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ITEM NO.101 COURT NO.7 SECTION XI
(Part-Heard)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3695 OF 2007

SRI ATIBAL SINGH AND ORS. Appellant (s)

VERSUS

PRAMOD SHANKAR UPADHYAY AND ORS. Respondent(s)

(With appln(s) for exemption from filing O.T., impleadment,permission to file additional documents and office report)

WITH
Civil Appeal NO. 3704 of 2007 (With Application for impleadment)
Civil Appeal NO. 3706 of 2007
Civil Appeal NO. 3705 of 2007
Civil Appeal NO. 3685 of 2007 (With Office Report)
Civil Appeal NO. 3686 of 2007
Civil Appeal NO. 3687 of 2007
Civil Appeal NO. 3688 of 2007
Civil Appeal NO. 3115-3127 of 2012
SLP(C) NO. 28395 of 2011
(With Appln. for permission to file lengthy list of dates and permission to file additional documents and with Prayer for Interim Relief and and office report)
SLP(C) NO. 28535-28536 of 2011
(With appln. for permission to file synopsis and list of dates and permission to file additional documents and impleadment and permission to appear and argue in person and prayer for interim relief and office report)
SLP(C) NO. 28917 of 2011
(With Appln. for permission to file lengthy list of dates and with Prayer for Interim Relief and and office report)
SLP(C) NO. 33760 of 2011
(With prayer for interim relief and office report)
SLP(C) NO. 3435 of 2012(
With appln. for modification and office report)
SLP(C)No(s)....CC 14685 of 2013
(With appln.(s) for permission to file SLP and with office report)

Date: 24/10/2013 These Matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Appellant(s) Mr. J.C. Gupta,Sr.Adv.
Ms. Mahalakshmi Pavani,Adv.
Mr. G. Balaji,Adv.
Ms.Meghna Thakuria, Adv.
M/s. Mahalakshmi Pavani & Co., Advs.

Mr. J.C.Gupta, Sr. Adv.
Mr. S.R.Singh, Sr. Adv.
M/s. Mahalakshmi Pavani & Co., Advs.

MS. Mahalakshmi Pavani, Adv.
Mr. G.Balaji, Adv.

Ms. Nishtha Kumar, Adv.
Mr. Vivek Jain, Adv.

Ms. Mahalakshmi Pavani,Adv.
Mr. G. Balaji,Adv.
Ms. Meghna T.,Adv.
Mr. Anirudh Sanganeria,,Adv.
For M/S.Mahalakshmi Balaji & Co.

Ms. Mahalakshmi Pavani,Adv.
Mr. G, Balaji,Adv.
Ms. Nishta Kumar,Adv.
Mr. Vivek Jain,Adv.
For M/S.Mahalakshmi Balaji & Co.

Ms. Mahalakshmi Pavani,Adv.
Mr. G.Balaji,Adv.
Ms. Meghna T.,Adv.
Mr. Kush Chaturvedi,Adv.
Mr. Anirudh,Adv.
For M/S.Mahalakshmi Balaji & Co.

Mr. Vikrant Yadav, Adv.
Mr. Fuzail Khan, Adv.
Mr. M.C.Dhingra, Adv.

Mr. D.K.Singh, Adv.
Mr. Pradeep Shukla, Adv.
Ms. Archita Phookan, Adv.
Mr. A.Sengupta, Adv.

Mr. Anil K. Jha,Adv.

Mr. Vishwajit Singh,Adv.

Mr. Vijay Kumar,Adv.

Mr. M.R. Shamshad,Adv.

Mr. Varun Thakur,Adv.
Mr. Varinder Kumar Sharma,Adv.
Ms. Shardh Saran, Adv.
Mr. Brajesh Pandey,Adv.

Mr. P.N.Misra, Sr. Adv.
Mr. Amit Sharma, Adv.

Petitioner-in-person

For Respondent(s) Mr. Rakesh Dwivedi,Sr.Adv.
Mr. Gaurav Bhatia,AAG
Mr. Gautam Talukdar,Adv.
Mr. Piyush Vashista,Adv.
Ms. Pragati Neekhra,Adv.

Mr. Dinesh Dwivedi, Sr. Adv.
Mr. Garvesh Kabra, Adv.

Mr. Anoop G.Chaudhari, Sr. Adv.
Mr. S.B. Upadhyay,Sr.Adv.
Mr. D.K. Goswami,Adv.
Mr. Shiv Sagar Tiwari,Adv.

Mr. S.B. Upadhyay,Sr.Adv.
Mr. D.K. Goswami,Adv.
Mr. Gayendera Giri, Adv.
Mr. Shiv Sagar Tiwari,Adv.

Ms. Kamini Jaiswal,Adv.

Mr. Ardhendumauli Kumar Prasad,Adv.

Mr. P.S.Patwalia, Sr. Adv.
Mr. Upendra Nath Misra, Adv.
Mr. Nikhil Majithia, Adv.
Mr. Kuldeep S.Parihar, Adv.
Mr. H.S. Parihar ,Adv

Mr. Chinmoy Pradip Sharma,Adv.
Mr. Sayan Ray,Adv.
Mr. Puneet Taneja,Adv.

Mr. Tara Chandra Sharma,Adv.
Ms. Neelam Sharma,Adv.
Mr. Rajeev Sharma,Adv.
Mr. Dinesh Kumar Aggarwal, adv.

Mr. Shrish Kr. Misra,Adv.
Mr. Surya Nath Pandey, Adv.

Mr. Sayan Ray, Adv.
Mr. Puneet Taneja, Adv.

Mr. Upendra Math Misra, Adv.
Mr. Nikhil Majithia, Adv.

Mr. Mohd. Fuzail Khan,Adv.
Ms. Shefali Jain,Adv.
Mr. Rajeev Singh,Adv.

Mr. Mohd. Fuzail Khan, adv.
Ms.Shefali Jain, Adv.
Mr. Anil Kumar Jandale,Adv.

Mr.Robin Majumdar, Adv.
Mr.Ajit Kakkar, Adv.

Mr. Shail Kumar Dwivedi,Adv.

Mr. C.D. Singh,Adv.

Mr. M.R. Shamshad,Adv.

Mr. Rameshwar Prasad Goyal,Adv.

Mr. P.V. Yogeswaran,Adv.

Mr. Samir Ali Khan,Adv.

Mr. Vishwajit Singh,Adv.

Mr. Adarsh Upadhyay,Adv.

Mr. Sarvesh Singh Baghel,Adv.

Mr. Debasis Misra,Adv.

UPON hearing counsel the Court made the following

O R D E R

We have heard learned counsel for the parties at considerable length. Substantial questions of law touching the interpretation of the relevant Rules arise for consideration in these cases. One of the questions is whether Service Rules of 1936 that were applicable to the parties till 2004 Rules came into force prescribe the requirement of the diploma holder

engineers appearing and passing a qualifying examination for promotion to the next higher post of Assistant Engineers. It was submitted that the said requirement stood deleted by the amendments that were made from time to time. The Judgments of the Allahabad High Court striking down the amendments and of this Court in P.D.Agarwal's case did not it was contended have the effect of reviving that requirement. Not only that for a period of 15 years between 1987 and 2002 when the amended Rules were operating no such examination was conducted or insisted upon on account of the said amendments. With the advent of the new Rules from the year 2004 onwards also diploma holders are not required to take any such examination for promotion to the next higher post. The result is that the requirement of the diploma holders passing a qualifying examination for promotion as Assistant Engineers is limited to the vacancies that became available during the short interregnum only. Correctness of the view taken by the High Court of Allahabad that the qualifying examination continued to be a requirement for promotion of the diploma holders for that interregnum was never examined on merits as the appeal filed against that judgment was dismissed as withdrawn. Correctness of the decision rendered by a two-Judge Bench of this Court in Diploma Engineers Sangh Vs. State of U.P. and Ors. 2007 (13) SCC 300 holding that the requirement of a qualifying examination continued and directing the conduct of such an examination shall therefore have to be examined according to Mr. Patwalia, learned counsel appearing for some of the Engineers.

In the circumstances, therefore, and keeping in view the importance of the questions that fall for determination, we deem it proper to refer all these cases to a three Judge Bench to be constituted by Hon'ble Chief Justice of India for final hearing and disposal.

Additional copies of the paper books, if so required, shall be furnished by learned counsel for the appellant in each appeal within four weeks from today.

Papers be placed before the Hon'ble Chief Justice of India for constituting an appropriate Bench.

(Shashi Sareen)	(Indu Bala Kapur)
Court Master	Court Master