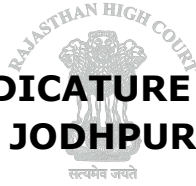




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



(1) S.B. Civil Writ Petition No. 14966/2024

1. Ram Niwas S/o Sh. Ram Kumar, Aged About 29 Years, Resident Of Ward No. 8, Chak 4-S.m.r., Thukrana, P.o. Thukrana, District Ganganagar (Raj.).
2. Vikram Singh Rathore S/o Sh. Idan Singh, Aged About 26 Years, Resident Of Street No. 17, Rampura Basti, Lalgargh, Bikaner (Raj.).

----Petitioners

Versus

1. State Of Rajasthan, Through Secretary To The Govt. Department Of Agriculture, Secretariat, Jaipur.
2. Rajasthan State Agriculture Marketing Board, G.b. Pant Krishi Bhawan, Jan Path, Jaipur Through Administrator At Jaipur.
3. General Manager (Admn), Rajasthan State Agriculture Marketing Board, Jaipur.
4. Executive Engineer, Rajasthan State Agriculture Marketing Division, Sub-Division-Second, Hanumangarh.
5. Rajasthan Staff Selection Board, Rajasthan State Agriculture Management Institution Premises, Durgapura, Jaipur Through Its Secretary At Jaipur.
6. Executive Engineer, Rajasthan State Agriculture Marketing Division, Sub-Division-Third, Bikaner.
7. Ashok Godara S/o Shri Shobha Ram, Aged About 27 Years, R/o Village Borwa, Tehsil Jayal, District Nagaur.
8. Gulab Singh Bhati S/o Shri Dev Kishan Bhati, Aged About 30 Years, R/o Achalvanshi Colony, Jaisalmer.

----Respondents

Connected With

(2) S.B. Civil Writ Petition No. 14925/2024

Baldev Singh S/o Sh. Raju Ram, Aged About 28 Years, Resident Of Indpalsar Hirawatan, Shri Dungargarh, District Bikaner (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary To The Govt. Department Of Agriculture Secretariat, Jaipur.



2. Rajasthan State Agriculture Marketing Board, G.b. Pant Krishi Bhawan, Jan Path, Jaipur Through Administrator At Jaipur.
3. General Manager (Admn), Rajasthan State Agriculture Marketing Board, Jaipur.
4. Executive Engineer, Rajasthan State Agriculture Marketing Division, Sub-Division-Second, Bikaner.
5. Rajasthan Staff Selection Board, Rajasthan State Agriculture Management Institution Premises, Durgapura, Jaipur Through Its Secretary At Jaipur.

-----Respondents

(3) S.B. Civil Writ Petition No. 15013/2024

Ajay Kumar Rar S/o Sh. Banwari Lal Rar, Aged About 27 Years,
Resident Of Ward No. 2, Rar Ki Dhani, Mudiyawas, Sikar (Raj.).

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary To The Govt. Department Of Agriculture, Secretariat, Jaipur.
2. Rajasthan State Agriculture Marketing Board, G.b. Pant Krishi Bhawan, Jan Path, Jaipur Through Administrator At Jaipur.
3. General Manager (Admn), Rajasthan State Agriculture Marketing Board, Jaipur.
4. Executive Engineer, Rajasthan State Agriculture Marketing Division, Sub-Division-Terminal Market, Jaipur.
5. Rajasthan Staff Selection Board, Rajasthan State Agriculture Management Institution Premises, Durgapura, Jaipur Through Its Secretary At Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Harish Kumar Purohit
For Respondent(s)	:	Mr. Kunal Bishnoi Mr. Sushil Solanki Mr. I.R. Choudhary, AAG assisted by Mr. K.S. Solanki Ms. Nandipna Gehlot for Mr. Manish Patel

**JUSTICE DINESH MEHTA****Judgment****Reportable****05/03/2025**

1. These writ petitions captioned above impugn different orders dated 27.08.2024 and 28.08.2024 passed qua each of the petitioners, whereby the earlier order dated 07.02.2024 appointing petitioners by way of transfer to the cadre of Civil Engineer (Degree Holders) has been recalled/revoked so also order dated 28.08.2024, whereby petitioners have been placed in the seniority list of Junior Engineer (Civil - Diploma Holders).

2. The facts of the cases are handful. The Rajasthan Staff Selection Board – respondent No.5 had issued an advertisement dated 03.03.2020 notifying 59 posts for Junior Engineer (Civil - Degree Holders) and 15 posts for Junior Engineer (Civil - Diploma Holders).

3. The petitioners had vied for both the categories of posts for Junior Engineer (Civil) (namely, Degree Holders and Diploma Holders) as they were having diploma so also degree in Civil Engineering at the time of furnishing their application form. As luck would have it, due to paper leak, the recruitment to the post of Junior Engineer (Civil - Degree Holders) got deferred while the petitioners could however get their position secured in the merit list of Junior Engineer (Civil - Diploma Holders). It is a different matter that later on the petitioners appeared in the recruitment process of Junior Engineer (Civil - Degree Holders) as well, but failed to get through.



4. The petitioners were appointed on the post of Junior Engineer (Civil - Diploma Holders) by way of order dated 30.11.2021, whereafter they were regularized as such.

5. Later on, the petitioners moved applications (petitioner No.1- dated 03.01.2024 in S.B. Civil Writ Petition No.14925/2024) seeking their appointment as Junior Engineer (Civil - Degree Holders) by asserting that they possess a degree in Civil Engineering as well.

6. Petitioners' applications were favourably considered by the respondents and by way of orders dated 07.02.2024, not only petitioners' degree were entered in their service record but their names were also added in the list of Junior Engineer (Civil - Degree Holders) and consequently, their names were reflected at appropriate place in the seniority list of Junior Engineer - Degree Holders.

7. It is the case set up by the petitioners that when Rajasthan State Agriculture Marketing Board – respondent No.2 sought opinion from the Department of Personnel about granting benefit of clause (d) of proviso to Rule 6 of the Rajasthan Subordinate Engineering (Building and Roads Branch) Service Rules, 1973 (hereinafter referred to as 'Rules of 1973'), they opined that the appointment of the petitioners as Junior Engineer (Civil - Degree Holders) is not proper for the reasons mentioned therein. And consequently, the orders impugned dated 27.08.2024 and 28.08.2024 came to be passed, whereby the above referred orders dated 07.02.2024 came to be canceled/revoked.



8. Mr. Purohit, learned counsel for the petitioners argued that the orders impugned dated 27.08.2024 and 28.08.2024 are illegal and liable to be set aside on various counts; firstly, being contrary to the principles of natural justice and secondly, because the same has been done solely on the basis of opinion of the Department of Personnel.

9. He argued that the benefit conferred upon an employee cannot be recalled without following due process of law and observing principles of natural justice. He also submitted that not only the petitioners but also hundreds of employees have been given benefit of such provision of Rules of 1973 and have been appointed as Junior Engineer (Civil - Degree Holders) on the basis of the degrees in Civil Engineering which they were holding even before being appointed as Junior Engineer (Civil - Diploma Holders).

10. Inviting Court's attention towards clause (d) of proviso to Rule 6 of the Rules of 1973, Mr. Purohit, learned counsel for the petitioners argued that once a request to grant benefit under clause (d) of proviso to Rule 6 of the Rules of 1973 has been accepted and appointment has been granted, the respondents cannot cancel the same without following due process of law.

11. He submitted that in any case if the orders impugned are allowed to sustain, it would lead to reversion of the petitioners on the post of Junior Engineer (Civil - Diploma Holders) and the same will be inequitable.

12. Mr. Kunal Bishnoi and Mr. Sushil Solanki, learned counsel appearing for the respondent – Board and private respondents



respectively opposed the submissions made by Mr. Purohit by contending that a simple reading of clause (d) of proviso to Rule 6 of the Rules of 1973 makes it abundantly clear that the petitioners could not have been appointed as Junior Engineer (Civil - Degree Holders).

13. It was also contended that salary and other emoluments which the petitioners used to get as Junior Engineer (Civil - Diploma Holders) is equal to Junior Engineer (Civil - Degree Holders). It was also argued that all the petitioners except Ajay Kumar Rar had applied for both the categories of the posts, viz Junior Engineer (Diploma Holders and Degree Holders) and since they had failed to get through the recruitment of Junior Engineer (Civil - Degree Holders), it would be inequitable to grant relief. They added that if the same is done, it would be unfair to those candidates who were selected for the post of Junior Engineer (Civil - Degree Holders) as part of one common advertisement.

14. Mr. Bishnoi further submitted that the respondent – Board itself has interpreted the relevant Rule and therefore, three candidates, namely, Ajay Kumar Rar, Dinesh Kumar Sharma and Vikram Singh Rathore have been retained as Junior Engineer (Civil - Degree Holders), as they had acquired the degree in Civil Engineering after being appointed as Junior Engineer (Civil - Diploma Holders) and no order of reversion qua them have been passed.

15. It was also argued that the petitioners will not loose their seniority etc. on their reversion to the post of Junior Engineer (Civil - Diploma Holders).



16. In rejoinder, Mr. Purohit, learned counsel for the petitioners argued that if the respondents were convinced by the opinion given by the Department of Personnel about the non-grant of benefit of clause (d) of proviso to Rule 6 of the Rules of 1973, they ought to have at least saved the appointment so far given and should have applied the same prospectively and not retrospectively, as has been done.

17. He submitted that the opinion of the Department of Personnel is based on peculiar facts and Department of Personnel was swayed more by the fact that when the respondent – Board had already notified the vacancy for the post of Junior Engineer (Civil - Degree Holders), these posts could not have been filled by way of adopting procedure given under clause (d) of proviso to Rule 6 of the Rules of 1973.

18. Heard learned counsel for the parties.

19. There is no gainsaying the fact that a common advertisement dated 03.03.2020 was issued for filling up the posts of Junior Engineer (Civil) Diploma Holders so also Degree Holders. Admittedly, most of the petitioners did apply in both the streams (Diploma Holders and Degree Holders) and they failed to march in the list of selected candidates for the posts notified for Degree Holders.

20. Before proceeding further, it would not be out of place to keep clause (d) of proviso to Rule 6 of the Rules of 1973 handy, for which, it is being reproduced hereinfra:-

“6. Methods of recruitment - (1) Subject to the provisions hereinafter contained in these



rules, recruitment or appointment to posts in the service shall be made by the method and in the proportion as indicated in column 3 of the Schedule:

Provided that -

(a)

(b)

(c)

(d) if a Diploma Holder Junior Engineer attains the qualification of B.E. "Civil/Electrical", or AMIE, he shall be entitled on his application and subject to availability of vacancy, to be appointed as Junior Engineer (Degree Holder), by transfer against the quota of direct recruitment but in that case his seniority amongst the Junior Engineers (Degree Holders) shall be determined from the date of occurrence of vacancy against which such Junior Engineer has been appointed on the post of Junior Engineer (Degree Holder) and one third of his previous experience shall be counted as experience on the post of Junior Engineer for the purpose of promotion to the next higher post."*

**emphasis supplied.*

21. A simple look at the clause (d) of proviso to Rule 6 of the Rules of 1973 makes it abundantly clear that the same is meant for those Junior Engineers (Civil - Diploma Holders), who acquire the qualification of B.E. (Civil/Mechanical/Electrical) or AMIE after being appointed.

22. According to this Court, encadrement of a degree holder in terms of clause (d) of proviso to Rule 6 of the Rules of 1973 is not an appointment per-se; it is an 'appointment by way of transfer'.



It is like an absorption in the cadre of Junior Engineer (Civil - Degree Holders).

23. The use of expression 'attains' is very significant in the clause (d) of proviso to Rule 6 of the Rules of 1973. 'Attains' by its very literal meaning means 'acquiring', 'obtaining' or 'getting'. The use of tense (simple present) with the verb 'attain' also makes the intention of the Rule Making Authority explicitly clear that such degree or AMIE should be acquired/obtained after being appointed as Junior Engineer (Civil - Diploma Holders).

24. Aforesaid interpretation finds support from the judgment rendered by Hon'ble the Supreme Court in the case of **N.C. Dalwadi Vs. State of Gujarat**, reported in **(1987) 3 SCC 611**, wherein it has been held that the word 'attain' means 'acquire' or 'reach'. The relevant part of the aforesaid judgment is being reproduced hereinfra:-

"The words 'if they have not attained to the rank' of Superintending Engineer in r. 161(1)(c) (ii)(1) are plainly bad English and must be read as 'if they have not attained the rank' of Superintending Engineer. The word used in that rule is 'rank' and not 'substantive rank' and there is no reason why it should not be understood according to its ordinary sense as meaning grade or status, particularly when it is preceded by the words 'have not attained the rank'. The word 'attained' means acquired or reached. The word 'rank' has both a narrower as well as a wider meaning."



25. A person who already had both - Degree and Diploma can well vie for the posts earmarked for Degree Holders as well as Diploma Holders, but he cannot move rather pole vault in the category of persons who are directly appointed as Degree Holders, unless he acquires the degree or AMIE after his/her appointment.

A candidate who was having diploma at the time of appointment and who acquires degree during his service alone can take benefit of clause (d) of proviso to Rule 6 of the Rules of 1973.

26. According to this Court, if the benefit as claimed by the petitioners are conferred upon them as done by way of orders dated 07.02.2024, it will take away rights of unemployed youth having degrees in their favour. Because the posts which are otherwise meant to be filled by direct recruitment will be occupied by them.

27. Such movement would be in essence an injustice to all those who did B.E. (Civil/Electrical) and could not fall in the merit of Degree Holders. If looked from another angle, it would create anomalous situation, inasmuch as a person having failed to compete with the degree holders, will by circuitous way move to the stream of degree holders, which stream has better prospects and promotional avenues. As is evident from the present facts, where out of 8 persons 7 persons had failed to get through the recruitment process meant for the degree holders and could manage to secure their place qua the posts reserved for Diploma Holders, despite having degrees in their possession by incorrect application or interpretation of the relevant Rules.

28. So far as argument of Mr. Purohit that the respondents have not followed due process of law or have not taken proceedings as



envisaged under service law is concerned, according to this Court no fault can be found in the action of the respondents.

29. Petitioners' claim of infraction of principles of natural justice is also not tenable. A person claiming breach of natural justice has to demonstrate before the Court the prejudice which has been caused by not providing him an opportunity of hearing. The position of law has been settled in the case of **Ashok Kumar Sonkar Vs. Union Of India & Ors.**, reported in **(2007) 4 SCC 54**, wherein Hon'ble the Supreme Court has held that principles of natural justice is not required to be complied with when it will lead to an empty formality. The relevant portion whereof is reproduced hereinbelow:-

"20. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula....."

30. The facts are undisputed - the respondents ought not but have done away with the principles of natural justice. But, in the instant case, when the fact that the petitioners had degrees even at the time of appointment as Junior Engineer (Civil - Diploma Holders) is not in dispute, even if a notice were issued to the petitioners, they hardly had any plausible defense.

31. That apart on account of reversion, the petitioners have not been put to any disadvantageous position. Neither their designation has been changed nor has their salary been reduced. As no civil wrong has been meted out, even if it is held that the orders impugned are contrary to principle of natural justice,



setting aside the orders with a liberty to pass fresh order would be an exercise in futality.

32. This Court is not much convinced with the argument of Mr. Purohit that since 2017 at least 20 candidates despite having degrees on the date of appointment had been given appointment as Junior Engineer (Civil - Degree Holders) in terms of clause (d) of proviso to Rule 6 of the Rules of 1973.

33. Clause (d) of proviso to Rule 6 of the Rules of 1973 seems to have been inserted with an avowed object. The Rules were framed back in the year 1973, when engineering colleges or the colleges granting degrees in engineering were a few while the demand for qualified engineers was large. There were people who were less fortunate or had no means to get admission in those engineering colleges because of the economic or geographical compulsions. And that is perhaps why the persons, holding diploma, were allowed to join the engineering services in order to fill the yawning gap between the demand and supply. However, in a bid to clothe them with the requisite qualification and encourage expertise and higher qualification, they were given a chance to acquire AMIE to make their qualification equivalent to engineering degree. And then, while continuing them in service, a window is provided to them to slide into the stream of Degree Holders. With that idea in mind, clause (d) of proviso to Rule 6 of the Rules of 1973 was incorporated so that all those candidates who could not acquire engineering degrees, can subsequently acquire additional qualification to match the degree in Engineering (which is or which



was considered to be a prerequisite qualification) and get in the mainstream of engineers.

34. According to this Court, this provision has lost both its efficacy and utility - as engineering colleges are in abundance and the number of candidates holding degrees is overwhelming. No doubt it is imperative for the Government being a model employer to provide employment opportunities to those less fortunate, who are unable to secure sufficient marks and means to get into the engineering colleges, but then, permitting the candidates who are holding degrees and diploma to contest against the posts for Diploma Holders despite having degrees and then allowing them to take advantage of clause (d) of proviso to Rule 6 of the Rules of 1973 is not only impermissible in law but also against the express provision and legislative intent. Such action cannot be countenanced. The respondents have rightly canceled petitioners' absorption.

35. With the spirit of ex-debito justitiae, this Court feels that "it is better to be right some day rather than continuing with the wrong in perpetuation".

36. As an upshot of discussion foregoing, this Court hardly finds any merit and substance in petitioners' contentions. All these writ petitions thus, fail.

37. The stay applications also stand dismissed, accordingly.

(DINESH MEHTA),J

31-33-akansha/-