

A.K. RAGHUMANI SINGH AND ORS.

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v.

GOPAL CHANDRA NATH AND ORS.

APRIL 4, 2000

[M. JAGANNADHA RAO AND RUMA PAL, JJ.]

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*Service Law :*

*Manipur P.W.D./Irrigation and Flood Control/Public Health Engineering [Superintending Engineer (Civil)/Superintending Surveyor of Works] Recruitment Rules, 1977.*

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*Promotion—From Executive Engineer to Superintending Engineer—Eligibility—Recruitment Rules provided that Executive Engineer should possess degree in Engineering or its equivalent with 6 years' regular service in the grade—Held : Even a person who had put in the requisite length of service in the grade prior to obtaining the prescribed educational qualifications is also eligible to be considered for promotion.*

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*Words and Phrases :*

*"With"—Meaning of—In the context of Manipur P.W.D./Irrigation and Flood Control/Public Health Engineering [Superintending Engineer (Civil)/Superintending Surveyor of Works] Recruitment Rules, 1977.*

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The appellants and respondent No. 1 were Executive Engineers in the Public Health Engineering Department. Respondent No. 1 obtained the qualification of AMIE diploma, which was recognised as equivalent to B.E. degree for recruitment to superior posts in the Central Government. The Manipur P.W.D./Irrigation and Flood Control/Public Health Engineering [Superintending Engineer (Civil)/Superintending Surveyor of Works] Recruitment Rules, 1977 provided that the post of Superintending Engineer shall be filled up by promotion from Executive Engineer possessing Degree in Engineering or its equivalent with 6 years' regular service in the cadre.

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Respondent No. 1 filed a writ petition before the High Court seeking directions to the State Government to consider him for promotion to the post of Superintending Engineer. The appellants contended before the

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A High Court that respondent No. 1 had not put in 6 years, regular service in the cadre after obtaining the AMIE diploma and, therefore, he was not eligible for being considered for promotion to the said post. The High Court allowed the writ petition. Hence this appeal.

Dismissing the appeal, this Court

B HELD : 1.1. The word 'with' in the Manipur P.W.D./Irrigation and Flood Control/Public Health Engineering [Superintending Engineer (Civil)/Superintending Surveyor of Works] Recruitment Rules, 1977 has been defined diversely, the meaning depending on the context in which it is used. But when it is used to connect two nouns it means "accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense 'and' - 'as well'." [946-D-E]

*New Shorter Oxford Dictionary* (1993), referred to.

D 1.2. Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word 'subsequent' after the word 'with'. [946-E-F]

E 2.1. Even on a point of principle it would be unreasonable to distinguish between the nature of the regular service required, as if the service in the grade subsequent to the obtaining of the necessary educational qualification were qualitatively different from the service in the grade prior thereto. [946-F-G]

F 2.2. Given the meaning of the words, the principle involved and the weight of precedents, the view of the High Court must be upheld. [948-B]

*M.B. Joshi v. Satish Kumar Pandey*, [1993] Supp. 2 SCC 419; *D. Stephen Joseph v. Union of India*, [1997] 4 SCC 753 and *Anil Kumar Gupta v. Municipal Corporation of Delhi*, [2000] 1 SCC 128, relied on.

G *N. Suresh Nathan v. Union of India*, [1992] Supp. 1 SCC 584, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 920 of 1994.

H From the Judgment and Order dated 27.8.93 of the Assam High Court

in W.A. No. 5 of 1993.

Arun Jaitley, A. Raghuvir, Ms. Madhoo Moolchandani, Kh. Nobin Singh, M. Veerappa, S. Janani, J.P. Pathak, Vijay Kumar, A.C. Mahimkar, Pankaj Kalra, Vishwajit Singh and B.K. Sharma, for the appearing parties.

The Judgment of the Court was delivered by

RUMA PAL, J. The appellants and the respondent No. 1 are all Executive Engineers in the Public Health Engineering Department of the Government of Manipur. All the appellants had Degrees in Engineering before they joined service. The respondent No. 1 obtained a Diploma in 1989 having duly qualified in both sections of the Associate Membership Examination of the Institution of Engineers (AMIE). It is not in dispute that the AMIE Diploma is recognised by the Central Government as being on par with a Bachelor's Degree of Engineering for the purpose of recruitment to superior posts under the Central Government. The question is whether the respondent No. 1 was eligible to be considered for promotion to the post of Superintending Engineer in 1991.

The Rules regulating the recruitment to the post of Superintending Engineers of the State of Manipur were notified on 18th October 1977. The Rules called 'The Manipur P.W.D./Irrigation and Flood Control/Public Health Engineering (Superintending Engineer (Civil)/Superintending Surveyor of Works) Recruitment Rules, 1977' provide that the post of Superintending Engineer shall be filled up by promotion from "Executive Engineer (Civil)/(Mech) and Surveyor of Works possessing Degree in Civil/Mechanical Engineering or its equivalent from a recognised institution with 6 years' regular service in the grade".

The vacancy in the post of Superintending Engineer arose in 1991. In the same year the respondent No. 1 filed a writ application seeking directions on the State Government to consider his name for promotion to the post as he had put in 12 years' service in the grade and possessed the necessary educational qualifications.

The writ application was opposed by the State Respondents. They contended that the eligibility criteria required six years regular service after the educational qualification was obtained. In the writ petitioner's case, his period of service after he obtained the AMIE diploma was far short of the requirement and as such, according to the respondents, he could not be

A considered for promotion to the post of Superintending Engineer. The writ application was allowed by the learned Single Judge on 17th March, 1993. It was held that the requirement of six years' service was independent of the requirement of educational qualifications and the eligibility criteria was fulfilled even if the requisite experience had been obtained before obtaining the educational qualifications.

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The appellants herein moved an application for review of the order before the Learned Single Judge. This was rejected. The appellants then filed an appeal before the Division Bench of the Gauhati High Court. The appeal was dismissed and the decision of the learned Single Judge was upheld.

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There is no dispute that as on 1991 the respondent no.1/writ petitioner had put in more than 6 years regular service in the grade. Of that period only a little over 2 years was after he was granted the AMIE Diploma. The controversy hinges on the interpretation of the word 'with' used in the eligibility criteria.

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The word 'with' has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But when it is used to connect two nouns it means "Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense 'and' - 'as well'."

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Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word 'subsequent' after the word 'with'.

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Even on a point of principle it would be unreasonable to distinguish between the nature of the regular service required, as if the service in the grade subsequent to the obtaining of the necessary educational qualification were qualitatively different from the service in the grade prior thereto. In fact no such case has been made out .

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The appellants' contention appears to have been based on the decision of this Court in *N. Suresh Nathan and Another v. Union of India and Others*, [1992] Supp 1 SCC 584. In that case, the qualification for promotion prescribed was as under:

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1. Section Officers possessing a recognised Degree in Civil Engineering or equivalent with three years' service in the grade failing which Section Officers holding Diploma in Civil Engineer with six years' service in the grade - 50 per cent. A

2. Section Officers possessing a recognised Diploma in Civil Engineering with six years' service in the grade - 50 per cent. B

The Court held that the Rules would have to be read in keeping with the practice followed in the Department for a long time and that the period of service in the grade for eligibility for promotion commenced from the date of obtaining the degree and the earlier period of service prior to obtaining the degree was not counted. Since this practice had been consistently followed and was understood as such by all concerned, the Court held that it would not be justified in taking the contrary view and unsettling the settled practice in the Department. C

The decision in *Suresh Nathan's* case has been explained in *M.B. Joshi and Others v. Satish Kumar Pandey and Others*, [1993] Supp 2 SCC 419; *D. Stephen Joseph v. Union of India and Others*, [1997] 4 SCC 753 and finally in *Anil Kumar Gupta and Others v. Municipal Corporation of Delhi*, [2000] 1 SCC 128 as being limited to the facts of that case. D

In *M.B. Joshi's* case "the decision in *Suresh Nathan* case was distinguished in the facts of that case and it was indicated that when the language of the rule is quite specific that if a particular length of service in the feeder post together with educational qualification enables a candidate to be considered for promotion, it will not be proper to count the experience only from the date of acquisition of superior educational qualification because such interpretation will violate the very purpose to give incentive to the employee to acquire higher education." See *D. Stephen Joseph v. Union of India* at page 755. E

The Court in *D. Stephen Joseph's* case was also of the view that the decision in *Suresh Nathan* was an exception to the accepted principle of interpretation of the rule on the plain language. F

In the last mentioned case, namely, *Anil Kumar Gupta's* case, the essential qualifications for appointment were (a) Degree in Civil Engineering and (b) two years' professional experience. The Court interpreted the lan- G

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A guage to mean 'that the two years' professional experience need not entirely be experience gained after obtaining the Degree'.

Given the meaning of the words, the principle involved and the weight of precedents, the view of the High Court must be upheld.

B The appeal is accordingly dismissed without any order as to costs.

V.S.S.

Appeal dismissed.