



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3199 of 2023
 With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2023
 In
R/SPECIAL CIVIL APPLICATION NO. 3199 of 2023
 With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 2 of 2023
 In
R/SPECIAL CIVIL APPLICATION NO. 3199 of 2023
 With
R/SPECIAL CIVIL APPLICATION NO. 3184 of 2023
 With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2023
 In
R/SPECIAL CIVIL APPLICATION NO. 3184 of 2023
 With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 2 of 2023
 In
R/SPECIAL CIVIL APPLICATION NO. 3184 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL Sd/-

and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE Sd/-

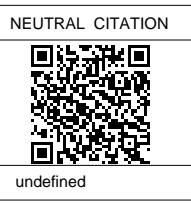
1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

=====
NITINKUMAR VAJUBHAI GAJERA & ORS.

Versus

STATE OF GUJARAT & ORS.

=====

**Appearance:**

MR NK MAJMUDAR(430) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

MR KAMAL TRIVEDI, ADVOCATE GENERAL, with MR VINAY VISHEN AGP
for the Respondent(s) No. 1,2,3,4

NOTICE SERVED BY DS for the Respondent(s) No. 5

=====

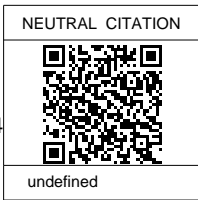
**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**

Date : 09/05/2024

COMMON CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE)

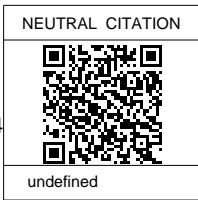
1. By way of these petitions, common challenge is made to the vires of Rule 2(A)(a)(ii) as well as Rule 2(A)(a)(iii) of the Narmada Water Resources, Water Supply and Kalpasar Department Recruitment Rules, 2016, which has been published through the notification dated 8.6.2016. There is a further challenge to the legality and validity of promotion to the post of Deputy Executive Engineer (Civil) Class-II in the Gujarat Engineering Services under the Roads & Building Department Recruitment Rules, 2017, being Rule 2(a)(i) and 2(a)(ii), published by the notification dated 14.7.2017, being discriminatory and violative of Articles 14 and 16 of the Constitution of India, by treating the 'unequals' as 'equals' for



the promotion to the post of Deputy Executive Engineer.

2. The case of the petitioners is that the Assistant Engineers who are having Bachelor of Engineering (Civil) degree and who have been selected after following the due procedure by the Gujarat Public Service Commission (GPSC) and who have no pecuniary limit for carrying out any civil work, are being considered for promotion along with the Additional Assistant Engineers who are Diploma Engineers and have pecuniary jurisdiction to carry out civil works, amounting upto Rs.10 lacs, having 8 years of experience in the cadre and the Overseers having 13 years of experience in the cadre, who can carryout the civil works upto the pecuniary limit of only Rs.25,000/-.

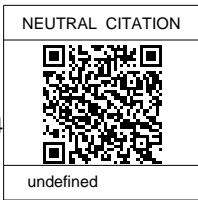
3. That one Special Civil Application No.7593 of 2016 came to be filed in this Hon'ble Court seeking to quash the ratio of 7:4:1 as absolutely irrational and arbitrary, whereby different cadres were considered for promotion. It was contended in the said writ petition that the said ratio required reconsideration as the same had caused injustice to the Assistant Engineers (Civil) Class-II (Gazetted Officer) and due to which, many of the



Assistant Engineers had attained superannuation serving in the same cadre. Whereas, the other cadres of the Overseers and Additional Assistant Engineers got undue advantage of higher promotion on the basis of the said ratio. That the said writ petition came to be disposed of. That, thereafter, the State Government published new Rules through the notification dated 8.6.2016, wherein the same ratio of 7:4:1 for filling up the posts of Deputy Executive Engineer (Civil) came to be maintained.

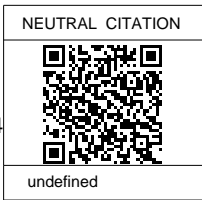
4. The new notifications have continued the same ratio for promotion to the next promotional posts and that no major change is envisaged in the promotion policy, except introduction of 5 years of experience for the Assistant Engineers for promotion to the posts of Deputy Executive Engineer. The grievance with respect to the three different cadres being treated as equals and at par has not been done away with and the anomaly still exists in the previous as well as the current Rules.

5. The learned counsel for the petitioners submitted that considering the requirement of minimum qualification



prescribed for appointment to the post of Deputy Executive Engineer (Civil) through the direct selection, the Overseer (Civil) and the Additional Assistant Engineer (Civil) could not have been and ought not to have been treated as feeder cadre posts for promotion to the post of Deputy Executive Engineer (Civil). He further submitted that all these cadres could not be treated at par only by prescribing work experience and the unequals have been treated as equals, though the qualification criteria prescribed for these three cadres are different and distinct. Further, even the duties attached to the posts are having different pecuniary jurisdiction and, therefore also, they lacked in experience for promotional posts and cannot be treated at par with the Assistant Engineers (Civil) who are actual feeder cadre for the post of Deputy Executive Engineer (Civil).

6. It was submitted that considering the capacity and competence as well as theoretical and practical knowledge gained by the Additional Assistant Engineers and Overseers, it cannot be said that all these cadres carry out the same kind of works and are enjoying the same powers to execute the civil

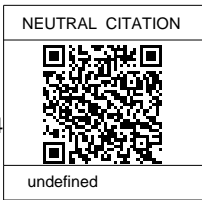


works allotted to them. It was submitted that even as per the Government Resolution dated 12.7.2011, published by the Road & Building Department, Government of Gujarat,

(i) Overseers (Civil) after 12 years of service, is treated as competence to carry out work of Rs. 10,000 only, and Overseer (Civil) having experience of 5 years to 12 years is treated as competent enough to carry out work up to Rs. 5000 only, and in the same manner, AND

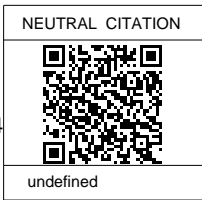
(ii) Additional Assistant Engineers (Diploma CIVIL) having experience of 2-10 years is treated as competent enough to carrying out work up to Rs. 40,000/-; and Additional Assistant Engineers (Diploma - CIVIL) having experience of over 10 years is treated competent enough to carry out work up to Rs. 1,00,000.

It was also submitted that the Overseers who have not even studied the basic principles of Civil Engineering and who have a qualification of 10th Std. pass as well as a Certificate Course from ITI, cannot gain the same knowledge and expertise even after discharging the duties for a long period. The same is also in respect of Additional Engineers who are appointed on the basis of their Diploma in Civil Engineering, which is conferred after passing 3 years course after 10th Std. It was, therefore, submitted that there could not be any comparison in respect of the capacity and competence of the candidates holding these posts, to be eligible for promotional post of Deputy Executive



Engineer (Civil) Class-II in Gujarat Engineering Services.

7. It was further submitted that even going through the scheme of the higher pay scale published through various Government Resolutions, none of these three cadres can be treated at par, as they carry different pay scales and Grade Pay. It was further contended on behalf of the learned counsel for the petitioners that the impugned new Recruitment Rules are also contradictory to the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967 and specifically Rule 11(A)(2) and, therefore also, the same cannot be sustained. He submitted that because of such newly formulated Rules, there is great heart-burning amongst the cadres of Assistant Engineers (Civil) as it curtails the promotional posts for their cadre and further treated the posts of Overseer and Assistant Engineer (Diploma- Civil) at par. By the said effect, the Overseer will jump at least two cadres when he is selected to the post of Deputy Executive Engineer and the Assistant Engineer shall jump one cadre to reach the post of Deputy Executive Engineer. It is further submitted that the said cadres which are lower in post to the Assistant Engineer (Civil) will march over the petitioners

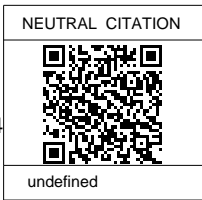


and many of the Assistant Engineers would stagnate their present posts till their retirement. It is, therefore, submitted that the impugned Rules be declared ultra vires and violative of Articles 14 and 16 of the Constitution of India and also violative of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967.

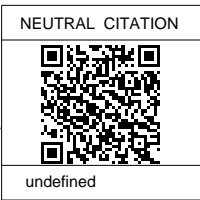
8. The learned counsel for the petitioners has relied upon the following judgments in support of his contentions which are based on the legal principle that two unequals cannot be treated equally and that the same is in violation of Articles 14 and 16 of the Constitution of India:-

- (1) Judgment dated 10.7.2023 of the Hon'ble Karnataka High Court rendered in Writ Petition No.1575 of 2023 & Ors. Between Sri Rangaramu M.R. vs. the State of Karnataka & Ors.
- (2) State of Jammu & Kashmir v. Trilokinath Kosha, reported in (1974) 1 SCC 19;
- (3) Uttar Pradesh Power Corporation Ltd. v. Ayodhya Prashad Mishra, reported in (2008) 10 SCC 139;
- (4) K. Naraynan v. State of Karnataka, reported 1994 SCC Supp (1) 44.

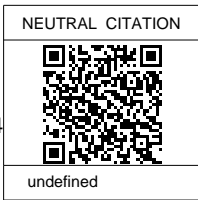
9. *Per contra*, Mr. Kamal Trivedi, learned Advocate General,



appearing on behalf of the State Government, has submitted that what has been provided by the impugned Rule is only an avenue for promotion to the post of Deputy Executive Engineer (Civil) Class-II for the two cadres of Additional Assistant Engineers and Overseers and the State Government has only prescribed the ratio of 7:4:1 for the said promotional post for different cadres of Assistant Engineers, Additional Assistant Engineers and Overseers; respectively. He submitted that for the said purpose of promotion, each of these feeder cadres have prescribed different qualifications and in addition to these qualifications, the candidates who are seeking such promotion have to pass a professional examination as well as computer qualifying examination. He submitted that it is only if the candidates in the different cadres are able to pass such professional examination, which is common for all these cadres, only then, they are to be considered at par for further promotion in the ratio prescribed. He submitted that since the three cadres have different qualifications and work experience, the State Government deemed it necessary to hold a common professional examination for consideration of promotion to the post of



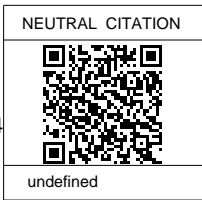
Deputy Executive Engineer and hence, they are not treated at par. Mr. Trivedi has further submitted that since the definite ratio has been prescribed for promotion for different cadres, it cannot be said that all the three cadres will be competing against each other for the promotional posts. He submitted that even after qualifying the qualifications and computer examination, as held by the State Government, the successful candidates shall be appointed only on the basis of the ratio of 7:4:1 as prescribed in the impugned Rules. The feeder cadres have fixed the ratio of promotional avenues and, therefore, all the candidates of the three cadres are competing for promotional posts in their respective cadres and not *inter-se* between all the three cadres. He submitted that even after the professional examination is cleared by the 7 Overseers candidates, still only one of them would be appointed to the promotional post. Similarly, the successful candidates who have cleared the examination in the cadre of Additional Assistant Engineer, only 4 of the candidates would be appointed to the promotional posts and the cadre of Assistant Engineers to which the petitioners belong, will be appointed to the 7 posts in the



promotional cadre. He, therefore, submitted that it cannot be said that all the three cadres have been treated equally for the promotional posts.

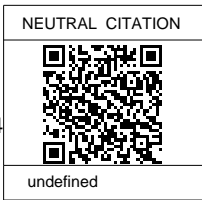
10. It is further submitted by the learned Advocate General that the State Government in exercise of its powers conferred under Article 309 of the Constitution of India has framed the impugned Rules. It is in the domain of the State Government to prescribe such Recruitment Rules. The State Government has made the aforesaid Rules providing for the ratio, experience and a common professional examination for the purpose of promotion to the post of Deputy Executive Engineer (Civil) Class-II. The same has been done to provide promotional avenues to the other cadres in the fixed ratio. The State Government is well within its power to prescribe appropriate Rules to various posts and accordingly, the present Rules, 2016 have been framed prescribing the ratio for the purpose of promotion to the post of Deputy Executive Engineer (Civil) Class-II.

11. It is submitted by the learned Advocate General that at



earlier point of time, one employee Shri Kailashchand Vishnulal Jain had preferred Special Civil Application No.16099 of 2016 *inter alia* raising a grievance that the ratio of 7:4:1 framed under the Rules of 1979 requires reconsideration and the present Rules, impugned herein, were also challenged on the similar lines. It was submitted that the said writ petition came to be dismissed on the ground that the ratio of 7:4:1, which was prescribed under the Rules, 1979, was already existing when the petitioner came to be appointed in the service and being fully aware of such position, he had accepted his appointment and continued to work on the said post and at the time of his retirement, he could not turn around and challenge the said Rules. He submitted that in the present case also, the petitioners were very well aware of these Rules and the ratio prescribed under the Rules, 1979. The said judgment squarely covers the issue involved in the present case and, therefore, the present writ petitions are not maintainable as a decision has already been rendered on the said issue by this Hon'ble Court.

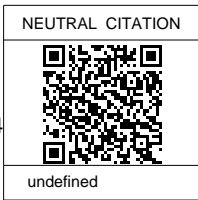
12. The learned Advocate General has further submitted that the judgments relied in support of the contentions by the



petitioners are not at all applicable in the facts and circumstances of the present case. He submitted that the judgments cited are on the principle that two unequals cannot be treated equally. However, in the present case, different cadres have not been treated as equals at any point of time. Since there is a qualification prescribed for promotion to the post of Deputy Executive Engineer (Civil) Class-II and there is a common professional substantive test to be cleared by the candidates in the respective cadres to be eligible for promotion for their cadres only in the ratio prescribed. He, therefore, submitted that the present writ petitions be dismissed as the Rules are not at all violative of Articles 14 and 16 of the Constitution of India or in violation of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967.

13. Heard the learned counsels for the parties and perused the record.

14. By Special Civil Application No.3184 of 2023, the petitioners have challenged the Rule 2(A)(a)(ii) and Rule 2(A)(a)(iii) of the Narmada Water Resources, Water Supply and Kalpsar

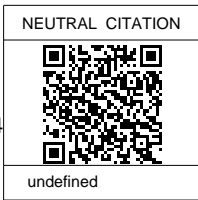


Department Recruitment Rules, 2016, published by the notification dated 8.6.2016, which reads as under:-

- “2. Appointment to the post of the Deputy Executive Engineer (Civil), Class II in Gujarat Engineering Services, under the Narmada, Water Resources. Water Supply and Kalpasar Department, Gujarat State, shall be made. either, -
- (A) by promotion of a person of proved merit and efficiency from amongst the persons, who, -
- (a)(i) have worked for not less than five years in the cadres of Assistant Engineer (Civil), Class II, in Gujarat Engineering Services, under the Narmada, Water Resources, Water Supply and Kalpasar Department or
- (ii) have worked for not less than eight years in the cadre of Additional Assistant Engineer (Civil), Class III, in the subordinate Engineering Services, under the Narmada, Water Resources, Water Supply and Kalpasar Department, or
- (iii) have worked for not less than thirteen years in the cadre of Overseer (Civil), Class III, and in the subordinate Engineering service, under the Narmada, Water Resources, Water Supply and Kalpasar Department.
- (b) have passed the prescribed professional examination; and
- (c) have passed the qualifying examination for computer knowledge in accordance with the provisions of the Gujarat Civil Services Computer Competency Training Examination Rules, 2006: and

Provided that the promotion from amongst Assistant Engineer (Civil), Additional Assistant Engineer (Civil) and Overseer (Civil) shall be made in the ratio of 7:4:1 respectively:

Provided further that where the appointing authority is satisfied that a person having the experience specified in clause 2(A)(a) above is not available for promotion and that it is necessary in the public interest to fill up the post by promotion even of a person having experience for a



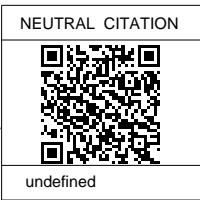
lesser period; it may, for reasons to be recorded in writing, promote such person who possesses experience of a period of not less than two-thirds of the period specified in clause 2(A)(a) above; or

- (B) On the basis of the result of the competitive examination held by the Gujarat Public Service Commission."

15. By Special Civil Application No.3199 of 2023, the petitioners have challenged the Rule 2(a)(i) and 2(a)(ii) of the Roads & Building Department Recruitment Rules, 2017, published by the notification dated 14.7.2017, which reads as under:-

- "2.** Appointment to the post of the Deputy Executive Engineer (Civil), Class II in Gujarat Engineering Services, under the Roads and Building Department, Gujarat State, shall be made, either, -
- (a) by promotion of a person of proved merit and efficiency from amongst the persons, who, -
 - (i) have worked for not less than 5, 8 and 13 years in the cadres of Assistant Engineer (Civil), Class II, Additional Assistant Engineer (Civil) Class-III and Overseer (Civil) Class- III respectively;
 - (ii) Assistant Engineer (Civil) Class-II, Additional Assistant Engineer (Civil) Class-III, and Overseers (Civil) Class-III shall be promoted to the post of Deputy Executive Engineer (Civil) Class-II in the ratio of 7:4:1 respectively;
 - (iii) have passed the prescribed professional examination; and
 - (iv) have passed the qualifying examination for computer knowledge in accordance with the provisions of the Gujarat Civil Services Computer Competency Training and Examination Rules, 2006:

Provided that where the appointing authority is

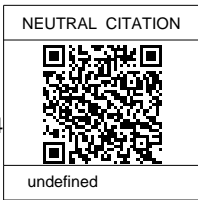


satisfied that a person having the experience specified in Sub-clause (i) above is not available for promotion and that it is necessary in the public interest to fill up the post by promotion even of a person having experience for a lesser period; it may, for reasons to be recorded in writing, promote such person who possesses experience of a period of not less than two-thirds of the period specified in Sub-clause (i) above; or

- (b) by direct selection on the basis of the result of the competition examination held for this purpose.”

16. That by the Rules impugned in both the writ petitions, the appointment to the post of Executive Engineer (Civil) Class-II shall be made either through promotion or direct selection. The said Rules further provide that for the purpose of promotion to the said post, the three cadres are to be considered for promotion with requisite experience prescribed therein in the prescribed ratio after clearing the competitive examination which would be held by the Gujarat Public Service Commission (GPSC) along with qualifying examination for computer knowledge. Three cadres which will compete for promotion to the post of Deputy Executive Engineer (Civil) Class-II in the Gujarat Engineering Services under the respective departments, shall be:-

- i. Assistant Engineer (Civil) Class-II having minimum experience of 5 years in the cadre;

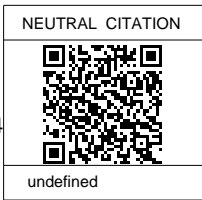


- ii. Additional Assistant Engineer (Civil) Class-III having minimum experience of 8 years in the cadre;
- iii. Overseer (Civil) Class-III having minimum experience of 13 years in the cadre.

The said three cadres will be considered for promotion in the prescribed ratio of 7:4:1; respectively.

17. Under the Rules, all the three cadres have different qualifications and criteria to be appointed to the respective posts. Further, all the three different cadres have also prescribed the pecuniary jurisdiction in respect of the civil works to be executed by them. In the routine course, by way of normal course of promotion, for the post of Overseer, the next promotional post by seniority is Additional Assistant Engineer (Civil) and thereafter, Assistant Engineer (Civil) Class-II. For the post of Additional Assistant Engineer (Civil) (Diploma holders), the next promotion post in the routine course is the Assistant Engineer (Civil). For the post of Assistant Engineer (Civil) Class-II, which is a Gazetted post, the next promotional post is the Deputy Executive Engineer (Civil) Class-II.

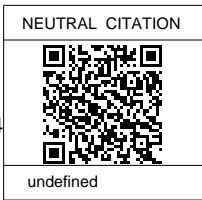
18. Article 309 of the Constitution of India empowers the



State Government to frame appropriate Rules for appointment to various posts. In the present case, the State Government framed the Deputy Engineer (Civil), Gujarat Service of Engineers (Class-II) Recruitment Rules, 1979 for appointment to the post of Deputy Engineer (Civil). That vide resolution dated 28.5.1981, the State Government changed the aforesaid existing designations of the post as under:-

- i. Supervisor, re-designated as Sub-Engineer;
- ii. Junior Engineer, re-designated as Assistant Engineer;
- iii. Deputy Engineer, re-designated as Deputy Executive Engineer.

19. Further, in partial modification of the resolution dated 28.5.1981, the State Government changed and re-designated the post of Sub-Engineer to the Additional Assistant Engineer, vide resolution dated 5.8.1981. That vide Gujarat Public Works Manual, published in March 1987, the State Government prescribed the duties of the Assistant Engineers., Additional Assistant Engineers and Overseers in the Irrigation, Roads and Building, Mechanical Organization and Electrical Wings of PWD. As per the said Manual, all the three cadres have the same

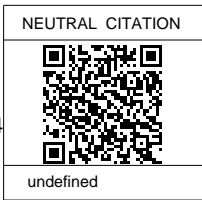


nature of duties across the different departments mentioned therein.

20. The State Government bifurcated the Narmada Water Resources, Water Supply and Kalpsar Department and the Roads & Building Department. In super-session of all the aforesaid Rules, the State Government has framed the Rules of 2016 for recruitment on the post of Deputy Executive Engineer (Civil) Class-II in Gujarat Engineering Services in its Narmada, Water Resources, Water Supply and Kalpsar Department. Similarly, the State Government framed the Rules, 2017 for recruitment on the post of Deputy Executive Engineer (Civil) Class-II in Gujarat Engineering Services in its Road and Building Department. Similarly, the Road and Building Department has framed the Rules of 2017, which are *pari materia* with the Narmada Water Resources, Water Supply and Kalpsar Department Recruitment Rules, 2016 for the said post.

21. At this stage, it would be also appropriate to take note of the source of appointment to all the three cadres, viz.:

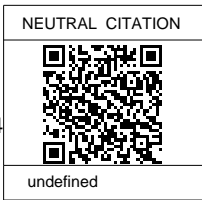
- (1) The post of Assistant Engineer is filled up by direct selection through the examination conducted by



Gujarat Public Service Commission (GPSC);

- (2) The post of Additional Assistant Engineer is filled up through direct selection by examination conducted by the Gujarat Subordinate Service Selection Board (GSSSB);
- (3) The post of Overseer is filled up through promotion from the feeder cadre post of Technical Assistant and Work Assistant having 5 years experience.

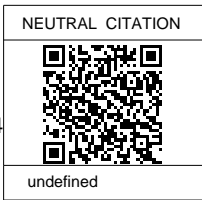
22. It is seen that the Assistant Engineers should have the qualification of Bachelor of Engineering (Civil) for being eligible to hold the post. For the purpose of Additional Assistant Engineer, it is necessary that they should have Diploma in Civil Engineering. Further, the Overseers cadre is a promotional post of the Technical Assistant (Class-III) and the Work Assistant (Class-III) and for the said post, the minimum educational qualification is also Diploma in Civil Engineering and both these cadres of Technical Assistant and Work Assistant are filled up by direct selection by way of a competitive examination conducted by the Gujarat Subordinate Service Selection Board. As the posts of Additional Assistant Engineer and Overseer are having basic minimum qualification of Diploma in Civil Engineering, higher work experience of 8 years and 13 years respectively is prescribed in the Recruitment Rules for being eligible to appear



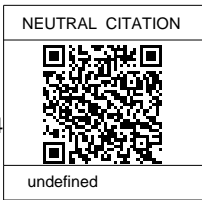
in the professional examination for the post of Deputy Executive Engineer (Civil) Class-II.

23. It would be appropriate to take note of the fact that the said position in respect of the promotion to the post of Deputy Executive Engineer (Civil) Class-II in the ratio of 7:4:1 has been prevailing since 1979, when for the first time, the Recruitment Rules came to be framed by the State Government. The promotions are being done in the respective departments on the basis of the said ratio and the Rules till date. The petitioners were fully aware of these Rules and the ratio when they had joined the services.

24. It was contended by the learned counsel for the petitioners that all the three posts of Assistant Engineer, Additional Assistant Engineer and Overseer have different pecuniary jurisdiction for the work to be carried out by them. However, on a close scrutiny, it can be said that the nature of duties in case of all these posts is same in all respects and it cannot be said that the nature of work is different with respect to all these three posts. Further, the contention of the learned counsel for the petitioners that on promotion, the cadres of Overseers and

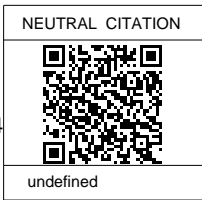


Additional Assistant Engineers who have limited pecuniary jurisdiction on promotion would get unlimited powers in view of the Recruitment Rules and would make these Rules irrational and arbitrary is also unfounded. Every higher post of promotion comes with additional duties and responsibilities. The PWD Manual lays down the common duties for the three posts of Assistant Engineers, Additional Assistant Engineers and Overseers and, therefore, just because the higher post has unlimited pecuniary jurisdiction would not affect the work being executed by these feeder cadres and, therefore, the said contention on behalf of the petitioners cannot be accepted. All the three feeder cadre posts exercise the same nature of duties, but different responsibilities and it cannot be accepted that they are not capable of being promoted to the promotional posts as per the Recruitment Rules. In fact, as per the responsibilities being handled by different cadres, the Rules have prescribed different years of work experience according to the responsibility handled, so as to treat them at par for appearing in the common professional examination, to be cleared by all the three cadres, which addresses the issue of unfair advantage to a



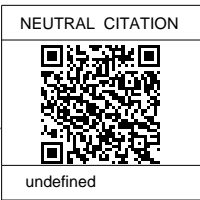
particular cadre. The equivalence is sought to be achieved by prescribing different work experience to appear in the professional test and, therefore, it cannot be said that in the present case, there is a discrimination or arbitrariness and that unequals are being treated as equals. In fact, even after clearance of professional examination, the promotions from different cadres have to be in the ratio prescribed and, therefore, it cannot be said that there is any arbitrariness or discrimination. The contention of the petitioners that since they are having superior qualifications and higher pay scale, only the cadre of Assistant Engineer can be feeder cadre for the promotional post of Deputy Executive Engineer (Civil) Class-II cannot be sustained.

25. It is further noticed that the prescriptions of qualification of work experience for the posts of Assistant Engineer and Overseer have also been fixed on the basis of the Rule 11A(2)(c) of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967. The said Rules prescribe that no employee shall be promoted from the lower Class-II service to the next higher post in the same service unless he has 5 years of

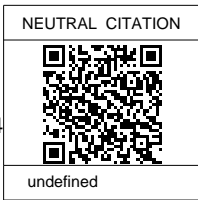


experience in the said post from which he is to be promoted to the next higher post. Therefore, in view of the said Rules, for the Assistant Engineers (Civil) Class-II, the Rules of 2016 and the Rules of 2017 prescribe that they should have experience of 5 years before being promoted to the post of Deputy Executive Engineer (Civil) Class-II. Further, Rule 11A(2)(b) provides that no employee shall be promoted from Class-III service to Class-II service unless he has experience of 7 years in the Class-III service from which he is being promoted. Accordingly, for the cadre of Additional Assistant Engineers and Overseers, minimum of 8 years and 13 years experience respectively has been prescribed for being considered to appear in the professional examination for promotion to the post of Deputy Executive Engineer (Civil) Class-II.

26. The Rules impugned herein provide for the ratio, experience and professional examination for the purposes of promotion to the post in question for the three different cadres. The said impugned Recruitment Rules are in consonance with the General Recruitment Rules as prescribed by the State Government. The State Government in its wisdom can prescribe



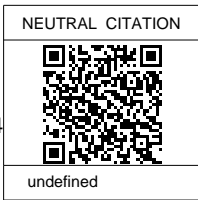
such Recruitment Rules. The learned counsel for the petitioners in the instant case could not point out any conflict between the General Recruitment Rules and the impugned Rules herein. It cannot be said that the impugned Rules of 2016 and Rules of 2017 are arbitrary, discriminatory and being violative of Articles 14 and 16 of the Constitution of India since the impugned Rules do not in any manner discriminate the petitioners since these impugned Rules prescribe a predefined ratio for promotion as well as the minimum number of years of experience for each of the feeder cadre posts and thus, the impugned Rules do not treat all the feeder cadre posts as equals. In fact, the different criteria are prescribed for different cadres, to be eligible for appearance in the professional examination which has to be undertaken by all the feeder cadres. Therefore, the Court is of the opinion that there is no undue and unfair advantage to any of the feeder cadres for being considered to be eligible to sit in the professional examination for the purpose of promotion to the higher post of Deputy Executive Engineer (Civil) Class-II. It cannot be said that the promotions given in the ratio prescribed in the feeder cadre are in violation of any General Rules as



prescribed by the State Government. There being distinct separation for all the three feeder cadres. The contention of the learned counsel for the petitioners that, unequals are being treated equally, has no force and the same is accordingly rejected.

27. It is well-settled in the Service Jurisprudence that the classification is necessary to balance the equality principle depending on the nexus for making such classifications. But, it has been left to the wisdom of the administrative authorities to examine this nexus. The administration can consider giving lesser qualified an opportunity of promotion on different terms rather than completely prohibiting them from promotion, in case where the cadres are having two different qualifications. There has to be a reasonable relation to the nature of duties and responsibilities, that go with the promotional posts. Therefore, whether such a classification is reasonable or not, necessarily depends upon the facts of circumstances of each case.

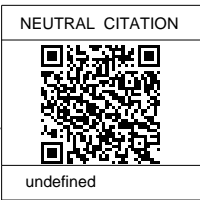
28. In the present case, the object of maintaining the ratio of 7:4:1 for promotion to the post of Deputy Executive Engineer (Civil) Class-II is with an intention to prevent the stagnation in



the feeder cadres of Additional Assistant Engineers and Overseers. It cannot be said that there is any integration of three different categories of employees in the feeder cadre, especially in view of the ratio to be maintained for promotion to the higher post along with the work experience required as per the Rules. Finally, to test the competency of candidates, all the three cadres are required to pass a highly competitive professional examination. Therefore, in the present case, the promotion to the post of Deputy Executive Engineer (Civil) Class-II is through different cadres which are not at par, having different qualifying criteria and one common qualifying professional exam before being promoted in the ratio prescribed. This fact clearly shows that three cadres are not treated as equal.

29. The judgments as relied upon by the learned counsel for the petitioners shall be of no avail in the present case in view of the aforesaid observations and are distinguishable in the facts and circumstances of the present case.

30. Further, the judgment and order of this Court in Special



Civil Application No. 16099 of 2016, which has dismissed the challenge to the ratio of 7:4:1 framed under the Rules, 1979 and which has been continued with framing of the new Rules, 2016 and Rules, 2017, would also cover the issue involved in the present case.

31. In view of the aforesaid observations, we are of the opinion that the challenge to the impugned Rules must fail. The impugned Rules are not discriminatory or violative of Articles 14 and 16 of the Constitution of India. The writ petitions are devoid of merits and are accordingly, DISMISSED. Notice is discharged. No order as to costs.

32. As the main writ petitions are dismissed, the pending Civil Applications do not survive and stand DISPOSED OF.

Sd/-
(SUNITA AGARWAL, CJ)

Sd/-
(ANIRUDDHA P. MAYEE, J.)

OMKAR