

**HIGH COURT OF MADHYA PRADESH : JABALPUR****W.A. No. 933/2016****M.P. Electricity Board & Another** .....Appellants

Versus

**Guneshwar Krishan Manuja** .....Respondent=====  
**Coram:****Hon'ble Shri Justice Hemant Gupta, Chief Justice****Hon'ble Shri Justice Atul Sreedharan, J.**Whether approved for reporting: **Yes**  
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Shri M.L. Jaiswal, Senior Advocate with Shri Rajmani Sharma, Advocate for the appellants.

Shri Pramod Kumar Mishra, Advocate for the respondent/writ petitioner.  
=====**O R D E R {Oral}****{18<sup>th</sup> April, 2017}****Per: Hemant Gupta, Chief Justice:**

The order dated 27.10.2016 passed by the learned Single Judge in Writ Petition No.3521/1998 (*Guneshwar Krishan Manuja v. M.P. Electricity Board and another*) is subject matter of challenge in the present appeal. Vide order impugned in the present appeal, the learned Single Judge has allowed the pay scale of the post of Additional Chief Engineer to the writ petitioner, who was a Diploma Holder.

3. Certain circulars were issued granting higher pay scale of the post of Additional Chief Engineer, but, all such circulars were superseded when a circular was issued on 19.07.1990. The relevant extract from the circular dated 19.07.1990 (Annexure A/1) reads as under:-

**Ist option:**

**Ind option:**

(xxv) The option for higher scale is admissible only upto the post of Superintending Engineer and equivalent rank. The SEs who are Diploma Holders are not eligible to the benefit of higher scale as the Promotion of Diploma Holders are limited to the post of SEs. Similarly, the officers in equivalent rank of SE in other wings who are not having required education/professional qualification, will

not be eligible to the benefit of higher pay scale. In the case of officers whose promotion to higher post is held up for want of minimum qualifications, such officers shall not be eligible to opt for higher pay scale.”

4. Earlier, another circular was issued on 22.03.1986 that the Superintending Engineers, who are Diploma Holders are not eligible to the benefit of higher pay scale as promotion of Diploma Holders is limited to the post of Superintending Engineer. The relevant clause 2(iv) of the circular dated 22.03.1986, reads as under:-

“2. The Board is now pleased to prescribe the following terms and conditions for grant of higher pay scale:

i)	***	***	***
ii)	***	***	***
iii)	***	***	***

iv) The Superintending Engineers who are Diploma Holders are not eligible to the benefit of higher scale as the promotion of Diploma holders are limited to the post of Superintending Engineer.”

5. On the basis of such circulars, it is contended by the appellants that the writ petitioner, who is a Diploma Holder cannot get the pay scale of Additional Chief Engineer, as such post is only meant to be held by Degree Holders. In support of the said contention that there can be classification on the basis of educational qualification, the learned counsel for the appellants

relies upon the Supreme Court order reported as 2004 (1) SCC 347 (*Government of W.B. v. Tarun K. Roy and others*) wherein it is held that the employees performing the similar job but having different educational qualifications can be treated differently. The relevant extract from the said decision are reproduced as under:-

“14. Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus, be treated differently.

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30. The respondents are merely graduates in Science. They do not have the requisite technical qualification. Only because they are graduates, they cannot, in our opinion, claim equality with the holders of diploma in Engineering. If any relief is granted by this Court to the respondents on the aforementioned ground, the same will be in contravention of the statutory rules. It is trite that this Court even in exercise of its jurisdiction under Article 142 of the Constitution of India would not ordinarily grant such a relief which would be in violation of a statutory provision.”

6. In another judgment reported as (2011) 11 SCC 122 (*Steel Authority of India Ltd. And others v. Dibyendu Bhattacharya*),

the Supreme Court held as under:-

“29. It is a settled legal proposition that it is not always impermissible to provide two different pay-scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority. (*Vide J.P. Chaurasia, (1989) 1 SCC 121 and Meva Ram Kanojia (1989) 2 SCC 235*. “Non-uniformities would not in all events violate Article 14”. Thus, a mere difference does not always amount to discrimination. (*Vide Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125, Associate Banks Officers' Assn. v. SBI, (1998) 1 SCC 428 and Official Liquidator, (2008) 10 SCC 1*).

30. In view of the above, the law on the issue can be summarised to the effect that parity of pay can be claimed by invoking the provisions of Articles 14 and 39(d) of the Constitution of India by establishing that the eligibility, mode of selection/recruitment, nature and quality of work and duties and effort, reliability, confidentiality, dexterity, functional need and responsibilities and status of both the posts are identical. The functions may be the same but the skills and responsibilities may be really and substantially different. The other post may not require any higher qualification, seniority or other like factors. Granting parity in pay scales depends upon the comparative evaluation of job and equation of posts. The person claiming parity, must plead necessary averments and prove that all things are equal between the posts concerned. Such a complex issue cannot be adjudicated by evaluating the affidavits filed by the parties.

31. The onus to establish the discrimination by the employer lies on the person claiming the parity of pay. The expert committee has to decide such issues, as the fixation of pay scales etc. falls within the exclusive domain of the executive. So long as the value judgment of those who are responsible

for administration i.e. service conditions etc., is found to be bonafide, reasonable, and on intelligible criteria which has a rational nexus of objective of differentiation, such differentiation will not amount to discrimination. It is not prohibited in law to have two grades of posts in the same cadre. Thus, the nomenclature of a post may not be the sole determinative factor. The courts in exercise of their limited power of judicial review can only examine whether the decision of the State authorities is rational and just or prejudicial to a particular set of employees. The court has to keep in mind that a mere difference in service conditions does not amount to discrimination. Unless there is complete and wholesale/wholesome identity between the two posts they should not be treated as equivalent and the Court should avoid applying the principle of equal pay for equal work.”

7. Learned counsel for the writ petitioner relies upon the circular dated 04.11.1989 as also the circular dated 19.01.1990 wherein the higher pay scale is contemplated to be granted on completion of 9/18/25 years of service. One of the condition is that the higher pay scale shall be available only up to the post of Additional Chief Engineer. It is, thus, contended that on completion of requisite number of years, irrespective of the educational qualification, the writ petitioner would be entitled to the pay attached to the post of Additional Chief Engineer. He also relies upon the order passed by the learned Single Judge of this Court in M.P. No.739/1987 (*Susarla Suryanarayana Murti v. M.P. Electricity Board*) wherein the petitioner was granted the

benefit of the post of Additional Chief Engineer being a Diploma Holder, *inter alia*, on the ground that at the time of appointment, he was not communicated that he will not be entitled to the further promotion beyond the post of Superintending Engineer. The educational qualification is to be considered at the time of induction of the employee in service but, the same cannot be considered for further promotion. The relevant extract from the order passed in *Murti (supra)* are reproduced as under:-

“23. Thus, in the considered opinion of this Court, no benefit by these Circulars can at all be given to Respondent. Thus having given my anxious consideration to the whole matter, I am of the opinion that petitioner would also be entitled to get benefit of Annexure-II and IV. Condition No.2(IV) of Annexure-IV would not come in the way of petitioner to hold that he was only a Diploma holder, therefore, he would not be entitled for it. It may also be mentioned that, petitioner was not communicated that he would not be entitled for further promotion beyond Superintending Engineer, when he was appointed in the year, 1952. Educational qualifications have to be considered at the time of induction of an employee. But the same cannot be considered while considering the case of such employee for further promotion. Further promotion of an employee depends on so many other conditions, namely; hard work, industry, integrity, dedication, diligence, merit and seniority etc.

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25. Looking to the facts and circumstances of the case, the petition stands allowed as mentioned above. Condition

No.2(IV) of Annexure IV dated 22.3.86 shall not come in the way of the petitioner. Needless to say, looking to the exemplary services rendered by Petitioner to Board for a period of 36 years, this would be a too little a reward for him and Respondent is not likely to be financially burdened on account of this. Accordingly benefit is directed to be given to the Petitioner only.”

8. We have heard learned counsel for the parties at length. We find that the order passed by the learned Single Judge cannot be sustained. The judgment of a Single Bench of this Court in *Murti's case (supra)* proceeds on a wrong assumption of law and facts. The promotion is not a right. The right is of consideration in view of the rules for filling up the promotional post. It can be curtailed or qualified, as the case may be. Therefore, the observation that at the time of appointment, the petitioner was not informed that he will not be entitled to further promotion beyond the post of Superintending Engineer, therefore, he is entitled to the pay scale of Additional Chief Engineer, is too farfetched. The educational qualification is to be considered at the time of induction of an employee for the post to which he is an applicant but further promotion will arise only if he possesses educational qualification and experience for such post. The petitioner is not possessing the educational qualification for promotion to the post of Additional Chief Engineer, therefore, for the reason that he was

possessing the educational qualification for the post of Assistant Engineer at the time of his appointment, will not be a ground to consider him eligible for promotion to the post of Additional Chief Engineer and/or pay scale attached to the said post. The said judgment does not lay down the law correctly. Still further, the benefit was restricted to the petitioner alone. To clear the law on the point, we deem it appropriate to overrule the said judgment.

9. In the present case, it is not a question of pay scale as in *Murti's* case (supra), but, the right of promotion to the higher post. The petitioner would be entitled to pay attached to the post of Additional Chief Engineer only if he is entitled to be promoted to the said post. The said post can be filled only amongst the Degree Holders and not the Diploma Holders. Thus, the petitioner was ineligible to be promoted as Additional Chief Engineer and accordingly cannot be held entitled to the pay scale of the said post.

10. The circulars dated 04.11.1989 and 19.01.1990 have been superseded when a circular was issued by the Board on 19.07.1990. The opening paragraph itself states that such order has been issued in supersession of the existing orders, except order No.01-05/I/95 dated 26.5.1990. Since a comprehensive circular was issued prescribing how the higher pay scale is to be given,

therefore, such circular will be deemed to have superseded the earlier circulars. We find that the finding of the learned Single Bench that the circular dated 19.07.1990 supersedes the circular dated 26.5.1990 but does not supersede other circulars is not the correct reading of the circular. In fact, it supersedes all earlier circulars except circular dated 26.5.1990.

11. Thus, we find that the order of the learned Single Bench cannot be sustained and is accordingly, set aside. The appeal is **allowed**.

**(HEMANT GUPTA)**  
Chief Justice

**(ATUL SREEDHARAN)**  
Judge

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