

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1264 of 2018

In
Civil Writ Jurisdiction Case No.6229 of 2016

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1. Bihar State Electricity Board, Now Bihar State Power Holding Company Limited, Represented through General Manager (HR & Admin.) Vidyut Bhawan, Bailey Road, Patna.
 2. Managing Director-cum-Chief Engineer, Tirhut Electric Supply Area, Bhagwanpur Chowk, Muzaffarpur presently Deputy General Manager – Cum – Electrical Superintending Engineer, Tirhut.
 3. North Bihar State Power Distribution Company Ltd., represented through Managing Director, Vidyut Bhawan, Bailey Road, Patna.

... .. Appellant/s

Versus

1. The State Of Bihar, through Principal Secretary, Energy Department, Government of Bihar, Patna.
2. Shiv Kumar Singh S/o Saryug Singh,
3. Santosh Kumar, S/o Upendra Singh, both are R/o village - Sarmaspura, P.S. Lalganj, District - Vaishali .
4. Upendra Rai, S/o Balbir Rai,
5. Sukesh Rai S/o Yadunandan Rai
6. Sanoj Rai, S/o Balbir Rai, Petitioner Nos. 3 to 5 are R/o village - Sathiauta, P.S. Bhagwanpur, District - Vaishali .
7. Ramesh Kumar Srivastava @ Ramesh Prasad Srivastava S/o Late Mahendra Prasad Srivastava
8. Ravindra Kumar S/o Nand Lal Sah
9. Nagendra Kumar, S/o Nand Lal Sah, Petitioner Nos. 6 to 8 are R/o village - Raghunathpur Sahtha, P.S. Bhagwanpur, District - Vaishali .

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anand Kumar Ojha, Advocate
For the Respondent/s : Mr. Yogendra Prasad Sinha -AAG-7

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PURNENDU SINGH)

Date : 14-11-2022

Heard Mr. Anand Kumar Ojha, learned counsel appearing
on behalf of the Petitioners-Respondents and Mr. Yogendra



Prasad Sinha, AAG-7 for the State.

2. Brief facts of the case are, that in the year 2007 Advertisement No. 01/2007 was published in a newspaper dated 13.03.2007 by the Bihar State Electricity Board, Tirhut Electric Supply Area, Muzaffarpur, inviting application from the eligible candidates for appointment to the post of Junior Lineman and Unskilled Labourer on contract basis. The qualification prescribed for Junior Lineman was ITI and that of the Unskilled Labourer was 8th pass. Pursuant to this, the petitioners-Respondents applied for the post of Unskilled Labourer and submitted his documents through post on 26.03.2007. In the meantime, the Bihar State Electricity Board was reorganised and unbundled into five companies pursuant to Bihar State Electricity Reforms Transfer Scheme, 2012 in accordance with the new Electricity Act, 2003. The company had taken decision to change the educational qualification for appointment of Unskilled Khalasi/ 4th grade employee from Class 8th pass to Class 10th pass from any Board recognized by the State Government. Due to long pendency of selection process for the post of unskilled-labourers *i.e* Category-2, the Petitioners-Respondents approached this Hon'ble Court in C.W.J.C No. 3700 of 2014 seeking direction in the nature of mandamus



commanding the respondent authorities of the Bihar Power Holding Company to complete the selection process initiated vide Advertisement No. 01/2007 dated 13.03.2007 in so far as it relates to unskilled labourers. The Learned Single Judge *vide* order dated 02.05.2014 disposed off the writ application with a direction to the Respondents-Appellants to take a final decision as regards selection process pursuant to said advertisement No. 01/2007 dated 13.03.2007 within a period of 6 months. The order dated 02.05.2014 was not complied with and consequently, the Petitioners-Respondents filed a contempt petition vide MJC No. 649 of 2015 for willful disobedience of order dated 02.05.2014. The Petitioners-Respondents were permitted to withdraw the contempt petition vide order dated 08.07.2015 with a liberty to challenge the decision of Bihar State Power Holding Company Ltd, contained in its letter dated 16.04.2015 and subsequent communication contained in Letter dated 05.05.2015, in an appropriate proceeding and the two letters were subject matter of CWJC No. 6229/2016 in which the Petitioners-Respondents sought directions upon the Respondents-Appellants to complete the selection process for the appointment of the Petitioners-Respondents and others against the advertised, sanctioned and vacant posts of Unskilled



Labourer, i.e. Category No. 2, pursuant to an Advertisement No. 01 of 2007, published by the Bihar State Electricity Board, Tirhut Electric Supply Area, Muzaffarpur.

3. Subsequent to the filing of the writ petition with the above prayer, the Petitioners-Respondents sought amendment of the relief by filing an Interlocutory Application bearing I.A. No. 4420 of 2018 was filed by the Petitioners-Respondents seeking leave to question the decision of Bihar Power Holding Company Ltd. cancelling the selection process contained in letter dated 16.04.2015 of the Officer on Special Duty and the subsequent letter dated 05.05.2015 of the same authority addressed to General Manager and a direction to Respondents - Appellants to complete the selection process, and the same was allowed vide order dated 10.07.2018.

4. The matter was heard and vide order dated 06.08.2018, the learned single judge held that the Bihar Power Holding Company has acted arbitrarily without jurisdiction and have altered the educational qualifications of the Unskilled Khalasi to have passed Class 10th Examination/ Matriculation in place of Class 8th as provided in the Advertisement No. 01/2007 dated 13.03.2007, the company has changed the rules of the game after the process of selection has started. The learned Single



Judge directed the Respondents- Appellants to abide by earlier order of this Court passed in CWJC No.3700/2014 dated 02.05.2014 and to complete the process initiated vide Advertisement No. 01/2007 dated 13.03.2007 as per stipulation present therein, within three months from the date of the order. An Interlocutory Application bearing I.A. No. 4420 of 2018 was filed by the Petitioners-Respondents seeking leave of the Court to question the decision of Bihar Power Holding Company Ltd. cancelling the selection process contained in letter dated 16.04.2015 of the Officer on Special Duty and the subsequent letter dated 05.05.2015 of the same authority addressed to General Manager and a direction to Respondents- Appellants to complete the selection process, and the same was allowed vide order dated 10.07.2018.

5. The learned counsel appearing on behalf of the Appellant submitted that the State Government has created the Bihar Power Holding Company Ltd and four other companies in accordance with the Bihar State Electricity Reforms Transfer Scheme, 2012 in pursuance of the new Electricity Act, 2003. As a result of this change in circumstance, the Bihar State Electricity Board was reconstituted and the newly constituted government companies came into existence including the North



Bihar State Power Distribution Company Ltd, were empowered to take final decision as regards the selection process pursuant to Advertisement No. 01 of 2007. He further submitted that the company's decision contained in Letter dated 16.04.2015 and 05.05.2015 to change the eligibility criteria relating to educational qualification from Class 8th to 10th pass for *Class-IV* employee are administrative in nature and the same does not suffer from the vice of discrimination or arbitrariness. The selection process which had initiated seven years back was cancelled by the above two letters due to reconstitution of Electricity Board into Power Holding Company. The observation made by the learned Single Judge that the Respondents-Appellants have no jurisdiction to alter the educational qualification of Unskilled Labourer as laid down in Advertisement No. 1 dated 13.03.2007 once the process for selection has started and to obey the mandamus of the co-ordinate Bench requiring to complete the process especially where they have allowed the mandamus to attain finality, is not sustainable in the eye of law. The Petitioners-Respondents have no right to be selected even though there exist vacancies.

6. Learned counsel further submitted that the law is well settled that there is no indefeasible right to be appointed. He



further submitted that the learned Single Judge has committed error of jurisdiction by issuing direction inconsistent with the law laid down by the Apex Court in case of *Shankarsan Dash vs. Union of India (1991) (3) SCC 47* and he has placed reliance on paragraph nos. 7 and 8 of the above judgement and submitted that the Hon'ble Supreme Court while approving various decision of the Apex Court on this point held that the government authorities may be justified in decision of not making appointment for valid reason.

7. Learned counsel further submitted that the Respondents-Appellants had taken a final decision not to proceed with the selection process pursuant to Advertisement No. 01 of 2007. Therefore the direction of learned Single Judge to complete the selection process within a period of six months in view of observations and the mandamus issued by the co-ordinate Bench in the previous round of proceeding arising from CWJC No. 3700 of 2014 directing the Respondents-Appellants to complete the selection process which order was never appealed against by the Respondents-Appellants and to abide by the earlier direction of this Court to complete the process initiated and any attempt by the Respondents-Appellants who have stepped into the shoes of Bihar State Electricity Board to



interfere with the selection process would not only be held an attempt to reach the mandamus in the previous round of proceeding but a contempt of the present order dated 06.08.2018 is not sustainable in the eye of law.

8. Learned counsel as regard to the proposition of *Change of Rules of Game* submitted that the same would not apply in the facts of the present case. In absence of any statutory Rules there is no obligation or restriction on the newly constituted Bihar Power Holding Company in cancelling the recruitment for valid reason with respect to those having 8th Class passed by restricting the appointment with the qualified candidates having passed the 10th Board Examination. The newly reconstituted Power Holding Companies had taken a decision to cancel the selection process related to unskilled Khalasi/ fourth grade employee. The decision was taken to return the fee of the candidates also.

9. *Per contra* learned counsel appearing on behalf of the Petitioners-Respondents submitted that the Bihar State Electricity Board vide Advertisement No. 01 of 2007 dated 13.03.2007, the Bihar State Power Holding Company having stepped into their shoes and neither they possess jurisdiction to alter the stipulation nor to cancel the process of selection during



the pendency of the selection process as the same would amount to *Change the 'Rules of Game'*, which has been fixed by the Bihar State Electricity Board. The Petitioners-Respondents had filed CWJC No. 3700 of 2014 for their appointment pursuant to the advertisement as no final decision was taken by the Electricity Board till the filing of the writ petition in the year 2014. This Court, vide order dated 02.05.2014 disposed of the writ petition bearing CWJC No. 3700 of 2014 with a direction to the Respondents-Appellants to take a final decision as regard selection process pursuant to the Advertisement No. 01 of 2007 within a period of six months from the date of receipt or production of the order. Learned counsel further submitted that the order dated 02.05.2014 was not complied within time and Petitioners-Respondents were forced to file contempt petition bearing MJC No. 649 of 2015 and during the pendency of the contempt petition, the Power Holding Company filed their show cause bringing on record that a decision to cancel the selection process related to Unskilled Khalasi / 4th Grade Employee by Letter dated 16.02.2015 of the Officer on Special Duty and subsequent communication dated 05.05.2015 addressed to the General Manager were never communicated to the Petitioners-Respondents. The contempt petition was allowed to be



withdrawn with a liberty to the petitioner to challenge the decision taken by the Power Holding Company-Appellant dated 16.04.2015 of Officer on Special Duty and subsequent communication dated 05.05.2015 addressed to the General Manager in an appropriate proceeding. In this background, the petitioner filed CWJC No. 6229 of 2016 and the same was allowed vide order dated 10.07.2018 holding that the power Holding Company has acted arbitrarily and has no jurisdiction to alter the educational qualification of Unskilled Khalasi / 4th Grade Employee as present in Advertisement No. 01 of 2007.

10. Learned counsel further submitted that even after reconstitution of Electricity Board into Bihar State Power Holding Company, they have no jurisdiction to alter the criteria nor to cancel the selection process. The order of this Court was to complete the selection process and the said order has attained finality as the company did not prefer to challenge it. He also submitted that it is well settled principle of law that once the selection process had started, any change in any condition with respect to qualification and eligibility by the employer will amount to changing the *rules of the game*. In this context, the changes made for the post of unskilled Khalasi as originally stipulated in the Advertisement No. 01/2007, by modifying the



required educational qualification from 8th pass to 10th pass, as decided by the Bihar Power Holding Company in the midst of the selection procedure in an arbitrary manner, tantamount to changing the rules of the game midway, which is impermissible. The order of the learned Single Judge is in accordance with law and thus requires no interference.

11. The undisputed facts of the case are that in the year 2007 Advertisement No. 01/2007 was published in a newspaper dated 13.03.2007 by the Bihar State Electricity Board, Tirhut Electric Supply Area, Muzaffarpur, inviting application from the Eligible candidates for appointment to the post of Junior Lineman and Unskilled Labourer on contract basis. The qualification required for Junior Lineman was ITI and that of the Unskilled Labourer was 8th pass. Pursuant to this, the Petitioners-Respondents applied for the post of Unskilled Labourer and submitted his documents through post on 26.03.2007. The Bihar State Electricity Board was reorganised and unbundled into five companies on 01.11.2012 pursuant to Bihar State Electricity Reforms Transfer Scheme, 2012 in accordance with the new Electricity Act, 2003. The selection process for the post of unskilled labourer i.e Category-2 remained pending. The Petitioners-Respondents approached this



Court by filing C.W.J.C No. 3700 of 2014 seeking direction in the nature of mandamus commanding the respondent authorities of the Bihar Power Holding Company to complete the selection process initiated vide Advertisement No. 01/2007 in so far as it relates to unskilled labourers. Vide order dated 02.05.2014, the writ application was disposed of with a direction to the respondents to take a final decision as regards selection process pursuant to said Advertisement No. 01/2007 within a period of 6 months of this order. The order dated 02.05.2014 was not complied with and consequently, the Petitioners-Respondents filed contempt petition vide MJC No. 649 of 2015 for willful disobedience of order dated 02.05.2014. The appellants filed their detailed show cause by bringing letters dated 16.04.2015 and subsequent communication dated 05.05.2015 giving information that the Bihar State Power Holding Company Limited has taken final decision not to proceed with the selection process by changing the minimum educational qualification required for the post of unskilled labourers from Class 8th to Class 10th pass. The petitioner was permitted to withdraw the contempt petition vide order dated 08.07.2015 with a liberty to challenge the decision of Bihar State Power Holding Company Ltd., contained in its letter dated 16.04.2015



and subsequent communication dated 05.05.2015, in an appropriate proceeding. The Petitioners-Respondents challenged the above two communication in CWJC No. 6229/2016 seeking issuance of following directions and reliefs:

"That this writ application is being filed for the following relief(s):-

(A)For issuance of order/orders, direction/directions, writ/writs particularly in the nature of writ of mandamus for a direction upon the Respondents to complete the selection process for the appointment of the petitioners and others against the advertised, sanctioned and vacant posts of Unskilled Labourer, i.e. Category No. 2, pursuant to an Advertisement No. 01 of 2007, published by the Bihar State Electricity Board, Tirhut Electric Supply Area, Muzaffarpur

(B)Any other relief/relief(s) for which the petitioners are legally entitled to."

12. The writ petition was allowed vide order dated 06.08.2018. The learned single judge held that the Bihar Power Holding Company has acted arbitrarily and has no jurisdiction to alter the educational qualifications of the Unskilled Khalasi as contained in the Advertisement No. 01/2007 dated 13.03.2007, for the rules of the game cannot be changed once the process is started and also directed that the Respondents-Appellants to abide by earlier order of this Court passed in CWJC No.3700/2014 dated 02.05.2014 and to complete the process initiated vide the Advertisement No. 01/2007 as per stipulation present therein, within three months from the date of the order and the writ was allowed vide order dated 10.07.2018. The order dated 06.08.2018 has been challenged in the present



appeal.

13. The learned Single Judge held the action of Power Holding Company in changing the terms of procedure adopted for selection prescribing minimum educational qualification from Class 8th to Class 10th pass would amount to change of 'Rules of Game'. The law dealing with recruitment is subject to discipline of Article-14 of the Constitution.

14. The question whether 'Rules of Game' could be changed has been considered by the Hon'ble Supreme Court in number of cases. The proposition of Rules of Game has been duly considered by the Apex Court in the case of ***Tej Prakash Pathak and Ors vs. Rajasthan High Court and Ors (2013) Vol. 4 SCC 540*** and supports the findings of the learned Single Judge based on change of 'Rules of Game'. It will be useful to reproduce paragraph nos. 12 to 15.

"12. If the principle of Manjusree case [K. Manjusree v. State of A.P., (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] is applied strictly to the present case, the respondent High Court is bound to recruit 13 of the "best" candidates out of the 21 who applied irrespective of their performance in the examination held. In such cases, theoretically it is possible that candidates securing very low marks but higher than some other competing candidates may have to be appointed. In our opinion, application of the principle as laid down in Manjusree case [K. Manjusree v. State of A.P., (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] without any further scrutiny would not be in the larger public interest or the goal of establishing an efficient administrative machinery.



13. This Court in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] 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 [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] does not appear to have been brought to the notice of Their Lordships in Manjusree [K. Manjusree v. State of A.P.,



(2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841] . This Court in *Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 at p. 524, para 27 : (2008) 1 SCC (L&S) 841]* relied upon *P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141 : 1984 SCC (L&S) 214]* , *Umesh Chandra Shukla v. Union of India [(1985) 3 SCC 721 : 1985 SCC (L&S) 919]* and *Durgacharan Misra v. State of Orissa [(1987) 4 SCC 646 : 1988 SCC (L&S) 36]* . In none of the cases, was the decision in *Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488]* 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.”

15. The above observation made by the Apex Court leads to the fact that the theory of change of ‘Rules of Game’ is yet to be crystallized. In view of the proposition having been referred to the larger Bench of Hon’ble Supreme Court.

16. The appellants have challenged the decision of learned Single Judge primarily on the ground that the Petitioners-Respondents have no *indefeasible right* to be appointed and the learned Single Judge by allowing the writ petition has committed error of jurisdiction by issuing direction in consistent with the law laid down by the Apex Court in case



of **Shankarsan Dash v. Union of India, (1991) 3 SCC 47**. The said contention of the appellant appears to be misconceived in the facts of the present case. The Apex Court in said judgment clearly puts a caution that the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to be appointed.

17. The above judgment has been followed by the Apex Court in the case of *Asha Kaul v. State of J&K, (1993) 2 SCC 573* wherein the Apex Court has observed in paragraph no. 8 as under:

“8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana v. Subhash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : AIR 1973 SC 2216] ; Mani Subrat Jain v. State of Haryana [(1977) 1 SCC 486 : 1977 SCC (L&S) 166 : AIR 1977 SC 276] ; State of Kerala v. A. Lakshmikutty [(1986) 4 SCC 632 : (1986) 1 ATC 735 : AIR 1987 SC 331]) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, — in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government — the Government cannot



quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] where the earlier decisions of this Court are also noted. The following observations of the Court are apposite: (SCC pp. 50-51, para 7).

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha and Others*, [1974] 1 SCR 165; *Miss Neelima Shangla v. State of Haryana and Others*, [1986] 4 SCC 268 and *Jitendra Kumar and Others v. State of Punjab and Others*, [1985] 1 SCR 899.”

18. Considering the nature of work of unskilled labourers, the change made in the educational qualification from 8th pass to 10th pass does not seem to hold any relevance given the very reason that the duties and responsibilities expected to be performed by unskilled labourers would not be affected by raising the educational qualifications from Class 8th pass to Class 10th pass. The fact reveals that the appellants continued



with the selection process for the appointment of Unskilled Labourers till their decision to cancel the same by altering the eligibility criteria vide letter dated 16.04.2015 and vide communication dated 05.05.2015. The respondents had challenged the decision by filing writ petition in the year 2014 much before the decision taken in the year 2015 by the appellant. The respondents remained during the aforesaid period under the expectation that the select list was still in existence. The selection procedure continued for seven years until the appellant in an arbitrary manner had cancelled the selection procedure , so as to defeat the expectation by keeping the selection process pending for seven years and for the first time they brought the above two communication with the so cause filed on their behalf in MJC No. 649 of 2015.

19. There are sufficient material on record to show that the promisee Electricity Board reconstituted as Power Holding Company has caused much prejudice and has frustrated the expectation, in so far as, it has taken a new and different course for appointment which will amount to abuse of power once the legitimacy of expectation is established.

20. The appellants action has caused much prejudice the right of the petitioners-respondents to be appointed and the



same cannot held to be reasonable and fair. The Apex Court in several judicial pronouncements has held that denial of such right amounts to denial of legitimate expectation. The Hon'ble Supreme Court in case of *NOIDA Entrepreneurs Assn. v. NOIDA*, has reiterated the principle on the following terms:

“39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a “democratic form of Government demands equality and absence of arbitrariness and discrimination”. The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

...

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. “Public authorities cannot play fast and loose with the powers vested in them.” A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, “in good faith” means “for legitimate reasons”. It must be exercised bona fide for the purpose and for none other...”]



21. The above judgment has been followed by the Apex Court in case of *State of Jharkhand and Others vs. Brahmputra Metalics Ltd., Ranchi and Another* 2020 SCC OnLine SC 968. The Apex Court in this judgment and relevant paragraphs 36 and 56 are reproduced hereunder:

“36. Under English Law, the doctrine of *promissory estoppel* has developed parallel to the doctrine of legitimate expectations. The doctrine of legitimate expectations is founded on the principles of fairness in government dealings. It comes into play if a public body leads an individual to believe that they will be a recipient of a substantive benefit. The doctrine of substantive legitimate expectation has been explained in *R v. North and East Devon Health Authority, ex p Coughlan* in the following terms:

55.... But what was their legitimate expectation? Where there is a dispute as to this, the dispute has to be determined by the court, as happened in *In re Findlay*. This can involve a detailed examination of the precise terms of the promise or representation made, the circumstances in which the promise was made and the nature of the statutory or other discretion.

.....

56....Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.”

22. Of recent, the Hon’ble Supreme Court in *State of Bihar & Ors. Versus Shyama Nandan Mishra* 2022 LiveLaw



(SC) 449 has held that if the government authority induced an expectation which was substantive, the upsetting of that expectation, through departure from the expected course of action in the absence of compelling public interest, would be so unfair, that it would amount to abuse of power. In this regard following paragraphs are produced hereunder:-

“32. To understand the legal consequences arising therefrom, useful reference can be made to R. V. Inland Revenue Commissioners, ex parte M.F.K. Underwriting Agents Ltd.9 (1989) where Lord Justice of Appeal, Thomas Bingham, while invoking fairness as a rationale for protecting legitimate expectations, expressed the following :-

“If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. ... The doctrine of legitimate expectation is rooted in fairness.”

33. Another facet of denial of legitimate expectations is underscored by the Court of Appeal of England and Wales in the seminal case of Coughlan¹⁰, where the Court preferred to use abuse of power as one of the criteria for testing whether a public body could resile from a prima facie legitimate expectation. In the Court’s opinion, if the government authority induced an expectation which was substantive, the upsetting of that expectation, through departure from the expected course of action in the absence of compelling public interest, would be so unfair, that it would amount to abuse of power. In the present case, the abuse of power is discernible in the State’s disparate decision in encadring the +2 lecturers with the teachers of nationalized schools, notwithstanding the contrary representation through the 1985 notification which created the +2 lecturer posts and the 1987 advertisement under which, the respondents entered service. Such manifest departure from the projected course smacks of arbitrariness and the government action, to selectively protect the interest of the BES cadre, does not conform to rules of justice and fair play.

34. Taking a cue from above, where the substantive



legitimate expectation is not ultra vires the power of the authority and the court is in a position to protect it, the State cannot be allowed to change course and belie the legitimate expectation of the respondents. As is well known, Regularity, Predictability, Certainty and Fairness are necessary concomitants of Government's action and the Bihar government in our opinion, failed to keep to their commitment by the impugned decision, which we find was rightly interdicted by the High Court."

23. In the above case, the Hon'ble Apex Court dismissed the appeal preferred by State of Bihar and affirmed the impugned order passed by Patna High Court.

24. The facts are conspicuous and manifest, in so far as, that the Petitioners-Respondents have been consistently raising their right before this Court from 2014 till date and most of the respondents have crossed the age of more than 38 years (as reflected from the affidavit sworn by the respondent no. 7) to be considered for any other employment and were left in lurch for seven years before the Respondents-Appellants took any decision for cancellation of the selection process. This Court finds that in the interest of justice to award compensation of payment of Rs.1.5 Lakh to be made over to each of the Petitioners-Respondents within a period of four weeks from the date of production of this order failing which they will be entitled for interest at the rate of 9% per annum until actual payment. Consequently, the judgment of learned Single Judge



dated 06.08.2018 is modified to the above extent.

25. The appeal is accordingly disposed off. However, in the facts and circumstances of the case, there will be no order as to costs.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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