

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 136/09

This the 10th day of November, 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

P.J.. Krishna D/o R.Jayaprakasam
PRA 2005-SIVA
Engineering College PO
Thiruvananthapuram.

..Applicant

By Advocate Mr. P.V. Mohanan

Vs

- 1 The Chief General Manager
Office of Chief General Manager
Kerala Telecommunications
BSNL, Thiruvananthapuram.
- 2 The Controller of Examination
University of Kerala
Palayam, Thiruvananthapuram.

.. Respondents

By Advocate Mr. Dinesh R. Shenoy for R-1
Advocate Mr. M. Rajagopalan Nair for R-2

The Application having been heard on 21.10.2009, the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The challenge in this Application is against the rejection of applicant's selection to the post of Graduate Engineer/Junior Telecom Officer, 2007 on the ground that she did not possess the prescribed educational qualification as on 23.03.2008 as required in the notification.

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2 The facts in brief are that the applicant appeared in the final B.Tech Examination held in December, 2007. She applied in response to the notification dated 1.2.2007 issued by the 1st respondent inviting application for recruitment of Graduate Engineer Junior Telecom Officers, 2007, applied, took part in the examination held on 15.6.2008, was declared successful and was placed at Rank No. 210 in the list of qualified hands. The applicant submitted the mark list and copy of provisional Degree certificate for verification as directed in Annexure A-5. She was directed to produce Degree Certificate. The applicant submitted representation stating that she is deemed to have obtained B.Tech Degree in December, 2007 upon which the 1st respondent by proceedings dated 23.12.2008 rejected her selection (A-9). Hence, the applicant is challenging the rejection of her selection on the grounds that at the time of appearing in the written examination the result of the B.Tech Examination was published. She appeared in the B.Tech Examination in December, 2007, the University declared the result after four months, provisional degree certificate was issued on 22.5.2008, the cut off date prescribed for the BSNL examination was 23.3.2008, there is no enabling provision to cancel the result.

3 The respondents submitted that notification for recruiting Graduate Engineer Junior Telecom Officers for the year 2007 was published in pursuance of the Recruitment Rules. The candidates were advised to ensure that they fulfill all eligibility conditions before applying for the examination and that in case it is found at a later stage that the information furnished by an applicant is false or does not fulfill any of the eligibility conditions, the candidature of such applicants would be cancelled. They submitted that the last date for sending application was fixed as 23.3.2008, the examination was held on 15.6.2008, the results were declared on 31.10.2008 and she is ranked as 210. On that basis, she was called for verification of documents on 24.11.2008. It was noticed that she acquired the B.Tech qualification only on 22.5.2008. She was given ten days time to

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produce the Degree Certificate Since she failed to produce any such document to prove her eligibility regarding B.Tech qualification within the stipulated date of 23.3.2008, her selection was rejected. They submitted that the matter of conduct of examination and fixing of educational qualification, etc for such examinations are absolutely within the domain of the competent authority. They submitted that the selection of the applicant is cancelled for not fulfilling the eligibility condition laid down in the notification and for furnishing wrong information in the application form.

4 We have heard learned counsel for both the parties and perused the records produced before us.

5 The question that comes up for consideration is whether the applicant fulfills the eligibility condition laid down in the notification and whether she had furnished wrong information in the application form.

6 The eligibility of Educational Qualification prescribed in the notification is as follows:

"Applicant must possess as on 23.03.2008 Bachelor of Engineering/Bachelor of Technology or equivalent Engineering Degree in any of the following disciplines from a recognised Engineering college/University:

- i) Telecommunications
- ii) Electronics
- iii) Radio
- iv) Computer
- v) Electrical
- vi) Instrumentation & Instrument Technology"

The undertaking to be given by the candidate is as follows:

"I do hereby declare that all the statements made in the application are true, complete and correct to the best of my knowledge and belief. I understand that in the event of any



particular information given above being found false or incorrect my candidature for the post of Junior Telecom Officer is liable to be rejected or cancelled and in the event of any misstatement or discrepancy in the particulars being detected after my appointment, my services are liable to be terminated forthwith without any notice to me.....".

In the Application form Under Item 14 Details of Education/Technical qualifications (Give details of Degrees obtained only of BE/B.Tech & above) the applicant has answered as follows:

- 14.1 Name of degree with discipline -B.E/B.Tech & above-B.Tech (ECE)
- 14.2 Name of University/Institute -Kerala University, SCGT college of Engineering
- 14.3 Month and year of obtaining Engineering degree - June, 2007

7 Now the question is whether the applicant possess the B.Tech Qualification at the time of submitting the application or not. A perusal of the Degree certificate issued by the University of Kerala on September 26, 2008 is extracted below:

Faculty of Engineering and Technology

The Senate of the University of Kerala hereby makes known that Krishna P.J. Has been admitted to the Degree of Bachelor of Technology under Electronics and Communication Engineering Branch, she having been certified by duly appointed examiners to be qualified to receive the same and having been by them placed in the First Class at the examination held in December, 2007.
(Emphasis applied)

From the above it is clear that the applicant has appeared in the final Examination of B.Tech in December, 2007 and passed in First Class, the original Degree Certificate having been issued only on 26.9.2008. The

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applicant has however submitted that the results of the B.Tech Examination was declared on 11.4.2008 and she has produced mark list dated 11.4.2008 and provisional B.Tech degree certificate dated 22.5.2008. The closing date of the application for the competitive Examination was 23.3.2008 and the examination was held on 15.6.2008. Therefore, the argument of the learned counsel for the applicant is that the Degree certificate shows that the applicant had appeared and passed B. Tech examination ~~in~~ held in December, 2007 though the results were officially published on 11.4.2008 before the written examination was held and a provisional degree certificate issued by Kerala University on 22.5.2008.

9 The counsel for the applicant relied on the judgment of the High Court of Kerala in Raghavan Pillai V. Govt. Of Kerala (1989 (2) KLT 950) and the judgment of the Apex Court in Ashok Kumar Sharma and another V. Chander Shekher and another with State of Jammu & Kashmir V. Chander Shekher and Others (1993 Supp.(2) SCC 611)

10 In Raghavan Pillai Vs. Govt. of Kerala, the High Court of Kerala while dealing with Rule 28(bbb) of the Kerala Subordinate Service Rules, the High Court held as follows:

"The rule provides (so far as it is relevant to the case on hand) that any right, benefit or concession, which depends on the passing of any examination or test, shall be deemed to have accrued to the Government servant on the day following the 1st day on which such examination or test was held, and in which he passed. The rule (as extracted above) operates retrospectively from the date of Ext. P-1, namely 20.4.1959. Rule 28(bb) provides that where promotion in a service or class depends upon the passing of any examination (general or departmental) such promotion shall ordinarily be made with reference to the conditions existing at the time of occurrence to the vacancies. Rule 28 (bbb) explains as to when an officer shall be deemed to have acquired the qualification in question"

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In this case, the dispute was whether the word "examination" occurring in Sub Rule 28(bbb) of KSR can refer to other than "departmental examination". The petitioner joined service of the 1st respondent State as LDC. Based on this seniority, the petitioner was duly promoted as Head Clerk. The petitioner was a non-graduate at the time he entered service. He appeared for the B.Sc Degree Examination held in September, 1961, the result of which was published in November, 1961. As per the Govt. orders in force at that time, promotion to the category of UDC was in the ratio of 1:1 between graduates and non-graduates so that possession of a degree entitled the officer concerned to get a benefit in the matter of promotion to the higher cadre. As per the Govt. order incorporated in Rule 28 (bbb) of the Kerala State Subordinate Service Rules (KSSR), a pass in any examination or test confers on the Govt. Servant the title to any right benefit or concession such title shall be deemed to have accrued on the day following the last day of the examination or test which he passed. The grievance of the petitioner was that he should be deemed to have passed the Degree examination and became a graduate in September, 1961 it self when he the examination was held and not when the results were published.

11 The respondents also relied on the judgment of the Apex Court in 1993 Suppl(2) SCC 611, 2007(4)SCC 54 and 1993 KHC 225 in support of their case.

12 In Ashok Kumar Sharma and Another relied on by both the parties, the Supreme Court (on majority) held as follows:

3 The question which arises in the present appeal is whether or not candidates who were fully qualified to be appointed as Junior Engineers on the date of interview, but whose result has not been declared in the date of submission of their application, were entitled to be considered for appointment to the post of Junior Engineer. If the answer is affirmative the appellants who had

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become qualified on the date of interview and had admittedly acquired higher marks in the interview were rightly promoted to the post of Assistant Engineer by reason of seniority in the preference to the respondents who were also appointed as Junior Engineers subsequently promoted, but placed junior to the appellants.

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"15 The fact is that the appellants did pass the Examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to appear in interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in public interest that the interview was made broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in public interest that better candidates who were fully qualified on the dates of selection were not rejected., notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of interview and taking into account the generally followed principle of Rule 37 in the State of Jammu and Kashmir we are of the opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect and the view expressed by the learned Single Judge was on the facts of this case, the correct view. Accordingly, we set aside the impugned judgment of the Division Bench and restore that of the learned Single Judge. In the result, we uphold the results announced by the recruiting authority. The appeal is allowed in the above terms. However, we make no order as to costs.

The Learned Mr. R.M. Sahai J partly dissenting held that:

"Although I agree with Brother Thommen J, that the appeals deserve to be allowed and the seniority of the appellants and respondents, who were selected as Junior Engineers in 1982 had to be determined by the marks they secured in the interview conducted by the Selection Board but with profound respect, in my opinion, they are entitled to this relief not as a matter of law but due to equitable considerations arising in peculiar facts and circumstances of the case. I would have refrained from expressing any opinion on eligibility of the appellants who admittedly, were not possessed of requisite qualifications till the last date of submission of forms for selection as Junior Engineer but if the

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submission of the appellants is accepted and it is held that their applications were not liable to be rejected as they acquired the requisite qualifications prior to commencement of the interview then it is likely to create misapprehension about the legal implications of such notification not only in the State of Jammu and Kashmir but even other States where similar rules are in force or where similar advertisements may be issued."

In the above case, the State Government issued an advertisement on 9.6.1982 inviting applications for filling up of the posts of Junior Engineers. Last date for submission of the applications was 15.7.82. Educational qualification prescribed for Junior Engineers (Civil) was B.E. (Civil). The applicants were required to submit attested copies of various certificates including attested copy of academic/technical examination certificate. The appellants who had appeared in the B.E.(Civil) Examination but their results had not yet been declared, applied for this post. The results were declared on 21.8.1982 whereas interviews were commenced from 24.8.1992. The appellants were declared selected.

In the case of Ashok Kumar Sonkar Vs. Union of India (2007) 2 SCC (L&S) 19, the Apex Court after going through the judgments in various cases held:

"20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed . In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this court would be the last date for filing the application".

In the above case, the Banaras Hindu University issued an advertisement for filling up a vacancy post of Lecturer. The appellant applied for the said post on 30.5.1995. As till the said date the appellant had not completed his MD in Sharir Kriya, which was an essential qualification for

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the said post with his application he enclosed a certificate issued by the Head of the Department concerned in that regard. The appellant passed the said examination only on 30.10.1995 much after the cut off date for submission of the application. He was allowed to appear before the Selection Committee despite the fact that he did not hold the requisite qualification till the date of filing of such application. He however, was selected and offered appointment. He joined the said post. In the meanwhile, respondent 4 filed a writ petition before the Allahabad High Court which was dismissed. Thus the legal battle started.

13 In the case of the applicant in the present case, she appeared in the B.Tech Examination in December, 2007, the results were published after the cut off date of submission of the application for the competitive Examination. The results were declared in the competitive examination, she stood at rank No. 210. After declaration of the results, at the time of verification of the documents the respondents noted that she was not in possession of the B.Tech Degree on the last date of submission of the Application.

14 We observe that in Annexure A-4 notification dated 26.2.2008, there was no stipulation that those who appeared in the Qualifying Examination and whose results were not declared before 23.3.2008, would be ineligible to apply for the Competitive Examination. As per item 12, list of Enclosures, there is no requirement about submission of copy of B.Tech Degree certificate or mark-list to prove candidate's Educational Qualifications. These stipulations with respect to Educational qualifications which are specifically made in such notifications for conducting competitive examinations by various Departments.

15 In this view of the matter, following the majority judgment of the Apex Court in Ashok Kumar Sharma and another quoted above and the

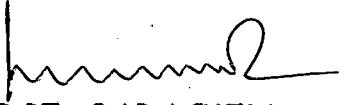
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observation of the High Court of Kerala in Raghavan Pillai V. Government of Kerala, we hold that the applicant did possess B. Tech Degree on completion of the examination in December, 2007, passing the same and thus possess the qualification required as on the date of interview on 15.6.2008 at Annexure A-4. Accordingly, we quash Annexure A-9 order and direct the respondents to appoint the applicant to the post of Graduate Engineer Junior Telecom Officer in BSNL w.e.f. the date of appointment of his immediate Junior in Annexure A-6 merit list. The O.A. is allowed. No cost.

Dated 10th November, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 136/09

Dated this the 24th day of February, 2011.

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HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER
HON'BLE MR. V. AJAY KUMAR, JUDICIAL MEMBER

P.J.. Krishna D/o R.Jayaprakasam
PRA 2005-SIVA
Engineering College PO
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..Applicant

By Advocate Mr. P.V. Mohanan

vs

- 1 The Chief General Manager
Office of Chief General Manager
Kerala Telecommunications
BSNL, Thiruvananthapuram.

2 The Controller of Examination
University of Kerala
Palayam, Thiruvananthapuram.

.. Respondents

By Advocate Mr. Johnson Gomez for R-1
Advocate Mr. M. Rajagopalan Nair for R-2

The Application having been heard on 10.1.2011, the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

This Original Application was heard and final orders pronounced on 10.11.2009. However, the respondents in the O.A. filed R.A. 5/2010

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for review of the order on the ground that there is error apparent on the face of the records. The Tribunal after hearing the parties on both sides, allowed the Review Application and issued notice for fresh hearing of the O.A. The matter was elaborately heard again on 18.1.2011.

2 The challenge in this Application is against the rejection of applicant's selection to the post of Graduate Engineer/Junior Telecom Officer, 2007 on the ground that she did not possess the prescribed educational qualification as on 23.03.2008 as required in the notification.

3 The facts in brief are that the applicant appeared in the final B.Tech Examination held in December, 2007. She applied in response to the notification dated 1.2.2007 issued by the 1st respondent inviting application for recruitment of Graduate Engineer Junior Telecom Officers, 2007, applied, took part in the examination held on 15.6.2008, was declared successful and was placed at Rank No. 210 in the list of qualified hands. The applicant submitted the mark list and copy of provisional Degree certificate for verification as directed in Annexure A-5. She was directed to produce Degree Certificate. The applicant submitted representation stating that she is deemed to have obtained B.Tech Degree in December, 2007 upon which the 1st respondent by proceedings dated 23.12.2008 rejected her selection (A9). Hence, the applicant is challenging the rejection of her selection on the grounds that at the time of appearing in the written examination the result of the B.Tech Examination was published. She appeared in the B.Tech Examination in December, 2007, the University declared the result after four months, provisional degree certificate was issued on 22.5.2008, the cut off date prescribed for the BSNL examination was

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23.3.2008, there is no enabling provision to cancel the result.

4 The respondents submitted that notification for recruiting Graduate Engineer Junior Telecom Officers for the year 2007 was published in pursuance of the Recruitment Rules. The candidates were advised to ensure that they fulfill all eligibility conditions before applying for the examination and that in case it is found at a later stage that the information furnished by an applicant is false or does not fulfill any of the eligibility conditions, the candidature of such applicants would be cancelled. They submitted that the last date for sending application was fixed as 23.3.2008, the examination was held on 15.6.2008, the results were declared on 31.10.2008 and she is ranked at 210. On that basis, she was called for verification of documents on 24.11.2008. It was noticed that she acquired the B.Tech qualification only on 22.5.2008. She was given ten days time to produce the Degree Certificate. Since she failed to produce any such document to prove her eligibility regarding B.Tech qualification within the stipulated date of 23.3.2008, her selection was rejected. They submitted that the matter of conduct of examination and fixing of educational qualification, etc for such examinations are absolutely within the domain of the competent authority. They submitted that the selection of the applicant is cancelled for not fulfilling the eligibility condition laid down in the notification and for furnishing wrong information in the application form.

5 We have heard learned counsel for both the parties and perused the records produced before us.

6 The question that comes up for consideration is whether the

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applicant fulfills the eligibility condition laid down in the notification on the last date of submission of the Applications and whether she had furnished wrong information in the application form.

7 The eligibility of Educational Qualification prescribed in the notification is as follows:

"Applicant must possess as on 23.03.2008 Bachelor of Engineering/Bachelor of Technology or equivalent Engineering Degree in any of the following disciplines from a recognised Engineering college/University:

- i) Telecommunications
- ii) Electronics
- iii) Radio
- iv) Computer
- v) Electrical
- vi) Instrumentation & Instrument Technology"

The undertaking to be given by the candidate is as follows:

"I do hereby declare that all the statements made in the application are true, complete and correct to the best of my knowledge and belief. I understand that in the event of any particular information given above being found false or incorrect my candidature for the post of Junior Telecom Officer is liable to be rejected or cancelled and in the event of any misstatement or discrepancy in the particulars being detected after my appointment, my services are liable to be terminated forthwith without any notice to me.....".

In the Application form Under Item 14 Details of Education/Technical qualifications (Give details of Degrees obtained only of BE/B.Tech & above) the applicant has answered as follows:

14.1 Name of degree with discipline -B.E/B.Tech & above-B.Tech (ECE)

14.2 Name of University/Institute -Kerala University, SCGT college of Engineering

14.3 Month and year of obtaining Engineering degree - June, 2007

8 Now the question is whether the applicant possess the B.Tech Qualification at the time of submitting the application or not. A perusal of the Degree certificate issued by the University of Kerala on September 26, 2008 is extracted below:

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Faculty of Engineering and Technology

The Senate of the University of Kerala hereby makes known that Kristina P.J. Has been admitted to the Degree of Bachelor of Technology under Electronics and Communication Engineering Branch, she having been certified by duly appointed examiners to be qualified to receive the same and having been by them placed in the First Class at the examination held in December, 2007. (Emphasis applied)

From the above though it is clear that the applicant has appeared in the final Examination of B.Tech in December, 2007 and passed in First Class, the original Degree Certificate having been issued only on 26.9.2008. The applicant has however submitted that the results of the B.Tech Examination was declared only on 11.4.2008 and she has produced mark list dated 11.4.2008 and provisional B.Tech degree certificate dated 22.5.2008. The closing date of the application for the competitive Examination was 23.3.2008 and the examination was held on 15.6.2008. Therefore, the argument of the learned counsel for the applicant is that the Degree certificate shows that the applicant had appeared and passed B. Tech examination in held in December, 2007 though the results were officially published only on 11.4.2008 before the written examination was held and a provisional degree certificate was issued by Kerala University on 22.5.2008.

9 The learned counsel for the applicant relied on the judgment of the High Court of Kerala in Raghavan Pillai V. Govt. Of Kerala (1989 (2) KLT 950) and the judgment of the Apex Court in Ashok Kumar Sharma and another V. Chander Shekher and another with State of Jammu & Kashmir V. Chander Shekher and Others (1993 Supp.(2) SCC 611)

In Raghavan Pillai Vs. Govt. of Kerala, the High Court of Kerala while dealing with Rule 28(bbb) of the Kerala Subordinate Service Rules,

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the High Court held as follows:

"The rule provides (so far as it is relevant to the case on hand) that any right, benefit or concession, which depends on the passing of any examination or test, shall be deemed to have accrued to the Government servant on the day following the 1st day on which such examination or test was held, and in which he passed. The rule (as extracted above) operates retrospectively from the date of Ext. P-1, namely 20.4.1959. Rule 28(bb) provides that where promotion in a service or class depends upon the passing of any examination (general or departmental) such promotion shall ordinarily be made with reference to the conditions existing at the time of occurrence to the vacancies. Rule 28 (bbb) explains as to when an officer shall be deemed to have acquired the qualification in question"

In this case, the dispute was whether the word "examination" occurring in Sub Rule 28(bbb) of KSR can refer to other than "departmental examination" The petitioner joined service of the 1st respondent State as LDC. Based on this seniority, the petitioner was duly promoted as Head Clerk. The petitioner was a non-graduate at the time he entered service. He appeared for the B.Sc Degree Examination held in September, 1961, the result of which was published in November, 1961. As per the Govt. orders in force at that time, promotion to the category of UDC was in the ratio of 1:1 between graduates and non-graduates so that possession of a degree entitled the officer concerned to get a benefit in the matter of promotion to the higher cadre. As per the Govt. order incorporated in Rule 28 (bbb) of the Kerala State Subordinate Service Rules (KSSR), a pass in any examination or test confers on the Govt. Servant the title to any right benefit or concession such title shall be deemed to have accrued on the day following the last day of the examination or test which he passed. The grievance of the petitioner was that he should be deemed to have passed the Degree examination and became a graduate in September, 1961 itself when the examination was held and not when the results were published.

10 The respondents relied on the judgment of the Apex Court in 1993 Suppl(2) SCC 611, 2007(4)SCC 54 and 1993 KHC 225 and Ashok

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Kumar Sharma and others Vs. Chander Shekhar and another (1997) 4 SCC

18, in support of their stand.

11 In Ashok Kumar Sharma and Another (1993 Supp (2) SCC) relied on by both the parties, the Supreme Court (on majority) held as follows:

3 The question which arises in the present appeal is whether or not candidates who were fully qualified to be appointed as Junior Engineers on the date of interview, but whose result has not been declared in the date of submission of their application, were entitled to be considered for appointment to the post of Junior Engineer. If the answer is affirmative the appellants who had become qualified on the date of interview and had admittedly acquired higher marks in the interview were rightly promoted to the post of Assistant Engineer by reason of seniority in the preference to the respondents who were also appointed as Junior Engineers subsequently promoted, but placed junior to the appellants.

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"15 The fact is that the appellants did pass the Examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to appear in interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in public interest that the interview was made broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in public interest that better candidates who were fully qualified on the dates of selection were not rejected., notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of interview and taking into account the generally followed principle of Rule 37 in the State of Jammu and Kashmir we are of the opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect and the view expressed by the learned Single Judge was on the facts of this case, the correct view. Accordingly, we set aside the impugned judgment of the Division Bench and restore that of the learned Single Judge. In the result, we uphold the results announced by the recruiting authority. The appeal is allowed in the above terms. However, we make no order as to costs.

The Learned Mr. R.M. Sahai J partly dissenting held that:

"Although I agree with Brother Thommen J, that the appeals deserve to be allowed and the seniority of the appellants and respondents, who were selected as Junior Engineers in 1982 had to be determined by the marks they secured in the interview conducted by the Selection Board but with profound respect, in my opinion, they are entitled to this relief not as a matter of law but due to equitable considerations arising in peculiar facts and circumstances of the case. I would have refrained from expressing any opinion on eligibility of the appellants who admittedly, were not possessed of requisite qualifications till the last date of submission of forms for selection as Junior Engineer but if the submission of the appellants is accepted and it is held that their applications were not liable to be rejected as they acquired the requisite qualifications prior to commencement of the interview then it is likely to create misapprehension about the legal implications of such notification not only in the State of Jammu and Kashmir but even

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other States where similar rules are in force or where similar advertisements may be issued."

In the above case, the State Government issued an advertisement on 9.6.1982 inviting applications for filling up of the posts of Junior Engineers. Last date for submission of the applications was 15.7.82. Educational qualification prescribed for Junior Engineers (Civil) was B.E. (Civil). The applicants were required to submit attested copies of various certificates including attested copy of academic/technical examination certificate. The appellants who had appeared in the B.E. (Civil) Examination but their results had not yet been declared, applied for this post. The results were declared on 21.8.1982 whereas interview commenced from 24.8.1992. The appellants were declared selected.

12 The learned counsel for the respondents argued that in Ashok Kumar Sharma and others Vs. Chander Shekhar and another (1997) 4 SCC 18, the Apex Court was considering Review Petitions (C)Nos. 600-601 of 1993 in Civil Appeals Nos. 5407-5408 of 1992 decided on March 10, 1997 The Apex Court after going through the judgments in various cases held:

"6.....we are of the respectful opinion that majority judgement (rendered by Dr. T.K. Thommen and V. Ramaswami, JJ) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for application constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the person had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the preposition affirmed in Rekha Chaturvedi (Smt.) v. University of Rajasthan and Others, 1993 Suppl. (3) SCC 168. The

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reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the Recruiting Authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview."

- 13 The Respondents have submitted that the judgment of the Kerala High Court in the case of Raghavan Pillai (Supra) is no more a good law in view of the aforesaid judgment of the Apex Court. They have rather relied upon the judgment of the Kerala High Court in Bindu V.K. vs. P.S.C and another [1993 (1) KLJ 963], where it has been held as under:-

" My attention is also drawn to the latest decision of the Hon'ble Supreme Court in Mrs. Rakha Charturvedi v. University of Rajasthan and Others reported in Judgments Today 1993 (1) page 220, wherein it is held that the relevant date is the last date fixed for the submission of the application. Para 12 of the said decision lays down as follows:-

"12. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in *praesenti* even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidate who do not have the qualifications in *praesenti* and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for major malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement / notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the selection Committee in the present case, as argued by Shri. Manoj Swarup took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission, Hyderabad and Anr v. B. Sarat Chandra and Others [1990 (4) SLR 235] and the District Collector and Chairman, Vizhinagaram and Another v. M. Tripura Sundari Devi 1990 (4) SLR 237."

- 14 The legal position is thus laid down by the Apex Court that possession of requisite educational qualification is mandatory on the last date of submission of the application. In the case on hand, the cut off date for submission of the Application was 23.3.2008. Admittedly, the

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applicant did not possess the B.Tech qualification as the result of the examination was not published on or before that date.

15 In this view of the matter, following the dictum laid down by the Apex Court in Ashok Kumar Sharma and others Vs. Chander Shekhar and another, (Review Petitions (C)Nos. 600-601 of 1993 in Civil Appeals Nos. 5407-5408 of 1992) decided on March 10, 1997 we dismiss the O.A. However, we observe that in Annexure A-4 notification dated 26.2.2008, there should have been stipulation that those who appeared in the Qualifying Examination and whose results were not declared before 23.3.2008, would not be ineligible to appear for the written test. That apart, at least before the interview submission of copy of B.Tech provisional Degree certificate/Degree Certificate or mark-list, in support of Educational Qualification should have been insisted upon, which would have enabled the respondents to eliminate, all those, who could not get the mark list or at least provisional degree certificate, from attending the interview. Hence, the verification of required documents was done only after the select list was published, which is not a proper procedure to be followed in any recruitment process. No costs.

Dated 24-2-2011.

V. AJAY KUMAR
JUDICIAL MEMBER

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K. NOORJEHAN
ADMINISTRATIVE MEMBER