORPORATION
KALABURGI DIVISION
KALABURAGI - 585 001.
13. SRI. MOHAN KUMAR M.V.
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
MYSORE CITY MUNICIPAL
CORPORATION
MYSORE DIVISION
MYSURU-570 001.
14. SRI ABHISHEK
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
HUBLI-DHARWAD CITY MUNICIPAL
CORPORATION
HUBLI-DHARWAD DIVISION
HUBLI-580 020.
15. SRI KIRAN A.R.
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
MYSORE CITY MUNICIPAL
CORPORATION, MYSORE DIVISION
MYSURU-570 001.

16. SRI VENKATESH PALAGATTI
NAME OF FATHER: NOT KNOWN
AGE NOT KNOWN
PRESENTLY WORKING AS
JUNIOR ENGINEER (CIVIL)
MYSORE CITY MUNICIPAL
CORPORATION
MYSORE DIVISION
MYSURU-570 001.

...RESPONDENTS

(BY SRI M.S. NAGARAJA, AGA FOR R1 AND R2;
SRI VIJAYA KUMAR, ADVOCATE FOR R3 TO R16)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE 1ST AND 2ND RESPONDENTS TO PROMOTE THE PETITIONER TO THE POST OF 'ASSISTANT EXECUTIVE ENGINEER (CIVIL)' FROM THE POST - 'ASSISTANT ENGINEER (CIVIL)' THAT IS PRESENTLY BEING HELD BY THE PETITIONER VIDE ANNEXURE 'B' DATED 30.01.2017 BY TAKING INTO CONSIDERATION THE EXPERIENCE AND SERVICE RENDERED BY THE PETITIONER AS 'ASSISTANT ENGINEER (CIVIL)' FOR A PERIOD OF 5 YEARS 11 MONTHS BETWEEN 01.02.2017 TO 15.01.2023 AS PER THE KARNATAKA MUNICIPAL CORPORATIONS (COMMON RECRUITMENT OF OFFICERS AND EMPLOYEES) RULES, 2011 VIDE ANNEXURE 'A' DATED 11.04.2011 AND ETC.

IN THESE WRIT PETITIONS ARGUMENTS BEING HEARD AND ORDERS RESERVED, COMING ON FOR "PRONOUNCEMENT OF ORDER", THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In these batch of petitions, a challenge has been made to the Karnataka Municipal Corporations (Common Recruitment of Officers and Employees) Rules, 2011 notified on 11.04.2011 insofar as providing for filling up of 25% of the promotion to the post of Assistant Executive Engineer (Civil) from the cadre of Junior Engineer (Civil), inter alia, sought for promotion to the cadre of Assistant Executive Engineer only from the feeder cadre i.e. from the post of the Assistant Engineer, the petitioners have approached this court under Article 226 of Constitution of India.

FACTS OF THE CASE

2. Factual matrix of the cases are that, the petitioners claim to be appointed as Assistant Engineers and it is averred that, the service conditions of the petitioners are governed under the Rules called as "Karnataka Municipal Corporations (Common

Recruitment of Officers and Employees) Rules, 2011 (for short, hereinafter referred to as Rules, 2011). The method of filling up of posts in the cadres of Assistant Executive Engineer, Assistant Engineer and Junior Engineer, is as follows:

Assistant Executive Engineer (Civil)	Twenty Five percent by direct recruitment, fifty from the cadre of Assistant Engineer (Civil) and twenty five percent from the cadre of Junior Engineer (Civil)	For Direct Recruitment: Must be holder of a Bachelor Degree in engineering (Civil) or AMIE (Civil) from a Government recognized University/ Institution. For Promotion: (1) In the case of Assistant Engineers (Civil), must have put in a service of not less than three years in the cadre of Assistant Engineers (Civil). (2) In the case of Junior Engineers (civil), must have put in service of not less than five years in the cadre of Junior Engineer (civil)
Assistant Engineer (Civil)	By Direct Recruitment	For Direct Recruitment: Must be a

		holder of a Bachelor Degree in Civil Engineering or AMIE in Civil from a Government recognized University/ Institution
Junior Engineer (Civil)	Eighty Percent by direct recruitment and Ten percent by promotion from the cadre of Work Inspector. Five Percent by promotion from the cadre of Water Supply Operator on the basis of combined seniority. If no suitable person is available for promotion then the cadres will be filled by direct recruitment.	For Direct Recruitment: (1) Must have passed Diploma in Civil Engineering from a Government recognized University/ Institution. For Promotion: (1) Must have put in a service of not less than five years in cadres of work Inspector, Water Supply Operator or UGD Operator as the case may be. (2) Must have passed Diploma in Civil Engineering from a Government recognized University/ Institution.

3. It is contended by the petitioners that, the above Rules make it clear that, the cadre of Assistant Executive Engineer is

filled up by way of promotion from the cadre of Assistant Engineer as well as directly from the cadre of Junior Engineer. It is further stated that, the State Government has issued Circular dated 06.07.2020, reiterating the earlier Circular dated 08.10.2004, directing the respective Departments to amend the Cadre and Recruitment Rules on every three years. It is the categorical submission of the petitioners that there is no accelerated promotion from the cadre of Junior Engineer to the cadre of Assistant Executive Engineer from the Department of Rural Development and Panchayat Raj and Department of Public Works and Karnataka Rural Infrastructure Development Limited etc. In this backdrop, the petitioners contended that, the Rules 2011, has not been amended till date and 25% of the cadre of Assistant Executive Engineer is being filled up by promotion from the cadre of Junior Engineer, which is, illegal and contrary to law. Hence, the petitioners have presented these writ petitions.

4. I have Heard Sri. M.S.Bhagwat, learned Senior Counsel appearing on behalf of Sri. Satish K. for the petitioner in W.P. No.1575/2023; Sri. K.N. Phanindra, learned Senior Counsel

appearing on behalf of Smt. Vaishali Hegde, for the petitioner in W.P. No.2336/2023; and Sri. M.P. Srikanth, learned counsel appearing for the petitioners in W.P. No.19636/2022 and Sri M.S.Nagaraja, learned Additional Government Advocate for the respondent-State and Sri Vijayakumar, learned counsel appearing for the respondents in W.P. No.1575/2023 and W.P. No.2236/2023.

CONTENTIONS OF THE PETITIONERS

5. Sri M.S.Bhagwat, learned Senior Counsel for the petitioner argued that, the method of filling up of 25% of the posts of Assistant Executive Engineer, by promotion from the cadre of Junior Engineer is arbitrary and contrary to law. He submitted that, the accelerated promotion is alien to the service jurisprudence and in this regard, he argued that, the Karnataka Municipal Corporations Act, 1976 was enacted to consolidate and amend the laws relating to the establishment of Municipal Corporations in the State of Karnataka. Section 421 of the said Act, provides power to the Government to make Rules and in furtherance of the same, the respondent-Government has

published the impugned Rules, 2011. Sri M.S.Bhagwat, learned Senior Counsel emphasized that, in exercise of Section 421 of the said Act, the Respondent-Government has also published Bruhat Bengaluru Mahanagara Palike, (General Cadre and Recruitment of Officers and Employees) Rules, 2020 and such other related Rules of conditions of service of PWD and related Rules of the Corporations etc. It is his submission that, the method of filling up of cadre of Assistant Executive Engineer in the aforementioned two Rules is different. Emphasising on the method of promotion to the cadre of Assistant Executive Engineer, he argued that, the Rules, 2020 of BBMP makes distinction between the Graduates (those who have B.E Degree) and non-Graduates (those who have Diploma Certificates). He submitted that, those who are working in the cadre of Junior Engineers, are directly promoted to the cadre of Assistant Executive Engineer even though they possess Diploma qualification (non-Graduate) and the said method of promotion is contrary to law. He made a categorical argument that, the Educational qualification required for the cadre of Junior Engineer is Diploma and if unequals are treated equally as per

impugned Rules, 2011, the Assistant Engineers, who got degree in Engineering would be deprived of their right of promotion to an extent of 25% earmarked for Junior Engineers and same is contrary to Article 14 and 16 of the Constitution of India. In this regard, Sri M.S.Bhagwat, learned Senior Counsel refers to Judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **STATE OF JAMMU AND KASHMIR Vs. TRILOKI NATH KHOSA AND OTHERS** reported in **AIR 1974 SC 1**. The criterion of minimum educational qualification is B.E.Degree for the cadre of Assistant Executive Engineer and in the event if the Diploma holders, get promotion to the cadre of Assistant Executive Engineer i.e., for a higher cadre despite they being not eligible as they are not B.E. Degree holders, such illogical and unscientific promotion, as per Rules, 2011, is contrary to Article 14 and 16 of Constitution of India. He further submitted that, the State Government is required to amend Cadre and Recruitment Rules, once in every three years and the Circular dated 08.10.2004 was reiterated subsequently in the Circular and, Clause 6 of the said Circular dated 06.07.2020 provides for prescription for educational qualification being the

criterion and the said aspect has to be considered in the case on hand and accordingly, sought for interference of this Court.

6. Nextly, Sri M.S.Bhagwat, learned Senior Counsel submitted that, the cadre of Assistant Executive Engineer is a Group A cadre, the cadre of Assistant Engineer is a Group B cadre and the cadre of Junior Engineer is a Group C cadre, and if a person working in Group C cadre (Junior Engineer) is promoted to the Assistant Executive Engineer - Group A cadre by parting the Group B cadre and the said avenue is provided in the Rules, 2011 infringes the right of promotion of the Group B cadre candidates and therefore, he sought for interference of this Court. In this regard, he refers to the law declared by the Hon'ble Apex Court in the case of ***P.U. JOSHI AND OTHERS Vs. ACCOUNTANT GENERAL, AHMEDABAD AND OTHERS*** reported in **(2003) 2 SCC 632** and argued that, the classification is primarily for the legislature or executive who are statutory authority, charged with the duty of framing terms and conditions of service and if the same is based on reasonable basis, it has to be upheld. However, in the impugned Rules,

2011, the classification of promoting the Group C cadre to the Group A cadre, directly affects the legal right of the Group B cadre, and as such he sought for interference of this Court.

7. Sri. M.S. Bhagwat, learned Senior Counsel refers to the pay scale of Assistant Engineers and the Junior Engineers as mentioned in their conditions of service and contended that as there is no equivalent pay scales of Assistant Engineers and Junior Engineers and the said fact has been noticed in the Circular dated 06.07.2020, and as such learned Senior Counsel contended that the impugned Rules are required to be set-aside. In order to buttress his submission, he refers to the Judgment of this Court in the case of **B.S. MAHABALESHWARA AND OTHERS vs. STATE OF KARNATAKA AND OTHERS** in **WRIT PETITION 14366 of 2008 disposed of on 19.06.2012** and argued that, the finding recorded by the Division Bench is squarely applicable to the facts on record.

8. Nextly, Sri M.S. Bhagwat, learned Senior Counsel contended that, in the event, the Junior Engineers are promoted to the post of Assistant Executive Engineer by passing the

Assistant Engineers, it would result in artificially making unequals as equals. He emphasised that, any person entering the service can justly feel secure of equality in continuance, promotion etc. as held by the Hon'ble Apex Court in the case of **K. NARAYANAN AND OTHERS vs. STATE OF KARNATAKA AND OTHERS** reported in **(1994) Supp 1 SCC 44** and accordingly, sought for setting aside the impugned Rules, 2011, insofar as the prayer made in the Writ Petition.

9. Sri. M.P. Srikanth, learned counsel appearing for the petitioners in Writ Petition No.19636 of 2022 argued that, the Notification dated 11.04.2011 making avenue for promotion to the post of Assistant Executive Engineer from the cadre of Junior Engineer with an experience of five years in the cadre of Junior Engineer is per se illegal on the ground that, the minimum education qualification required for the post of Assistant Engineer and Junior Engineer is distinct and therefore, the educational qualification cannot be equated by inserting experience in the field of five years in the cadre of Junior

Engineer and accordingly, he sought for interference of this Court.

10. Sri. K.N. Phaneendra, learned Senior Counsel appearing for the petitioner in W.P. No.2336/2023 and argued that the respondent No.1 is duty bound to take into account the service rendered by the petitioner as Assistant Engineer (Civil) under Mangaluru Municipal Corporation as well as before the Directorate of Municipal Administration for the purpose of promoting the petitioner to the post of Assistant Executive Engineer as per Rules, 2011. He further contended that, though the Rules, 2011 is not directly challenged in this writ petition, however, the respondent-Authorities have failed to consider that, there are thirty eight posts in the cadre of Assistant Executive Engineer (Civil), which are to be filled-up by promotion from the cadre of Assistant Engineer excluding the post reserved for Hyderabad Karnataka candidates. It is the submission of Sri. K.N. Phaneendra, learned Senior Counsel that the contention of the respondent No.2 that there are thirty seven posts in the cadre of Assistant Executive Engineer are to be filled-up by

promotion from the cadre of Assistant Engineers which is not correct and in reality, there are thirty eight posts to be filled-up in the cadre of Assistant Executive Engineer and not thirty seven posts as contended by the respondent-Authorities. He submitted that, excluding the fourteen posts reserved for Hyderabad Karnataka Region and four posts are deputational posts from the sanctioned strength of eight posts, the remaining would be sixty eight posts out of which, 50% i.e., 34 posts are to be filled-up by promotion from the cadre of Assistant Engineers and further four posts are deputational posts, i.e., two posts are to be filled-up by promotion from the cadre of Assistant Engineers, inter-alia the posts are reserved under Non-Hyderabad Karnataka candidates and two posts are to be filled by promotion to the post of Assistant Engineers. Therefore, Sri. K.N. Phaneendra, learned Senior Counsel contended that, the respondent No.2 has erroneously calculated allocating only thirty seven posts instead of thirty eight posts to be filled-up by promotion from the cadre of Assistant Engineers and as such, the petitioner is being deprived of promotion to the post of Assistant Executive Engineer. Hence, he sought for interference of this Court.

11. Learned counsel appearing for the petitioner in Writ Petition No.22241 of 2022 adopts the arguments advanced by Sri. M.S. Bhagwat, learned Senior Counsel appearing for petitioner in Writ Petition No.1575 of 2023 and prays for allowing the writ petition.

CONTENTIONS OF THE RESPONDENTS

12. Per contra, Sri. Vijay Kumar, learned counsel appearing for the contesting respondents argued that order dated 19.06.2012 passed by the Division Bench in Writ Petition No.14366 of 2008 is stayed by the Hon'ble Apex Court in C.A. No.15959 of 2012 (Annexure-R6) and further contended that, the order passed by the Division Bench is not applicable to the facts of the case on hand. It is the specific argument of Sri. Vijay Kumar, that the Rules, 2011, was in force for more than a decade and several Junior Engineers have already been promoted to the post of Assistant Executive Engineers and therefore, no interference is called for in these Writ petitions.

13. Next, Sri. Vijay Kumar, learned counsel argued that the granting of promotion from the cadre of Junior Engineer to that of Assistant Executive Engineer is a policy decision of the State Government and therefore, no interference is called for under Article 226 of the Constitution of India. In this regard, he places reliance on the Judgment of the Hon'ble Apex Court in the case of **P.U. JOSHI AND OTHERS vs. ACCOUNTANT GENERAL AND OTHERS** reported in **(2003) 2 SCC 632** and in the case of **UNION OF INDIA Vs. PUSHPA RANI AND OTHERS** reported in **(2008) 9 SCC 242** and contended that, the petitioners have not made out a case for interference as the same being a policy decision of the State Government. Sri. Vijay Kumar, learned counsel further emphasised that, Rules, 2011 prescribe a separate quota for promotion from the cadre of Assistant Engineer to the cadre of Assistant Executive Engineer and therefore the petitioners have no aversion against the Junior Engineers (contesting respondents). He further submitted that, a lateral entry being considered from the Diploma to B.E. Degree and the respective method of recruitment provides for five years experience in the post of Junior Engineer and insofar as three

years for Assistant Engineers would make it clear that, the classification between the Assistant Engineer and Junior Engineer is valid, and as such, he sought for dismissal of the writ petitions. In order to buttress his submission, he places reliance on the judgment of the Hon'ble Apex Court in the case of ***KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA AND ANOTHER*** reported in **(2004) 6 SCC 254** and in the case of ***STATE OF UTTARAKHAND AND OTHERS Vs. S.K. SINGH AND OTHERS*** reported in **(2019) 10 SCC 49**.

14. Sri. M.S. Nagaraja, learned Additional Government Advocate appearing for the respondent - State has supported the submission of Sri. Vijay Kumar, learned counsel appearing for contesting respondents and reiterates the averments made in the statement of objections. He further contended that, claiming promotion is not a fundamental right and the policy decision of the Government cannot be interfered with under the Article 226 of Constitution of India and accordingly, he sought for dismissal of the writ petitions. Insofar as Writ petition No.2236 of 2023, he submitted that the representation made by the petitioner

therein dated 03.06.2023 has been considered and rejected by issuing endorsement dated 27.06.2023 and accordingly, he sought for dismissal of the writ petition.

POINT FOR DETERMINATION:

15. In the light of the submissions made by learned counsel appearing for the parties, the core question to be answered in these writ petitions is as under:

"Whether post of Junior Engineer is a feeder cadre to the promotion to the post of Assistant Executive Engineer or not?"

FINDINGS

16. Facts are not disputed. In the light of the above, this Court has to consider that, the impugned Rules, 2011, providing for filling up of 25% of posts of Assistant Executive Engineers by promotion from the cadre of Junior Engineer, sought to be interfered with in these Writ Petitions is whether valid and permissible under law?. The aforementioned Rules, 2011 is made in furtherance of Section 421 of the Karnataka Municipal

Corporations Act, 1976. It is well settled principle in law that no one can have right to be appointed but only right to be considered is fairly an appointment subject to the parameters under Article 14 and 16 of the Constitution of India. It is also pertinent to mention here that the conditions of service of the public servants, including matters of promotion and seniority are governed by extant Rules. In the case of **KALIF RIZVI Vs. UNION OF INDIA** reported in **1993 Supp. (3) SCC 575** and in the case of **HARDEV SINGH Vs. UNION OF INDIA** reported **(2011)10 SCC 121**, it is held that there is no vested right lies with the persons seeking promotions, independent of the Rules governing the service conditions. In the event, the State Government alters the conditions of service, same would be subject to judicial review. The Government is empowered to make Laws and Rules under Article 309, 310 and 311 of the Constitution of India to regulate the recruitment, conditions of service, tenure and termination, though not by consent of the parties, but same is amenable to judicial review. Therefore, though the learned counsel appearing for the respondents contended that policy decision of the State cannot be interfered

with, however, if such a policy decision is contrary to the Constitutional parameters, the same requires to be interfered with under writ jurisdiction. It is equally related that, though the argument was addressed by learned counsel appearing for the petitioners that, the amendment to the method of promotion will be made in due course and the said Rule shall be promulgated shortly, however, the case of the petitioners has to be looked into in the light of provisions contained under Notification dated 11.04.2011. Clause 2(t) of the Rules, 2011, provides for definition of 'promotion'. Clause 2(t) of the Rules, 2011, reads as under:

"Promotion means the appointment of an officer or employee from a post or grade of service or class of service to a higher post or higher grade of service or higher class of service."

(emphasis supplied)

17. Perusal of the aforementioned definition under the relevant Rules, makes it clear that the promotion is only to a higher post / higher grade and therefore, the legislative intention is very clear that, the promotion has to be made from the feeder cadre

only. In this regard, it is relevant to follow the declaration of law by the Hon'ble Supreme Court in the case of **T. ARUNA AND OTHERS Vs. SECRETARY, A.P. PUBLIC SERVICE COMMISSION** reported in **(2001) 9 SCC 54**. Paragraphs 6 and 10 of the said judgment read as under:

"6. It is true that both Typists and Junior Assistants have been in the feeder category for the purpose of promotion to the posts of Senior Assistants. But it is not fully correct to say that posts of Junior Assistants and Typists are equivalent. Minimum educational qualification prescribed for Typists is SSC/matriculation, whereas for the post of Junior Assistant, the minimum educational qualification is graduation. For recruitment of Junior Assistants, a test consisting of four papers is prescribed, whereas for Typists one has to pass a test consisting of only one paper. Moreover, in the Andhra Pradesh Ministerial Service Rules, separate guidelines have been provided for promotion from these two categories. Therefore, it is idle to contend that there should not have been any distinction in the matter of promotion from these two categories to the next higher cadre.

7. *****

8. *****

9.*****

10. *From these Rules, it is abundantly clear that Typists and Stenographers have to pass the eligibility test for getting promotion to the post of Senior Assistant and they have to put in 5 years' service for the purpose of promotion. The appellants have submitted that they have passed the test and qualified themselves for promotion. Admittedly, from 22-3-1984, the Typists also are entitled to get promotion to the cadre of Senior Assistant after completing 3 years' service. The direction given by the Tribunal which is affirmed by the High Court is in accordance with the relevant rules."*

In the above case, passing of the relevant test by the Typists is the relevant aspects to be considered for promotion. However, in the present case no such test is prescribed in the Rules, 2011, for the Junior Engineers to get promotion to the post of Assistant Executive Engineers.

18. It is also relevant to extract the dictum of the Hon'ble Supreme Court relating to the importance of feeder channel in promotion, in the case of **MANGI LAL VS. STATE OF RAJASTAN** reported in **(2007) 9 SCC 189**. Paragraphs 5 to 11 reads as under:

"5. *Column 6 of the Rajasthan Mines and Geological Service Rules, 1960 (for short "the Rules") lays down the minimum qualification and experience required for promotion, which is in the following terms:*

"3 years' experience in case of holders of degree in Mining Engineering or equivalent and 7 years' experience in case of diploma-holders in Mining Engineering from a recognised Institution on any post in Subordinate Mines and Geological Services not lower than Mines Foreman, Grade II."

6. *Indisputably, the terms and conditions of service of the appellant are governed by the said Rules. On or about 20-5-1977, the said Rules were amended, in terms whereof promotion to the post of Assistant Mining Engineer was to be made from amongst the persons holding the posts of either: (i) Mines Foreman, Grade I; or (ii) Head Draftsman; (iii) or any post in the Subordinate Mines and Geological Services carrying scale of pay identical or higher than Mines Foreman, Grade II.*

7. *Indisputably, in terms of the Rules, 50% of the posts of Assistant Mining Engineer are to be filled up by direct recruitment; 30% by promotion from amongst the diploma-holders and 20% from amongst the degree-holders. The qualification necessary for being appointed as Assistant Mining Engineer is as under:*

"Degree in Mining Engineering from university established by law in India.

OR

AMIE (Mining Engineering), Parts A & B of Institution of Engineers.

OR

Diploma in Mining Engineering from the Indian School of Mines and Applied Geology, Dhanbad."

8. *The appellant was admittedly not holding the post of Mines Foreman, Grade I at the relevant time.*

9. *Column 6 of the said Rules whereupon reliance has been placed by Mr Kaushik speaks about experience required for filling up of the said post. Whereas three years' experience would satisfy the requirement in case the candidate is a holder of degree in Mining Engineering or equivalent, seven years' experience was necessary in case of the diploma-holders in Mining Engineering from a recognised institution on any post, but the same should not be lower than the Mines Foreman, Grade II.*

10. *"Eligibility" and "experience" stand on different footings.* *For filling up the post by way of promotion, there must exist a channel. In absence of any channel, promotion cannot be effected.*

11. *The rule must be read in its entirety. So read, there cannot be any doubt whatsoever that for the purpose of promotion to the post of Assistant Mining Engineer, the candidate must be a holder of a post of Mines Foreman, Grade I or Head Draftsman or Senior Surveyor. As the appellant did not hold any of the said posts, the question*

of promoting him to the post of Assistant Mining Engineer did not arise."

19. In the above case, Hon'ble Supreme Court, held that, eligibility of a candidate is different from the 'experience' of a candidate for filling up of the post, while considering the case for the promotion.

20. It is well established principle in law that, while interpreting the words in the Statute, the construction has to be made with that of the intention of the Legislature. In this regard, Hon'ble Supreme Court in the case of **KANAI LAL SUR Vs. PARAMNIDHI SADHUKHAN** reported in **AIR 1957 SC 907** at paragraph 6, held as follows:

" 6. Mr. N. C. Chatterjee, for the appellant, has contended that the object in enacting the relevant Thika Tenancy Acts and Ordinances is absolutely clear. It is a piece of welfare legislation and as such its operative provisions should receive a beneficent construction from the Courts. If the scheme of the Act and the object underlying it is to afford full protection to the thika tenants, says Mr. Chatterjee, Courts should be slow to reach the conclusion that any class of thika tenants are excluded from the benefit of the said Act.

In support of his argument Mr. Chatterjee has naturally relied on the observations made by Barons of the Exchequer in Heydon's case (1584) 3 co. Rep. 7a (A). Indeed these observations have been so frequently cited with approval by Courts administering provisions of welfare enactments that they have now attained the status of a classic on the subject and their validity cannot be challenged.

However, in applying these observations to the provisions of any statute, it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the

achievement of the said policy, then the courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct. Indeed Mr. Chatterjee himself fairly conceded that he would not be justified in asking the Court to put an undue strain on the words used in the section in order that a construction favourable to the thika tenants should be deduced. It is in the light of this legal position that we must now consider s.5, sub-s. (1) of West Bengal Act II of 1949, amended by West Bengal Act VI of 1953.

21. Nextly, applying the legislature intent as envisaged under definition i.e. Rule 2(t) of the Rules, 2011 it provides for promotion to the higher cadre / grade and not for accelerated promotion. It is relevant to understand the language employed under Rule 2(t) in the context of other statutes referred thereto. Sri. Vijay Kumar, learned counsel appearing for the contesting respondents submitted that, the accelerated promotion has been recognized and approved by the Hon'ble Supreme Court in the case of **S.K.Singh** (supra). Paragraphs 28 and 29 of the said judgment reads as under:

"28. *It has also been opined that even where persons having two different qualifications are given the opportunity of promotion, there cannot be an absolute equality for the reason that the administration may consider giving the lesser qualified an opportunity of promotion on different terms, rather than completely prohibiting them from promotion.*

29. *We are conscious of the fact that in further posts, higher than AE, there is no distinction between persons having different qualifications. There are no direct appointments. The posts are filled in only through promotions. The question is: what is really being done? In our view, all that has been done is that, at a particular promotion stage, in the wisdom of the administration, recognising higher skills developed through higher qualifications, and as an incentive to others to acquire these higher qualifications, an accelerated promotion on a small percentage of posts had been granted."*

22. Perusal of the aforementioned judgment, wherein, there are no direct appointment to the post higher than the Assistant Executive Engineer in the facts of the said case, however, in the present case, 25% of the appointment is through direct recruitment to the post of Assistant Executive Engineer, 50% by promotion from Assistant Engineer and 25% by promotion from

the cadre of Junior Engineer. In that view of the matter, the ruling in the case of **S.K.Singh** (supra) is not applicable to the facts on hand, as the relevant Rules governing the service conditions of the Engineers in the Irrigation Department i.e., Uttaranchal Service of Engineers (Irrigation Department) (Group B) Rules, 2003 is not on par with the Rules, 2011, which is impugned in the present writ petitions. Therefore, I am not inclined to accept the submission made by the learned counsel appearing for the respondents.

23. In view of the submissions made by the learned Senior Counsel appearing for the petitioners, I have carefully examined the notification dated 17.05.2010 in respect of the service conditions of the employees under the Karnataka Municipal Corporations (Conditions of Service), Rules, 1991, which is applicable to all the employees of the Corporation, except the employees of BBMP. Schedule II to the said Rules, provides for promotion to the post of Assistant Executive Engineer from the post of Assistant Engineer only. The said procedure of promotion, excluding from the cadre of Junior Engineer, is

followed and prevailing in the Public Works Department also. It is also relevant to examine the procedure adopted by other Departments. The Karnataka Public Works Department Service (Cadre and Recruitment) Rules, 2018, as per notification dated 02.11.2018, wherein, the promotion to the post of Assistant Executive Engineer is by way of 75% by promotion from the cadre of Assistant Engineer (Grade I) and 25% by direct recruitment on the basis of the competitive examination conducted by the Karnataka Public Service Commission, in accordance with the scheme provided therein. Insofar as the post of Assistant Engineer (Grade II) is concerned, the promotion is from the cadre of Junior Engineers. The pay scales have been clearly specified and would make it clear that, the pay scale of Junior Engineer is different from the pay scale of Assistant Engineer. In that view of the matter, I am of the opinion that, as the pay scales of the Junior Engineer and the Assistant Engineer as per Rules, 2011 is different and therefore, both the Junior Engineer and Assistant Engineer cannot be equated while promoting to the post of Assistant Executive Engineer. This is reflected in Section 2(t) of the Act, which

provides for definition of 'promotion', wherein, the language employed is higher post or higher grade. At this juncture, it is relevant to deduce the law declared by the Hon'ble Supreme Court in the case of **COMMISSIONER OF AGRICULTURAL INCOME TAX, BENGAL Vs. SRI KESHAB CHANDRA MANDAL** reported in **AIR 1950 SC 265**. Therefore, I am of the view that, the promotion of 25% from the cadre of Junior Engineer to the post of Assistant Executive Engineer is bad in law on the ground of inequality in pay scale in the feeder cadres.

24. Nextly, I have carefully examined the G.O. dated 11.11.2016, published by Government to fix the limit of the Junior Engineers, Assistant Engineers, Assistant Executive Engineer and higher cadre in the Engineering Section in the City Corporation, CMC, TMC, and Taluk Panchayat, to sanction estimates and tender approval powers wherein it is stated that Junior Engineer is empowered to accord technical sanction up to five lakhs, Assistant Engineers up to 10 lakhs and Assistant Executive Engineer empowered to sanction up to 50 lakhs and these different classifications in approving the tender in the

aforementioned Government order, makes it clear that, the classification between and among the Engineering Section in various Departments is based on the pay scales of different cadres and therefore, I find force in the submission made by the learned Senior Counsel appearing for the petitioners. At this juncture, it is relevant to extract the observation made by the Hon'ble Supreme Court in the case of **K. NARAYANAN** (supra), at paragraph 7, it is held as follows:

"7. Rules operate prospectively. Retrospectively is an exception. Even where the statute permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right. The rule-making authority should not be permitted normally to act in the past. The impugned rule made in 1985 permitting appointment by transfer and making it operative from 1976 subject to availability of vacancy in effect results in appointing a Junior Engineer in 1986 with effect from 1976. Retrospectivity of the rules is a camouflage for appointment of Junior Engineers from a back date. In our opinion the rule operates viciously against all those Assistant Engineers who were appointed between 1976 to 1985. In Ex-Capt. K.C. Arora v. State of Haryana and P.D. Aggarwal v. State of U.P. it was held by this Court that

the President or Governor cannot make such retrospective rules under Article 309 of the Constitution as contravene Articles 14, 16 or 311 and affect vested right of an employee. Even in B.S. Yadav v. State of Haryana] where the power to frame rules retrospectively was upheld it was observed: (SCC p. 557, para 76)

"Since the Governor exercises a legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case."

As seen earlier there is no nexus between framing a rule permitting appointment by transfer and making it retrospective with effect from 1976. Appointing a person to a higher post in a different cadre in which he has never worked is violative of constitutional guarantee of those who are working in the cadre. It is against basic principle of recruitment to any service. Even in Mohammad Shujat Ali where the Constitution Bench while reiterating that distinction in qualification was valid criterion for determining eligibility for promotion except where both held the same post and perform same duty did not strike down the rules as the differentiation in same class of

persons was not brought about for the first time but existed from before and the two were treated as distinct and separate class. The retrospective operation of the impugned rule attempts to disturb a system which has been existing for more than twenty years. And that too without any rationale. Absence of nexus apart no rule can be made retrospectively to operate unjustly and unfairly against other (sic). In our opinion the retrospective operation of the rule with effect from January 1, 1976 is discriminatory and violative of Articles 14 and 16."

(Emphasis Supplied)

25. It is also to be noted that, in **TRILOKI NATH KHOSA**, (supra) reported in **(1974) 1 SCC 19**, the question before the Hon'ble Supreme Court was relating to the Jammu and Kashmir Civil Services, (Revised pay) 1968, and Paragraphs 30 to 35 read as under:

"30. *Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another.*

31. *Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.*

32. *Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making authority on the need to classify or the desirability of achieving a particular object.*

33. *Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into degree-holders and diploma-holders rests on any unreal or unreasonable basis. The classification, according to the appellants, was made with a view to achieving administrative efficiency in*

the Engineering services. If this be the object, the classification is clearly co-related to it, for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend.

34. *On the fact of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineers to Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgment of the Rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trail of higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunities to*

those possessing higher educational qualifications. And we are concerned with the reasonableness of the classification, not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact American decisions have gone as far as saying that classification would offend against the 14th Amendment of the American Constitution only if it is "purely arbitrary, oppressive or capricious" and the inequality produced in order to encounter the challenge of the Constitution must be "actually and palpably unreasonably and arbitrary". We need not go that far as the differences between the two classes — graduates and diploma-holders — furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision.

35. *Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification.* In *State of Mysore v. P. Narasing Rao* where the cadre of Tracers was reorganized into two, one consisting of matriculate Tracers with a higher scale of pay and the other of non-matriculates in a lower scale, it was held that Articles 14 and 16 do not exclude the laying down of selective tests nor do they preclude the Government from laying down qualifications for the post in question. Therefore, it was open to the Government to give preference to candidates having higher educational qualifications. In *Ganga Ram v. Union of India* it was

observed that "The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible for promotion in its different departments." In Union of India v. Dr (Mrs.) S.B. Kohli a Central Health Service Rule requiring that a professor in Orthopaedics must have a post-graduate degree in the particular speciality was upheld on the ground that the classification made on the basis of, such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". The argument that a degree qualification was not the only criterion of suitability was answered laconically as "strange".

(Emphasis Supplied)

26. It is well settled principle in law that, in the matters relating to creation/abolition of posts/ formation/ restructuring of cadres/ sources/ mode of recruitment, prescription of qualifications, selection, criteria, evaluation of service records are matters which fall in the domain of employer. The Courts have to exercise its power of judicial review only if State action is contrary to constitutional or statutory provisions or is patently

or manifestly arbitrary or vitiated by malafides. In the case of

PUSHPA RANI (supra), paragraphs 35 to 37 reads as under:

"35. A careful reading of the policy contained in Letter dated 9-10-2003 shows that with a view to strengthen and rationalise the staffing pattern, the Ministry of Railways had undertaken review of certain cadres. The basis of the review was functional, operational and administrative requirement of the Railways. This exercise was intended to improve the efficiency of administration by providing incentives to the existing employees in the form of better promotional avenues and at the same time requiring the promotees to discharge more onerous duties. The policy envisaged that additional posts becoming available in the higher grades as a sequel to restructuring of some of the cadres should be filled by promotion by considering such of the employees who satisfy the conditions of eligibility including the minimum period of service and who are adjudged suitable by the process of selection. This cannot be equated with upgradation of posts which are required to be filled by placing the existing incumbents in the higher grade without subjecting them to the rigor of selection.

36. In view of the above discussion, we hold that the Railway Board did not commit any illegality by directing that the existing instructions with regard to the policy of reservation of posts for Scheduled Castes and Scheduled

Tribes will apply at the stage of effecting promotion against the additional posts and the Tribunal committed serious illegality by striking down Para 14 of Letter dated 9-10-2003.

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.”*

27. In the similar lines, in the case of **P.U. JOSHI** (supra) Hon'ble Supreme Court at paragraph 10 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 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."

28. In the case of **DEEPAK AGARWAL AND ANOTHER VS. STATE OF UTTAR PRADESH AND OTHERS** reported in **(2011) 6 SCC 725** at paragraphs 26 and 32, the Hon'ble Supreme Court held as follows:

"26. *It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rule in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for*

promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.

32. *Similarly, this view has been reiterated by this Court in State of M.P. v. Raghuveer Singh Yadav, H.S. Grewal v. Union of India and Rajasthan Public Service Commission v. Chanan Ram. This Court in Rajasthan Public Service Commission case has held that it is the rules which are prevalent at the time when the consideration took place for promotion, which would be applicable. In SCC para 17, it has been held as follows: (SCC pp. 218-19)*

"17. In State of M.P. v. Raghuveer Singh Yadav a Bench of two learned Judges of this Court consisting of K. Ramaswamy and N. Venkatachala, JJ., had to consider the question whether the State could change a qualification for the recruitment during the process of recruitment which had not resulted into any final decision in favour of any candidate. In para 5 of the Report in this connection it was observed that it is settled law that the State has got power to prescribe

qualification for recruitment. In the case before the court pursuant to the amended Rules, the Government had withdrawn the earlier notification and wanted to proceed with the recruitment afresh. It was held that this was not the case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended Rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules. In J&K Public Service Commission v. Dr. Narinder Mohan another Division Bench of two learned Judges of this Court consisting of K. Ramaswamy and N.P. Singh, JJ. considered the question of interception of recruitment process earlier undertaken by the recruiting agency. In this connection it was observed that the process of selection against existing and anticipated vacancies does not create any right to be appointed to the post which can be enforced by a mandamus. It has to be recalled that in fairness learned Senior Counsel, Shri Ganpule for

the respondent-writ petitioner, stated that it is not his case that the writ petitioner should be appointed to the advertised post. All that he claimed was his right to be considered for recruitment to the advertised post as per the earlier advertisement dated 5-11-1993 Annexure P-1 and nothing more. In our view, the aforesaid limited contention also, on the facts of the present case, cannot be of any assistance to the writ petitioner as the earlier selection process itself had become infructuous and otiose on the abolition of the advertised posts, as we have seen earlier. The second point, therefore, will have to be answered in the negative in favour of the appellants and against the respondent-writ petitioner."

29. The aforementioned judgments declare that the employees are governed by the rules, which are prevailing as on the date of their consideration for promotion and in such cases, if such Rule is contrary to the statutory parameters or violate Article 14 and 16 of the Constitution of India, the same is required to be set aside to set right the things in consonance with constitutional domain.

30. It is also noted that, the Government has passed Notification dated 16.03.2020, whereby, the Bruhat Bengaluru Mahanagara Palike (General Cadre and Recruitment of Officers and Employees) Rules, 2018 was published and in the definition Clause, Rule 2(h) provides for Division-I means, those who have completed Engineering in Degree. Rule 2(i) provides for Division – II means, those who have completed Engineering in Diploma. Under the said Rule, the promotional avenue has been made insofar as the posts of Assistant Executive Engineer and Assistant Engineer are concerned. The promotional avenue to the post of Assistant Executive Engineer is from the feeder cadre of Assistant Engineer with particular pay-scale. In that view of the matter, the Circular dated 06.07.2020, though passed after the impugned Rules, reiterates earlier Circular dated 08.10.2004, wherein, it is stated that, the pay-scale is the criterion to consider the case for promotion, if there are more feeder cadres to the promotional post. It is evident from the arguments advanced by the learned counsel appearing for the parties that, if the Rules, 2011 is giving effect to making way for promotion from the cadre of Junior Engineer to the post of

Assistant Executive Engineer and such Junior Engineers have put in service of more than five years and such service of five years cannot be equated with three years in the cadre of Assistant Engineer, inter alia, possessed Degree in Engineering and therefore, I am of the view that, the experience cannot be a sole factor to be considered as a criterion to substitute the educational qualifications as well as pay scale equations, which are distinct. Therefore, the Legislative intent in Rule 2(t) of the Rules, 2011 that, promotion has to be made only to a higher post or higher grade and the said definition does not say about the educational criterion as the basis for promotional avenues. Therefore, in the event, 25% from the cadre of Junior Engineers, who have put in a service of not less than five years, are promoted to the post of Assistant Executive Engineer, bypassing the promotion of Assistant Engineer, same would curtail / deprive the legal right of such of 25% of the Assistant Engineers, who are front runners for promotion, based on the educational qualification and pay scale, and therefore, the said classification made under impugned Rules, 2011, providing promotion to the post of Assistant Executive Engineers from the cadre of Junior

Engineer in an extent of 25% is contrary to law and Article 14 and 16 of the Constitution of India.

31. In view of arriving at such conclusion, that the feeder channel for promotion to the post of Assistant Executive Engineer is Assistant Engineer alone and not the Junior Engineer, in view of different pay-scales, cadre and educational qualification. I have examined the findings arrived at by the Division Bench of this Court in W.P. No.14366/2008 and connected writ petitions. Paragraphs 18 and 19 reads as under:

"18. In the instant case, the facts are not in dispute. The applicants are all Diploma holders, who joined the service as Junior Instructors. Thereafter, they were promoted to the next higher cadre 'Senior Instructor'. Thereafter they are promoted to the cadre of Group Instructors. So, there are three cadres which one has to pass through before he is considered to the post of Principal Grade II. 1985 Rules provided for 50% post being filled up by direct recruitment and 50% post by way of promotion. Now in the amended Rules, another feeder cadre is constituted. Persons who are working as Junior Training Officers with pay scale of Rs. 1520-2900, Assistant Training Officers in the pay scale of 1720-3300 and Training Officers with pay scale of Rs. 1900-3700 are grouped into one category for

promotion to the post of Principal Grade II, provided they possess a Degree in Engineering. Therefore in the cadre of Training Officers, we have two sub-cadres – (1) who are Diploma Holders who are eligible for being promoted as Principal Grade II and (2) another cadre on the basis of a Degree in Engineering. Whether a person possesses a Degree in Engineering or Diploma in Engineering, if he is in the cadre of Training Officer, both of them are eligible to be promoted. There is no grievance on that score.

19. The grievance is, persons who are working in the lower cadre, i.e., as Assistant Training Officer with pay scale of Rs. 1720-3300 and persons who are working as Junior Training Officer with pay scale of Rs. 1520-2900, if they possess Degree in Engineering, they are also eligible for being considered for promotion to the post of Principal Grade II. It is here there is different pay scales, as one cadre. In other words, a person who is working as Junior Training Officer without working in the cadre of Assistant Training Officer and Training Officer is also eligible to be promoted directly as Principal Grade II. Similarly, a person who has worked as Assistant Training Officer without working as Training Officer is eligible to be promoted as Principal Grade II. The result is double and triple promotion, i.e., without working in the cadres immediately below cadres, a person is promoted to the higher cadre. This is the anomaly, which is brought about by this amendment. The justification for this anomaly is that it applies only to persons who have got a Degree in Engineering, as they have got a better qualification and

as they are stagnated in these junior cadres, now an avenue is open to them to improve the efficacy of the system.

19. As held by the Apex Court in the case of TRILOKI NATH KHOSA, on the basis of educational qualification, classification is permissible. Persons who are not holding the said qualification can be denied promotion on the ground of efficiency. In the instant case, a Diploma Holder as well as Engineering Graduate both are eligible for promotion. Therefore it is not a case where on the basis of education qualification one is prevented from being considered for promotion. On the contrary, on the basis of educational qualification, a person who is not in the immediate lower cadre, who is very much junior to the persons who are working in the lower cadre are considered for promotion on the basis of educational qualification, which is impermissible. It is contrary to Article 14 and 16 of the Constitution. When Engineering Junior Training Officer and merely because a person who possess that qualification secures employment in the lower cadre by virtue of his educational qualification, he cannot over take his seniors in the hierarchy and he cannot be promoted to the post of Principal Grade II at the cost of the persons who are in the cadre of Training Officers. The argument is, the persons who are in the cadre of Training Officers with Diploma are not denied promotion. No doubt they are not denied promotion, but by reducing the percentage from 50% to 33 1/3rd per

cent, their chance of promotion is considerable taken away. But this accelerated promotion of junior- most officers would certainly deny promotion to sizable number of persons who are working as Training Officers which is discriminatory and there is no nexus, which is achieved by such accelerated promotion. This is precisely the reason given by the Tribunal for striking down only that particular Rule which is arbitrary and unreasonable."

32. The Division Bench of this Court, having taken note of the findings recorded by the Hon'ble Supreme Court, in the case of **TRILOKI NATH KHOSA** (supra) and in the case of **DIRECTOR, LIFT IRRIGATION CORPORATION LIMITED AND OTHERS Vs. PRAVTKRIAN MOHANTI AND OTHERS** reported in **1991 SCC (L & S) 472**, has arrived at a conclusion that there is no justification to treat the educational qualification as a basis to provide promotion to the higher cadre. The said finding recorded by this Court is based on the principles of nexus test and the concept of arbitrariness by the authorities in the impugned Rules therein. Though Sri. Vijaykumar, learned counsel appearing for the contesting respondents, submitted that, the order passed by the Division Bench in the case of **RAMESH M.S. AND OTHERS** is stayed by the Hon'ble Supreme Court, however, the Hon'ble

Supreme Court has categorically stated that, the Degree holders in the feeder cadre of Training Officers in the above case shall not be reverted. On the other hand, the Hon'ble Supreme Court protected the interests of the parties therein. There is no finding by the Hon'ble Supreme Court relating to the reason assigned by the Division Bench of this Court with regard to making classification based on the educational qualification as a criterion in the promotional aspects. The Hon'ble Supreme Court, in the case of **STATE OF U.P. AND OTHERS Vs. SACHCHINDANAND SRIVASTAVA AND OTHERS** reported in **(1999) 1 SCC 181** had an occasion to consider the case of Division Assistants under U.P. Public Services, has held that, as the pay-scale of the post in question was lower than the latter post in comparison to the pay-scale of Upper Division Assistants and accordingly, validate the Government Order dated 28.01.1982 as just and proper and within the purview of Article 14 of the Constitution of India. Taking into consideration the pay-scale of the Junior Engineers and the Assistant Engineers, which is distinct under Rules, 2011, and therefore, the equals cannot be treated unequally and unequals cannot be treated equally (See. (2008) 10 SCC 139). I

am also well aware about the fact that, this Court is not concerned with practicability or the wisdom of policies of the Government, however, those aspects have to be microscopically considered under the realm of Article 14 of the Constitution of India. That is to say, if such policies are only concerned with illegality, under such circumstances, the Court has to exercise its judicial review under Article 226 of the Constitution of India (See. (2012) 1 SCC 157). This Court is also concerned about the arbitrary action that may have to be decided on the basis of material available on the date and not the basis of what may happen in future (See. AIR 2011 SC 2308).

33. The Hon'ble Supreme Court in the case of **UNION OF INDIA AND ANOTHER Vs. MANPREET SINGH POONAM AND OTHERS** reported in **(2022) 6 SCC 105**, at paragraph 21 of its Judgment has held as below:

"21. Similarly, this Court in the case of Ganga Vishan Gujrati and Ors. v. State of Rajasthan, (2019) 16 SCC 28 has held that:

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to

an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* (1990) 2 SCC 715. The principle was reiterated by this Court in *State of Bihar v. Akhouri Sachindra Nath*, 1991 Supp (1) SCC 334 and *State of Uttaranchal v. Dinesh Kumar Sharma*, (2007) 1 SCC 683. In *Pawan Pratap Singh v. Reevan Singh*, (2011) 3 SCC 267, this Court revisited the precedents on the subject and observed: (*Pawan Pratap Singh* case SCC pp. 281-82, para 45)

"45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules,

executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

This view has been re-affirmed by a Bench of three Judges of this Court in P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693."

34. In that view of the matter, the ratio laid down by the Division Bench of this Court was not disturbed by the Hon'ble Supreme Court while granting interim stay. Therefore, the point for determination formulated above answered in favour of the petitioners that, the post of Junior Engineer is a not a feeder

cadre for promotion to the post of Assistant Executive Engineer under Rules, 2011. In that view of the matter, the petitioners have made out a case of interference in these writ petitions. In so far as petitioner in W.P. No.2236/2023 is concerned, it is open for the petitioner to challenge the endorsement dated 27.06.2023, if so advised. However, the observations made above are equally applicable to the said petitioner.

35. In the result, I pass the following:

ORDER

- (i) The Writ petitions are allowed.
- (ii) Karnataka Municipal Corporations (Common Recruitment of Officers and Employees) Rules, 2011 vide Notification dated 11.04.2011, providing promotion for filling up of 25% of the post of Assistant Executive Engineer (Civil) from the cadre of Junior Engineer (Civil) is unconstitutional and contrary to Article 14 and 16 of the Constitution of India.
- (iii) Respondents are directed to grant promotion to the post of Assistant Executive Engineer only from the feeder cadre / lower cadre i.e. from the

post of Assistant Engineer only. The respondents are directed to fill up vacancies in the post of Assistant Executive Engineer in terms of observations made above, within eight weeks from the date of receipt of this order.

**SD/-
JUDGE**

SAC