

(2009) 09 MAD CK 0267

Madras High Court

Case No: Writ Petition No"s. 8870, 9093 and 27694 of 2008, 9260, 9838, 9839, 9842, 9857 to 9861, 10183, 10486 and 10577 of 2009

D. Aravindhan and Others

APPELLANT

Vs

The Government of Tamil Nadu
and Others

RESPONDENT

Date of Decision: Sept. 9, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14, 16(1)

Citation: (2013) 3 LLN 291

Hon'ble Judges: K.N. Basha, J

Bench: Single Bench

Advocate: V. Vijaya Narayan, for N. Subramaniyan, for Petitioner Nos. 1, 4-6 in W.P. No. 8870 of 2008 and Petitioner in W.P. No. 10486 and 9842 of 2009, for Respondent No. 8 in W.P., N. Subramaniyan, in W.P. Nos. 9093 of 2008 and 9842 of 2009 and for Respondent No. 8 in W.P. No. 9260 of 2008, N.G.R. Prasad for R. Rengaramanujam, in W.P. No. 27694 of 2008, K. Venkatachalapathy, for M. Ravibharati, in W.P. No. 9260 of 2009, M.A. Gouthaman, in W.P. Nos. 9857-9861 of 2009 and 10577 of 2009, D. Gopinath, in W.P. Nos. 9838 and 9839 of 2009, M. Venkatachalapathy, for S. Pattabiraman, in W.P. No. 10183 of 2009 and K. Manikandan and 3 in W.P. No. 8870 of 2008, for the appearing parties; P.S. Raman, Additional Advocate General assisted by P. Muthukumar, Government Advocate and Pushpa, Advocate for Respondent No. 1 and 2, R. Thiagarajan, for M. Muthappan, Advocate for Respondent Nos. 24 to 28 in W.P. No. 8870 of 2008 and for Respondent Nos. 3 to 6 in W.P. No. 10183 of 2009, G. Ethirajulu, Advocate for Respondent No. 3 in W.P. No. 10183 of 2009, for Respondent Nos. 11, 12, 19 in W.P. Nos. 8870 of 2008 and for Respondent Nos. 3 and 4 in 27694 of 2008, L. Chandrakumar, Advocate for Respondent Nos. 3 to 5 and 13 in W.P. No. 8870 of 2008, for Respondent No. 13 in W.P. No. 9093 of 2009 and for Respondent No. 4 to 7 in W.P. No. 10183 of 2009, M.D. Subramaniam, Advocate for Respondent Nos. 9, 10, 17 and 20 in W.P. Nos. 8870 of 2008 and 9093 of 2009, Sivam Sivanandraj, Advocate for Respondent Nos. 6 and 16 in W.P. No. 8870 of 2008 and Pitty Parthasarathy, Advocate for Respondent Nos. 3 and 4 in W.P. No. 27694 of 2008 and for Respondent Nos. 3 to 7 in W.P. No. 9260 of 2009, for the Respondent

Judgement

K.N. Basha, J.

In view of the common questions involved in all these Writ Petitions, these Writ Petitions have been taken up for hearing together and disposed of by this common order. The tussle is between Assistant Engineers (B.E. Degree-holders) (hereinafter referred to as "AEs") and Junior Engineers (diploma-holders) (hereinafter referred to as "JEs"), who are working in the Highways Department, in the matter of promotion to the post of Assistant Divisional Engineers (hereinafter referred to as "ADEs"). The Petitioners in W.P. No. 8870 of 2008 are AEs who challenge the promotion of the Respondents 3 to 23 as Assistant Divisional Engineers from the post of JEs and to forbear the Respondents 1 & 2 from promoting the Respondents 24 to 28. W.P. No. 9842 of 2009 has been filed by an association, whose members are AEs, seeking a Writ of Mandamus to forbear the department from promoting JEs as ADEs unless such JEs have put in 10 years of service as JEs. W.P. No. 10183 of 2009 has been filed by yet another similar association praying for similar relief. Writ Petitions in W.P. Nos. 9093 of 2008, 27694 of 2008, 9260 of 2009, 9838, 9839, 9857 to 9861, 10183, 10486 & 10577 of 2009 have been filed by AEs (B.E. Degree-holders) seeking for the same relief.

2.1. Before going into the actual issues involved, it is better to recapitulate, the status and position of various officers in the department with reference to the relevant service Rules.

2.2. There are two Service Rules governing the services of various staff in the department. Upto the level of JEs, they are governed by the "Special Rules to Tamil Nadu Highways Engineering Subordinate Service" (hereinafter referred to as "Engineering Subordinate Rules"). The post of AEs, ADEs and above are governed by "Special Rules to Tamil Nadu Highways Engineering Service" (hereinafter referred to as "Engineering Service Rules"). The Section Offices of the department are manned by either AEs or JEs. As a matter of fact, as per Rule 18 of the Engineering Service Rules, 75% of the section offices are to be manned by AEs and 25% are to be manned by JEs. Insofar as the nature of work is concerned, there is absolutely no difference between AEs & JEs. The next avenue of promotion for AEs as well as JEs is to the post of ADE. The Engineering Service Rules prescribes the method of recruitment of ADEs and also it prescribes the qualification for the same. According to the said Rules, the post of ADE is to be filled up on promotion either from AEs or from JEs, but the same should be filled up in the ratio of 3: 1. To put it otherwise, three vacancies should be filled up by promoting the AEs and the fourth vacancy should be filled up by promoting a JE. After a JE is so promoted to the post of ADE, he is brought under the Engineering Service Rules. Insofar as the qualification is concerned, the engineering graduates (B.E. Degree-holders) are eligible for appointment as AEs, whereas, the diploma-holders in engineering in various subjects are eligible to be appointed as JEs. JEs can be appointed either by means of

direct recruitment or promotion from the lower category such as Draughtsman, Overseer, etc. Engineering Service Rules prescribes the qualification for promotion from the cadres of AE by prescribing that an AE holding a B.E. Degree with five years of experience in the said post is eligible for promotion as ADE. Insofar as the JEs are concerned, the experience needed is either 10 years or 18 years as the case may be which would be stated in detail hereunder.

2.3. In the case on hand, the Respondents 3 to 23, who were JEs, have been now promoted as ADEs against the quota earmarked for them, viz., ratio of 3: 1. The Respondents 24 to 28, who are also Junior Engineers, are likely to be promoted. It is the common grievance of all these Petitioners that the Respondents 3 to 28 are not eligible to be promoted as ADEs for want of sufficient number of years of experience as it is claimed by them that number of years of service only as JE is to be taken into consideration excluding the service rendered as Overseer and Draughtsman as per the Rules. It is further contended that in the event of there being no sufficient number of qualified candidates in the cadre of JEs for the purpose of promoting them as ADEs, the AEs should be appointed as against the vacancies earmarked for JEs. With these two main contentions, the Petitioners have come forward with these Petitions.

3.1. The common case of the Petitioners in all these Writ Petitions is that the AEs, who are B.E. degree-holders, were appointed by direct recruitment through the Tamil Nadu Public Service Commission in Tamil Nadu Highways Engineering Service and they joined in Highways Department during the year 1998 as against the vacancies accrued during the years 1993-1995 and 1995-1996. The Respondents 3 to 23 are diploma-holders promoted as JEs from the category of Draughting Officials during the year 1999 and afterwards and now promoted as ADEs.

3.2. As already pointed out, the post of ADE is governed by the Special Rules to Tamil Nadu Highways Engineering Service. The appointment to the post of ADE is made from the AEs having not less than five years of service by promotion and from the JEs with not less than ten years of service as JE or Draughtsman or not less than eighteen years of service as Overseer, JE or Draughtsman by recruitment by transfer in the ratio of 3: 1 as per the relevant provisions under Rule 9(a) & (b) & 10(b)(2)(a) & (b) or 10(b)(3)(a) & (b) of the Engineering Service Rules respectively.

3.3. The Petitioners further claim that a harmonious reading of above Rules 9(a) & (b) & 10 would show that the Proviso to Rule 10 stipulating 10 years Draughtsman's service for a JE shall mean the service rendered by a JE in the category of Draughtsman when posted as Draughtsman due to administrative reasons as stipulated under Rule 9(b) and cannot be construed as the service rendered as Draughtsman prior to promotion as JE. But, wrongly construing the said Proviso to mean the service rendered as Draughtsman prior to promotion as JE, the Respondents 3 to 23 were appointed as ADEs even before completion of 10 years of service in the category of JE, thereby marching over the Petitioners and other

similarly placed AEs who are Seniors. Further the Respondents 1 & 2 even went to the extent of appointing the unqualified JEs as ADEs.

3.4. The further grievance of the Petitioners is that an AE, who has rendered more than ten years of service is stagnating without promotion, whereas, a JE with four years of service is getting promotion and a Draughtsman, who was working in the lower category to AE got promoted as ADE, which is illegal and discriminatory.

3.5. The appointment of diploma holder (JE) with lesser experience as ADE earlier to the degree holder (AE) with higher qualification of B.E. Degree, is nothing but meriting the demerits and demeriting the merits which is in violation of Rule of Equality mandated under Articles 14 & 16(1) of the Constitution of India and is also highly discriminatory.

3.6. It is claimed that any construction of the Rules that it permits to take the service rendered in draughtsman category before becoming JE for the purpose of promotion to the post of ADE would make the Rules illegal, arbitrary and liable to be declared void. The Petitioners submitted that the Respondents 1 & 2 did not publish the panel for the post of ADE in Tamil Nadu Government Gazette as amended under Rule 4(a) of General Rules and hence, the Petitioners do not have the copy of the Government Orders appointing the Respondents 3 to 23 as ADEs and the Petitioners were able to get the details of the Respondents only when the Seniority list of JEs were communicated during the month of August 2007 and thereafter, they have come forward with these Petitions.

3.7. The same averments and grounds have been raised by the other Petitioners in the other Writ Petitions filed by the individual AEs.

4.1. The Respondents 1 & 2 filed a Counter refuting the claims and contentions raised by the Petitioners. In respect of the main point raised by the Petitioners, namely, whether ten years combined service in the post of JE and Draughtsman is sufficient for appointment to the post of ADE by recruitment by transfer of JEs possessing diploma in Engineering or a minimum service of ten years in the category of JE is required, it is stated by the Respondents 1 & 2 that as per the Rule 10(b)(2)(b), it is mentioned as "Service as Junior Engineer or Draughtsman for a period of not less than ten years" and therefore, it is clear that the JEs, who have put in a "combined service" of not less than ten years in the categories of JE and Draughtsman (now Junior Draughting Officer) are eligible for appointment as ADE and accordingly, while preparing the selection list of persons eligible for appointment as ADE, "ten years of total service" is taken into account.

4.2. The Respondents 1 & 2 further stated in their counter that the Petitioners joined the Highways Department as AEs by direct recruitment through the TNPSC in the year 1998, while the Respondents 3 to 23 have joined in the service as Junior Draughting Officer between 1978 & 1983 and they were subsequently promoted as JEs on various dates. As per Rule 10, a JE, who has put in a service of not less than 10

years in the categories of JE or Draughtsman are eligible for appointment as ADE and the Respondents 3 to 23 have fulfilled the requirements of the above said provision and accordingly, they were selected and included in the list of JEs fit for appointment as ADE approved by the Government. It is further stated by the Respondents 1 & 2 that Section Offices in Highways Department are manned either by B.E. Degree-holders or diploma-holders. The degree-holders are called as AEs and diploma-holders are called as JEs. As per Rule 18, 75 % of the vacancies to be filled up by AEs (degree-holders) and 25% of the vacancies shall be filled up by JEs (diploma-holders) and in the Section Office both the AEs & JEs are interchangeable. As per Rule 9(a), the same ratio of 3: 1 between AEs & JEs is being followed while filling up the vacancies in the post of ADE. As per the statutory Rules, only the eligible candidates in both the categories of AEs/JEs are being considered for promotion and appointment as ADE by following the ratio of 3: 1. Hence, the appointment of the Respondents 3 to 23 to the post of ADE is valid and legal and they have been appointed only in the quota reserved for diploma-holders and none of them have been appointed in the quota earmarked for degree-holders.

4.3. It is further stated that the contention of the Petitioners that the approved panel should be published in the Tamil Nadu Government Gazette is not correct and as per the provisions contained under Rule 4(a) as amended in G.O.Ms. No. 284, Personnel and Administrative Reforms Department, dated 1.12.1997, it is enough if the approved panels are displayed in the notice board of the Approving Authority.

4.4. The Respondents 1 & 2 have also emphatically denied the allegations of acting and favouring the diploma-holders as totally baseless.

4.5. The Respondents 3, 4, 5 & 13 and the Respondents 11, 12, 19 & 23 to 28 and the Respondents 6 & 16 in W.P. No. 8870 of 2008 have filed separate Counters refuting the averments and contentions of the Petitioners stating that they are eligible and qualified and they have been promoted as ADE as per the statutory Rules. It is stated that the Petitioners having not challenged the order of promotion of the Respondents 3 to 23 made in G.O.Ms. No. 147, Highways Department, dated 30.5.2007 and the 3: 1 ratio and prescribed qualification for the promotion as per the Engineering Service Rules, these Writ Petitions are not maintainable. The Respondents 3 to 23 have rendered more than 20 years of combined service as Draughtsman, Overseer and JEs and as such they are eligible for promotion as ADE. It is further stated that the Petitioners wrongly interpreted the service Rules and thereby erred in alleging that an Employee, who rendered service for 10 years as JE alone should be promoted as ADE without taking note of the fact that as per Rule 10(b)(3)(a) & (b), service as Overseer, Junior Engineer or Draughtsman for a period of not less than 18 years is the eligibility for the post of ADE.

4.6. In respect of the other averments and contentions, the above said Respondents taken a similar stand as that of the Respondents 1 & 2.

5.1. Mr. Vijay Narayan, learned Senior Counsel for the Petitioners while assailing the promotion of the Respondents 3 to 23 and the proposed promotion of the Respondents 24 to 28 as ADE put forward the following contentions:

(1) The Respondents 3 to 28 are not qualified as they are not having 10 years experience as JE and as such they are not eligible for promotion as ADE;

(2) From the reading of the Rule 9(a), it is clear that the reservation of quota of 3: 1 ratio between AEs & JEs is applicable only in the event of qualified and suitable candidates are available and if qualified and suitable candidates are not available in either of the categories of AEs and JEs, it goes to the other, i.e., if AEs are not available, three posts can be filled up from among the eligible JEs and vice-versa. The said rule is not absolute in its terms, but it is conditional upon qualified and suitable candidates are being available.

(3) Rule 10 makes it very clear that the persons who do not possess the qualification prescribed therein are not eligible for appointment to the category under the methods of recruitment stated therein.

(4) If the promotions are made to the post of ADE by appointing unqualified persons, Rule 9(b) would become redundant. Rule 9(a) if harmoniously read with Rule 10(b)(2)(a) & (b) would show that the fourth vacancy out of every four vacancies in the category of ADE shall be filled either by a JE or by a permanent Draughtsman, who has been appointed as JE but working in the drawing office for administrative reasons and who has rendered service as JE or as draughtsman after becoming JE. The draughtsman referred to shall be the draughtsman who after appointment as JE continues to work as draughtsman for administrative reasons and he should have rendered ten years either as Junior Engineer or Draughtsman after becoming Junior Engineer.

(5) The Government can, under Rules 9(b) & 10(b)(3)(a) & (b) of the Rules notwithstanding anything contained in these Rules, i.e., de hors, the said 3: 1 ratio, appoint JEs with lower subordinate diploma with total service of 18 years as Junior Engineer, Overseer or Draughtsman with proven efficiency. This rule is not applicable to the present case as the said Respondents have not been appointed as ADE under this Rule as the First Respondent replied to the query put under the Right to Information Act, 2005 that the Respondents 3 to 23 have not been appointed under Rule 10(b)(2)(a) & (b) of the Rules.

(6) The Petitioners who are the degree-holders and working as AEs after completing 9 years of service are stagnating, whereas the Respondents 3 to 23, who are not having 10 years of service as JEs, are promoted/included in the panel for promotion as ADEs;

(7) The Respondent No. 23, who has been promoted as JE on 18.4.1999 is due for promotion on 18.4.2009, i.e., after completing 10 years of service as JE, whereas, he

was promoted as ADE on 30.5.2007 itself. Likewise, one P. Subramanian (Respondent No. 24), who was promoted as Junior Engineer on 11.9.2004 will be finishing 10 years of service as JE only on 11.9.2014, but his name is under consideration for promotion as ADE in the year 2009 itself. On the other hand, the Petitioners, who are the degree-holders and serving as AEs since 1998, 1999 & 2000 and who are eligible for promotion as ADE after completing five years of service are not included in the list for promotion as ADE. Therefore, the question is whether 10 years of service as JE is sufficient or not or ten years of service as JE includes draughtsman also and if such contention is accepted, then Rule 9(b) of the Rules becomes redundant.

5.2. The learned Senior Counsel placed reliance on the decision of a Division Bench of this Court in W.A. No. 1542 of 1992 dated 10.10.2003.

6.1. Mr. N. Subramaniyan, learned Counsel for the Petitioners while adopting the arguments of Mr. Vijay Narayan, would further submit that as per Rule 10(b)(4) a Junior Engineer, even if he acquires B.E. Degree, he will not be eligible for appointment as Assistant Divisional Engineer before completion of five years and as such care was taken by the framers of the Rules to see that the AEs already in service shall not be overlooked by subsequently appointed JEs. It is further submitted that there are inequalities between the Petitioners and the Respondents 3 to 23. The Respondents 3 to 23 and impleaded Respondents 24 to 28, who are not having requisite qualification as contemplated under Rules 9(b) & 10(b)(3)(a) & (b) and without serving ten years as JEs, have overtaken the Petitioners, who are having more than nine years of service with higher qualification, which is nothing but meriting the demerits and demeriting the merits amounting to discrimination.

6.2. Mr. N. Subramaniyan, learned Counsel would further submit that the Respondents 3 to 28, being possessed the qualification of only DCE, a diploma awarded by the Directorate of Technical Education, Madras, which was formerly known as L.C.E., Diploma of Technological Board of Madras and such qualification is not in conformity with Rule 10. It is further contended that the said Respondents have been appointed only as per Rule 9(a) & 10(b)(2)(a) & (b) and not under Rule 10(b)(3)(a) & (b), and there is no specific pleading either in the counter of the Respondents 1 & 2 or in the counter of the Respondents 3 to 23 and as such they are not eligible and qualified for appointment to the post of ADE.

7. Mr. N.G.R. Prasad, learned Counsel for the Petitioner in W.P. No. 27694 of 2008 contended that only AEs (degree-holders), are entitled for promotion for the post of ADE and in respect of JEs, their earlier service cannot be taken into account. It is submitted that service as JEs for a period of 10 years alone can be taken into account and even putting service as Draughtsman cannot be counted unless they have served as JE for 10 years. The learned Counsel further contended that even putting 18 years service as Overseer or Draughting Officer will not enable them to get promotion unless they should be considered to be efficient and competent for

such appointment by the Government. The learned Counsel would place reliance on the decision of the Hon"ble Apex Court in [N. Suresh Nathan and another Vs. Union of India and others,](#)

8.1. Mr. R. Thiagarajan, learned Senior Counsel for the Respondents 3 to 6 in W.P. No. 10183 of 2008 and the Respondents 24 to 28 in W.P. No. 8870 of 2008 would contend that it is the admitted fact that there are two streams, AEs & JEs, and there is a ratio between these two different streams for the purpose of promotion to the post of ADE, namely, 3:1. It is submitted by the learned Senior Counsel that for every four vacancies of ADE arising, three must be from AE stream and one must be from JE stream and therefore, there are two lists and three will come from AE list and one will come from JE list and there is no question of inter se Seniority or Senior or junior position and one cannot enter into others line and the Rules and provisions are clear in this regard. Even if there is no qualified candidates in one stream, the other cannot enter into that stream, which fact is very much clear from the position of the Rules. The learned Senior Counsel further submitted that out 48 vacancies, 36 must go to AEs and 12 must go to JEs and each of them cannot claim other stream's posts and their respective quota has been fixed. The learned Senior Counsel relied Rule 9(a) & (b) and submitted that if a JE is having totally eighteen years of service, he is eligible for promotion as ADE. The learned Senior Counsel vehemently contended that as per Rule 9(b) total service of not less than eighteen years rendered by a candidate as JE, Overseer or Draughting Officer will count and 10 years as JE is not required. Therefore, it is submitted that if a Draughtsman completed 17 years and 11 months 30 days service as Draughtsman and served one day as JE, he is eligible for the promotion as ADE, i.e., on the date of promotion he should be holding the post of JE. It is contended that all the Respondents herein have put up more than 18 years of service and they are definitely eligible for promotion as they have fulfilled the requirements. The learned Senior Counsel would further submit that since the AEs are having higher qualification, they are required to complete only 5 years of service, whereas, the JEs are required to complete 10 years of service.

8.2. The learned Senior Counsel contended that Rule 9(a) & (b) of the Rules is not peculiar and such Rule is not prevailing in the Highways Department alone and there are similar Rules available in Chennai Corporation Engineering Service Rules, Tamil Nadu Engineering Service Rules (PWD), etc. It is contended by the learned Senior Counsel for the Respondents that a Division Bench of this Court in [T.N. Gomathinayagam Vs. D. Dayal and Others,](#) considering the similar Rules under the Madras Corporation Engineering Service Rules, 1969, held that total service has to be taken into consideration including the service rendered in the feeder category. It is submitted that the said decision was also confirmed by the Hon"ble Apex Court in SLP (Civil) No. 2567 of 1994 by Order dated 29.2.1996. The learned Senior Counsel by placing reliance on the above said decisions would contend that it is enough for the Respondents 3 to 23 to have total period of service of 18 years including the service in the lower category to become eligible for promotion for the post of ADE.

8.3. The learned Senior Counsel would also place reliance on yet another decision of the Division Bench of this Court in W.A. Nos. 225 & 651 of 2005 dated 28.9.2007 dealing with the similar Rules taking similar view that total period of service is to be taken into consideration including the service rendered under the lower category.

8.4. It is further contended by the learned Senior Counsel that the Respondents 3 to 28 are possessing requisite educational qualification and placed reliance on the Letter dated 20.7.2009 written by the Additional Director of Polytechnics to the Additional Secretary to Government, Highways and Minor Ports Department, Secretariat, Chennai, certifying that LCE/LME awarded by the Directorate of Technical Education, Tamil Nadu, is equivalent to DCE/DME respectively awarded by the State Board of Technical Education and Training, Tamil Nadu.

9. Mr. L. Chandrakumar, learned Counsel for the Respondents 3, 4, 5 & 13 in W.P. No. 8870 of 2008 while adopting the arguments of the learned Senior Counsel for the Respondents and also highlighting the Rules submitted that only total period of service is to be taken into consideration including the service rendered in the lower category and the service as JE alone is not required as per the Rules.

10. Mr. G. Ethirajulu, learned Counsel for the Respondents 11, 12 & 19 in W.P. No. 8870 of 2009 and the Third Respondent in W.P. No. 10183 of 2009, while adopting the arguments of Mr. R. Thiagarajan, learned Senior Counsel further submitted that the Rules 9(a) & (b) & 10(b)(3)(a) & (b) have been framed in order to give chance to the lower category people for promotion to the higher category, otherwise, diploma-holders cannot compete with the degree-holders. The learned Counsel would further submit that the Rule is very clear in respect of the fixation of ratio of 3: 1 between the degree-holders and diploma-holders and also fixing the eligibility of experience instead of five years as 10 years & 18 years for diploma-holders and that itself shows that the Rule is very clear and there is no impediment for promotion of such diploma-holders. The learned Counsel also submitted that the Petitioners have not challenged the Rules 9 & 10 and as such the points raised by them cannot be considered.

11.1. Mr. P.S. Raman, learned Additional Advocate General, by placing reliance on the provisions, submitted that the degree in Engineering is a higher qualification. The Petitioners, who are the degree-holders in Engineering are entitled to be appointed directly as AEs and they need to put 5 years of service for getting promotion as ADE. As far as JEs are concerned, a diploma in Engineering is sufficient to get appointment as JE and they need to put more years of service to become eligible for promotion as ADE and the same is applicable to Overseer, Draughtsman and Draughting Officers as per the Rules.

11.2. The learned Additional Advocate General would further contend by placing reliance on the Counter filed by the Respondents 1 & 2 that JEs, who have been given promotion as ADEs, had joined in the service between 1979-1983 and the

junior most officer, who was given promotion as ADE, had joined in the service on 29.8.1983 and for getting promotion each of them have put up more than 25 years of service, whereas, the Petitioners have joined in the service between 1997 & 1998 and from such position, it is clear that all the promotees have put up more than 25 years of service and therefore, there is no doubt that they have completed 18 years of total service, which is the crucial qualification and such factual position cannot be disputed.

11.3. It is further contended that Rule 9(b) reads "a Junior Engineer.... who has rendered a total service of not less than eighteen years on duty as Junior Engineer, Overseer or Draughting Officer and has proved himself to be efficient may...." which means collectively one must have completed 18 years of service as it does not specifically indicates how much service one has to put in each category and that is why the term "total service" is used. It is further contended that the Petitioners strangely interpreted the Rules instead of challenging the Rules 9 & 10 and Rule 9 is only an enabling provision and the term used in Rules 9(b) & 10(c)(2)(a) & (b) must be collectively read which will fall in line and it cannot be isolated and as such the same is not redundant as contended by the learned Senior Counsel for the Petitioners.

11.4. It is contended by the learned Additional Advocate General that such Rules are prevailing in other departments, like, Public Works Department and Chennai Corporation, etc. and it is common in Service jurisprudence.

11.5. The learned Additional Advocate General would further contend that the Petitioners cannot claim the quota reserved for JEs and vice-versa as out of every four vacancies of ADEs, three posts are reserved for AEs and one post is reserved for JEs and one cannot embark into quota earmarked for the other.

11.6. The learned Additional Advocate General further contended that the Petitioners are not coming within the zone of consideration and therefore, they are not entitled to challenge the promotion of JEs as ADEs.

11.7. Lastly it is submitted by the learned Additional Advocate General that the Technological Diploma Board, Madras has now become Directorate of Technical Education and produced a Letter dated 6.7.2009 and contended that the Respondents 3 to 23 are possessing necessary educational qualification as R-3 to R-5 & R-9 to R-11 are possessing DCE/BE, R-7, R-8 & R-12 are possessing B.E. and others possessing DCE. It is submitted that the Letter dated 20.7.2009 written by Additional Director (Polytechnics), Directorate of Technical Education, Chennai, to the Additional Secretary to the Government, Highways and Minor Ports (HK. 1) Department, Secretariat, Chennai, reveals that L.C.E./L.M.E. (Licentiate Civil Engineering/Licentiate Mechanical Engineering) awarded by the Directorate of Technical Education, Tamil Nadu, is equivalent to Diploma in Civil Engineering/Diploma in Mechanical Engineering respectively awarded by the State Board of Technical Education and Training, Tamil Nadu and as such, the

Respondents 3 to 28 are possessing the prescribed educational qualification as per the Rules apart from experience eligibility for the promotion to the post of ADE. Therefore, it is contended by the learned Additional Advocate General that the Respondents 3 to 23 have been rightly promoted and appointed as ADE as they are coming well within the prescribed qualification and eligibility under the Rules.

12. I have given my careful consideration to the rival contentions put forward by either side and perused the entire materials available on record.

13. The main questions arising for consideration are:

(i) Whether the reservation of the quota of 3:1 ratio prescribed under Rule 9(a) between AEs (degree-holders) and JEs (diploma-holders) would be applicable only in the event of qualified and suitable candidates are available in the respective categories and in the event of non-availability of such candidates in either of the categories, whether one can embark into the quota reserved for the other;

(ii) Whether the total service of not less than 18 years, 10 years & 18 years contemplated under Rules 9(b), 10(b)(2)(b) & 10(b)(3)(b) respectively would mean only rendering service as JE or it would include the service as Draughtsman and Overseer;

(iii) Whether the promotion of Respondents 3 to 23 and proposed promotion of Respondents 24 to 28 are in accordance with the Engineering Service Rules?

14. Before proceeding to consider the above said questions, it is relevant to refer to the Engineering Service Rules in respect of method and manner of promotion to ADE.

15.1. Rule 3 of the Engineering Service Rules which provides for appointment to various categories of staff is as follows:

3. Appointment.--(a) Appointment to the several categories shall be made as follows:

15.2. Rules 9 & 10 deal with the manner of appointment of ADEs and the required qualification and eligibility. The said Rules read as hereunder:

9. Appointment of Assistant Divisional Engineer.-

[earlier provision for direct recruitment was omitted vide G.O.Ms. No. 68 Highways (HK. 1) Department, dated 1.4.2002 and as such (b) became (a)]

(a) So far as qualified and suitable candidates are available, out of every four vacancies successively arising otherwise than substantively among Assistant Divisional Engineers, the first three shall be filled or reserved to be filled by promotion from among permanent Assistant Engineers in category 5, possessing the B.E., degree (Highways, Civil or Mechanical) of any University or Institution recognised by the University Grants Commission for the purpose of its grant or the diploma in Engineering (Highways, Civil or Mechanical) of the College of

Engineering, Guindy, or of any University or Institution recognised by the University Grants Commission for the purpose of its grant and the fourth vacancy shall be filled or reserved to be filled by recruitment by transfer from among permanent Junior Engineers of the Tamil Nadu Highways Engineering Subordinate Service or permanent Draughtsmen who have been appointed as Junior Engineer but working in the Drawing Office for administrative reasons possessing the Upper Subordinate or L.C.E. Diploma of the College of Engineering, Guindy or the L.C.E. Diploma of the Technological Diploma Board, Madras, or a diploma in Engineering of any University or Institution recognised by the University Grants Commission for the purpose of its grant.

(b) A Junior Engineer holding the Lower Subordinate diploma of the College of Engineering, Guindy, or a diploma in Engineering of any University or Institution recognised by the University Grants Commission for the purpose of its grant who has rendered a total service of not less than eighteen years on duty as Junior Engineer, Overseer or Draughting Officer and has proved himself to be efficient may, notwithstanding anything contained in these rules be appointed as Assistant Divisional Engineers if the State Government consider that he is competent for such appointment.

(Emphasis supplied by this Court)

10. Qualification for Assistant Divisional Engineers and Assistant Engineers.-

No person shall be eligible for appointment to the category specified in column (1) of the table below, by the method specified in column (2) unless he possesses the qualifications specified in the corresponding entries in column (3) thereof:

16.3. Rule 18(a) reads hereunder:

18. Reservation of vacancy in the post of Assistant Engineer and assignment of rank for certain Assistant Engineers.--(a) Twenty five percent of the total number of vacancies both in the category of Assistant Engineers in the Tamil Nadu Highways Engineering Service and in the category of Junior Engineers in the Tamil Nadu Highways Engineering Subordinate Service estimated every year shall be reserved to be filled by the candidates possessing the L.C.E. diploma or its equivalent. The other seventy five percent of the vacancies shall be reserved to be filled by the candidates possessing a degree in Engineering or its equivalent for appointment as Assistant Engineers in the Tamil Nadu Highways Engineering Service;

16.4. A reading of the above said Rules makes it clear that the promotion to the post of ADE is to be made from two categories, viz., AEs (degree-holders) and JEs (diploma-holders).

Rule 9(a) contemplates reservation of quota in respect of AEs (degree-holders) and JEs (diploma-holders) at the ratio of 3: 1, i.e., out of every four vacancies successively arising, the first three shall be filled or reserved to be filled from AEs and the fourth

vacancy shall be filled or reserved to be filled from JEs.

17. Now let me consider the first question which is the sheet-anchor of the contentions of the learned Senior Counsel for the Petitioners relating to the interpretation of Rule 9(a) prescribing reservation of quota for promotion to the post of ADE between AEs and JEs at 3: 1 ratio as to whether it is applicable only in the event of availability of qualified and suitable candidates and whether in the event of non-availability of such qualified and suitable candidates in a particular category, whether the vacancy reserved for the said category can be filled up by promoting the candidates from the other category?

18. To answer this question, we have to, at the outset, examine the scope and ambit of Rule 9(a) of the Engineering Service Rules.

19. Rule 9(a) has to be read conjointly with the other Rules to understand its purport and meaning and it cannot be read in isolation. Merely because Rule 9(a) begins with the phrase "so far as qualified and suitable candidates are available", it cannot be misunderstood to give a go-by to 3: 1 ratio contemplated under the said Rule between AEs (degree-holders) and JEs (diploma-holders). The phrase used "so far as the qualified and suitable candidates are available" should be taken into consideration along with Rules 9(b) & 10 prescribing qualification and experience as eligibility criteria for the promotion to the post of ADE.

20. It is needless to say that only qualified and suitable persons are entitled for the promotion either from AEs or JEs. The statute fixes the quota for the respective two Feeder Categories, namely, AEs and JEs for the promotion to the post of ADE on the basis of the cumulative consideration of qualification and experience. The question of one encroaching and embarking into the quota of the other does not arise in view of the clear and unambiguous Rules, as stated above.

21. At this juncture, it is relevant to refer to the decision of the Hon"ble Apex Court in [Shailendra Dania and Others Vs. S.P. Dubey and Others](#), The Hon"ble Apex Court in that decision while dealing with a similar question in respect of fixing eligibility, experience and quota for the degree-holders and diploma-holders for promotion to the higher cadre held as hereunder:

43. Taking into consideration the entire scheme of the relevant Rules, it is obvious that the diploma-holders would not be eligible for promotion to the post of Assistant Engineer in their quota unless they have eight years" service, whereas the graduate Engineers would be required to have three years" service experience, apart from their degree. If the effect and intent of the Rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then induction to the cadre of Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma-holders to any further requirement of having a further qualification of two years" service. At the time of induction into the service to the post of Junior Engineers, degree in

Engineering is a sufficient qualification without there being any prior experience, whereas diploma-holders should have two years" experience apart from their diploma for their induction in the service. As per the Service Rules, on the post of Assistant Engineer, 50% of total vacancies would be filled up by direct recruitment, whereas for the promotion specific quota is prescribed for a graduate Junior Engineer and a diploma-holder Junior Engineer. When the quota is prescribed under the Rules, the promotion of graduate Junior Engineers to the higher post is restricted to 25% quota fixed. So far as the diploma-holders are concerned, their promotion to the higher post is confined to 25%. As an eligibility criterion, a degree is further qualified by three years" service for the Junior Engineers, whereas eight years" service is required for the diploma-holders. Degree with three years" service experience and diploma with eight years" service experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma-holder Junior Engineer....

44. After having an overall consideration of the relevant Rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineer cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. When the claim is made from a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The 25% specific quota is fixed for degree-holder Junior Engineers with the experience of three years. Thus, on a plain reading, the experience so required would be as a degree-holder Junior Engineer. 25% quota for promotion under the Rule is assigned to degree-holder Junior Engineers with three years" experience, whereas for diploma-holder Junior Engineers eight years" experience is the requirement in their 25% quota. Educational qualification along with number of years of service was recognised as conferring eligibility for promotion in the respective quota fixed for graduates and diploma-holders. There is watertight compartment for graduate Junior Engineers and diploma-holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. Fixation of different quota for promotion from different channels of degree-holders and diploma-holders itself indicates that service required for promotion is an essential eligibility criterion along with degree or diploma, which is service rendered as a degree-holder in the present case.

22. The Hon"ble Apex Court in [The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others,](#) , held that-

When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if Rules are framed in this

regard they must ordinarily be followed strictly.

The principles laid down in the decisions cited supra are squarely applicable to the question involved in the instant case relating to the interpretation of the Rules stipulating the reservation and fixation of quota in respect of AEs (degree-holders) and JEs (diploma-holders) for promotion to the post of ADE. Applying the same, it is crystal clear that neither a degree-holder (AE) could claim promotion in the quota of diploma-holder (JE) nor can a diploma-holder (JE) make any claim for promotion in the quota fixed for degree-holder (AE). It is pertinent to note that the Petitioners have not challenged the validity of the Rules 9(a) & (b) & 10 and as such it goes without saying that the said Rules have to be read as it is. In my considered opinion, the said Rules are clear and unambiguous and therefore, only a literal Rule of interpretation should be applied. In view of the same, the quota fixed for the respective categories as per Rule 9(a) is to be followed scrupulously.

23. It is relevant to note that the AEs have higher qualification as they are degree-holders and they are required to complete five years of service, whereas, JEs, who are only diploma-holders and they are required to complete 10 years of service as per Rules 10(b)(1)(b) & 10(b)(2)(b) respectively. It is pertinent to note that as per the Rule 9(b) JEs (diploma-holders) required to complete the total service of not less than 18 years as JE, Overseer or Draughting Officer. It is seen that JEs, being diploma-holders, are required to complete more number of years of service as Overseer, Junior Engineer or Draughtsman as they are holding lesser qualification.

24. The quota of 3:1 ratio prescribed under Rule 9(a) between AEs (degree-holders) and JEs (diploma-holders) is proportionate to their qualification and experience. It is pertinent to note that even as per Rule 18 a similar quota is fixed in respect of the post of AEs stipulating 75% of the vacancies arising in the Section Offices shall be reserved to be filled by the degree-holders and 25% of vacancies shall be filled by the diploma-holders. In view of such clarity in the said rules, neither the AEs (degree-holders) embark into the quota of JEs (diploma-holders) nor JEs (diploma-holders) embark into the quota reserved for AEs (degree-holders). As held by the Hon"ble Apex Court in the decision cited supra, there is a water tight compartment for AEs (degree-holders) and JEs (diploma-holders) as per the above said Rules and they are entitled for promotion only on the basis of their respective quotas. Even in the event of non-availability of qualified and suitable candidates in either of the categories, one cannot embark into the quota of the other as the said Rule 9(a) does not contemplate such situation. Such being the position, it is not possible for the Court to add or delete words in statutory Rules.

25. At the risk of repetition, it is to be re-iterated that the above said Rules are very clear and unambiguous and followed for a long period. Even assuming if two views are possible after interpreting the Rule, the interpretation which favours the practice which was being followed for a long period should ordinarily be preferred.

26. It is well-settled by the Hon"ble Apex Court in [Shailendra Dania and Others Vs. S.P. Dubey and Others](#), that--

36...Thus, we are required to decide the matter on the basis of the entire scheme of the Rules, the facts and circumstances at the relevant time and the Rules called in question before us, independently giving meaning to the words, the principle involved and the past practice, if any, which is in consonance with the interpretation given by us to the Rule. If we find that two views are possible after interpreting the Rule, then the Rule would be interpreted keeping with the practice followed in the Department for a long time and thus the practice practically acquired status of rule in the Department.

27. In yet another latest decision in [Nair Service Society Vs. Dr. T. Beermasthan and Others](#), the Hon"ble Apex Court held that,-

32...If two interpretations of the Rules are possible, the interpretation which favours the practice which was being followed for a long period should ordinarily be preferred unless it is clearly in violation of the Rules.

It is seen that Rule 9(a) prescribing quota for AEs and JEs is continuously followed for a long time and as such there is no question of any deviation from following such reservation quota system.

28. Let me now consider the next limb of the contention of the learned Senior Counsel for the Petitioners to the effect that the Respondents 3 to 28 are not qualified and eligible for promotion to the post of ADE as they are not having required service experience and the educational qualification.

29. The learned Senior Counsel for the Petitioners took enormous pain to contend that as per the Rules, the Respondents 3 to 28 have to put 10 years of service as JEs to become eligible for promotion to the post of ADE and their service as Draughtsman cannot be included. The learned Senior Counsel would further submit that Rule 9(a) provides that "the fourth vacancy shall be filled or reserved to be filled by recruitment by transfer from among permanent JEs of the Tamil Nadu Highways Engineering Subordinate Service or permanent Draughtsmen, who have been appointed as JEs but working in the Drawing Office for administrative reasons" which means a Draughtsman after appointment of permanent JE, who is working as Draughtsman in the Drawing Office for administrative reasons and completed ten years of service as JE, alone eligible for appointment as ADE and total experience cannot be taken into consideration. Similar contention was re-iterated by Mr. N.G.R. Prasad, learned Counsel appearing for the Petitioner and further emphasized that they should be considered to be efficient and competent for such promotion.

30. I am of the considered view that Rule 9(a) & (b) & Rules 10(b)(2)(a) & (b) & 10(b)(3)(a) & (b) shall be read together and cannot be isolated as Rule 9(a) & (b) are the enabling provisions. I am unable to countenance the contention of the learned

Senior Counsel for the Petitioners that as per Rule 9(a), a Draughtsman after appointment of permanent JE alone, who is working as Draughtsman in the drawing office for administrative reasons and completed 10 years service as JE, eligible for appointment as ADE and total experience cannot be taken into consideration on the simple reason that the said provision Rule 9(a) does not contemplate such situation of requiring 10 years of service as JE alone.

31. At the risk of repetition, it is to be re-iterated that the promotion to the post of ADE is only from two feeder categories, viz., AEs (degree-holders) and JEs (diploma-holders). Section 9(a) provides for reservation of quota of 3: 1 ratio between AEs & JEs. Therefore, the eligibility for promotion to the post of ADE is at the time of promotion, they should work as AE or JE and as such, it is abundantly clear that the Draughtsman is entitled for promotion only after becoming JE. It is relevant to note that Rule 9(a) clearly provides that the fourth vacancy shall be filled or reserved for recruitment by transfer from permanent JEs or permanent Draughtsman, who have been appointed as JEs, working in the drawing office for administrative reasons, that means, as per provision under Rule 9(a), the eligibility for promotion to the post of ADE made abundantly clear that one should work, at the time of promotion, as JE irrespective of the fact that a Draughtsman, who have been appointed as JE but working in the drawing office for administrative reasons. It is pertinent to note that only the provisions under Rules 9(b) & 10(b)(2)(a) & (b) & 10(b)(3)(a) & (b) contemplates the required service experience and Rule 9(a) is nothing to do with fixing of service experience. The phraseology used in Rule 9(b) reads "a total service of not less than eighteen years on duty as Junior Engineer, Overseer or Draughting Officer and has proved himself to be efficient"; in Rule 10(b)(2)(b) reads "Service as Junior Engineer or Draughtsman for a period of not less than ten years; and in Rule 10(b)(3)(b) reads "Service as Overseer, Junior Engineer or Draughtsman for a period of not less than eighteen years ". The reading of the said provisions makes it crystal clear that for diploma-holders their total service including the service as Overseer, Draughtsman and JE should be taken together and their service under the lower categories as Overseer and Draughtsman cannot be excluded and they are not required to put a service of 10 years and 18 years as JE alone. Therefore, I am of the considered view that there is much force in the contentions put forward by Mr. R. Thiagarajan, learned Senior Counsel for the Respondents that if a Draughtsman completed more than 17 years of service as Draughtsman and served one day as JE, he is eligible for promotion as ADE and the only requirement for eligibility to the promotion is that he should hold the post of JE on the date of promotion.

32. The above said Rules are not peculiar to the Highways Department alone and such Rules are common in Service jurisprudence for promotion and similar Rules are prevailing in other departments also contemplating total period of service including the service rendered in the lower category.

33. There is a similar provision under Rule 4 in the Madras Corporation Engineering Service Rules, 1969 in respect of the diploma-holders and a Division Bench of this Court dealt with such Rule in [T.N. Gomathinayagam Vs. D. Dayal and Others](#) , and held as hereunder:

10...A plain reading of the Rule would only mean that the Draughtsmen, etc., promoted to the feeder category of Junior Engineers, etc., are eligible for promotion to the post of Assistant Executive Engineer if they have put in a total service of not less than 10 years in one or more categories. In the abovesaid context, the term "one or more categories" cannot be restricted only to the Feeder Category, viz., Junior Engineers, Head Surveyor or Head Draftsmen, but it would include even the lower category of Draughtsmen, Overseers and Surveyors because the term they used in the expression "only if they have put in a total service" would grammatically refer to Draughtsmen, Overseers and Surveyors who are promoted as Junior Engineers, Head Surveyors or Head Draftsmen.

The said decision was upheld by the Hon"ble Court in SLP (Civil) No. 2567 of 1994 dated 20.2.1996.

34. Yet another Division Bench of this Court in V. Kuppan v. P. Murali, W.A. Nos. 255 & 651 of 2005 dated 28.9.2007, took a similar view in respect of the interpretation of Rule 4 of the Madras Corporation Engineering Service Rules and held as hereunder:

From the perusal of the above said Rule it is amply clear that for the Diploma-holders in Electrical Engineering of the State Board of Technical Education and Training or any other qualifications considered equivalent thereto, a minimum 15 years of service is required and for the Degree-holders in Electrical Engineering, not less than five years of experience as Assistant Engineer in the Corporation Engineering Subordinate Service is required. Nowhere in the said Rule it is stipulated that 15 years of service is required for the Diploma-holders after they were designated as Junior Engineers. When the Rule is very clear and the Corporation having acted upon on the basis of the Rule as could be seen from the Counter Affidavit filed by the Corporation placing the Respondents 3 to 5 who are Appellants in W.A. No. 255 of 2005 in the panel for promotion for the post of Assistant Divisional Engineer (Electrical) by Seniority from the post of Junior Engineer (Electrical), no exception could be taken by the Petitioners, who are Degree-holders.

35. There are similar provisions in the Service Rules of Public Works Department and Housing and Urban Development Department.

36. It is seen that the Respondents 1 & 2 in their counter stated about the respective dates of appointments of the Respondents 3 to 28 as Junior Draughting Officer, JE and promotion and appointment as ADE as hereunder:

The persons mentioned in Sl. Nos. 1 to 21 have been arrayed as Respondents 3 to 23 in W.P. Nos. 8870 of 2008. The above details make it crystal clear that the Respondents 3 to 23 have put in a total and combined service of more than a period of 20 years and as such they are coming well within the required experience contemplated in the above said Rules. It is further seen from the Letter dated 6.7.2009 in Letter No. 7746/HK1/2009-4 written by the Secretary to Government as produced by the learned Additional Advocate General that while preparing the panel for the year 2006-2007, 43 JEs were taken up for consideration and only 27 JEs including the Respondents 3, 4 & 5 were found to be competent for appointment as ADE and they were selected. Similarly, while preparing the panel for the year 2007-2008, 27 JEs were taken up for consideration and only the Respondents 6 to 23 were found to be competent for appointment to the post of ADE and hence, they were selected. It is further revealed from the said letter that in the panel for the year 2008-2009 which is under preparation, the cases of 22 JEs have been taken up for consideration and out of which only 12 JEs, are found to be competent for appointment as ADE. Therefore, the Respondents 1 & 2 not only taken into consideration the experience of the Respondents 3 to 28, but also the Respondents 3 to 28 found to be efficient and competent to be promoted as ADE. The Rule does not contemplate conducting of any special test for ascertaining the competency and efficiency and it is for the Government to examine and assess their efficiency and competency from their record of service. Therefore, the Respondents 3 to 23 have been appointed as ADEs within the quota earmarked for the JEs as they found to be qualified, eligible, competent and efficient for the post of ADEs.

37. The decision cited by Mr. N.G.R. Prasad, learned Counsel for the Petitioners in [N. Suresh Nathan and another Vs. Union of India and others](#), is in respect of the diploma-holders/JEs obtaining degree while in service and it was held that the period of three years is to be reckoned from the date of obtaining degree and not earlier and therefore, the said decision is not applicable to the question involved in the instant case. Even in the above said decision, it was held by the Hon"ble Apex Court that,-

5. The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the provision.

Therefore, it is to be reiterated, as already stated, that the provisions under Rules 9 & 10 are very clear and unambiguous and followed considerably for a long time and as such the settled practice cannot be unsettled and that too, the Petitioners having not challenged the above said Rules.

38. The unreported judgment relied by the learned Counsel for the Petitioners in W.A. No. 1542 of 1992 dated 30.10.2003 is not applicable to the facts of the instant case.

39. The next question is about requirement of educational qualification for the JEs (diploma-holders). As per Rule 9(a), the required qualification for JEs (diploma-holders) is the possession of Upper Subordinate or L.C.E. Diploma of the College of Engineering, Guindy, or the L.C.E. Diploma of the Technological Diploma Board, Madras or a diploma in Engineering of any University or Institution recognised by the University Grants Commission for the purpose of its grant. Rule 10(b)(2)(a) prescribes possession of Upper Subordinate or L.C.E. Diploma of the College of Engineering, Guindy, or the L.C.E., L.M.E., or L.A.E., Diploma of the Technological Diploma Board, Madras or any diploma in Engineering. Rule 10(b)(3)(a) prescribes possession of Lower Sub-ordinate Diploma of the College of Engineering, Guindy, or any Diploma of Engineering.

40.1. At this juncture, it is relevant to note that Mr. P.S. Raman, learned Additional Advocate General produced two letters before this Court during the course of his arguments, viz., (i) a Letter written by the Secretary to Government, to the Additional Advocate General, dated 6.7.2009, and (ii) another Letter written by the Additional Director, Polytechnics, (Directorate of Technical Education), Chennai, to the Additional Secretary, Highways and Minor Ports Department, Secretariat, Chennai, dated 20.7.2009, as stated above. A perusal of the Letter dated 6.7.2009 reveals that the Respondents 3 to 23 are possessing necessary educational qualification as R-3 to R-5 & R-9 to R-11 are possessing DCE/BE, R-7, R-8 & R-12 are possessing B.E. and others possessing DCE. It is further revealed from the said letter that the Technological Diploma Board, Madras, mentioned in Section 10(b)(2)(a) is presently called as the Directorate of Technical Education and further the L.C.E., and L.M.E., diplomas mentioned in the same Rule 10(b)(2)(a) are now known as D.C.E., and D.M.E., awarded by the Directorate of Technical Education. It is seen from the above said Letter dated 6.7.2009 that the Respondent 24 is holding D.C.R.E. (Declared as equivalent to DCE in G.O.Ms. No. 51, Education Department, dated 15.4.1971), the Respondents 25, 26 & 28 are B.E. holders and the Respondent 27 is holding D.C.E.

40.2. A perusal of the Letter dated 20.7.2009 reveals that the L.C.E., and L.M.E., awarded by the Directorate of Technical Education, Tamil Nadu, is equivalent to Diploma in Civil Engineering (D.C.E.) and Diploma in Mechanical Engineering (D.M.E.) respectively awarded by the State Board of Technical Education and Training, Tamil Nadu.

40.3. The above said materials produced before this Court make it abundantly clear that the Respondents 3 to 28 are coming well within the prescribed educational qualification as per the rules stated above.

41. The next controversy raised in this matter is that the Petitioners contended that the First Respondent while replying for a query raised under the Right to Information Act, 2005 stated that the Respondents 3 to 23 were promoted under Rule 10(b)(2)(a) & (b) and not under Rule 10(c)(3)(a) & (b). It is contended that the Respondents 1 & 2 in these Petitions also not stated in their Counter as to under

what provision the Respondents 3 to 23 have been promoted as ADE. It is true that the Additional Secretary to Government replied to the query under the RTI Act, 2005 stating that the Respondents 3 to 23 have been promoted under Rule 10(b)(2)(a) & (b) and not under Rule 10(c)(3)(a) & (b). In the letter written by the Secretary to Government, Highways and Minor Ports (HK1) Department to the Additional Advocate General dated 6.7.2009, it is specifically stated that the Respondents 3 to 23 have been appointed under Rule 10(2)(a) & (b). It is seen that in the letter instead of referring 10(b)(2)(a) & (b), it is plainly mentioned as sub-rule (2)(a) & (b) of Rule 10. It is further stated in the said letter that the L.C.E. and L.M.E. Diploma mentioned under sub-rule (2)(a) & (b) of Rule 10 are now known as D.C.E., & D.M.E., awarded by the Directorate of Technical Education and the Respondents 3 to 28 are possessing the aforesaid technical qualification.

42. It is pertinent to note that both under Rules 10(b)(2)(a) & 10(b)(3)(a), it is specifically stated that apart from the Upper Subordinate/Lower Subordinate diploma of the College of Engineering, Guindy, or L.C.E., L.M.E. or L.A.E., Diploma of the Technological Diploma Board, Madras, it is stated as "or any other diploma in Engineering", which means possession of any diploma in engineering is sufficient. It is specifically stated in the counter filed by the Respondents 1 & 2 in W.P. No. 10183 of 2009 that the College of Engineering, Guindy, is not conducting any diploma course in Highways, Civil or Mechanical Engineering and similar statement was also made in the letter written by the Secretary to Government to the Additional Advocate General dated 6.7.2009 produced before this Court. It is pertinent to note that JEs required to possess qualification and experience mentioned in Rule 10(b)(2)(a) & (b) or 10(b)(3)(a) & (b) and as such both the provisions should be read together and not in isolation and it is sufficient for the Respondents 3 to 28 to satisfy the requirement of qualification and experience under any one of the above said provisions.

43. Therefore, this Court is of the considered view that quoting the provisions of sub-rule to Rule 10 is immaterial and irrelevant and the respondents are coming well within the required qualification and experience under both the provisions, viz., Rules 10(b)(2)(a) & (b) & 10(b)(3)(a) & (b).

44. Mr. N. Subramaniam, learned Counsel for the Petitioners lastly contended that even as per Rule 10(b)(4), no JE, who has a total service of less than five years shall be eligible for promotion as ADE even if he acquires B.E. Degree. At the outset, I am unable to accept the said contention. The said Rule deals in respect of the person obtaining degree in engineering or its equivalent after appointment. The said Rule also contemplates of completion of either ten years of total service or three years of service from the date of obtaining degree whichever is earlier. It is to be stated that the Respondents 3 to 28 are concerned, they are not claiming any promotion on the basis of obtaining B.E. Degree subsequent to their appointment in the lower category and as such, this Court need not go into the interpretation of the said Rule

as it is immaterial in view of the issue involved in this matter.

45.1. It is seen that two associations, viz., Association of Engineers, Chennai, and Association of Tamil Nadu Highways Engineers, filed two Writ Petitions in W.P. Nos. 9842 of 2009 & 10183 of 2009 respectively. The learned Senior Counsel for the Respondents by placing reliance on the decision of this Court in Tamil Nadu Uthaviperum Thodakka Nadunilai Palli Nirvagigal v. State of Tamil Nadu and others, 2006 (1) LLN 759, contended that a representative Writ Petition in a service matter is not maintainable.

45.2. The learned Additional Advocate General also contended that a similar view was taken by the First Bench of this Court recently.

45.3. However, the learned Senior Counsel for the Petitioners contended that the said decisions could be distinguished by citing other decisions. In view of the fact that the AEs (Petitioners) filed individual Writ Petitions, this Court is of the considered view that the question of maintainability of a representative Writ Petition in a service matter need not be gone into and the same is left open.

46. For the aforesaid reasons, this Court is of the considered view that these Writ Petitions are liable to be dismissed as devoid of merits and accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. The Petitioners 2 & 3 in W.P. No. 8870 of 2008 have withdrawn this Petition as per the endorsement made by their Counsel and as such W.P. No. 8870 of 2008 is hereby dismissed as withdrawn insofar as the Petitioners 2 & 3 are concerned.