

**Ramesh Chandra Maurya and ors. Vs. State of U.P. and anr.**

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**Court :** Allahabad

**Decided On :** Aug-26-2004

**Reported in :** (2004)3UPLBEC3009

**Judge :** M. Katju and ;Umeshwar Pandey, JJ.

**Acts :** Uttar Pradesh Rural Engineering (Group-B) Services, First Amendment Rules, 1999 - Rules 5 and 16; [Constitution of India](#) - Articles 14, 16 and 226; Uttar Pradesh Rural Engineering Services, Subordinate Engineers Rules, 1984; Uttar Pradesh Rural (Engineering Services) Rules - Rules 5 and 16

**Appeal No. :** Civil Misc. Writ Petition No. 34967 of 2004

**Appellant :** Ramesh Chandra Maurya and ors.

**Respondent :** State of U.P. and anr.

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** S.C. Budhwar, ;Abhishek Tripathi and ;Vikas Budhwar, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**M. Katju and Umeshwar Pandey, JJ.**

1. This writ petition has been filed challenging the validity of Rule 5 of the UP. Rural Engineering (Group-B) Services 1st Amendment Rules, 1999 as notified on 28.1.2000, on the ground that it is violative of Articles 14 and 16 of the [Constitution of India](#).

2. The petitioners have prayed that a direction in the nature of mandamus be issued directing the respondents to consider the case of the petitioners for promotion on the post of the Assistant Engineer ignoring the aforesaid Rule 5.

3. We have heard learned Counsel for the petitioners and find no merit in this petition.

4. The petitioners were initially appointed as Junior Engineer in 1995, as stated in Para 3 of the writ petition. They have obtained degree of A.M.I.E. vide Annexure-1 to the writ petition.

5. In Paras 6 to 9 of the writ petition, it is stated that earlier recruitment to the post of Assistant Engineer was made in accordance with certain Government Orders (Annexures 2 and 3 to the writ petition). These Government Orders had fixed certain promotion quota as stated in Paras 8 and 9 to the writ petition.

6. In Para 10, it is stated that for the very first time the Governor under the proviso to Article 309 of the [Constitution of India](#), framed the UP. Rural Engineering Services, Subordinate Engineers Rules, 1984. It is alleged that the petitioners were inducted on the post of Junior Engineers in accordance with the said Rules. Subsequently some amendments were made in the quota earmarked for promotion on the post of Assistant Engineer from amongst the degree holders and diploma holders vide GO. dated 7.11.1987, Annexure-4. As per G.O. dated 14.5.1986, the 30% quota earmarked for promotion in respect of diploma holders and degree holders was altered and thereupon 33.33% was earmarked for promotion on the post of Assistant Engineer from Junior Engineer. This 33.33% also contained 8.33%, which was earmarked for degree holders having a degree of Bachelor of Engineer or A.M.I.E.

7. Subsequently new Rules were framed under Article 309 of the [Constitution of India](#) being UP. Rural (Engineering Services) Rules, 1993. Rule 5 of the said rules states :-

'5. Source of recruitment.-Recruitment to the post of Assistant Engineer shall be made from the following sources :

(i) 66-2/3 percent vacancies by direct recruitment through the Commission;

(ii) 33-1/3 percent vacancies by promotion from amongst substantively appointed Junior Engineers and substantively appointed Computers, out of which :-

(a) 25 percent vacancies shall be filled from amongst substantively appointed Junior Engineers and Computers, who have completed seven years service, as such on the first day of July of the recruitment year; and

(b) 8-1/3 percent vacancies shall be filled from amongst substantively appointed Computers who passes a Bachelor's Degree in Civil or Electrical Mechanical Engineering from a recognized Institutions or are Association Members of the Institution of Engineers (India) on the first day of the year of recruitment:

Provided that if suitable eligible persons under clause (b) are not available for promotion, which vacancies may be filled from the persons mentioned in clause (a):

Provided further that the division of vacancies to be filled from amongst substantively appointed Junior Engineers and substantively appointed Computers shall be in the proportion of their respective cadre strength.'

8. Rule 16 of the said Rules states :-

'Recruitment by promotion to the post of Assistant Engineer shall be made on the basis of merit, in accordance with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970, as amended from time to time.'

9. A perusal of Rule 5 of the above Rules shows that 66.66% vacancies were earmarked for direct recruitment and 33.33% vacancies were earmarked for promotion. The criteria for promotion was merit in accordance with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commissioner (Procedure) Rules, 1970.

10. It is alleged in Para 19 of the writ petition that the State Government issued a Government Order dated 18.2.1995 whereby it amended the statutory Rules framed under Article 309 of the [Constitution of India](#) by amending them to the extent that 8.33% post was earmarked for degree holders (as it was in the 1993 Recruitment Rules) and furthermore it extended the quota of diploma holders under the promotional avenue by enhancing it to 33.33%. A true copy of the G.O. dated 18.2.1995 is Annexure-5 to the writ petition. It is alleged that this G.O. is illegal.

11. Subsequently on 28.1.2000, Rules 5 and 16 were amended. A true copy of the amended Rule is Annexure-6 to the writ petition.

12. Under the new Rule of 1999, 51-2/3 post were earmarked for direct recruitment, 40% for promotion from Junior Engineers who had completed seven years of service on the first day of the recruitment year and 8-1/3 post were earmarked for degree holders and substantively appointed Junior Engineers, who had Bachelors Degree in Civil or Electrical Engineering from a recognized Institution.

13. In our opinion, there is no illegality or unconstitutionality in Rule 5. Rule 5 incorporates a policy decision and it is well settled that this Court should not ordinarily interfere in policy matters vide *Union of India v. International Trading Co.*, JT 2003 (4) SC 549 (vide Para 17); *Krishnan Kakkanth v. Government of Kerala*. (1997) 9 SCC 495 and *State of Punjab v. Ram Lubhaya Bagga*. (1998) 4 SCC 117 etc.

14. It is alleged in Paras 21 and 28 of the writ petition and it has been strongly urged by the learned Counsel for the petitioners that the quota of diploma holders has been enhanced to 40%. In our opinion, this submission suffers from a basic

misconception. There is no quota of promotion of 40% only for diploma holders under the new Rule 5. The 40% promotion quota is for Junior Engineers. A Junior Engineer can be either a degree holder or a diploma holder. There is on Rule or Statutorj' Law that a Junior Engineer can only be a diploma holder and cannot be a degree holder. Hence, the learned Counsel's submission proceeds on a fundamental misconception, which is incorrect.

15. Enhancement of the promotion quota to 40% appears to be a policy matter and this Court should exercise self-restraint and should not interfere in such policy decisions.

16. For the reasons given above, there is no force in the petition and it is dismissed.

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