

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Archana Kumari & Ors.**

**vs.**

**The State of Bihar & Ors.**

Civil Writ Jurisdiction Case No. 14755 of 2023

[with Civil Writ Jurisdiction Case No. 9395 of 2023; Civil Writ Jurisdiction Case No. 16501 of 2023; Civil Writ Jurisdiction Case No. 17653 of 2023; Civil Writ Jurisdiction Case No. 37 of 2024; Civil Writ Jurisdiction Case No. 113 of 2024]

01 March, 2024

**(Hon'ble Mr. Justice Mohit Kumar Shah)**

**Issue for Consideration**

Whether the revision of a minor punishment (stoppage of increment) to a major punishment (compulsory retirement) by the revisional authority, without assigning valid reasons and beyond the prescribed limitation period under Rule 28 of the Bihar Government Servants (CCA) Rules, 2005, is legal, valid, and sustainable in the eyes of law?

**Headnotes**

**Service Law – Recruitment – Amendment of Rules During Selection Process – Legality - Changing Selection Criteria Midway – Impermissibility - Vested Rights of Candidates – Date of Advertisement is Crucial - Notification Dated 19.09.2023 – Held Arbitrary and Unjustified - Validity of New Cadre Rules, 2023 – Prospective Operation - Enlargement of Zone of Consideration – Permissible - Distinction from Cited Cases – Inapplicability of Precedents - Relief Granted.**

**Held:** The Court quashed the notice dated 19.09.2023 to the extent it changed the recruitment procedure and directed the Bihar Technical Service Commission (BTSC) to prepare the merit list strictly as per Advertisement No. 07 of 2022 and the Cadre Rules, 2018, without applying the 2023 rules or the newly introduced

competitive exam. Expansion under Clause-D of the notice was upheld, being consistent with settled law. Candidates acquire a vested right to be considered under the rules existing on the date of the advertisement which right cannot be taken away by subsequent rule amendments unless explicitly made retrospective.

#### **Case Law Cited**

(2008) 7 SCC 11, AIR 1966 SC 1942, (2021) 7 SCC 695, (2011) 10 SCC 121, (2006) 10 SCC 261

#### **List of Acts**

The Constitution of India, Bihar Technical Service Commission Act, 2014, General Clauses Act, 1897, Bihar Female Health Workers (Auxiliary Nurse Midwife) Cadre Rules, 2023

#### **List of Keywords**

Selection and Appointment; Eligibility criteria; Bihar Female Health Workers; Obiter Dictum

#### **Case Arising From**

For quashing the notice dated 19.09.2023, issued by the In-Charge Secretary of the Bihar Technical Service Commission, Patna (herein after referred to as the 'Commission'), in connection with Advertisement No. 07 of 2022

#### **Appearances for Parties**

(In Civil Writ Jurisdiction Case No. 14755 of 2023)

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate; Mr. Pushkar Bharadwaj, Advocate

For the Respondent/s : Mr. Pankaj Kumar (SC-12); Mr. Kamlesh Kishor, AC to SC-12

For the B.T.S.C. : Mr. Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 9395 of 2023)

For the Petitioner/s : Mr. Shiv Kumar, Advocate

For the Respondent/s : Mr. Birju Prasad (GP-13); Mr. Ravi Kumar, AC to GP-13; Mr. Ajit Anand, AC to GP-13

For the B.T.S.C.: Mr. Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 16501 of 2023)

For the Petitioner/s : Mr. Arun Kumar, Advocate; Mr. Raghubir Chandrayan, Advocate

For the Respondent/s : Mr. Birju Prasad (GP-13); Mr. Akshay Lal Prasad, AC to GP-13; Mrs. Shweta Anand, AC to GP-13

For the B.T.S.C. : Mr. Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 17653 of 2023)

For the Petitioner/s : Mr. Shambhu Sharan Singh, Advocate

For the State : Mr. Binod Kr. Yadav (SC-18)

For the Respondent No.4 : Mr. Nikesh Kumar, Advocate

For the Respondent No.5 & 6 : Mr. Awadhesh Kumar Pandit, Advocate

(In Civil Writ Jurisdiction Case No. 37 of 2024)

For the Petitioner/s : Mr. Anil Kumar Sinha, Advocate

For the Respondent/s : Government Pleader- 12

(In Civil Writ Jurisdiction Case No. 113 of 2024)

For the Petitioner/s : Mr. Shambhu Sharan Singh, Advocate

For the State : Mr. Binod Kumar Yadav (SC- 18)

For the Respondent No.4 : Mr. Nikesh Kumar, Advocate

For the Respondent No.5 & 6 : Mr. Awadhesh Kumar Pandit, Advocate

Headnotes Prepared by Reporter : Ravi Raj, Advocate

**Judgment/Order of the Hon'ble Patna High Court**

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 14755 of 2023

- 1. Archana Kumari Wife of Shri Ram Naresh Singh, Resident of Sahwajpur, Shahbazpur Salem, P.O.- Muzaffarpur, P.S.- Ahiyapur, District- Muzaffarpur, Pin- 842004.
- 2. Pinki Kumari, Daughter of Shri Suresh Choudhary, Resident of Alampur, P.O.- Barh, P.S.- Barh, District- Patna, Pin Code- 803213.
- 3. Usha Kumari, Wife of Shri Arun Mehta, Resident of Mohammadpur, Near Imam Medical, Mahendru, P.S.- Sultanganj, P.O.- Mahendru, District- Patna, Pin Code- 800006.
- 4. Veena Kumari, Wife of Shri Surjit Kumar, Resident of C/o Suresh Yadav, Jeet Lal Path, Back of Cold Storage, Karbigahiya, P.O.- G.P.O., District- Patna, Pin Code- 800001.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Additional Chief Secretary, Health Department, Bihar, Patna.
- 2. Director, Directorate of Health Department, Bihar, Patna.
- 3. Bihar Technical Service Commission, Patna through its Secretary.
- 4. Chairman, Bihar Technical Service Commission, Patna.
- 5. Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9395 of 2023

- 1. Anita Kumari W/o Sri Ganesh Prasad Thakur, Resident of Village- Ayma, P.S. - Saraiya, District - Muzaffarpur.
- 2. Sanjukta Kumari, W/o Sri Rajeev Ranjan, Resident of Village - Arawan, P.S. - Ben, District - Nalanda.
- 3. Seema Kumari, D/o Sri Naresh Prasad Singh, Resident of Village - Uttrawan, P.S. - Kurtha, District - Arwal.
- 4. Sarita Kumari, W/o Sri Chandramani Prasad, Resident of Village- Ganipur, P.S. - Hilsa, District - Nalanda.
- 5. Priyanka Kumari, W/o Sri Mantu Kumar, R/o Village- Hasanchak, P.S. -



Chandi, District - Nalanda.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Additional Chief Secretary, Department of Health, Govt. of Bihar, Patna.
- 2. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
- 3. The Deputy Secretary, Department of Health, Govt. of Bihar, Patna.
- 4. The Director in Chief (Nursing) Health Services, Bihar, Patna.
- 5. Bihar Technical Service Commission through its Secretary, 19, Harding Road, Patna.
- 6. The Chairman, Bihar Technical Service Commission, 19, Harding Road, Patna.
- 7. The Deputy Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16501 of 2023

- 1. Arti Kumari Daughter of Om Prakash Singh, Resident of Jahanabad Road Shanti Complex, Ekangarsarai, P.S.- Ekangarsarai, District- Nalanda.
- 2. Nitu Kumari, Daughter of Raj Kumar Ram, Resident of Ahirauli, Ward No. 2, P.S.- Industrial Area Buxar, District- Buxar.
- 3. Abha Kumari, Daughter of Subodh Kumar, Resident of Village - Dhanhar, P.S.-Ekangarsarai, District - Nalanda.
- 4. Nikki Kumari, Daughter of Jay Prakash Ram, Resident of Village - Rahthua, P.S. Brahmapur, District-Buxar.
- 5. Kumari Anita Singh, Wife of Rakesh Kumar, Resident of Village - Darauli, P.S. Ramgarh, District - Kaimur.
- 6. Kiran Kumari, Wife of Pankaj Kumar, Resident of Village - Giridharpur, P.S.- Itarhi Sikraul, District - Buxar.
- 7. Sangeeta Kumari, Wife of Santosh Chaudhary, Resident of Village - Paniyari, P.S. - Nawa Nagar Sikraul, District - Buxar.
- 8. Amrawati Kumari, Wife of Fulendra Chaudhari, Resident of Village - Dhankutiya, P.S.- Dinara, District -Rohtas.
- 9. Guddee Kumari, Wife of Sanjay Kumar, Resident of Village - Paniyari, P.S.



Nawa Nagar Sikraul, District-Buxar.

- 10. Muni Kumari, Wife of Sunil Kumar Ram, Resident of Village - Rahthua, P.S. - Brahmapur, District - Buxar.
- 11. Preeti Kumari, Wife of Rajeev Kumar, Resident of Village/Mohalla - Harnaha Tola Patna City, P.S.- Patna Sadar, District - Patna.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
- 2. The Additional Chief Secretary-cum-Principal Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
- 3. The Deputy Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
- 4. The Director In-Chief, Health Services (Nursingh, ), Department of Health, Government of Bihar, Old Secretariat, Patna.
- 5. Bihar Technical Service Commission, 19, Harding Road, Patna through its Secretary.
- 6. The Chairman, Bihar Technical Service Commission, 19, Harding Road, Patna.
- 7. The Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17653 of 2023

- 1. Sarita Kumari W/o Mukesh Kumar Thakur, Resident of Village Kerma Road, Mahant Maniyari, P.S.- Silot, Baijnath, District- Muzaffarpur.
- 2. Nibha Kumari, W/o Manoj Singh, Resident of Village Ward No. 25, Bichla Tola, Madhurapur, P.S. Teghara, District- Begusarai.
- 3. Priyanka Kumari, W/o Laxman Shah, Resident of Village- Hitampur, P.S.- Jagdishpur, District- Bhojpur at Ara.
- 4. Rekha Kumari, W/o Pappu Kumar, Resident of Village and P.O. Mani Bhakurahar, P.S. Sarai, District- Vaishali.
- 5. Munchun Rani @ Munchun Kumari, W/o Satish Kumar, Resident of Village Kanti Kasba, P.S. Kanti, District- Muzaffarpur.



6. Seema Kumari, W/o Vikash Kumar Thakur, Brahmsthan, Sahbagpur @  
Salempur, P.S.- Salempur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department,  
Govt. of Bihar, Patna.
2. The Principal Secretary, General and Administrative Reforms Department,  
Govt. of Bihar, Patna.
3. The Director, Health Department, Govt. of Bihar, Patna.
4. The Secretary, Bihar Technical Service Commission, 19, Harding Road,  
Patna.
5. The Secretary, Bihar Nursing Registration Counsel, Patna.
6. The Incharge Secretary, Bihar Nursing Registration Counsel, Patna.
7. District Magistrate-cum-President, District Health Committee of concerned  
District- Muzaffarpur, Begusarai, Bhojpur at Ara and Vaishali.
8. The Civil Surgeon-cum-Secretary, District Health Committee of concerned  
District- Muzaffarpur, Begusarai, Bhojpur at Ara and Vaishali.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 37 of 2024**

1. Rita Kumari Wife of Surendra Kumar Singh, Resident of Majhauri Road,  
P.O. and P.S.- Mairwa, District- Siwan.
2. Minta Kumari, D/o Brajesh Thakur, Resident of Village- Dhobawat, P.O.-  
Dhano, P.S.- Baniyapur, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Directorate of Health Department, Bihar, Patna.
3. The Secretary, Bihar Technical Service Commission, Bihar, Patna.
4. The Deputy Secretary, Bihar Technical Service Commission, Patna.
5. The Chairman, Bihar Technical Service Commission, Patna.
6. The Joint Secretary, Health Department, Government of Bihar, Patna.
7. The Incharge Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

with



**Civil Writ Jurisdiction Case No. 113 of 2024**

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1. Sapna Kumari D/o Vidyanand Tiwari Resident of village-Amhara, P.S. Bihta, District-Patna.
  2. Kumari Mamta W/o Sanjay Kumar Resident of village and post Geruapur Sanda, P.S. Halasi, District Lakhisarai.
  3. Neelam Kumari W/o Shashi Munna Kumar Resident of village Badalpur, Post-Nalanda, P.S. Telhara, District Nalanda.
  4. Mamta Kumari W/o Ranvir Prasad Singh resident of village Sohijan, Post Beriya, P.S. Hathauri, District Muzaffarpur.
  5. Sudha Kumari W/o Akhilesh Kumar Sharma Resident of village Naubatpur, P.O.Jamalpura, P.S.Korawan,, District- Patna.
  6. Maya Kumari W/o Ramadhar Sharma Barah Resident of village-Barah, P.S. Barah, District Patna.
  7. Mamta Kumari W/o Rajib Kumar Resident of village-Gokhula Rupauli, P.S.Rupauli, District-Muzaffarpur.
  8. Sabita Kumari W/o Sudhir Pandey, resident of village post Maghol Sushta, P.S.Kurahani, District Muzaffarpur.
  9. Bindu Kumari W/o Mrityunjay Kumar resident of village Bahrapur, Dubaha Bujurg, P.S. Sakra, District-Muzaffarpur.
  10. Baby Kumari W/o Late Gautam Kumar resident of village and post Khandpar, Bhiththapar P.S. Sheikhpura, District Sheikhpura.
  11. Ruby Kuamri W/o Singar Shukla Resident of village Parumathiya Post-Paru, P.S.-Paru, District Muzaffarpur.
  12. Poonam Kuamri W/o Surendra Sharma Resident of village-Sahnajpur, P.S.-Bhikhapur (Musahri), District- Muzaffarpur.
  13. Namita Kumari W/o Chandan Kumar Choudhary Resident of village Kanti Tiary Tola, P.S. Kanti, District Muzaffarpur.
  14. Babita Kumari W/o Arvind Kumar Resident of village Madapur Choubey, near of Shivmandir Kharindih, P.S.Musahri, District Muzaffarpur.
  15. Prity W/o Kumar Pankaj Resident of village Narharpur Chamari, P.S. Naharpur, District Saran Chhapra.
  16. Rama Kumari W/o Rajesh Kumar Choubey Resident of village Hamidnagar, Post Badhoipi, P.S.Upahara, District Aurangabad.
  17. Manju Kumari W/o Pradip Ram Resident of village Gidha, P.S.Garhani, District Bhojpur.





- 18. Ragni Kumari W/o Rakesh Kumar Pandey Resident of village Braharup, P.S. Bhagwanpur, District-Muzaffarpur.
- 19. Pritanjli Kumari W/o Sandhir Kumar Singh Resident of village Madhopur Ram, P.S. Vaishali, District-Vaishali.
- 20. Rinku Kumari W/o Vimlesh Kumar Resident of village and post Kolhua, P.S.Saraiya, District Muzaffarpur.
- 21. Anju Kumari W/o Prakash Kumar Resident of village and post-Basant Kharona, P.S.Kurahani, District Muzaffarpur.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
- 2. The Principal Secretary General and Administrative Reforms Department, Govt. of Bihar, Patna.
- 3. The Director, Health Department Govt. of Bihar, Patna
- 4. The Secretary Bihar Technical Service Commission, 19, Harding Road, Patna.
- 5. The Secretary Bihar Nursing Registration Counsel, Patna.
- 6. The Incharge Secretary Bihar Nursing Registration Counsel, Patna.
- 7. District Magistrate-cum-President District Health Committee of concern District- Patna, Lakhisarai, Nalanda, Muzaffarpur, Sheikhpura, Chapra, Aurangabad, Bhojpur (Ara), Vaishali (Hajipur).
- 8. The Civil Surgeon-cum-Secretary, District Health Committee of concern District- Patna, Lakhisarai, Nalanda, Muzaffarpur, Sheikhpura, Chapra, Aurangabad, Bhojpur (Ara), Vaishali (Hajipur).

... .. Respondent/s

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**Appearance:**

(In Civil Writ Jurisdiction Case No. 14755 of 2023)

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate Mr. Pushkar Bharadwaj, Advocate
For the Respondent/s	:	Mr. Pankaj Kumar (SC-12) Mr. Kamlesh Kishor, AC to SC-12
For the B.T.S.C.	:	Mr. Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 9395 of 2023)

For the Petitioner/s	:	Mr. Shiv Kumar, Advocate
For the Respondent/s	:	Mr. Birju Prasad (GP-13) Mr. Ravi Kumar, AC to GP-13 Mr. Ajit Anand, AC to GP-13
For the B.T.S.C.	:	Mr. Nikesh Kumar, Advocate



(In Civil Writ Jurisdiction Case No. 16501 of 2023)

For the Petitioner/s : Mr. Arun Kumar, Advocate  
Mr. Raghubir Chandrayan, Advocate  
For the Respondent/s : Mr. Birju Prasad (GP-13)  
Mr. Akshay Lal Prasad, AC to GP-13  
Mrs. Shweta Anand, AC to GP-13  
For the B.T.S.C. : Mr. Nikesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 17653 of 2023)

For the Petitioner/s : Mr. Shambhu Sharan Singh, Advocate  
For the State : Mr. Binod Kr. Yadav (SC-18)  
For the Respondent No.4: Mr. Nikesh Kumar, Advocate  
For the Respondent No.5 & 6: Mr. Awadhesh Kumar Pandit, Advocate

(In Civil Writ Jurisdiction Case No. 37 of 2024)

For the Petitioner/s : Mr. Anil Kumar Sinha, Advocate  
For the Respondent/s : Government Pleader- 12

(In Civil Writ Jurisdiction Case No. 113 of 2024)

For the Petitioner/s : Mr. Shambhu Sharan Singh, Advocate  
For the State : Mr. Binod Kumar Yadav (SC- 18)  
For the Respondent No.4: Mr. Nikesh Kumar, Advocate  
For the Respondent No.5 & 6: Mr. Awadhesh Kumar Pandit, Advocate

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**CAV JUDGMENT**  
**Date: 01-03-2024**

Regard being had to the commonality of the controversy in the aforesaid batch of writ petitions, it was thought apposite to hear them analogously, and accordingly, they were heard together with the consent of parties and are being disposed of by the present singular order.

2. The aforesaid writ petitions have been filed for quashing the notice dated 19.09.2023, issued by the In-Charge Secretary of the Bihar Technical



Service Commission, Patna (herein after referred to as the 'Commission'), in connection with Advertisement No. 07 of 2022, whereby and whereunder the process of selection for the purposes of making appointment to the post of Auxiliary Nurse Midwife (herein after referred to as the 'ANM') has been amended. The writ petitioners have also prayed for directing the respondent-authorities to conclude the process of selection initiated vide Advertisement No. 07 of 2022 in terms of the provisions contained therein, with respect to the process of selection and other requirements to be fulfilled by the candidates as also in terms of the provisions contained under the Bihar Female Health Workers (Auxiliary Nurse Midwife) Cadre Rules, 2018 (hereinafter referred to as the Cadre Rules, 2018). Lastly, the writ petitioners have prayed to direct the respondents to refrain from acting in furtherance of the aforesaid notice dated 19.09.2023 and declare the action of the respondent-Commission in issuing the aforesaid notice dated 19.09.2023, seeking to



amend the process of selection, to be impermissible in the eyes of law.

3. The undisputed facts lie in a narrow compass. The respondent-Commission had issued an advertisement dated 28.07.2022, inviting applications from the eligible candidates for consideration of their cases for appointment on the post of A.N.Ms., whereafter the writ petitioners along with others had submitted their applications in the prescribed form for consideration of their case for appointment on the post of A.N.Ms., in terms of the Cadre Rules, 2018. The said Cadre Rules, 2018 were framed by the State Government, in exercise of powers conferred by proviso to Article 309 of the Constitution of India, to regulate the appointment, promotion and service conditions of the Bihar Auxiliary Nurse Midwife-A.N.M. Cadre under the Health Department. It would be relevant to reproduce Rule-5, 6 & 7 of the Cadre Rules, 2018 herein below:-

***“5. Recruitment.*** *The appointment in this cadre shall be made by direct recruitment to*



*the basic category posts, on the basis of recommendation of the Commission*

### **6. Qualifications.**

*(1) For appointment by direct recruitment to the basic category posts in educational qualifications shall be pass in Auxilliary Nurse Midwifery training course of the period as determined by Indian Nursing Council from time to tune from a recognised institution and a certificate related thereto shall be necessary Registration of candidates from Bihar Nurses Registration council shall also be necessary.*

*(2) For direct recruitment minimum age limit shall be 21 years and maximum age limit shall be the same as determined reservation category wise from time to tome by the Government (General Administration Department). 1<sup>st</sup> August of the concerned year shall be deemed to be the cutoff date for determination of age.*

### **7. Procedure of Recruitment:-**

*(1) The appointing Authority, after calculating the vacancy on the basis of positions as on 1<sup>st</sup> April of the year and getting roster cleared, shall send reservation category wise requisition to the Department. The Department will compile the vacancy of*



*all districts and send requisition to the Commission by 30<sup>th</sup> April.*

*(2) In view of the requisition the Commission shall invite applications by advertising vacancies and shall prepare a merit list on the following basis:-*

- (a) For marks obtained in 60 Marks  
A.N.M. course examination*
- (b) For higher course (if any) 15 Marks*
- (c) For working experience in 25 Marks  
Government hospitals of  
Bihar State (5 Marks per  
year, maximum 25 marks)*

*Total 100 Marks*

***Explanation:*** *The marks to be given to a candidate for A.N.M. course examination shall be determined by multiplying the percentage of total marks obtained in the aforesaid examination by the multiple of 0.6 For example, if a candidate has obtained 50% marks, then he will be given  $50 \times 0.6 = 30$  marks.*

*(3) The Commission shall send merit list prepared on the basis of aforesaid sub-rule (2), and reservation category wise recommendations in accordance with requisitioned vacancies to the Department. The Department will allocate the cadre after*



*scrutiny of certificates of recommended candidates. Thereafter, the concerned Appointment Authority will make the appointments after conducting health checkup, verification of antecedents etc and after complying guidelines regarding appointment issued by the government (General Administration Department from time to time."*

4. The aforesaid Advertisement No. 07 of 2022 was published by the respondent-Commission pursuant to a requisition received from the Health Department for appointment of 10709 Bihar Female Health Workers (Auxiliary Nurse Midwife). Clause 2 of the said advertisement, prescribes the essential qualifications required to be possessed by the candidates and Clause 4 thereof lays down the provisions, with respect to the process of selection, required to be followed for the purposes of making appointments against the aforesaid posts, which further prescribes that the merit list is to be prepared on the basis of evaluation of a candidate against a total of 100 marks, out of which 60 marks are to be awarded for marks obtained in A.N.M.



course examination, 15 marks for higher course (if any) and 25 marks for working experience in the government hospitals of The State of Bihar.

5. The respondent-Commission had then scrutinized the application forms submitted by the candidates, including that of the petitioners, whereafter marks have been awarded in terms of Rule 7 of the Cadre Rules, 2018 and Clause-4 of the aforesaid Advertisement dated 28.07.2022, which was then published on the website of the respondent-Commission. In the meantime, the Department of Health, Government of Bihar, Patna vide notification dated 01.06.2023, contained in Memo No. 904 (6), had promulgated the Bihar Female Health Workers (Auxiliary Nurse Midwife) Cadre Rules, 2023 (herein after referred to as the Cadre Rules, 2023), to regulate the appointment, promotion and service conditions of the Bihar Female Health Workers (Auxiliary Nurse Midwife) Cadre under the Health Department. Rule 8 of the said Cadre Rules, 2023 lays down the provisions with respect to the procedure of recruitment and





the mode of preparing merit list of candidates for making appointments on the post of ANMs. It further prescribes that the merit list is to be prepared on the basis of evaluation of a candidate against a total of 100 marks, out of which 60 marks are to be awarded to the candidates on the basis of the marks obtained by them in the competitive examination, 15 marks for higher course and 25 marks for working experience in the government/non private hospitals of The State of Bihar, in the manner prescribed under the said Rules. Therefore, in terms of the said Cadre Rules, 2023, now, the merit list is required to be prepared on the basis of performance of the candidates in the competitive examination, to be conducted by the respondent authorities. Rule 21 of the aforesaid Cadre Rules, 2023 contains the savings and repeal clause, according to which the said Cadre Rules, 2023 have repealed the Cadre Rules, 2018, nonetheless, it has been provided that even after repeal of the Cadre Rules, 2018, any action taken under the Cadre Rules, 2018 would be deemed to



have been taken under the said Cadre Rules, 2023. The said Cadre Rules, 2023 has been made operative with effect from 01.06.2023. At this juncture, it would be relevant to reproduce Rule 8 of the Cadre Rules, 2023 herein below:-

"भर्ती की प्रक्रिया:- (1) नियुक्ति प्राधिकार द्वारा वर्ष की 1 वी अप्रैल की स्थिति के आधार पर रिक्ति की गणना कर और रोस्टर क्लीयरेन्स कराकर, आरक्षण कोटिवार अध्याचना आयोग को 30 अप्रैल तक भेजी जाएगी।

(2) अध्याचना के आलोक में आयोग रिक्तियों को विज्ञापित कर आवेदन पत्र आमंत्रित करेगा और निम्नलिखित के आधार पर मेधासूची तैयार करेगा :-

- |   |          |
|---|----------|
| (क) प्रतियोगिता परीक्षा में प्राप्त प्राप्तांक के लिए-  | 60 अंक   |
| (ख) उच्चतर कोर्स के लिए (जी0एन0एम0-10, बी0एस0सी0 (नर्सिंग), पोस्ट बेसिक बी0एस0सी0 नर्सिंग, एम0एस0सी0 (नर्सिंग)-15)  | - 15 अंक |
| (ग) बिहार राज्य के अन्दर अवस्थित सभी सरकारी / गैर निजी (केन्द्र सरकार, पंचायत, नगर निगम आदि) अस्पतालों में कार्य का अनुभव प्रति वर्ष के लिए 5 अंक, अधिकतम 25 अंक (किसी वर्ष के अंश के लिए कार्यदिवसों की संख्या में 05 से गुणा करने के पश्चात 365 से भाग देकर प्राप्त अनुपातिक अंक जोड़ा जायेगा।) | - 25 अंक |

कुल- 100 अंक

स्पष्टीकरण:-प्रतियोगिता परीक्षा में प्राप्त प्राप्तांक के लिए किसी अभ्यर्थियों को प्रदान किये जाने वाले अंको का अवधारण प्रतियोगिता परीक्षा में प्राप्त कुल अंको के प्रतिशत को 0.6 के गुणक से गुणा कर करना होगा। यथा, यदि किसी अभ्यर्थी द्वारा 50 प्रतिशत अंक प्राप्त किया गया हो तो उसे  $50 \times 0.6 = 30$  अंक दिये जायेंगे।

(3) आयोग उपर्युक्त उपनियम (2) के आधार पर तैयार मेधासूची एवं अध्याचित रिक्तियों के अनुरूप आरक्षण कोटिवार अनुशंसा विभाग को भेजेगा। विभाग अनुशंसित अभ्यर्थियों के प्रमाण पत्रों की जाँच किये जाने के पश्चात्



संबंधित नियुक्ति प्राधिकार स्वास्थ्य जाँच, पूर्ववृत्त सत्यापन आदि कराते हुए सरकार द्वारा समय-समय पर निर्गत नियुक्ति संबंधी दिशा-निदेशों का पालन करते हुए नियुक्ति करेगा।"

6. The Deputy Secretary, Health Department, Government of Bihar, Patna had then written a letter dated 12.06.2023 to the Deputy Secretary of the respondent-Commission regarding conducting of competitive examination in terms of clause-8 (2) क of the Cadre Rules, 2023 for the purposes of making appointment on the post of A.N.Ms., in connection with Advertisement No. 07 of 2022 and thereafter, sending the recommendations. In pursuance to the said letter dated 12.06.2023, the In-charge Secretary of the respondent-Commission had issued a notice dated 19.09.2023, in connection with Advertisement No. 07 of 2022, whereby it has been notified that in view of the advice received from the Health department vide letters dated 12.6.2023 and 02.8.2023, the appointment on the posts of ANMs, pursuant to Advertisement No. 07/2022, shall be now made on the basis of Bihar Female Health Workers (Auxiliary Nurse Midwife) Cadre Rules, 2023 instead of the



Cadre Rules, 2018 and accordingly Clause-4 of the aforesaid Advertisement No. 07/2022 has been substituted. Consequently, the provisions regarding the procedure for recruitment, as contained in the aforesaid Advertisement No. 07/2022, has stood replaced by the provisions contained under Rule 8 of the aforesaid Cadre Rules, 2023, resulting in the selection process now comprising of two phases, first phase being that of holding of computer based test comprising of multiple choice objective questions and second phase pertaining to preparation of a merit list by the Commission on the basis of performance of the candidates in the aforesaid test and other criteria's mentioned under Rule 8 of the said Cadre Rules, 2023. Clause D of the aforesaid notice dated 19.09.2023 prescribes that further opportunity would be given to candidates to submit online applications through online portal of the Commission, in-between 22.09.2023 to 06.10.2023.

7. It is a matter of record that the respondent-Commission had, thereafter, conducted a



competitive examination wherein all the petitioners of the aforesaid writ petitions except petitioner no. 1 of CWJC No. 37 of 2024, have participated.

8. The lead argument in the aforesaid batch of writ petitions, on behalf of the petitioners, has been advanced by Shri Abhinav Srivastava, Advocate, appearing in one of the aforesaid writ petition, i.e. the one bearing CWJC No. 14755 of 2023.

9. Shri Abhinav Srivastava, Advocate for the writ petitioners has submitted that the selection process, as aforesaid, was initiated by issuance of Advertisement No. 07 of 2022 on 28.07.2022, the day on which the Cadre Rules, 2018 were in force, in terms of the provisions contained in Rule 7 of the Cadre Rules, 2018, pursuant whereunto, the petitioners and others had filed their application forms, whereafter the respondent-Commission had prepared the merit list and published the individual marks obtained by the candidates on its website. Nonetheless, subsequently on account of coming into force of the Cadre Rules, 2023, the Directorate of Health, Government of Bihar, Patna had issued



the aforesaid letter dated 12.06.2023, directing the respondent-Commission to hold a competitive examination for the purposes of selection of A.N.Ms. in connection with Advertisement No. 07 of 2022. It is submitted that the said action of the Directorate of Health is clearly untenable in the eyes of law inasmuch as once the process of selection, in terms of the provisions contained in Advertisement No. 07 of 2022, had already been initiated by the respondent-Commission, the respondent authorities under the Directorate of Health had no authority to interfere with the said process of selection. It is further submitted that the aforesaid notice dated 19.09.2023, issued by the respondent-Commission in connection with the aforesaid Advertisement No. 07 of 2022, changing the process of selection for appointment to the post of A.N.Ms., and replacing the earlier process of selection, prescribed in the said Advertisement No. 07 of 2022, issued on 28.07.2022, by the provisions contained under Rule 8 of the Cadre Rules, 2023 by introducing the mode of holding a competitive



examination, is arbitrary, unreasonable and amounts to violation of Articles 14, 16 and 21 of the Constitution of India. It is contended that after issuance of Advertisement No. 07/2022 by the Respondent-Commission on 28.07.2022, in terms of the provisions contained under the Cadre Rules, 2018, leading to filing of applications by the different candidates and scrutiny thereof by the Respondent-Commission, resulting in preparation of merit list and publication of the individual marks of the candidates, the action on the part of the concerned authorities in issuing the aforesaid notice dated 19.09.2023, by which the provisions with respect to the process of selection and criteria to be adopted for the purposes of preparation of merit list have been sought to be changed, amounts to changing the rules of the game midway, which is completely untenable in the eyes of law and amounts to blatant disregard and violation of Articles 14, 16 & 21 of the Constitution of India.

10. It has been next contended by Shri Abhinav



Srivastava, Advocate, appearing for the petitioners that it is a well settled law that the process of selection is to be completed strictly in accordance with the provisions contained under the relevant rules which were in force on the date of publication of the advertisement and in terms of the stipulations contained in the advertisement in question, as such, the process of selection, eligibility criteria, etc. cannot be subsequently changed or amended on the basis of new rules having been introduced during pendency of the process of selection, therefore, the action on the part of the concerned respondent authorities in issuing the aforesaid notice dated 19.09.2023 is clearly impermissible in the eyes of law.

11. Lastly, it has been submitted by Shri Abhinav Srivastava, Advocate, appearing for the petitioners that by the aforesaid notice dated 19.09.2023, it has been indicated that further opportunity would be given to the candidates to submit online applications through online portal of the Commission in between 22.09.2023 to





06.10.2023, notwithstanding the fact that in furtherance to the aforesaid Advertisement No. 07 of 2022, the online application forms have already been submitted by the candidates by 01.09.2022, which was the last date for submission of such online application forms, thus such action on the part of the respondent authorities in opening the portal for submission of application forms afresh is not only arbitrary and unreasonable but also in blatant disregard and violation of Articles 14 and 16 of the Constitution of India.

12. Shri Abhinav Srivastava, Advocate has referred to certain judgments rendered by the Hon'ble Apex Court on the issue under consideration in the present writ petitions. Firstly, he has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***N.T. Devin Katti & Ors. vs. Karnataka Public Service Commission & Ors.***, reported in ***(1990) 3 SCC 157***; paragraph no. 11 whereof is reproduced herein below:-

*"11. There is yet another aspect of the*



*question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and*



*its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."*

13. The next judgment referred to by Shri. Srivastava is the one rendered by three Judges



Bench of the Hon'ble Apex Court in the case of **P. Mahendran & Ors. vs. State of Karnataka & Ors.**, reported in **(1990) 1 SCC 411**; paragraphs no. 4 & 5 whereof are reproduced herein below:-

*"4. There is no dispute that under the Recruitment Rules as well as under the advertisement dated October 6, 1983 issued by the Public Service Commission, holders of Diploma in Mechanical Engineering were eligible for appointment to the post of Motor Vehicle Inspectors alongwith holders of Diploma in Automobile Engineering. On receipt of the applications from the candidates the Commission commenced the process of selection as it scrutinised the applications and issued letters for interview to the respective candidates. In fact the Commission commenced the interviews on August 1984 and it had almost completed the process of selection but the selection could not be completed on account of interim orders issued by the High Court at the instance of candidates seeking reservation for local candidates. The Commission completed the interviews of all the candidates and it finalised the list of selected candidates by June 2, 1987 and the result was published in the State Gazette on July 23, 1987. In addition to that the selected candidates were intimated by the Commission by separate letters. In view of these facts the sole question for consideration is as to whether the amendment made in the Rules on May 14, 1987 rendered the selection illegal.*



*Admittedly the amending Rules do not contain any provision enforcing the amended Rules with retrospective effect. In the absence of any express provision contained in the amending Rules it must be held to be prospective in nature. The Rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment. In fact the entire selection in the normal course would have been finalised much before the amendment of Rules, but for the interim orders of the High Court. If there had been no interim orders, the selected candidates would have been appointed much before the amendment of Rules. Since the process of selection had commenced and it could not be completed on account of the interim orders of the High Court, the appellants' right to selection and appointment could not be defeated by subsequent amendment of Rules.*

*5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect*



*except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."*

14. Yet another judgment referred to by Sri. Srivastava is the one rendered by the Hon'ble Apex Court in the case of **Y. V. Rangaiah & Ors. Vs. J. Sreenivasa Rao & Ors.**, reported in **(1983) 3 SCC 284**, wherein it has been held that filling of vacancies by promotion to the post of Sub-Registrar Grade II, that occurred prior to the amended rules, would be governed by the old rules and not by the new rules.



15. Another Judgment, referred to by Sri. Srivastava is the one rendered by the three Judges Bench of the Hon'ble Apex Court in the case of **K. Manjusree Vs. State of Andhra Pradesh & Anr.**, reported in **(2008) 3 SCC 512**; paragraph no. 27 whereof is relevant, hence is being reproduced herein below:-

*"27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier Resolutions dated 24-7-2001 and 21-2-2002 and held that what was adopted on 30-11-2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view*



*by several decisions of this Court. It is sufficient to refer to 3 of them-P.K. Ramachandra Iyer v. Union of India, (1984) 2 SCC 141, Umesh Chandra Shukla v. Union of India, (1985) 3 SCC 721 and Durgacharan Misra v. State of Orissa, (1987) 4 SCC 646."*

16. Lastly, Sri. Srivastava has referred to a judgment rendered by the Hon'ble Apex Court in the case of **Mohd. Raisul Islam & Ors. Vs. Gokul Mohan Hazarika & Ors.**, reported in **(2010) 7 SCC 560**, para no. 38 whereof is being reproduced herein below:-

*"38. We are unable to agree with Mr Hansaria that the High Court had committed an error in relying on the unamended Rules since the law has been well settled that the process of selection commenced on the basis of the Rules then in existence would continue under the said Rules, even though the Rules may have been amended in the meantime. Accordingly, the seniority of members of the service would, no doubt, be governed under Rule 19, but the selection process has to be completed under Rule 4 in order to attract the provisions of Rule 19. The vacancies for which the advertisement had been published in 1984 were directed to be filled up by the High Court on the basis of*





*the unamended Rule 4 which provided for quota between promotees and direct recruits and, accordingly, placed 45 of the direct recruits immediately below the first 45 promotees out of the list of 129 promotees in keeping with the said quota system for the year 1986.”*

17. Though the other Counsels appearing for the petitioners in other writ petitions have adopted the arguments advanced by Sri Abhinav Srivastava, Advocate but then it would be apropos to refer to a judgment referred to by Shri Shambhu Sharan Singh, Advocate, appearing for the petitioners in CWJC No. 17653 of 2023 and CWJC No. 113 of 2024, i.e. the one rendered by the Hon’ble Apex Court in the case of **Sureshkumar Lalitkumar Patel & Ors. vs. State of Gujarat & Ors.**, reported in **2023 SCC OnLine SC 167**; paragraphs no. 19, 22, 24, 25 and 27 to 29 whereof are reproduced herein below:-

*“19. Mr. P.S. Patwalia, learned senior counsel appearing for the appellants submitted that the Selection Committee did not have a power to reduce the cut-off marks. The Respondent Nos. 1 and 2 cannot be permitted to change the rules of the game after it has begun. The exercise of power, if*



*any, is arbitrary. In any case, the State of Gujarat cannot usurp the power of the Selection Committee, and in turn the same ought not to have been followed by it. The Division Bench has committed an error in wrongly applying the law to the facts of the case. Learned senior counsel for the appellants has pressed into service the following decisions, while seeking an order of reversal.*

- Tej Prakash Pathak v. Rajasthan High Court, (2013) 4 SCC 540;*
- Veerendra Kumar Gautam v. Karuna Nidhan Upadhyay, (2016) 14 SCC 18;*
- Anupal Singh v. State of Uttar Pradesh, (2020) 2 SCC 173;*
- Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1.*

*22. We are dealing with the recruitment process by which the posts pertaining to each of the separate categories is to be filled up by only one mode, i.e., written examination. The cut-off marks have been fixed with a distinct clarification that it would not be tinkered with by facilitating anyone to be considered, if the candidate acquired lesser marks. There is a difference between qualification for making an application, and the eligibility to be determined in the process of selection. We are not concerned with the qualification for making an application in the present case, but rather an eligibility after the examination is conducted.*

*24. It is true that a candidate may not have a vested right to the post, however, it cannot*



*be confused with a right to be considered in accordance with law. A law which enables a candidate to get a post cannot be changed to facilitate another group of persons, since the candidate acquires a vested right to be considered in accordance with law, as held by this Court in N.T. Devin Katti v. Karnataka Public Service Commission, (1990) 3 SCC 157, "Para 11. ...."*

25. Admittedly, in the case on hand, the appellants are entitled to get the respective post as per the advertisement issued. The said advertisement has not been amended. It was sought to be modified on the advice of the Government, though an earlier decision was taken on the similar line but wisely withdrawn. Fixing cut-off marks for a particular category has got a rationale behind it. Reducing it only for the purpose of providing employment to a particular category, when the others have already acquired some right would be an affront to Article 14 of the Constitution of India.

27. We wish to place reliance on the judgment of this Court in Tamil Nadu Computer Science B.Ed. Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association, (2009) 14 SCC 517,

20. It is thus established, that the State Government reduced the minimum qualifying marks for the post of computer instructors to 35% which is contrary to an earlier decision taken in a meeting held on 10-10-2006 that the minimum qualifying marks for filling up the posts of computer instructors would be 50% i.e. 75 marks out



*of total 150 marks. It is thus established that the Govt. changed the rules of recruitment and terms and conditions of appointment in the midway after the selection process was initiated. The said decision was taken on a Sunday i.e. on 12-10-2008, after the candidates had taken their exams.*

XXXXXXXXXX

*29. The counsel appearing for the respondents, however, submitted that since these contract employees have been working for a very long time in the government schools, therefore, the Government had taken the decision to reduce the minimum qualifying marks to see that at least some of them who could qualify in the special recruitment test could be recruited and absorbed so as not to deprive them from getting absorbed in the government employment through a regular process.*

*30. It was also submitted that out of 1714 candidates, who have written the special recruitment test only 894 candidates could receive more than 50% marks whereas 906 candidates could obtain less than 50%, which was minimum qualifying marks prescribed by the Govt. in its earlier policy decision but obtained more than 35% marks. Consequently, it was submitted that the Govt. thought it fit that the said minimum qualifying marks should be reduced to 35% so as to absorb more people, who are still working in the government schools as computer instructors.*



31. We have considered the aforesaid rival submissions of the counsel appearing for the parties in the light of the records placed before us. It is clearly established from the records that in order to give one-time opportunity, a special recruitment test was ordered to be held for selection and recruitment as also absorption of existing computer instructors. The said decision was taken on sympathetic consideration and with the intention of doing justice to those existing computer instructors who were working in government schools for a very long time. Such a recruitment drive and test was held by laying down rules of recruitment thereby providing a level playing field for all concerned.

32. Prior to holding of the said test guidelines were formulated through a policy decision laying down the criteria that the minimum qualifying marks in the said test would be at least 50%. The said guidelines of recruitment as laid down through a policy decision were sacrosanct and were required to be followed for all practical purposes even if we accept that the Government could have filled up the said posts of computer instructors by holding a special recruitment test of the aforesaid nature as one-time exception.

33. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding of the examination and at the time when the



*result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game as justified, for we find the same as arbitrary and unjustified. This Court in Hemani Malhotra v. High Court of Delhi [(2008) 7 SCC 11 : (2008) 2 SCC (L&S) 203] has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible.”*

28. The aforesaid judgment would certainly govern the issue, therefore, the decision of the Division Bench in holding the aforesaid decision as having no application to the facts of the present case cannot be sustained. In fact, the case we are dealing with, stands on a better footing than the facts governing the aforesaid case, wherein the selection process was not completed when a decision to reduce the marks was made. The Division Bench is also not correct in not following the earlier decisions of the Co-ordinate Bench in *Prajapati Ishwarbhai Joitaram v. State of Gujarat*, **Letters Patent Appeal No. 1350 of 2012 dated 20.03.2013**, which dealt with the issue of reduction in cut-off marks to accommodate horizontal reservations.

29. Much argument has been made based upon the decision of this Court in *K. Manjusree v. State of Andhra Pradesh*, (2008) 3 SCC 512 and the reference pending before the Constitution Bench in *Tej Prakash Pathak v. Rajasthan High Court.*, (2013) 4 SCC 540. On the facts of the case, we do not think that the said issue has any bearing, as held by this Court, while dealing with a case



*of arbitrary change in criteria, in Ramjit Singh Kardam v. Sanjeev Kumar, (2020) 20 SCC 209,*

***“Was the Chairman competent to take policy decisions like “selection criteria” or “mode of selection”?***

51. As per the notification extracted above it is the Commission, which “shall devise the mode of selection and fix the criteria for selection”. The said power has to be exercised in a reasonable and fair manner to advance the purpose and object of selection. Even if it is assumed for the sake of the argument that the Commission can change the criteria of selection from time to time, the said power has to be exercised not in an arbitrary manner.

52. We may in this context refer to the three-Judge Bench judgment of this Court in *T.N. Computer Science B.Ed. Govt. Welfare Society (1) v. Higher Secondary School Computer Teachers Assn., (2009) 14 SCC 517*. In the above case computer instructors were appointed on contract basis to various schools. The Government decided to hold a special test by the Teacher Recruitment Board for selection of computer instructors. On 10-10-2008 the State Government took decision that minimum qualification marks would be 50%. Special recruitment test was announced as 12-10-2008. On the night of 12-10-2008 a list of candidates for appointment to the post of computer instructors based on the special recruitment test was put on the internet. While publishing the said marks of the candidates, it was made clear that all candidates who have secured 35% marks in the test would be called for certificate verification. The State Government



*reduced the minimum qualifying marks to 35%. This Court did not approve the reduction of qualifying marks from 50% to 35%. The following was laid down in para 33: "33....."*

*53. The learned counsel for the appellant has submitted that judgments of this Court laying down the criteria for selection cannot be changed during the course of selection has been referred to a larger Bench by a judgment of this Court in Tej Prakash Pathak v. High Court of Rajasthan, hence the judgment of this Court laying down the criteria cannot be changed during the course of the selection is yet to be tested. For the purposes of the present case we proceed on the assumption that even if the criteria can be changed by selecting body from time to time, the said change cannot be affected arbitrarily. The present is a case where change in criteria has been affected and altered arbitrarily with the object of downgrading and not upgrading the standards of selection. The High Court did not commit any error in not upholding the change of criteria effected after start of selection process with which finding we fully concur."*

18. *Per contra*, the learned counsel for the respondent-Commission Shri Nikesh Kumar, Advocate, has submitted that though it is true that the rules of the game cannot be changed midway but then in the present case the eligibility criteria has remained the same, the age criteria has remained the same and the application forms submitted by the candidates in pursuance to the





Advertisement No. 07 of 2022 dt. 28.07.2022 have also been treated to be valid for the fresh selection process but the only change which has been made is regarding the method/ procedure of selection, which can definitely be altered even midway, considering the noble cause for doing so i.e. with a view to select the best and most competent candidates. It is also submitted that since the respondent-Commission had found the candidates who had applied pursuant to the aforesaid advertisement dt. 28.07.2022 to be quite poor and the certificates/degrees produced by them were also suspicious, the respondent-State had thought it proper to introduce a system of competitive examination so that comparative merit of the candidates could be evaluated and best candidate could be finally selected and appointed as A.N.Ms. In this regard the Ld. counsel for the Commission has referred to a number of judgments rendered by the Hon'ble Apex Court, which are being enumerated below along with their relevant paragraphs, which are also being reproduced



herein under:-

(i). ***The State of Haryana vs. Subhash Chander Marwaha & Ors.***, reported in **(1974) 3 SCC 220**; paragraphs no. 3, 4, 8, 10 and 12 whereof are reproduced herein below:-

*“3. It is contended on behalf of the appellant that the above finding against the State was erroneous. The submission was that under the rules the minimum of 45% was an element to be considered for the eligibility of a candidate for selection and that while making the actual appointment by selection the State Government, in the interest of maintaining high standards of judicial competence, were not prevented from fixing a minimum standard of a score of 55% marks, especially, as that was the view of the High Court also previously intimated to them. In our view that submission is correct.*

*4. Elaborate rules were framed by the Punjab Government in 1951 for the purpose of recruitment of Subordinate Judges to the Punjab Civil Service (Judicial Branch). After the bifurcation of the Punjab State these rules applied to the State of Haryana and the same have been published by the Government of Haryana with appropriate amendments. Part A of these rules deals with general qualifications. Part B deals with the preparation and submission of rolls of those who are qualified under Part A. Those who are on these rolls prepared by the District Judges become eligible for appearing*



*in a written examination held by the Punjab Public Service Commission. The rules with regard to this examination are in Part C. Rule 4 thereof provides that “the examination papers shall be set and marks awarded by examiners who will be appointed by the Punjab Public Service Commission”. Rule 8, which is important, is as follows:*

*“No candidate shall be considered to have qualified unless he obtains 45% marks in the aggregate of all the papers and at least 33% marks in the language paper, that is, Hindi (in Devnagri script).” As we shall see immediately the final selection depends entirely on this examination. Apart from this examination there is no other hurdle except that of medical examination to be passed by the candidate. No oral interview is prescribed. Rule 10 is as follows:*

- (i) The result of the examination will be published in the Punjab Government Gazette;*
- (ii) Candidates will be selected for appointment strictly in the order in which they have been placed by the Punjab Public Service Commission in the list of those who have qualified under Rule 8;....”*

*8. This will clearly go to show that the High Court itself had recommended earlier to the Punjab Government that only candidates securing 55% marks or more should be appointed as Subordinate Judges and the Haryana Government in the interest of maintaining high standards in the service had agreed with that opinion. This was entirely in the interest of judicial administration.*

*10. One fails to see how the existence of vacancies give a legal right to a candidate to*



*be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. The true effect of Rule 10 in Part C is that if and when the State Government propose to make appointments of Subordinate Judges the State Government (i) shall not make such appointments by travelling outside the list, and (ii) shall make the selection for appointments strictly in the order the candidates have been placed in the list published in the Government Gazette. In the present case neither of these two requirements is infringed by the Government. They have appointed the first seven persons in the list as Subordinate Judges. Apart from these constraints on the power to make the appointments, Rule 10 does not impose any other constraint. There is no constraint that the Govt. shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence.*

*12. It was, however, contended by Dr. Singhvi on behalf of the respondents that*



*since Rule 8 of Part C makes candidates who obtained 45% or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55% as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why Rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for mere eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had*



*done on a previous occasion. There is nothing arbitrary in fixing the score of 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. That the Punjab Government later on fixed a lower score is no reason for the Haryana Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who got less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking that the State Government had somehow contravened Rule 8 of Part C."*

(ii). **Pitta Naveen Kumar & Ors. vs. Raja Narasaiah Zangiti & Ors.**, reported in **(2006) 10 SCC 261**; paragraphs no. 32 & 33 whereof are reproduced herein below:-

*"32. The legal position obtaining in this behalf is not in dispute. A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is*



*required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise. By reason of the amended notifications, no change in the qualification has been directed to be made. Only the area of consideration has been increased. Those who were not eligible due to age bar in 2003 became eligible if they were within the prescribed age-limit as on 1-7-1999. By reason thereof only the field of choice was enlarged. We would briefly consider the purport and effect thereof.*

*33. Initially, there had been 301 vacancies. 223 vacancies were later on added. 1,52,000 applications were received pursuant to the first advertisement. About 51,768 applications were filed after issuance of the impugned G.Os. By reason of the subsequent G.Os., however, those who had appeared in the first preliminary examination were debarred from appearing in the second examination. The reason therefor is not far to seek. The result of the first preliminary examination had not been announced. A combined result was announced both in respect of the first preliminary examination as also the second preliminary examination. Both the examinations were held to be a part of the same recruitment process. It may be that in relation thereto different question papers were set or different examiners examined them but it must be borne in mind that the said examinations were held only for the purpose of elimination of candidates. The result of the said examination was not to*



*affect the ultimate selection process.”*

(iii). **Maharashtra State Road Transport Corporation & Ors. vs. Rajendra Bhimrao Mandve & Ors.**, reported in **(2001) 10 SCC 51-**

Though the Hon’ble Apex Court in the said case has held that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced but then the said case was disposed of with a view to give a quietus to the controversies with reference to the selection in hand and adjust equities, thus the said order would not act as a precedent.

(iv). **Hardev Singh vs. Union of India & Anr.**, reported in **(2011) 10 SCC 121**; paragraphs no. 19 and 20 whereof are reproduced herein below:-

*“19. Upon perusal of the contents of the counter-affidavit filed and submissions made on behalf of the respondents by the learned Additional Solicitor General, it is clear that the first meeting of the SSB to consider the cases of the appellant and other officers for promotion to the rank of Lieutenant-General was convened on 9-1-2009, and not prior thereto. The counsel had however, stated that the ministerial staff of the respondents had collected the relevant data in 2008 because relevant material for considering the cases of all the officers concerned was to be placed before the SSB when its meeting*





*was to be convened. For the said reason, the necessary exercise for collecting the data and putting it in a proper form was done in 2008 but, in fact, the said data was considered by the SSB only when it convened its meeting in January 2009 i.e. after the new policy had come into force.*

*20. The above facts would make it clear that the cases of the appellant and others were never considered by the SSB in 2008 or prior to 1-1-2009. It means that the cases were considered as per the new policy and, therefore, all submissions made on behalf of the appellant that the policy was changed after the process of selection had been started are not correct and, therefore, they are to be discarded."*

(v). ***The State of Uttar Pradesh vs. Karunesh Kumar & Ors.***, reported in **2022 SCC Online SC 1706**, paragraphs no. 14, 15, 17, 18, 20, 24, 25, 27 and 31 to 33 whereof are reproduced herein below:-

*"14. In view of the existence of a specific non-obstante clause, the 2015 Rules, being the later one, and despite being a general law would take precedence over the 1978 Rules, being the special service rules. Since the two sets of rules are completely inconsistent, in light of the fact that the authority who is to conduct the recruitment process is different in the two rules, so also the process of recruitment, as such, there is no possibility of any harmonious reading of*



*the two sets of rules.*

*15. The amendment made to the special rules in the year 2016 would not change the position as it was done by way of abundant caution, being clarificatory in nature. There is no right vested with the private respondents and the impleading applicants to the post, and the waiting-list cannot be seen as a perennial source of recruitment. Having participated in the process of recruitment, they are estopped, having acquiesced themselves. Even otherwise, in light of the 1999 GO, the Respondents or the impleadment applicants will not be entitled to appointment.*

*17. The 1978 Rules deal with a specified post, and therefore, the 2015 Rules, despite being a subsequent one will have to yield to it, the former being the special law governing the field. Rule 15(4) of the 1978 Rules clearly provides for a waiting list. A general rule will not have precedence over a special one, notwithstanding a non-obstante clause, unless there is a clear inconsistency between the two, in which case the two sets of rules will have to be harmoniously construed.*

*18. The 1978 Rules, governed the field until the 2016 amendment, which only came into force after the interviews in the impugned selection process, and as such, the rules of the game cannot be changed once the game has started. Even otherwise, there is a vested right of appointment against an advertised post which has remained unfilled due to non-joining of the more meritorious candidate.*



20. We have already placed the relevant rules and considered their import. Clause 15(1) of the 1978 Rules deals with a Selection Committee, while we are concerned with the recruitment made by the Selection Commission statutorily created by an enactment, the 2014 Act. Under the 1978 Rules, no written examination was contemplated as against a mere interview. This was consciously given a go-by, to the knowledge of the candidates who willingly participated in the selection process by taking the written examination, and thereafter, the interview. This process was adopted in tune with the 2015 Rules, and in terms of the powers conferred to the Commission under the 2014 Act. Therefore, the 1978 Rules are put into cold storage qua a selection even at the time of conducting the written examination.

24. We have considered the aforesaid submissions to appreciate the arguments made. Even under the 1978 Rules, we do not find the existence of any waiting-list in operation to be filled up at a later point of time, when a certain candidate does not join. Such a list has been provided under Rule 15(4) of the 1978 Rules only to facilitate the appointing authority to fill up the vacancies. Thus, after the vacancies are filled up, the door for the other candidates gets closed.

25. The same is the position under the 2015 Rules by which the Commission is required to send the merit list alone to the appointing authority which it actually did and in case of non-joining, the vacancies are carried forward to the next process of selection, as



*has been rightly done by the authority in the present case. An employer shall always have adequate discretion with an element of flexibility in selecting an employee. Interference can only be made when a selection is arbitrary or contrary to law, which we do not find to be the case in the present matter. The approach of the High Court is like a visually impaired person looking for a black cat in a dark room when the cat itself is not there.*

*27. Merely because the Appellant sought to amend the 1978 Rules subsequently in 2016, it cannot be presumed that the 1978 Rules particularly with respect to Rule 15 continue to exist in the statute book, considering the fact that the 2016 amendment was only clarificatory in nature. We may hasten to add that both the Rules were made in the exercise of power conferred under Article 309 of the Constitution of India.*

*31. We do not wish to reiterate the situation when two Rules are sought to be pitted against each other, as we find no such repugnancy that has arisen. A court of law is expected to reconcile the rules, and therefore, not to foresee or presume conflicts, if any.*

*32. The respondents have also placed reliance on the decision of this Court in the case of K. Manjusree (supra). However, in our considered view, the facts of the aforesaid decision are quite different from the present case. A change was introduced for the first time after the entire process was over, based on the decision made by the Full*



*Court qua the cut off. Secondly, it is not as if the private respondents were nonsuited from participating in the recruitment process. The principle governing changing the rules of game would not have any application when the change is with respect to selection process but not the qualification or eligibility. In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job.*

*33. On a perusal of the judgment rendered by the High Court, as found earlier, the impugned decisions are made without considering the appropriate provisions despite an endeavour being made drawing its attention to the same. The High Court in our considered view did not take note of the grounds raised in the Review Petition. In a proceeding initiated under Article 226 of the Constitution of India, the scope of review has to be looked at differently, facilitating an enlarged view. We have already discussed the scope of Rule 15 and the non-availability of any provision for a waiting list in the 2015 Rules."*

(vi). **Tej Prakash Pathak & Ors. vs. Rajasthan High Court & Ors.**, reported in **(2013) 4 SCC 540**; paragraphs no. 10, 11, 13, 14 and 15 whereof



are reproduced herein below:-

*“10. Under the scheme of our Constitution an absolute and non-negotiable prohibition against retrospective law-making is made only with reference to the creation of crimes. Any other legal right or obligation could be created, altered, extinguished retrospectively by the sovereign law-making bodies. However, such drastic power is required to be exercised in a manner that it does not conflict with any other constitutionally guaranteed rights, such as, Articles 14 and 16, etc. Changing the “rules of game” either midstream or after the game is played is an aspect of retrospective law-making power.*

*11. Those various cases deal with situations where the State sought to alter (1) the eligibility criteria of the candidates seeking employment, or (2) the method and manner of making the selection of the suitable candidates. The latter could be termed as the procedure adopted for the selection, such as, prescribing minimum cut-off marks to be secured by the candidates either in the written examination or viva voce as was done in Manjusree or the present case or calling upon the candidates to undergo some test relevant to the nature of the employment (such as driving test as was in Maharashtra SRTC.*

*13. This Court in State of Haryana v. Subash Chander Marwaha while dealing with the recruitment of Subordinate Judges of the Punjab Civil Services (Judicial Branch) had to deal with the situation where the relevant*



*rule prescribed minimum qualifying marks. The recruitment was for filling up of 15 vacancies. 40 candidates secured the minimum qualifying marks (45%). Only 7 candidates who secured 55% and above marks were appointed and the remaining vacancies were kept unfilled. The decision of the State Government not to fill up the remaining vacancies in spite of the availability of candidates who secured the minimum qualifying marks was challenged. The State Government defended its decision not to fill up posts on the ground that the decision was taken to maintain the high standards of competence in judicial service. The High Court upheld the challenge and issued a mandamus. In appeal, this Court reversed and opined that the candidates securing minimum qualifying marks at an examination held for the purpose of recruitment into the service of the State have no legal right to be appointed. In the context, it was held: (Subash Chander Marwaha case [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] , SCC p. 227, para 12)*

*“12. ... In a case where appointments are made by selection from a number of eligible candidates it is open to the Government with a view to maintain high standards of competence to fix a score which is much higher than the one required for more (sic mere) eligibility.”*

*14. Unfortunately, the decision in Subash Chander Marwaha does not appear to have been brought to the notice of Their Lordships in Manjusree. This Court in Manjusree relied upon P.K. Ramachandra Iyer v. Union of*



*India, Umesh Chandra Shukla v. Union of India and Durgacharan Misra v. State of Orissa. In none of the cases, was the decision in Subash Chander Marwaha considered.*

*15. No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the “rules of the game” insofar as the prescription of eligibility criteria is concerned as was done in C. Channabasavaih v. State of Mysore [AIR 1965 SC 1293], etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.”*

19. The learned counsel for the respondent-Commission has contended, by referring to the aforesaid judgment rendered by the Hon'ble Apex Court in the case of **Tej Prakash Pathak & Ors.** (supra), that the expression changing the rules of the game midway or after the game is played, pertains to two situations; (i) Eligibility criteria of candidates seeking employment; or (ii) Method and





manner of making selection of suitable candidates. It is contended that as far as the second situation is concerned, a three Judges Bench, in the case of **Tej Prakash Pathak & Ors.** (Supra), has referred the issue, as to whether the principle of not permitting the State or its instrumentalities to tinker with the “rules of the game” insofar as the prescription of eligibility criteria is concerned shall also be applicable in the context of the “rules of the game” stipulating the procedure for selection, to a larger Bench, especially taking into account the fact that the decision rendered by the Hon’ble Apex in the case of **Subash Chander Marwaha** (Supra) was not brought to the notice of Their Lordships either in the **K. Manjusree** case or in the cases which have been cited and relied upon by the Ld. Counsel for the petitioners. It is stated that the aforesaid reference is still pending adjudication.

At this juncture itself, it would be apposite to deal with the aforesaid submission advanced by the Ld. Counsel for the respondent-commission. As far as the judgment rendered in the case of



***Subhash Chander Marwaha & Ors.***, (supra) is concerned, the same is distinguishable in the facts and circumstances of the present case inasmuch as Rule 8 of Punjab Civil Service (Judicial Branch) Service Rules, 1951, which prescribes that a candidate should obtain 45 per cent or more marks in the competitive examination to be eligible, is only for the purposes of preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment, however, what the Hon'ble Apex Court has held is that since the High Court, prior to initiation of the selection process, had intimated to the Punjab Government on which the Haryana Govt. thought fit to act, that only candidates securing 55 per cent or more marks should be appointed as Subordinate Judges and moreover, it was open to the Govt., with a view to maintain high standard of competence, to fix a score which is much higher than the one required for mere eligibility, whereas in the present case the entire process of selection has been changed. Moreover, it appears that the Constitution Bench



Judgment of the Hon'ble Supreme Court, rendered in the case of **B. N. Nagarajan Vs. State of Mysore**, reported in AIR 1966 SC 1942 : 1966 SCC OnLine SC 7 was not brought to the notice of Their Lordships in **Tej Prakash Pathak & Ors.** case, apart from the fact that the aforesaid order passed in the case of **Tej Prakash Pathak & Ors.** (supra) is not conclusive for the purposes of determination of the lis involved in the present case.

20. The Ld. Counsels appearing for the Respondents-State of Bihar and the Directorate of Health have adopted the arguments advanced by Sri Nikesh Kumar, Advocate.

21. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that the only issue under consideration in the aforesaid batch of writ petitions is as to whether the process of selection or rather the procedure of recruitment, as mandated in the aforesaid Advertisement No. 07 of 2022 dated 28.07.2022, in consonance with the Cadre Rules, 2018, can be changed midway, after the



applications have been filed by the candidates and their marks have been assessed for the purposes of publication of the merit list for making appointment on the post of A.N.Ms., by introducing the mode of competitive examination, which was never prescribed in the aforesaid Advertisement No. 07 of 2022 dated 28.07.2022.

22. It is not in dispute that the aforesaid Advertisement No. 07 of 2022 was issued on 28.07.2022, in consonance with the Cadre Rules, 2018 and the selection process did not envisage holding of any competitive examination, nonetheless, after the candidates including the writ petitioners had filled their application forms and after their marks had been assessed by the respondent-Commission as per clause-4 of the aforesaid Advertisement No. 07 of 2022 dated 28.07.2022, leading to uploading of their marks on the website of the respondent-Commission for the purposes of preparing the merit list for making appointment on the post of A.N.Ms., the State Government had amended the aforesaid Cadre



Rules, 2018 and brought in the new Cadre Rules, 2023, to be operative with effect from 01.06.2023, whereby the selection process has been changed and in clause-8 thereof, it has been postulated that a competitive exam would be held and thereafter, the merit list shall be prepared on the basis of evaluation of a candidate against a total of 100 marks, out of which 60 marks are to be awarded to the candidates on the basis of the marks obtained by them in the competitive examination, 15 marks for higher course and 25 marks for working experience in the government/non private hospitals of The State of Bihar, whereupon the respondent-Commission published a notice dated 19.09.2023, changing the procedure of recruitment and increasing the zone of consideration by inviting fresh applications from the eligible candidates. This Court has also been informed that thereafter, the competitive examination has also been held.

23. This Court finds that the law with regard to the issue under consideration is no longer res-integra. In **B. N. Nagarajan Vs. State of**



**Mysore**, reported in AIR 1966 SC 1942 : 1966 SCC OnLine SC 7, a Constitution Bench of the Hon'ble Supreme Court was dealing with a dispute pertaining to the validity of appointment of Assistant Engineers. The Public Service Commission had invited applications by issuing notifications for making appointment to the post of Assistant Engineers in October 1958, May 1959 and April 1960. The Public Service Commission made selection, interviewed the candidates and sent the select list to the government in the month of October/November 1960, however before the appointments could be made, the Mysore Public Works, Engineering Department Services (Recruitment) Rules, 1960 came into force, which prescribed different selection process than the one prescribed in the earlier notifications, in pursuance whereof the Public Service Commission had made the selections. The validity of the appointment made by the government on the basis of the selection made by the Commission was challenged. The Hon'ble High Court quashed the



selection and appointments made in pursuance thereof, leading to filing of an appeal before the Hon'ble Supreme Court, where validity of the appointments were assailed on the ground that since the appointments had been made after the amendment of the Rules the appointments should have been made in accordance with the amended Rules. The Constitution Bench of the Hon'ble Supreme Court rejected the said contention holding that since the whole procedure of issuing advertisement, holding interviews and recommending the names having been conducted in accordance with the then existing Rules, the appointments made on the basis of the recommendation made by the Public Service Commission could not be rendered invalid. It would be relevant to quote paragraph No. 20 of the aforesaid judgment rendered in the case of **B.N. Nagarajan** (Supra), herein below:-

*“20. Mr. Nambiar sought to impeach the appointments on another ground. He said that the appointments violated the Mysore Public Works Engineering Department*



*Services (Recruitment) Rules, 1960, dated December 3, 1960, because the appointments were made on October 31, 1961, and according to him, these appointments had also to be made under the statutory rules made on December 3, 1960. We are unable to sustain this contention because it took about two years for the Public Service Commission to publish notifications, interview candidates and recommend names for appointment. The whole procedure having been followed, it could not have been the intention of the Government while framing the rules to cover appointments made in pursuance of the recommendations of the Public Service Commission made in November 1960 after interviewing candidates in October 1960."*

24. At this juncture, it would be apt to refer to a judgment rendered by the Hon'ble Three Judges' Bench of the Hon'ble Supreme Court of India, in the case of **Tamil Nadu Computer Science BED Graduate Teachers Welfare Society (1) vs. Higher Secondary School Computer Teachers Association & Ors.**, reported in **(2009) 14 SCC 517**, paragraphs no. 32 to 34 whereof are





reproduced herein below:-

*“32. Prior to holding of the said test guidelines were formulated through a policy decision laying down the criteria that the minimum qualifying marks in the said test would be at least 50%. The said guidelines of recruitment as laid down through a policy decision were sacrosanct and were required to be followed for all practical purposes even if we accept that the Government could have filled up the said posts of computer instructors by holding a special recruitment test of the aforesaid nature as one-time exception.*

*33. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding of the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game as justified, for we find the same as arbitrary and unjustified. This Court in Hemani Malhotra v. High Court of Delhi [(2008) 7 SCC 11] has held that in recruitment process changing rules of the game during selection*



*process or when it is over are not permissible.*

*34. Thus we hold and declare that those candidates who had secured more than 50% qualifying marks would be held to have qualified in the said test and the remaining candidates would be treated as unsuccessful/failed and therefore became ineligible to be permanently recruited and absorbed in government schools. However, we give liberty to the State Government to hold a fresh examination/recruitment test to fill up all the remaining posts of computer instructors as against the sanctioned and vacant posts of computer instructors, which we are told would be more than 1000, by holding a recruitment test in terms of assurance given to the High Court."*

25. Lastly, this Court would also rely on a judgment rendered by the Hon'ble Apex Court in the case of **Hemani Malhotra vs. The High Court of Delhi**, reported in **(2008) 7 SCC 11**, reference whereof has already been made in the aforesaid judgment rendered by the Three Judges' Bench of Hon'ble Apex Court in the case of **Tamil Nadu Computer Science BED Graduate**



***Teachers Welfare Society (1)*** (supra).

26. On a compendious consideration of the law laid down by the Constitution Bench of the Hon'ble Apex Court in the case of ***B. N. Nagarajan*** (Supra), as also by the Hon'ble Apex Court in the cases of ***Y. V. Rangaiah & Ors.*** (Supra), ***N.T. Devin Katti & Ors.*** (Supra), ***P. Mahendran & Ors.*** (Supra), ***Hemani Malhotra*** (supra), ***K. Manjusree*** (Supra), ***Tamil Nadu Computer Science BED Graduate Teachers Welfare Society (1)*** (supra), ***Md. Raisul Islam & Ors*** (supra) and ***Sureshkumar Lalitkumar Patel & Ors. (Supra)***, this Court finds that it is now a well settled law that a candidate has the right to be considered in accordance with the terms and conditions set out in the advertisement, as his right crystallizes on the date of publication of advertisement, a candidate acquires a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement and he cannot be deprived of that limited right on the amendment of rules during the



pendency of selection unless the amended rules are retrospective in nature and moreover, rules of the game cannot be permitted to be changed during the selection process or when it is over, either it be with regard to the eligibility criteria or the procedure of recruitment/selection, hence this Court holds that the notice dated 19.09.2023, to the extent it changes the procedure of recruitment/selection is arbitrary and unjustified, thus the notification dated 19.09.2023, to the extent it has changed the procedure of recruitment as provided for in the Advertisement No. 07 of 2022 dated 28.07.2022, is quashed and the respondent-Commission is directed to publish the merit list by tabulating the marks of the candidates, including the writ petitioners, as per the procedure for recruitment provided for in clause-4 of the said Advertisement No. 07 of 2022 dated 28.07.2022. At this juncture, I would hasten to add that this Court has consciously refrained from tinkering with Clause D of the aforesaid notice dated 19.09.2023, whereby merely the area/zone of consideration has



been increased, considering the law laid down by the Hon'ble Apex Court in the case of **Pitta Naveen Kumar & Ors.** (Supra).

27. It would be unfair to the respondent-Commission in case the judgments relied upon on its behalf are not adverted to. The judgment referred to by the learned counsel for the respondent-Commission in the case of **Pitta Naveen Kumar & Ors.** (supra) does not appear to be an authority on the issue as to whether the rules of the game, stipulating the procedure for selection, can be changed midway and even otherwise the same is distinguishable in the facts and circumstances of the case inasmuch as in the said case only the area of consideration was increased inasmuch as those who were not eligible due to age bar in the year 2003 became eligible if they were within the prescribed age limit as on 01.07.1999 and that too for the reason that since several years there had been no further recruitment but the right of the candidates to be considered for appointment, who had cleared the



first preliminary examination without availing the age relaxation was not effected, nonetheless, the recruitment process had not been changed, thus the said judgment is of no help to the respondents.

28. As far as the judgment rendered by the Hon'ble Apex Court in the case of **Rajendra Bhimrao Mandve & Ors.** (supra) is concerned, the same has been rendered by treating the said case to be a case suitable for adjustment of equities as also considering the fact that the drivers who have already got appointed, have been serving since several years and since the petitioners of the said case were only 10 in number, their claims for appointment were directed to be considered favorably. Thus the said judgment cannot be said to be a binding precedent inasmuch as apparently the same has been passed by the Hon'ble Apex Court in exercise of powers under Articles 142 of the Constitution of India.

29. The judgment referred to by the learned counsel for the respondent-Commission, rendered by the Hon'ble Apex Court in the case of **Hardev**



**Singh** (supra) is also distinguishable inasmuch as the said case deals with promotion whereas the present case pertains to selection.

30. As regards the judgment rendered by the Hon'ble Apex Court, referred to by the learned counsel for the respondent-Commission, in the case of **Karunesh Kumar & Ors.** (supra), it would suffice to state that the same is also distinguishable in the facts and circumstances of the present case inasmuch as in the said case, the advertisement was published in accordance with the Uttar Pradesh Direct Recruitment to Group 'C' posts (Mode and Procedure) Rules, 2015, the selection process was completed in accordance with the said Rules, 2015 and by way of abundant caution, though not necessitated, the 1978 Rules were amended on 22.11.2016, however, the final result was declared on 24.12.2016 and the appointment letters were issued during the months of April and May, 2017, nonetheless, the rules of the game had not been changed in the said case. As far as paragraph no. 32 is concerned, it can be



merely stated to be a “**obiter dictum**” and in fact contrary view has been taken in the case of **Sureshkumar Lalitkumar Patel & Ors.** (supra) apart from the fact that the law laid down by the Constitution Bench of the Hon’ble Supreme Court in the case of **B.N. Nagarajan** (Supra) and by the Three Judges Bench of the Hon’ble Supreme Court in the cases of **P. Mahendran & Ors.** (Supra), **K. Manjusree** (Supra) and **Tamil Nadu Computer Science BED Graduate Teachers Welfare Society (1)** (supra) hold the field.

31. Considering the facts and circumstances of the present case and for the foregoing reasons, the writ petitions stand allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

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