

**JHARKHAND PUBLIC SERVICE
COMMISSION**

THE HON'BLE MR. JUSTICE S.J.MUKHOPADHAYA

The Jharkhand Public Service Commission (J.P.S.C for short) issued an advertisement

for Combined Competitive Examination in the newspaper on 2nd January 2003, calling for application to appear in the J.P.S.C Combined Civil Service Preliminary Examination, 2003 for appointment in Jharkhand Civil Service and some other services, the minimum and maximum age limit of 22 and 35 respectively was fixed for general candidates.

The petitioner Md. Tahari of W.P(C) No. 322 of 2003 has challenged sub-clause (iv) of clause (a) of the aforesaid advertisement No.11/2002-03 whereby the cut off date calculating the age has been fixed as 1st August 2002.

The other petitioner Md. Shamim Anjum of W.P (S) No. 289/2003 has prayed for direction on respondents to give relaxation of three years in the upper age limit of 35 years for general categories making it to 38 years.

One of the ground taken is that the State of Jharkhand has not made any appointment since last two years. No such employments have been given to the candidates who were eligible in the year 1999. The other ground, as taken by petitioner Md. Shamim of W.P (S) No. 289 of 2003 is that the present Combined Competitive Examination is continuity of the Combined Competitive Examination held by the Bihar Public Service Commission (B.P.S.C for short). In earlier competitive examination always a retrospective cut off date used to be fixed to calculate the age. For example 1st August 1994 was the cut off date fixed in the 40th Combined Competitive Examination held in the year 1997; 1st August 1995 was the date fixed for 41st Combined Competitive Examination held in the year 1998 and similarly 1st August 1996; 1st August 1997 and 1st August 1998 respectively in the subsequent examination. According to the petitioner such cut off date should have been followed in the Jharkhand State fixing 1st August 1999 as the date to count the age for the Combined Competitive Examination held by the Jharkhand Public Service Commission. But such submission cannot be accepted as the power to relax age for appointment or the power to fix a maximum age for appointment or the power to fix a cut off date for appointment is vested with the Appointing Authority. The State of Jharkhand and not with the High Court.

In the circumstances, there being no merit, both the writ petitions are dismissed.

The Hon'ble Mr. Justice S.J.Mukhopadhyaya

The State of Jharkhand & Ors. ... Respondents (in both the cases)

Petitioner challenged the cutoff date of 1.8.2002 fixed to count the minimum age of 22 year for appointment to the post of Assistant Engineer – High Court in view of Rule 6 of the relevant Rules which fixes the cutoff date dismissed the writ petitions.

1. AIR 1977 SC 629 – State of Punjab Vs. Balbir Singh
2. AIR 1970 SC 1742 – Rattan Lal Co. Vs. The Assessing Authority, Patiala
3. 2002(2) P.L.J.R. 80 – Singhbhum Homoeo Med. College and Hospital Vs. State of Bihar
4. 2002(2) P.L.J.R. 334 – Commissioner Vs. M/s Swarnarekha Cokes & Coal Pvt. Ltd.

In both the cases, as petitioner is common and common question of law involved they were heard together and are being disposed of by this common order.

2. In WPC (C) no 942 of 2003 the petitioner has challenged the cut off date of 1st August 2002 as fixed to count the minimum age of eligibility of 22 years for appointment to the post Assistant Engineer in Public health Engineering Department (PHED for short) and notified vide Advertisement No.12/02-03 with further prayer to direct the respondents to decrease the minimum

age limit as mentioned in Clause IV of the advertisement aforesaid and to accept the application of the petitioner for consideration of his case for appointment against the post of Assistant Engineer along with others

In the other case WP (C) No. 946 of 2003 similar prayer has been made by the petitioner against the minimum age of 22 years as on 1st August 2002 prescribed for appointment in different State Civil Services vide advertisement No. 11/02-03 published by Jharkhand Public Service Commission (JPSC for short).

3. The case of the petitioner is that he passed the matriculation examination in 1995 with 1st Division completed intermediate (Science) and thereafter took admission in B I T Sindri in the year 1998. He completed Engineering course and provided with provisional certificate from BIT Sindri in the year 2002 and is other wise eligible for appointment to the post of Assistant Engineer and the State Civil Services.

The date of birth of petitioner being 9th October 1980 he attained 22 years of age on 9th October 2002. His grievance is that in view of clause IV of Advertisement No. 12/02-03 for appointment to the post of Assistant Engineer in PHE D he has been made ineligible and thus debarred from consideration of his case for appointment to the post of Assistant Engineer though he is otherwise eligible on the date of advertisement.

Similar plea has been taken in respect to the Advertisement No.11/02-03 published by the JPSC in the newspaper “HINDUSTAN TIMES” ON 2ND January 2003 for appointment on different posts of Jharkhand Civil Services and Labour and Employment Services.

4. According to the petitioners there is absolutely no legal reasoning or valid basis for fixing the minimum age limit of 22 years on a particular day of the previous year rather when the advertisement itself is being published in the year 2003 the J P S C should have either fixed the minimum age requirement as 21 years as being done in all other competitive examination or should have fixed such minimum age requirement as on the last date of submission of application.

According to petitioner in most of the cases/advertisement almost all the concerned organization have fixed the minimum age requirement of 21 years for appointment in government services.

5. Mr. Mihir Kumar Jha, the counsel for the petitioner relied on Annexure 5 series, the advertisements published by the Union Public Service Commission on 18th Jan 2003 Public Service Commission Uttar Pradesh in 2003 two advertisement published by the Union Public Service Commission in 2003 Advertisement published by the Electricity Service Commission Lucknow in 2003 Public Service Commission Uttaranchal on 19th August 2002 etc. to suggest that all the Selection Bodies/Public Service Commission have fixed the minimum age of 21 years.

6. Learned Advocate General Jharkhand appearing for the JPSC submitted that the posts in Civil Services used to be filled up as per Bihar Civil Services (Executive Branch) and Bihar Junior Civil Services (Appointment) Rules 1951. The said rule has been adopted by the State of Jharkhand with certain amendments under section 85 of the Bihar Reorganisation Act 2000 vide Notification No. 2/NI -005/2002 KA 6184 dated 9th November 2002.

The minimum age has been fixed as per rule 6 of 1951 rules and the maximum age has fixed as per the amendments made vide Notification no 6184 dated 9th November 2002.

7. So far as appointment to the post of Assistant Engineer P.H.E.D. is concerned the learned advocate General relied on rule 4(a) of the rules regulating the method of Recruitment to the Bihar Public Engineering Service Class II.

8. Under Rule 6 of the Bihar Civil Service (Executive Branch) and the Bihar Junior Civil Services (Appointment) Rules 1951 as adopted by the State of Jharkhand vide Notification No.6184 dated 9th November 2002 the minimum age for appointment in the Civil Services has been prescribed.

The relevant part of the original rule 6 is quoted here under .

“6. A candidate may either be a male or female and-

(a) be under 25 years and over 22 years of age on the 1st day of August last preceding the month in which the examination is held

Provided that-

(i) in the case of candidate belonging to the scheduled castes or the scheduled tribes the upper age limit shall be under 30 years.

The maximum age limit as was prescribed has been enhanced by the State Government.

9. Mr. Mihir Kumar Jha the counsel for the petitioner submitted that the month in which the examination is to be held having not yet fixed the respondents should not have fixed the cutoff age of 22 years as on 1st August 2002. According to him if the examination is held after August 2003 then as per rule 6(a) the candidate having minimum age of 22 years as on 1st August 2003 will also become eligible.

However the aforesaid submission cannot be accepted in view of recent advertisement published by JPSC on 1st April 2003 in the newspaper “HINDUSTAN” Ranchi wherein 6th July 2003 is the date of preliminary examination has been fixed.

10. The minimum and maximum age limit of 22 years and 35 years respectively as has been fixed for appointment in the Jharkand civil service vide Advertisement No. 11/02-03 fell for consideration before this court in the case of Md. Shammi Anjum Vs. State of Jharkhand and others. (WP (s) No 289 of 2003 analogous with case of Md Tahri Vs State of Jharkand and others (WP(C) No. 322 of 2003) in those cases both the petitioners had challenged the cut off date fixed to calculate the maximum age limit and prayed for direction on the State to relax the upper age limit. A bench of this court vide its (unreported) decision dated 22nd January 2003 while rejected the prayer as was made in both the writ petitions held that the power to relax the age for appointment or the power to fix a maximum age for appointment or the power to fix a cut off date for appointment is vested with appointing authority the State of Jharkhand and the high court has no such jurisdiction. Both the writ petitions were dismissed there being no merit.

11. In view of rule 6(a) of the Rules 1951 as adopted by the State of Jharkand and the date of preliminary examination having fixed by JPSC on 6th July 2003 I find that the Respondents have rightly fixed the cut of date 1st of August 2002 to count the minimum age of 22 year and it requires no interference. The prayer made in W.P.(C) No. 942 of 2003 is thus rejected.

12. For appointment to the post of Assistant Engineer in PHED the minimum age has been fixed under Rule 4 (a) of the Bihar Public Health Engineering Services Class II Rules as quoted hereunder.

“4. A candidate must (a) be of an age not below twenty three years and not exceeding twenty five years on the first day of August in the year in which applications are invited provided that if he satisfied the Commission that he requires to further practical training in Engineering he may be of an age not exceeding 26 years on that date provided govt may in special cases relax the age limit provided that in case of candidates belonging to the scheduled castes and backward tribes the upper age limit shall be under 28 years.

13. Mr. Mihir Kumar Jha the counsel for the petitioner submitted that the Bihar Public health Engineering services Class II Rules having not adopted by the State of Jharkhand Under Rule 85 as of the Bihar Reorganisation Act 2002 within 2 years of reorganization of the State i.e. by 15th Nov 2002 the said rule cannot be made applicable for appointment to the post of Assistant engineer in PHED Jharkhand.

Mr. Jha further submitted that the aforesaid Bihar public health engineering services class II rules is not a statutory rule nor any enactment ordinance regulation order bye law scheme notification to fall within the ambit of law as per section 2(1) of the Bihar reorganization act 2000 therefore the question of its continuance of adoption under sections 84 and 85 of the Bihar reorganization act 2000 does not arise.

14. For determination of aforesaid issue it will be appropriate to refer the relevant provisions of the Bihar Reorganisation Act in the said act, ‘law’ has been defined under section 2(1) of which reads as follows :

2(f) law includes any enactment ordinance resolution order bye-law rule scheme notification or other instruments having immediately before the appointed day, the force of law in whole or in any part of the existing state of Bihar.

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“.....The Scheme of the State read as Re-organization Act makes the laws applicable to the new areas until superseded amended or altered by the Appropriate Legislature in the new state. This is what the Legislature had done and there is nothing that can be said against such amendment.”

Even the Administrative Orders made by the Govt of the erstwhile State continue to be in force and effective and binding on the successor States until and unless they are modified, changed or repudiated by the Government of the Successor States was the finding of the Supreme court in the case of State of Punjab Vs Balbir Singh AIR 1977 SC 629 as quoted hereunder.

“.....In our judgement when there is no change of sovereignty and it is merely an adjustment of territories by the reorganization of a particular State the administrative orders made by the govt. of the erstwhile State continues to be in force and effective and binding on the successor State until and unless they are modified changed or repudiated by the govt. of the successor States. No other view is possible to be taken. The other view will merely bring about chaos in the administration of the new States. We find no principle in support of the stand that administrative orders made by the govt. of the erstwhile state automatically lapsed and were rendered ineffective on the coming into existence of the new successor States.”

17. The aforesaid provision of section 2(1) and section 84 of the Bihar Reorganisation Act 2000 fell for consideration before a learned Single Judge of Patna High Court in the case of Singhbhum Homeo med college and hospital Vs State of Bihar reported in 2002 (2) PLJR 80 wherein the Court held as follows:

“3. from a conjoint of the above it is clear that all laws in force immediately before the appointed day ie the day the division of State became effective continue to be applicable notwithstanding the change in the territories and a notification being law as such remains valid and binding so far as the territories comprising the new state are concerned.”

18. Similiar was the view of the Division Bench of Patna High court in the case of Commissioner

Vs M./S Swarnarekha Cokes and Coal Pvt Ltd. reported in 2002 (2) PLJR 334 wherein while it considered the relevant provisions of sections 84 and 85 along with section 2(f) of the Bihar Reorganization Act 2000 held as follows :

“9. It is significant to mention that what had fallen for consideration before the Supreme Court was an administrative order not amounting to law within the meaning of section 2(g) of the Punjab Act held by the Punjab High court with which the Supreme Court agreed. It was on general principles that extended meaning was given to the administrative orders and they were held to be applicable in the successor State. The present case stands on a much higher footing inasmuch as the basis of the claim of the respondents is a statutory order/notification which amounts to law by virtue of the inclusive definition of the term ‘law’ in section 2(f) of the Bihar Act.

10. The above categorical and definite enunciation of law by the Apex Court leaves no room for doubt about applicability and binding nature by the statutory orders/ notification of the Govt of the erstwhile State of Bihar in the successor state of Jharkhand in fact there is no necessity of its being adopted as observed by the learned Judge. Under section 84 unless repudiated or otherwise modified or superseded by a legislative mandates they continue to be applicable and binding in the successor state.

19. This court in its recent (unreported) decision dated 7th April 2003 in the case of Rajiv Kumar Vs the State of Jharkhand and others WPC No. 6341 of 2002 also held that the laws of the combined State of Bihar continue in the successor State of Bihar and Jharkhand under section 84 of the Bihar reorganisation Act 2000 until and otherwise provided by a competent Legislature or competent authority of the successor

20. In view of the aforesaid finding I have no hesitation to held that the Bihar Public Engineering Services Class II Rules whether it is a statutory rule or instruction or executive instruction or order it is still in force and binding on both the successor State s of Bihar and Jharkhand until and unless suitable provision is made by the competent legislature or the competent authority of the State of Jharkhand.

21. This court has noticed the provision of rule 4(a) of the Bihar Public Health Engineering Services Class II Rules wherein the minimum age of 23 years is prescribed on the 1st day of Aug in the year in which applications are invited learned advocate general while accepted that 22 years is the minimum age prescribed in the advertisement no 12-02-03 as on 1st August 2002 rightly clarified that it will not affect any of the candidate in any manner the advertisement having published in the year 2003 and as all the eligible candidates will attain the age of 23 years as on 1st August 2003 as per the advertisement.

22. In the aforesaid background the petitioner being not eligible as per clause 4(a) of the Bihar Public health engineering services class II rules or the advertisement, no relief can be granted in his favour.

23. There being no merit both the writ petitions are dismissed. However, there shall be no order as to costs.

D.D. 25.6.2003

The Hon'ble Mr. Justice S.J.Mukhopadhyaya

Vs.

State of Jharkhand & Ors. ... Respondents

Appointment – Whether selection and recommendation made by Bihar P.S.C. is binding on the State of Jharkhand? – No

Petitioner who has been declared successful by Bihar P.S.C. sought for direction for issuing appointment order – The High Court in view of the decision in Smt. Chaya Singh Vs. State of Jharkhand reported in 2002 (1) J.L.J.R. 395, dismissed the writ petition.

Held:

In view of the decision in the above cited case, the Court held that the recommendations made by Bihar P.S.C. in the matters of appointment are not binding on the State of Jharkhand since both the States have not agreed for joint Public Service Commission and also held that mere existence of name in the panel/select list or existence of vacancies do not confer any legal right on a candidate for being appointed.

ORDER

This writ petition has been preferred by petitioner for direction on the respondents to appoint him on the vacant posts of primary teacher, who have been declared successful by the Bihar Public Service Commission (B.P.S.C. for short).

The question whether any appointment in the State of Jharkhand on the recommendation of B.P.S.C can be made after re-organisation of the State or not fell for consideration before this Court in the case of Smt. Chaya Singh Vrs. State of Jharkhand reported in 2002 (1) J.L.J.R 395.

In the said case, the court while held that the recommendation made by BPSC in the matter of appointment are not binding on the state of Jharkhand since both the States have not agreed for joint Public Service Commission, also held that mere existence of name in the panel/select list or existence of vacancies do not confer any legal right on a candidate for being appointed.

In view of finding of the Court in the case of Chaya Singh (supra), no direction can be given to the State of Jharkhand for appointment of petitioner as Primary Teacher on the recommendation of B.P.S.C.

The Writ petition is dismissed.

However, this order will not stand in the way of petitioner to claim for appointment as primary teacher in the State of Bihar.

IN THE HIGH COURT OF JHARKHAND**Writ Petition (PIL) No.2769 of 2003 & connected cases****D.D. 29.9.2003****Hon'ble Mr. Chief Justice Sri. P.K.Balasubramanyan****Hon'ble Mr. Justice R.K.Merathia****Jharkhand Justice Forum & Anr. ... Petitioners****Vs.****State of Jharkhand ... Respondents****Jharkhand P.S.C. (Conditions of Service) Regulations, 2000 – Composition of Public Service Commission:**

This P.I.L. is directed against the composition and competency of Jharkhand P.S.C. to proceed with the selection process initiated by P.S.C. for recruitment to the post of Primary Teacher under Jharkhand Primary School Appointment Rules 2002 – After the formation of new State of Jharkhand the Governor Promulgated J.P.S.C. (Conditions of Service) Regulations 2000 which provided for appointment of Chairman and 4 Members – Only Chairman and a Member were appointed and they initiated recruitment process and completed the Examination – High Court held that unless and until the Chairman and 4 Members of the first Jharkhand P.S.C. are appointed further process of selection and recommendations should be kept in abeyance – However by applying de facto doctrine upheld the action taken upto the stage of conducting the examination but prevented Chairman and Member from making selection or recommendation.

Held:

Clause 3(i) of J.P.S.C. (Conditions of Service) Regulations 2000, provided that the Commission shall consist of a Chairman and 4 Members. The first Public Service Commission in terms of Article 315 and Regulations framed under Article 318 of the Constitution can come into being only when a Chairman and 4 Members were appointed by the Governor. Since this was the first body there has to be a full constitution of it for its coming into existence in the eye of law. Mere appointment of a Chairman and a Member is not sufficient to create a Public Service Commission of the State.

Cases referred:

1. AIR 1970 Kerala 165 – P.S.Menon Vs. State of Kerala
2. AIR 1971 Assam & Nagaland 136 – Full Bench of the Assam High Court in Devajit Vs. Harendra Naik
3. AIR 1972 SC 1812 – Ishwar Chandra Vs. Satya Narayan Sinha
4. 1981 SC 1473 – Gokaraju Rangaraju Vs. State of Andhra Pradesh
5. AIR 1987 SC 454 – Ashok Kumar Yadav Vs. State of Haryana
6. AIR 1993 SC 1906 – Jay Shankar Prasad Vs. State of Bihar
7. I.L.R. 1997 Karnataka 3335 – Ishwarappa Vs. State of Karnataka
8. AIR 2003 Karnataka 269 – Ramaiah Vs. State of Karnataka

ORDER

1. These writ petitions are a sequel to writ petitions, W.P (S) No.5170 of 2002 and W.P (C) No.6135 of 2002 filed before this Court. The judgement in those writ petitions is Annexure-A to the counter affidavit filed on behalf of the respondents in writ petition W.P (C) No.2566 of 2003 (since reported in 2003 (1) JLJR 322). The State of Jharkhand had introduced the Jharkhand Primary Schools appointment Rules, 2002 to regulate the appointment procedure of teachers in primary schools. Rule 4 of the said Rules provided a lower and upper age limit for appearing in the examination to be held as part of the selection process of teachers. But a concession was given by the said Rule of the effect that there will be no such limitation on the upper age for the first examination to be held. This was on the basis that for a number of years, no examination had been held or selection made and all those who had acquired Teachers' Training should have an opportunity to appear in the first examination. It was intended to be a one-time concession. It meant that even a person who would attain the age of superannuation within six months of being selected or appointed, could appear in the examination. Rule 8 thereof provided that the knowledge level for the written examination for selection would be the Middle Level Examination. The non-fixation of an upper age limit for candidates and fixing the knowledge at Middle level academic standard, were challenged before this Court in those writ petitions. This court struck down the unbridled concession given regarding the upper age limit and the fixation of Middle Level as the standard for the written test to be conducted. The Division Bench declared

void the non-prescription of a bar in respect of the upper age limit and the fixation of Middle level examination knowledge as the standard for the written test to be conducted on the ground that the non-prescription of an upper age limit and the fixation of Middle level examination knowledge for the candidates, are arbitrary, suffer from non-application of mind and not based on any intelligible differentia and had no nexus with the object sought to be achieved. The Division bench thus found both those provisions violative of Article 14 of the Constitution of India, though the said Article was not specifically mentioned. The court also declared that the said two stipulations were against public interest. The said decision of the Division bench became final.

2. The legislature thereupon amended Rule 4(d) and Rule 8(d). The amended Rules provided a lower and an upper age limit and for the first examination provided for relaxation of age by five years. By rule 8(d), it enhanced the standard of examination of Primary Teachers Training Examination. Except in WP (C) No. 2566 of 2003, wherein various questions are sought to be raised, in the other writ petitions, the essential prayer is for the issue of a writ of mandamus directing the state to relax the upper age-limit indefinitely or, not to restrict the one-time relaxation to five years as has now been done by the amendment. It appears to us that the prayer for the issue of a writ of mandamus directing the one time relaxation indefinitely is clearly barred by the decision of the Division Bench in the earlier writ petitions. Rule 4(d) as amended has been introduced to meet the objections upheld by the Division Bench in the earlier writ petitions. It is not shown how the limit of one-time age relaxation of five years is in any manner illegal or unconstitutional. A reasonable explanation has been given by the state that there were no appointments for five years. Therefore, it is clear that the prayer in the writ petitions for permitting those who are beyond the age limit prescribed by Rule 4(d) to take the examination is clearly ineligible and cannot be granted. The writ petitions raising only that contention and containing only that prayer have only to be dismissed. Similarly, the prayer to ignore Rule 8(d) of the Rules fixing the Standard as the Primary Teachers Examination instead of Middle Standard, cannot also be sustained in the light of the earlier division Bench decision. The court had held that the fixation of the standard of the written examination at Middle Standard Level was against public interest and unconstitutional. Thus, in the light of the fact that the standard has now been raised,

at best the complaint could be that it should have been higher. Certainly, a plea that it should be reduced cannot be entertained in the light of the prior decision. Therefore, that prayers also ineligible.

3. The challenge on the ground that the examination level should have been higher may have some merit considering the challenges posed by modern educational needs and standards. But it is explained on behalf of the state that this is intended only as a test of the ability to teach and the educational qualification has been separately fixed. Though we are inclined to think that the educational qualification should at least be a graduation and the standards of the examination should also be correspondingly raised, we cannot say that what is now fixed is so irrational, unreasonable or that it has no nexus with the object sought to be achieved. Hence, we are not satisfied that the said rule can be struck down. But we direct the respondents to consider the need to raise the qualification and the standard for future examinations. If the state wants its citizens to progress, the state should ensure that quality education is imparted to children by well-qualified teachers. The appointment of a teacher should not be considered merely as providing yet another job opportunity even to the under qualified and the unqualified.

4. In WP (PIL) No.2769 of 2003, an important question has been raised. The state of Jharkhand came into existence on 15.11.2000 in terms of the Bihar Reorganization Act, 2000. The existing State of Bihar, a phrase coined by the Bihar Reorganisation Act, had a Public Service Commission, as envisaged by Article 315 of the Constitution of India. It was the Bihar State Public Service Commission. Section 77 of the reorganization Act provided that on and from the appointed day, the Public Service Commission for the Existing State of Bihar shall be the Public Service Commission for the state of Bihar, meaning the reorganized State of Bihar as distinct from the State of Jharkhand. On a clarification sought by the Government of Bihar on the status of the Public Service Commission, vis-à-vis the State of Jharkhand, the Government of India clarified that the Government of Jharkhand will set up its own State Public Service Commission under Article 315 of the Constitution of India.. Thus, it became necessary for the state of Jharkhand to bring into existence a Public Service Commission for the state. Under Article 318 of the Constitution, the Governor of the state of Jharkhand had the power to make regulations

determining the number of the members of the Commission and their conditions of service and to make provisions for the staff of the Commission and their conditions of service. On 16.1.2001, the Governor promulgated the Jharkhand Public Service Commission (Conditions of Service) Regulations, 2000. Part II of the regulation by clause 3(i) provided that the Commission shall consist of a Chairman and four other members. There was a proviso to the effect that in the case of absence of one or more members on leave or otherwise, the remaining member/members, as the case may be, shall constitute the Commission. Regulation 3(ii) gave power to the Governor to appoint an additional member when a member proceeded on leave preparatory to demitting office. On 19.1.2001, the state Government passed a resolution to the effect that on and from that day, there shall be an independent State Commission known as the Jharkhand Public Service Commission. The resolution envisaged publication of the same in the Gazette and it was so published. The State of Jharkhand did not straightway appoint a Chairman and the four other members as envisaged by the Regulations. But, on 25.1.2002, the Chairman of the Public Service Commission was appointed. This was followed by the appointment of a member of the Commission. Though the Public Service Commission could have been constituted with only the Chairman as the member or only with the Chairman and Member in terms of Article 316 of the Constitution of India, here, what happened was that as against the strength determined by the Regulations framed under Article 315 of the Constitution read with the Regulations framed under Article 318 of the Constitution of India, only the chairman and a member were appointed leaving the three other positions unfilled. A Division Bench of this Court dealing with a public interest litigation regarding the creation of the Jharkhand Public Service Commission, in its order dated 13.5.2002 commented on this aspect. The delay in not appointing a fulfilled Commission and in appointing a Chairman and one member alone was commented upon. Even then, the State Public Service Commission has not been constituted with the full complement of members as envisaged by the Regulations. Pending these writ petitions, the Governor named two other members whose appointments are to come into effect when they assume charge and even today, there has been no appointment of the fourth member so as to bring into existence the full body as envisaged by Regulation 3(i) of the Regulations. It is the contention of the petitioners that a Public Service Commission for the State of Jharkhand has never come into existence as envisaged by Article 315 of the Constitution, read with the Regulations framed under Article

318 of the Constitution of India. Only a body consisting of a Chairman and four members as envisaged by the Regulations could constitute the first Public Service Commission in the eye of law and no such body having come into existence at all, the mere appointment of a Chairman and a member could not be considered sufficient to bring into existence the first Public Service Commission for the State.

5. The Chairman took charge on 29.01.2002 and the member took charge on 6.2.2002 and an advertisement was issued on 28.08.2002 on behalf of the Public Service Commission by the Chairman and the Member. But the proceedings could not be continued pursuant to that advertisement. In view of the intervention by this Court. On 21.4.2003, a supplementary /second advertisement was issued calling for applications based on the amended Rule 4(d) and Rule 8(d) of the Jharkhand Primary Teachers Appointment Rules, 2002. An examination was conducted on the basis of the applications received. It is said that about 60,000 candidates had taken the examinations out of some 70,000 odd candidates who had applied. It is alleged in the writ petition that there were serious irregularities in the conduct of the examinations and such irregularities also vitiated the process of selection calling for interference by this Court. We shall deal with that aspect later. In the present context what is to be noted is that the examination was got conducted by the Public Service Commission, which had only a Chairman and a member, as against a Chairman and four Members as envisaged by the Regulations. Pending the writ petitions, it is submitted that the evaluation work is over and the results are yet to be announced and they have not yet been announced since a decision by this court in these writ petitions is awaited.

6. According to counsel for the petitioners, the first Public Service Commission in terms of Article 315 of the Constitution of India and the Regulations framed under Article 318 of the Constitution can come into being only on a Chairman and four members being appointed by the Governor. Since this was the first body, there has to be a full constitution of it for its coming into existence in the eye of law. The mere appointment of a Chairman and a member is not sufficient to create a Public Service Commission for the state of Jharkhand. The proviso to Regulation 3(i) relates only to a member absenting himself on leave or other wise in a properly constituted Public Service Commission. The proviso cannot have any application when the very Public

Service commission as envisaged by the Regulations had never come into existence at all. It is pointed out that under the Appointment Rules, the advertisement has to be issued by the Public Service Commission, examinations has to be conducted by the Public Service Commission and the selection has to be made by the Public Service Commission. In the case on hand, since the advertisement was issued only by the Chairman and a member, and not by the Public Service Commission as contemplated by the Regulations, the advertisements was void and the examination to be conducted thereon was also void. In the event, the examination process. It is only if the commission is constituted by the Regulations, the advertisement is valid.

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8. We find it difficult to appreciate why a newly born state should create such difficulties for itself and for the people of the State. Under Article 315 of the Constitution of India, the State had to have a State Public Service Commission, unless, of course, it chose to have a joint public service commission or to entrust the work to the Union Public Service Commission as contemplated by that Article. Here, the State did want a State Public Service Commission of its own as is clear from the resolution notified on 19.1.2001. Even earlier, on 16.1.2001, the Governor had framed Regulations as envisaged by Article 318 of the Constitution prescribing the composition of the Commission and providing that it shall consist of a Chairman and four members. A State Public Service Commission is a constitutional body and it should consist of suitable and qualified persons of unimpeachable integrity and consistent with the proviso to Article 316 (1) of the Constitution. Here, the State waited for almost an year after resolving to constitute the State Commission and issuing the Regulations, to notify the appointment of a Chairman of the Commission. Thereafter, it notified another member still, the other three members as envisaged by the Regulations were not appointed. In fact a Division Bench consisting of the then Chief Justice commented on this aspect in its orders dated 13.5.2002 in W.P (PIL) No. 2727 of 2002. Even then, there was no attempt to bring into the existence the full fledged Commission. During the pendency of these writ petitions, two other members were notified, still leaving one position vacant or unfilled. Thus, till date, there has been no constitution of a State Public Service Commission with the requisite strength prescribed by the Jharkhand Public Service Commission (Condition of Service) Regulations, 2000. One would have expected a State that came into existence after 50 years of the Constitution, to be conscious of the need to maintain constitutional properties and to act in terms of the Regulations it had framed for itself. We can take judicial notice of the fact that a number of writ petitions are pending and are being filed in this court challenging the propriety of one action or another by the State and it is time the Government sheds its lackadaisical approach and insists on strict compliance with the requirements of the Constitution and all laws or Regulations promulgated or framed by it or by the Parliament. A due adherence to the requirements as envisaged by the Regulations could have avoided many a litigation, including the present ones.

9. But now that the State has chosen to follow the course it has chosen, we have necessarily to

decide the question that is posed for our decision. The main thrust of the argument of the learned Advocate general was that it was open to the Governor to appoint a Chairman for the State Public Service Commission and a Chairman by himself could have performed the duties of the Public Service Commission in terms of Articles 315 and 316 of the Constitution. That may be so. But under Article 318 of the Constitution, the Governor of the State has a right to frame Regulations to determine the number of members of the Commission. Since the State Public Service Commission was being born, necessarily, the requirement of the Regulations that it shall consist of a Chairman and four others had to be fulfilled. Admittedly, this has not been done even today. According to the Advocate General, the Regulation to the effect that the State Public Service Commission shall consist of a Chairman and four members was only directory and the constitutional requirement would be met by the notifying of the Chairman and members to act as the Public Service Commission. This has to be examined.

10. We are inclined to think that unless compelled, the Regulations made by the Governor in terms of Article 318 of the Constitution must be read in harmony with Articles 315 and 316 of the Constitution. May be, without framing the Regulations, the Governor could have appointed a Chairman and a Member to act as the Commission. But that has not happened. Here, the Regulations was framed first, fixing the strength of the State Public Service Commission, as one Chairman and four Members. Normally, the Court should not consider any constitutional provision or the Regulations made under it, a dead letter. Therefore, endeavour must be made to read the constitutional provisions in harmony with the Regulations framed and if so read, it is clear that for the first State Public Service Commission to come into existence in this State, a Chairman and four other members have to be appointed so as to fulfill the requirements of the Constitution. When something is to be done in a manner provided for by a Statute, the same should be done in that manner or not at all. No direct decision was brought to our notice arising out of a situation like the one obtaining here. But the learned Advocate General brought to our notice a decision of the full Bench of the Assam High Court in *Devajit Vs. Harendra Nath* (AIR 1971 Assam & Nagaland 136). He drew our attention to an earlier decision referred to and dealt with therein, *A.C Sarkar Vs. State of Assam* (Assam Law Reporter 1969, Assam & Nagaland 202). He referred to the following passage from the decision:-

“The Governor at a particular time may not think it fit to fill in the vacancy and yet the Commission which is existing with the Chairman and another member does not cease to be a Commission under Article 316(1) read with Article 318(a) and Regulation 4. The Commission which interviewed the petitioners was perfectly competent under the law to exercise its functions.”

11. The Advocate General pointed out that the petition for Special Leave to appeal against that decision was dismissed by the Supreme Court, though the Supreme Court did not deal with the question of validity of the composition of the Public Service Commission. On an examination of the facts of that case, it is seen that *A.C. Sarka* was a case where a full fledged Commission was constituted, of a Chairman and three other members as per the Regulations, but a particular interview set up by the Commission was conducted by the Chairman and another member and in absence of the remaining two members, and the question involved was whether that was legal. It appears to us that the said decision is not an authority for the proposition that even while constituting the first State Public Service Commission, the composition as envisaged by the Regulations framed under Article 318 of the Constitution need not to be adhered to. The further observation in the Supreme Court Judgment to the effect, “we may also in this context notice that Article 316 (1-A) provided for the contingency when the office of the Chairman of the Commission becomes vacant. This would go to show that there is no illegality per se of the Commission continuing to function with one member less under certain circumstances. Article 317(2) also makes provision for another contingency under some other specified circumstances” also indicate that was not a case where even at the inception there was no proper constitution of the State Public Service Commission as envisaged by the Regulations in that behalf.

12. Article 315 of the constitution only provides that there shall be a Public Service Commission for each State. Article 316 confers power on the Governor of the State to appoint a Chairman and other members of the State Public Service Commission. The proviso thereof directs that as nearly as may be, one-half of the members should be persons who had held office for at least 10 years under the Government of India or the Government of a State prior to the date of their appointments. Of course in a case where the appointment of a member was challenged before

the S.C. on the ground that such appointment would go against the proviso, the challenge was not upheld by the Supreme Court by observing that the proviso to Article 316 of the Constitution was directory.

13. In *Jay Shankar Prasad Vs. State of Bihar* (AIR 1993 SC 1906), all that the Supreme Court said was, “it cannot be said that the proviso to Article 316(1) requiring that as nearly as may be, one-half of the members of the Public Service Commission shall be from service category leaves no option to the appointing authority under any circumstances what so ever to allow reduction of the representation from that category and a breach of the said requirement by reason of appointment of a member from non-service category vitiates such appointment or the duties performed by such appointees as a member of the Public Service Commission.” Their Lordships took note of the expression “as nearly as may be” in the proviso to Article 316(1) of the Constitution to come to the above conclusion. From this it does not follow that even a truncated constitution of the Commission at the inception, could be held to be valid on the ground that the Regulations framed under Article 318 of the Constitution prescribing the composition of the Commission is also not mandatory. Of course, if such a body as envisaged by the Regulations is constituted and if it does not strictly conform to the direction in the proviso to Article 316(1) of the Constitution, we may be able to say that the Constitution of the Commission is not bad, even though the proviso has not been satisfied, since the requirement of the proviso is not mandatory. The said analogy, in our view, cannot be extended to find that the first State Public Service Commission created, itself need not satisfy the mandate of the Regulations framed under Article 318 of the Constitution. In our view, there would be a difference between the first constitution of the State Public Service Commission and its subsequent re-constitution or the supplying of the omissions as and when they occur. Once a valid body has come into existence, the fact that a member has resigned or the fact that one or two members are absent during any particular decision taken by the Commission, may not invalidate the proceedings. It is here that the proviso to Regulation 3(i) of the Regulations also may have operation. What it provides for is that in case of absence of one or more members on leave or otherwise, the remaining member/members, as the case may be, shall constitute the Commission. We think that the proviso envisages a case where the body has come into existence as envisaged and thereafter absence occurs of one or more of the members on the ground of

leave or otherwise. We may incidentally indicate that at the relevant time, even a majority of members of the State Public Service Commission have not been appointed. The majority obviously would at least be three out of five. Therefore, the principle recognized in *Ishwar Chandra Vs. Satya Narayan Sinha* (AIR 1972 SC 1812) that a meeting of the majority of the members of a body would be a valid meeting and the decision taken therein would be valid, relied on by the learned Advocate General does not have much relevance here.

14. A serious challenge was mounted on the qualifications of the Chairman, the member and the persons to be made members of an august Commission, like the State Public Service Commission. It was contended that the Chairman was an employee of the All India Radio, totally unfamiliar with the work that is expected of the Chairman of a State Public Service Commission and that the member was only a lecturer of an affiliated college and was not even holder of an office under the State Government. It was submitted that he was appointed merely on political considerations and appointments of such a person would certainly not enhance the prestige of a constitutional body, like the State Public Service Commission. Respondents 6 and 7 refute these allegations and claim that they are qualified to be appointed and once they are appointed, they could only be removed by the Governor in terms of Article 317 of the Constitution and even a writ of quo warranto could not be issued by the High Court. Learned Advocate General contended that the challenge to the competence of the persons appointed could not be entertained by the Court. He relied on the observations in *Ashok Kumar Yadav Vs. State of Haryana* (AIR 1987 SC 454) in support. In that decision, the Supreme Court observed that the High Court was not competent to undertake an enquiry into the question whether the Chairman and members were men of integrity, Caliber and qualifications. Even assuming that they lacked integrity, caliber and qualifications, their appointment would not be invalid, when constitutional and legal requirements with regard to their appointments were fulfilled. The said decision is also an authority for the position that a collateral challenge to the appointment of a Chairman and a Member could not be entertained by the High Court. But still, we feel emboldened to say that it is the duty of those concerned with such appointments to ensure that the men appointed to such constitutional bodies are men of spotless reputation, unimpeachable integrity possessing good, if not outstanding, academic qualifications and not actively involved with one political party or the other. In the

light of the decision brought to our notice by the learned Advocate General, we feel disinclined to further pursue this aspect of the case urged by the petitioners. We may observe that the credibility of a body depends on the members who compose it.

15. Thus, though the Court may not interfere with the composition of a State Public Service Commission and may not invalidate its actions even if all the members constituting it do not act together, this Court can and has to consider whether the first State Public Service Commission as envisaged has come into existence at all. On considering that question, we are of the view that the Jharkhand State Public Service Commission as a body is yet to be constituted. Going by the relevant provisions of the Constitution and the Regulations framed, the constitution of the First Commission will be complete and effective only on the Chairman and the four members being initially appointed. The Constitution of the very body is different from the supplying of omissions in it. Since a proper body has not yet been constituted, we have to hold that the State Public Service Commission has not yet come into existence as contemplated. For it to perform its duties properly, the other members contemplated have also to be appointed as envisaged by the Regulations.

16. What is the consequence of our finding that the first State Public Service Commission for the State of Jharkhand has not yet come into existence in the eye of law, is the question now to be considered. No, doubt, the Jharkhand Primary Teachers Appointment Rules envisage that an advertisement for the selection be issued by the State Public Service Commission, evaluation of answer sheets be got done by the State Public Service Commission and the selection process completed by the State Public Service Commission. The contention is that the advertisement was issued by a truncated Public Service Commission which was still born and the examinations were also got conducted through such a Commission and consequently, the entire exercise must be declared illegal and invalid. We think that the de facto doctrine approved by the Supreme Court would ward off this challenge. In *P.S Menon Vs. State of Kerala* (AIR 1970 Kerala 165), a case relating to the validity of selections made by a State Public Service Commission, whose constitution was challenged, a full Bench of the Kerala High Court observed thus:

“This doctrine was engrafted as a matter of policy and necessity to protect the

interest of the Public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers in fact, whose acts, public policy requires should be considered valid.”

17. The Supreme Court in *Gokaraju Rangaraju Vs. State of Andra Pradesh* (1981 SC 1473) applied the de facto doctrine to uphold the judgment of a Sessions Judge whose appointment was subsequently declared invalid on the ground that it was in violation of Article 233 of the constitution. Their Lordships held that the de facto doctrine is now well established that the acts of officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding as if they were the acts of officers de jure. It was further observed that a judge de facto is one who is not a mere intruder or usurper, but one who holds office under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, the judgment pronounced by him and acts done by him when he was clothed with powers and functions of the office, albeit unlawfully have the same efficacy as judgment pronounced and acts done by a judge de jure. Such is the de facto doctrine born of necessity and public policy to prevent needless confusion and endless mischief. A Full Bench of the Karnataka High Court in *Ramaiah Vs. State of Karnataka* (AIR 2003 Karnataka 269) had occasion to consider this aspect. There, the question involved was the validity of the establishment of the tribunal itself as distinct from the appointment of a judge. In spite of holding that the doctrine of de facto judge had no application to the case since it related to the very Constitution of the body itself, the Full Bench still applied the de facto doctrine while saving the orders passed by the said Tribunal. In fact, their Lordships specifically overruled an earlier decision of a Division Bench in *Ishwarappa Vs. State of Karnataka* (I.L.R 1997 Karnataka 3335) wherein; the Division Bench had applied the doctrine of de facto judge, for savings orders passed by a Tribunal, the very establishment of which itself was questioned. The Full Bench held that the doctrine of de facto judge had no application to the case, which related to the very constitution of the Tribunal itself. But even then, the Full Bench considered whether a similar principle could not be applied to save an order of a Tribunal which had not properly come into being in the eye

of law, but which had rendered certain decisions. The Court after referring to passages from American jurisprudence, *corpus juris secundum* and certain other decisions including the decision of American Supreme Court in *Extein Norton Vs. Shelby County, State of Tennessee*, 118 U.S 178, held that orders and judgment delivered by a Land Tribunal created by the Karnataka Inams Abolition Laws (Amendment) Act, 1979 which was subsequently declared unconstitutional and *ultra vires*, are saved from challenge to their validity based on the *facto doctrine*. The Court held that while the correctness of the orders and decisions rendered by such Tribunal could be examined on merits in each case, the same cannot be set aside or quashed merely because they had been delivered by a Tribunal established under an enactment which was, by a subsequent judgment, declared to be unconstitutional. The case on hand is also one where a constitutional body had not come into existence as envisaged by the very Regulations framed under Article 318 of the Constitution. What has happened is that a Chairman and a member out of a Chairman and four members envisaged, had proceeded to act, notified the examinations and had held the examinations. Out of some 70,000 odd candidates who had applied, about 63,000 candidates had written the examination thus conducted for about 10,000 posts. It is submitted by the learned Advocate General that the process of evaluation is also complete and what remains is only the recommendations to be made for making appointments. We think that it will be public interest and the interests of all those who had taken the examinations to uphold the steps thus far taken, by applying the *de facto doctrine*. The *de facto doctrine* is a doctrine of convenience and is adopted in public interest. We must notice here the fact that the examination in questions were conducted amid tight security and threats of violence were unleashed by some unruly elements for their own reasons. A few lost their lives in violence. Learned Advocate General has, therefore, a point when he urges that undo the steps taken until now not only mean waste of substantial public funds, inconvenience to about 63,000 candidates, but also a possibility of the examination for selection of teachers being postponed indefinitely. He urges that the last examination was held more than five years back and there are a number of vacancies of teachers in various schools. Article 21A of the Constitution relied on by the counsel for the petitioners itself shows the need to have teachers to impact education at the primary and secondary schools level. We find substance in these submissions. These practical considerations incline us to the view that we would be justified in applying the *de facto doctrine* to the case on hand. After all, what have been performed

by now are the issuing of the advertisement, holding of the examination and getting the papers valued by qualified persons. We therefore take the view that what has been done thus far cannot be and not be nullified only on the ground that the State Public Service Commission was not fully constituted and the Chairman and a member who alone were appointed could not validly constitute the first State Public Service Commission in the eye of law.

18. Having said thus, we also think that it is proper to restrain the State Government, and the Chairman and the Members who have been appointed to the Public Service Commission, which is yet to be constituted as envisaged by the Constitution and the Regulations, from making recommendations for the appointments until the Public Service Commission as envisaged by the regulations framed under Article 318 of the Constitution, in fact, has come into existence. In other words, until the State Public Service Commission consisting of the Chairman and four Members comes into existence *de facto* and *de jure*, further steps by the Commission should be kept in abeyance. We, therefore, direct that unless and until the Chairman and the four members of the first Jharkhand State Public Service Commission are appointed, the further process of selection and recommendations by the State Public Service Commission would be kept in abeyance. Further steps will be taken and the recommendations made only after a full fledged State Public Service Commission comes into existence.

19. There is challenge to the mode of the examinations conducted by the Public Service Commission, including a charge that one of the Coordinators appointed for the examination was the brother of the member. There was a further contention that no proper examination halls/ places were chosen for the examination and candidates did not even have proper places to sit to take the examination which was held in a most haphazard manner. Apart from the allegations in that behalf and some newspapers cuttings said to support such allegations, no concrete material was brought before us to enable us to accept such a contention to invalidate the examination on the ground that it was vitiated by serious irregularities. We may notice that no candidate who took the examination has come before us questioning the mode of the conduct of the examination. We are not satisfied that adequate materials are available to justify our interference with the examination already held. Same is the position regarding the process of evaluation of the answer

papers sought to be raised on behalf of the petitioners. On the whole, we are satisfied that the examination already conducted could not be interfered with on these grounds.

20. In one of the writ petitions, this Court issued a direction that the three writ petitions in that writ petition, would be permitted provisionally to take the examination or to write the examination even if they did not fulfill the age requirement or the age qualification, subject to the result of the writ petition. It appears that some unruly elements on the strength of that order forced some of the officers or the authorities to issue them hall tickets to appear in the examination even though they were over aged and did not qualify as per the amended rule issued pursuant to the earlier decision of the Division Bench. It is made clear that those who did not possess the requisite qualification as per the amended rule 4(d) of the Rules, even if they have written the examinations, would not be considered for recommendation, selection or appointment by the Commission or by the Government. Appearance of those who did not possess the requisite qualifications or the age qualification, will be ignored by all those concerned with the process of selection and appointment.

21. In the result, the writ petitions, other than WP (PIL) No. 2769 of 2003 are dismissed. W.P. (PIL) No. 2769 of 2003 is partly allowed with the direction to the State of Jharkhand and State Public Service Commission not to proceed with the recommendatory process until the full State Public Service Commission as envisaged by the Jharkhand Public Service Commission (Conditions of Service) Regulations, 2000 comes into existence. It is made clear that the steps so far taken and the examinations conducted will be treated as valid. There will be no order as to costs.

to the petitioner, the examination conducted at the Second Stage for 23 optional subjects were all cancelled for such reasons and on those very same reasons the concerned examination at first sitting held on 17.8.2003 was also liable to be cancelled. Learned Advocate General appearing on behalf of the respondents submitted that the examinations in the second sitting regarding 23 Optional Subjects were cancelled for other reasons like the question paper not reaching the examination centers in time, examinations not being held in all centers at the same time and such other substantial reasons. He pointed out that there was no case that there was any such problem connected with the first sitting in the General Study examination held on 17.08.2003. He reminded the Court that in such academic matters the Court can interfere only if some thing had taken place, which would shock the conscience of the Court.

What we find is that it was an objective type of question paper and the total marks was 150. Going by the writ petition, there was some confusion regarding answer in respect of a few questions which would have involved some 5 to 10 marks altogether. Even assuming for the purpose of argument that there was such confusion, we do not think that it would be proper or just in public interest to cancel the entire examination on that score. We may indicate here that on hearing counsel and on scrutinizing the alleged errors, variations, mistakes or defects pointed out by him in the question paper concerned, we are not satisfied that there are in fact such defects as to warrant interference by this Court. In any event we have to say that there was no such shocking irregularity or gross irregularity which would justify our interference. On the whole, we are not satisfied that our power of judicial review should be exercised as to nullify this particular examination.

It is clear now from the arguments set out before us that the examination in the second sitting in the optional subjects had to be cancelled for various irregularities that occurred due to absence of care on the part of those who are entrusted with the task of holding such examinations. One would expect a body like the Jharkhand Public Service Commission, to be capable of holding examinations properly and in time and at same time ensuring fairness in their conduct, preventing attempted malpractices. However now that the matter has come before us, we direct the respondents and especially the Jharkhand Public Service Commission to ensure that when they

hold re-examinations of the second sittings in the optional subjects, they should ensure that there is no leakage of question papers, that the question paper reach all the centers duly packed and sealed and in time; that the question papers are opened at the various centers only on time just before their distribution to the candidates; that the examination are started simultaneously and at the same time in all the centers in the State and that the papers are got valued by persons who are qualified to do so. We think that these directions would ensure that the examinations in optional subjects, to be conducted again, are conducted in the proper manner. It is also necessary for the Jharkhand Public Service Commission to deal with those who indulge in unfair practices or malpractices in the examinations, strictly and impose on them exemplary punishment so that they will not be tempted to repeat such improper practices which vitiate the whole process of such examination in the State.

Learned counsel for the petitioner relied on a decision of the Madhya Pradesh High Court in *Vivek Jain verses The Professional Examination Board, Madhya Pradesh, Bhopal & others* (AIR 1994 MP 164) to submit that, the Court had interfered with the examination when irregularities similar to the ones involved here were unearthed. What is seen is that the Court had found that the question bearing two or more equally correct answers out of four possible answers were set and this was contrary to the scheme of an objective test. We are not in a position to follow the ratio of that decision since we find that the errors involved here are not of such a nature as to go to the very root of the purpose of the examination as appears to have happened in that case. Therefore, nothing turns of on the decision relied upon by the petitioner.

We dismiss the writ petition subject to the directions issued to the Jharkhand Public Service Commission as above.

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P No. 5440 of 2003 With W.P No. 5222 of 2003****D.D. 2.12.2003****The Hon'ble Mr. Justice M.Y.Eqbal****Ashok Kumar Sahani & Ors. ... Petitioners****Vs.****State of Jharkhand & Ors. ... Respondents****Eligibility:**

Petitioners appeared for examination conducted for recruitment to the post of Primary Teachers in the primary school – The candidature of the petitioners was restricted only to the post of Physical Trained Teachers as they possessed training teachers qualification only in Physical Education and not any other subjects – The petitioners were not considered for appointment as they obtained Physical Training qualification after the recruitment notification – The High Court dismissed the writ petitions.

Held:

Even if a person is selected for appointment he does not acquire any indefeasible right to be appointed to the post in question. Similarly, merely because a person was allowed to appear in the examination does not acquire any right to be considered for appointment if he does not possess requisite qualification.

Cases referred:

1. (1990)3 SCC 655 - District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another vs. M.Tripura Sundari Devi.
2. (1994) 1 U.J.(SC) 713 – Union of India & Anr. Vs. Shri Yogendra Singh
3. (1998)8 SCC 345 – U.P. Public Service Commission Vs. Dr.Saad Usmani

ORDER

These two writ petitions involving common questions of facts and law have been heard together and are disposed of by this common judgment.

2. Petitioners seek issuance of writ in the nature of mandamus commanding upon the respondents to consider their cases for appointment to the post of primary teachers in the primary school situated within their respective districts in accordance with the advertisement issued on 24.10.2002 and further for a direction to the respondents not to restrict their candidatures for being appointed to the post primary teachers only against the vacant posts of physical trained teachers which are available in the four districts.

3. The facts of the case lie in a narrow compass.

4. The respondent- Jharkhand Public Service Commission (shortly the “Commission”) issued advertisement-dated 24.10.2002 for appointment of primary teachers in all the 22 districts of the State of Jharkhand. In the said advertisement the eligibility conditions were prescribed and the candidates possessing qualifications, as mentioned in the advertisement, were eligible to apply for the said post. Subsequently on 28.10.2002 by way of corrigendum the Commission clarified the definition on the words ‘trained teachers’ as defined under Rule 2 of the Jharkhand Primary Teachers Appointments Rules, 2000 (the Rule). In pursuance of the said advertisement and corrigendum the petitioners applied for the said post.

5. Petitioners case is that after being found fit they were issued admit cards for appearing in the examination to be held on 25.5.2003. All the petitioners appeared in the examination and did well. They are said to have secured high marks in the said examination. The petitioners thereafter came to know that their cases for appointment as Primary Teachers has been restricted only against the post of Physical Trained Teachers and they shall not be considered for appointment in the general post of Primary Teachers at par with the candidates having the qualification of matric trained teachers.

6. The respondents, in their counter affidavit, have stated that till the result of the physical trained teachers has not been published and as such the writ application is premature. It is stated that the petitioner’s qualification is of physical trained teachers against the vacant post of physical trained teachers. Further case of the respondent is that Rule 2(b) of the Rule, 2000 has already been

amended vide notification dated 6.3.2003 and as such the petitioners are entitled to be considered for appointment on the post of Physical Trained Teachers against the vacant post, if any, in their district.

7. Mr. Mahesh Tiwary, learned counsel appearing on behalf of the petitioners contended that the petitioners are trained teachers as defined under Rule 2(b)(iii) of the Rule 2000, and, therefore, they are entitled to appointment against the general seats of Primary Teachers. Learned counsel, drawing my attention to a Division Bench Judgment of this Court rendered in W.P(PIL) No. 2769 of 2003 and submitted that the Commission has no power to restrict for being appointed against the general seats of Primary Teachers. Learned counsel submitted that the notification dated 6.3.2003 making amendment in Rule 2 of Rule 2000, does not apply in the cases of the petitioners.

8. Mr. R.N. Sahay, learned Sr. Standing Counsel No.II on the other hand, submitted that as per the amended Rule the petitioner do not possess the requisite qualification for being appointed as Primary Teachers. Learned counsel submitted that the petitioners have not challenged the notification dated 6.3.2003 and therefore they cannot be allowed to claim appointment on the general seats of Primary Teachers in violation of the Rules.

9. From perusal of the advertisement-dated 24.10.2002, it appears that the requisite qualification prescribed for appointment on the post of Primary Teachers are as follows:

“(A) Matric or equivalent examination passed

(B) Two years teachers training or B.Ed/Dip-in-Ed/Dip-in-teacher or C.P.Ed

10. By a corrigendum as contained in Annexure-2 the words ‘trained’ has been defined and clarified as candidates having two years teachers training or B.Ed/Dip-in-Ed/Dip-in-teacher or C.P.Ed/D.P.Ed.

11. Rule 2 of the Jharkhand Primary Teachers Appointments Rules 2000 reads as under:

“(Ka) “Prarambhik Vidyalaya” se abhiprerit hai satwen warg tak ke aise vidyalaya

jo Jharkhand gair sarkari prathamik Vidhyalaya(Niantryan Grahan) Adhiniyam, 2001 ke tahat rajya sarkar dwara adhigrihit hai ya kholigaye hai.

(Kha) “Prakshikhit” se abhiprerit hai waise baikti jo manyata prapt prakshikhan sanathan prakshikhan prapt on uttrain ho.

- (i) Do warsiye Sikshak Prasikhan athwa
- (ii) B.Ed, Dip-in-Ed/Dip-in-teach
- (iii) C.P.Ed/D.P.P.Ed

12. The Rule has been amended vide notification dated 6.3.2003 by the said amendment in Rule 2(iii) it was clarified that the qualification of C.P.Ed and D.P.Ed shall be only for the post of Physical Trained Teachers.

13. On consideration of the pleadings of the parties and after hearing learned counsels, the only question that emerge for consideration is whether petitioners are entitled to claim their appointment against the general seats of primary teachers and not only against the post of Physical Trained Teachers.

14. Admittedly, petitioners do not possess requisite qualification of two years ‘Teachers Training or qualification of B.Ed, Dip-in-Ed/Dip-in-teach. They are matriculate and completed Physical Education Training Course, known as Physical Trained Teachers. As noticed above, in the notification dated 6.3.2003 it was clarified by amendment in Rule 2(iii) that the candidates having qualification of C.P.Ed/D.P.P.Ed shall be eligible against only the post of Physical Trained Teachers. Admittedly all the petitioners appeared in the examination on 27.5.2003 i.e. much after the notification dated 6.3.2003 and therefore merely because the petitioners submitted their applications before the amendment in Rule 2(iii) came into force they cannot claim their right to be considered for appointment against the post for which they do not possess requisite qualification. Petitioners cannot take the plea that they had no knowledge about the amended Rule before they appear in the examination as it will appear from Annexure-4 that respondents have notified in the Newspaper dated 22.4.2003 to the effect that candidates having qualification of C.P.Ed/D.P.P.Ed shall be eligible only against the vacant post of Physical Trained Teachers.

15. Recently some of the candidates challenged the advertisement dated 24.10.2002 on the ground of non fixation of upper age limit, standard and level of examination in Public Service Interest Litigation being W.P (PIL) No. 2769 of 2003 which has been disposed of by a Division Bench of this Court along with other writ petitions vide Judgment dated 29.9.2003. While deciding the issue involved in the said writ petition, their Lordships held that those candidates who do not possess requisite qualification or the required age will not be considered for recommendation, selection or appointment. Their Lordship observed.

“In one of the writ petitions, this Court issued a direction that the three writ petitions in that writ petition, would be permitted provisionally to take the examination or to write the examination even if they did not fulfill the age requirement or the age qualification, subject to the result of the writ petition. It appears that some unruly elements on the strength of that order forced some of the officers or, the authorities to issue them hall tickets to appear in the examination even though they were over aged and did not qualify as per the amended rule issued pursuant to the earlier decision of the Division Bench. It is made clear that those who did not possess the requisite age qualification as per the amended rule 4(d) of the Rules, even if they have written the examinations, would not be considered for recommendation, selection or appointment by the Commission or by the Government. Appearance of those who did not possess the requisite qualification or the age qualification will be ignored by all those concerned with the process of selection and appointment.”

16. In another writ petition being W.P (PIL) No. 2517 of 2003, it was brought to notice of the Court that the State of Jharkhand has introduced C.B.S.E Syllabus for education in the State and that syllabus provides that English Language be taught from the first standard. But in the Recruitment Rules, there was not even a paper in the English in the test that was conducted for primary teachers. It was conceded by the State Counsel that a person who has not studied English at the appropriate level cannot be entrusted with the task of teaching English or a person who has not studied Mathematics will not be in a position to teach that subject. A Division Bench of this Court while disposing of this writ petition held as under:

“We, therefore, dispose of this writ petition by directing the respondents to ensure

that only those who possess the qualification in the particular subject as indicated are selected and appointed to teach the particular subject. As an illustration only a teacher who has the requisite qualification in terms of the rules and who has studied the English language up to the qualification level, should be appointed as a teacher in English. The same will be the position regarding the other subjects. The authorities must also consider the need for introducing English as a subject for these selection tests taking into consideration the fact that language is our window to acquisition of advanced knowledge making us competent to compete with the rest of the world in all fields of human activity.”

17. In the case of “District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another.. Vs.. M. Tripura Sundari Devi” (1990) 3 SCC-655, the Supreme Court while considering a question in that case where appointments were made of a candidate not having minimum essential qualification held that such appointment amounts to fraud on public and no Court should be a party to the perpetuation of the fraudulent practice. Their Lordships observed:

“It must further be realized by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualification mentioned in advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relax able. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

18. In the case of “Union of India & Another Vs. Shri Yogendra Singh”(1994)1 U.J.(SC) 713, the Apex Court while considering a similar question held that no candidate who does not possess currently prescribed qualification but who may possess the educational qualification prescribed

earlier, can be said to qualify or have any vested right to appointment even against some earlier unfilled vacancy. Every candidate who aspires to fill any vacancy must possess the educational qualification that are then prescribed.

19. In the case of “U.P Public Service Commission Vs. Dr. Saad Usmani” (1998) SCC-345, the fact of the case was that an advertisement was issued inviting application for the post of Professor, one of the essential qualification prescribed for the said post was 10 years ‘teaching experience of the subject including three years’ on the post of Reader in a recognized institution. Petitioner of that case was permanent Demonstrator and also worked as Lecturer for some time. The Commission was of the view that respondents do not possess requisite teaching experience and he was not called for interview. Petitioner filed writ petition in Allahabad High Court, which was allowed on the ground that since respondent was employed as full time Demonstrator his experience as Demonstrator should be counted for the purpose of teaching experience. The Supreme Court in an appeal moved by the Commission set aside the order of the High Court and held as under:

“The respondent satisfied the first condition in as much as he held worked as a full time Demonstrator but he did not satisfy the second condition since he did not possess a postgraduate qualification. In view of the decision of the Commission dated 30.10.1992 the experience of the respondent on the post of Demonstrator could not, therefore, be taken into account and if the period the respondent worked as Demonstrator is excluded he did not have the requisite ten years’ teaching experience. There was, therefore, no infirmity in the view of the Commission that the respondent did not possess the requisite qualification prescribed for the post of Professor in Moalejat. The High Court in our opinion, was in error in holding that the respondent fulfilled the conditions of the eligibility and was wrongly denied consideration for the post of Professor in Moalejat by the Commission’.

20. In the instant case, admittedly, petitioners obtained physical training course which is required for the post of physical trained teachers. For being appointed as a primary teacher a candidate must possess qualification of a trained teacher i.e B.Ed/Dip-in-Ed/Dip-in-Teach. In

my considered opinion therefore, petitioners do not possess requisite qualification for appointment on the post of primary teacher.

21. Mr. Mahesh Tiwari, learned counsel for the petitioners vehemently argued that since petitioners appeared in the written examination and they have done well they are bound to be selected for the post of primary teachers. I do not find any force in the submission of the learned counsel. The law has been set at rest by catena of decision of the Supreme Court that even if a person is selected for appointment does not acquire any indefeasible right to be appointed to the post in question. Similarly, merely because a person was allowed to appear in the examination doesn't acquire any right to be considered for appointment if does not possess requisite qualification.

22. Having regard to the entire of the case and the discussions made above, I have no hesitation in holding that petitioners since do not possess requisite qualification are not entitled to claim their appointment on the post of primary teachers.

23. For the reasons aforesaid, I do not find any merit in these writ petitions are accordingly, dismissed.

IN THE HIGH COURT OF JHARKHAND, RANCHI**W.P.S. No. No.2587 of 2004****D.D.13.5.2004****Hon'ble Mr. Justice M.Y.Eqbal****Sanju Kumari**

...

Petitioner

Vs.

State of Jharkhand & Ors.

...

Respondents**Appointment – Cancellation of appointment obtained by misrepresentation:**

The petitioner was appointed to the post of Teacher under reservation quota – It was found that the petitioner took the benefit of reservation illegally – On that ground appointment was cancelled – Writ petition dismissed.

ORDER

Heard the parties.

Petitioner was appointed on the post of teacher in 2003 under reservation quota. Subsequently, it was found that the petitioner took the benefit of reservation illegally and because of mis-representation appointment was given to her. On that ground, service of the petitioner was terminated. I do not find any reason to interfere with the impugned order of termination.

This writ application is accordingly, dismissed.

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P (C) No. 4075 of 2004****D.D. 13.8.2004****Hon'ble Mr. Justice R.K.Merathia****Kumar Nilesh & Anr. ... Petitioners**

Vs.

State of Jharkhand & Ors. ... Respondents**Examination – Rescheduling of Examination by P.S.C.**

The petitioners sought for rescheduling the Examination to be held on 23.8.2004 on the ground that same will clash with L.L.B. Examination – Writ Petition dismissed.

Held:

The Court cannot order rescheduling of examination because the dates of examination may clash with the University Examination.

ORDER

Heard. Petitioners have prayed for rescheduling the examination to be held on 23.8.2004 published by Jharkhand Public Service Commission, on the ground that the same will clash with the examination of L.L.B Part II and Part III, 2004 announced by Vinova Bhawe University, Hazaribagh.

In my opinion, this Court cannot order rescheduling of the examination only because in case of few students like petitioners the dates of examination may clash. Nothing has been brought to show that the University and Jharkhand Public Service Commission should consult before announcing the dates of examination.

In the circumstances, no relief can be granted to the petitioners in this writ petition, which is, accordingly, dismissed.

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P.(S) No.917 of 2005****D.D. 28.2.2005****Hon'ble Mr. Justice S.J.Mukhopadhaya****Rajiv Kumar Mishra** ... **Petitioner****Vs.****The State of Jharkhand & Ors.** ... **Respondents****Eligibility:**

Petitioner though successful in the written test conducted by J.P.S.C. for appointment to the post of Primary Teacher in Nationalised Primary School was not appointed though persons below him in the merit list were appointed – High Court following the decision of Division Bench in LPA No.23 of 2004 (Dilip Kumar Gupta & Ors. Vs. The State of Jharkhand & Ors.), has disposed of the case with a direction that if it is brought to the notice of the Government or the concerned District Education Officer the Institute from which the petitioner obtained the Teachers Training College has been recognised by the N.C.T.E. authority will consider his case for appointment if he is otherwise eligible.

Held:

To be eligible to be appointed as a Teacher prior recognition of the Institute conducting the Teacher Training Examination by N.C.T.E. is a must after 1.1.1996 in view of N.C.T.E. Act.

ORDER

This writ petition has been preferred by the petitioner for a direction on the respondents to consider his case for appointment as primary Teacher under the State of Jharkhand.

2. According to the petitioner, he is eligible for appointment to the posts of Primary Teacher and though he has competed in the written test for appointment to the post of Primary Teacher, held by Jharkhand Public Service Commission, Ranchi (herein after to be referred as JPSC), he has

not been provided with the letter of appointment whereas the persons, below him in the merit list, have been appointed.

3. The case of the petitioner is that he, having passed B.Ed. Examination from S.N. Zaheer Alam Teachers Training College, examination of which was conducted by Lalit Narayan Mithila University, Darbhanga (1997 Session), is eligible for appointment to the posts of Primary Teacher. Provisional certificate, granted by the University has been enclosed as Annexure 7 to the Writ petition. In pursuance of an advertisement, published by the JPSC in the month of August 2002, the petitioner applied for appointment as Primary Teacher in Nationalized Primary School. He was allowed to appear at the written competitive test held on 27th May, 2003. Thereafter, results of the successful candidates were published in the month of November, 2003 and the petitioner was also declared successful. However, letter of appointment has not been issued to him, though the persons, below him in the merit list, have been appointed.

4. When the case was taken up, learned counsel for the State relied on a judgment dated 4th March, 2004, rendered by learned Single Judge of this Court in the case of Suresh Kumar & ors. Vs. State of Jharkhand & Ors. (W.P. (S) No.588 of 2004) and analogous cases. Those cases were dismissed on the ground that the Institute from where those petitioners passed Teachers Training Examination was not recognized by the National Council for Teachers Education.

The judgment, rendered in W.P.(S) No.588 of 2004 (Suresh Kumar & ors. Vs. State of Jharkhand & ors.) and analogous cases fell for consideration before a Division bench of this Court in L.P.A No.235 of 2004 (Dilip Kumar Gupta & ors. Vs. The State of Jharkhand & Ors.) and analogous cases. In the said case, Division bench of this court having taken note of expression “Recognized Training Institute”, held as follows:

“ Therefore on a proper construction of expression “Recognized Training Institute” (Manyata Prapt Prakshikshan Sansthan), as occurring in Rule, 2(Kha) of Rules 2002, I hold that the expression “Recognized Training Institute” means a Training Institute, recognized or established either by State Government or Union of India or Statutory Bodies, such as, N.C.T.E , UGC etc., / Organizations, maintained and controlled by

either State Government or Central Government or a Training Institute, recognized or affiliated by a University or a Board for imparting Teachers Training Course.

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In the facts and circumstances, having regard to the guidelines, issued by the State from time to time, and the provisions of the Ordinances, Acts and Rules, as discussed above, in my considered opinion.

(a) “Recognized Institute” means an institution recognized or established by State Government or Union Government or by Statutory Bodies/Organizations, maintained and controlled by either State Government or Central Government or recognized University for imparting education (training herein)

(b) After 1st July 1995 or at best for another period of six months i.e., after 1st January 1996 nobody, offering a course of training in Teachers Education, can run the institute without prior recognition by the NCTE, there being bar to run such institute under sub-section(1) to section 14 of the NCTE Act. 1993:

(c) Even if a Teachers Training Institute is affiliated to a University, recognized by the University Grant Commission, no Teachers Training Examination can be held by the University whether provisional or other wise, for the students of such Teachers Training College after 1st January 1996, if the institute is not recognized by the NCTE in view of Clause (b) to section 16 of the NCTE Act 1993:

(d) A Person, who has completed and obtained a Degree/Diploma / Certificate in Teachers Training Course prior to 31st January 1996 i.e., six months after promulgation of the NCTE Act 1993 from an institute, recognized or established by the State Government or Union Government or by Statutory Bodies/ Organizations, maintained and controlled by either State Government or Central Government or recognized University or affiliated by a recognized University for imparting Teachers

Training Education, is eligible for appointment to the post of Primary Teacher, if other wise found fit and.

(e) Since 4th September 2001 i.e., the date NCTE (Determination of Qualification & Recruitment of Teachers) Regulation 2001 came into force, no untrained person can be appointed to the post of Primary Teacher.”

The Division bench also took not of the relevant provisions i.e., 2(Kha) of the Jharkhand Primary School Amendment Recruitment Rules 2003 as also sections 14 and 16 of the National Council for Teachers Education Act 1993 (Act NO.73 of 1993) and held as follows:

“Definition:-

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(kha) “Trained” means those persons, who have got and passed the following training from a recognized Training Institutions:-

- (i) Two years teachers training ,or
- (ii) B.Ed. /Dip in Ed/ Dip in Tech

...
XX XX XX

“14 . Recognition of institutions offering course of training in teacher education : (1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day , may, for grant of recognition, under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

Provided that an institution offering a course of training in teacher education immediately before the appointed day, shall be entitled to continue, such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

2. The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

3. On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall:-

a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such condition as may be determined by regulation:or

b) if it is of the opinion that such institution does not fulfils the requirements laid down in sub-clause (a) pass an order refusing recognition to such institution for reasons to be recorded in writing:

c) Provided that before passing an order under sub-clause (b) the Regional Committee shall provide a reasonable opportunity to the concerned institutions for making written representation..

(4) Every order granting or refusing recognition to an institution for a course or training in Teacher education under sub-section 3 shall be published in the official gazette and Communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

(6) Every examining body shall, on receipt of the order under sub-section (4).

- a) grant affiliation to the institution, where recognition has been granted:or
- b) cancel the affiliation of the institution, where recognition has been refused.

“16 Affiliating body to grant affiliation after recognition or permission by the council:
Notwithstanding anything contained in any other law for the time being in force, no
examining body shall, on or after the appointed day:-

- a) grant affiliation, whether provisional or otherwise, to any institution; or
- b) hold examination, whether provisional or other wise , for a course of training
conducted by a recognized institution.

Unless the institution concerned has obtained recognition from the Regional
Committee concerned under section 14 or permission for a course or training under
section 15"

Taking into consideration the facts and circumstances of the case, the statutory
Rules, 2002 and the decisions, rendered by the Supreme Court, as discussed above,
in my view no ground is made out to interfere with the orders, passed by the Secretary
Human Resources Development Department (Primary Education), Govt. of
Jharkhand, Ranchi, as affirmed by the learned Single judge or to grant any relief to
the appellants/petitioners. The appellants /petitioners, having no requisite
qualification of Teachers Training as per Rule 2(kha) of Rules 2002, many of hem
having obtained training qualification form unrecognized institutions and one
institution even found fake by the UGC and the Degree / Diploma/Certificate obtained
in other cases are not being equivalent to Trained Graduate/Teachers Training, no
relief can be granted to any of them. There being no merit, all the appeals and the
analogous writ petition are hereby dismissed. However, in the facts and
circumstances, there shall be no order as to cost.”

8. Admittedly, the petitioner passed B.Ed. Examination after 1st July 1995 i.e., after NCTE Act
1993 came into force. It is also not in dispute that the petitioner prosecuted his Teachers Training

in an Institution, known as SN. Zaheer Alam Teachers Training College. There is nothing on the record to suggest that SN Zaheer Alam Teachers Training Institute was recognized by the National Council for Teachers Education, New Delhi. Such being the position, after NCTE Act came into effect and in view of Sections 14 and 16 of the NCTE Act 1993 there was no occasion or any University to hold B.Ed. Examination of the students of the College, not recognized by the National Council for Teachers Education.

9. In the facts and circumstances, no specific relief can be granted in favour of the petitioner, but he is given liberty to approach the competent authority, if the Institute from where he has prosecuted Teachers Training i.e., SN Zaheer Alam Teachers Training College is recognized by the National Council for Teachers Education. If it is brought to the notice of the competent authority i.e., Secretary, Human Resources Development Department, Govt. of Jharkhand Ranchi, or the concerned District Education Officer that the institute i.e., SN Zaheer Teachers Training College has been recognized by the National Council for Teachers Education, the said authority will consider the case of the petitioner for appointment to the post of primary teacher, if he is other wise eligible and competed in the written test and has been recommended by the JPSC.

10. The writ petition stands disposed of with the aforesaid observations and directions.

IN THE HIGH COURT OF JHARKHAND AT RANHI**W.P.(S). No. No.920 of 2005****D.D. 28.2.2005****Hon'ble The Acting Chief Justice S.J.Mukhopadhaya****Bhagirath Mahto ... Petitioner**

Vs.

State of Jharkhand & Ors. ... Respondents**Examination – Furnishing of marks:**

The petitioner sought direction to P.S.C. to supply the marks obtained by him in Primary Teachers Recruitment Examination – P.S.C. rejected the application on the ground that there is no provision to supply the marks sheet – Writ petition dismissed.

ORDER

This application has been preferred by the petitioner for a direction on the respondent Chairman, Jharkhand Public Service Commission, Ranchi, to supply the marks, obtained by him in Primary Teachers Recruitment Examination, held on 27th May 2003.

It appears that the petitioner had earlier moved before this Court vide W.P.(C) No.5057 of 2004 for similar relief. In the said case, a Bench of this Court vide order dated 22nd September, 2004 allowed the petitioner to represent before the Chairman, Jharkhand Public Service Commission, Ranchi, who, in his turn, was directed to enquire into the matter and if there is a provision to supply the mark sheet, then to take appropriate steps. The Jharkhand Public Service Commission, thereafter by its letter No. 48 dated 18th January, 2005 while informed that Rs. 100/-, deposited by him has been refunded, also informed that there is no provision to supply the mark sheet to the persons, who had appeared at the primary Teachers Recruitment Examination.

So far as appointment of the petitioner as Trained Teacher is concerned, as there appears to be no cause of action and there is no pleading that any person, having obtained lesser mark

than him, has been appointed, as also the name(s) of such person(s) not having been given, merely on the basis of vague pleadings, no relief can be granted to the petitioner.

This application is accordingly, dismissed.

IN THE HIGH COURT OF JHARKHAND AT RANCHI**L.P.A.No. 235 of 2004 with L.P.A.No.236 of 2004 with****D.D. 30.3.2005****Hon'ble Mr. Justice S.J.Mukhopadhaya****Hon'ble Mr. Justice Narendra Nath Tiwari****Dilip Kumar Gupta & Ors. ... Appellants****Vs.****The State of Jharkhand & Ors. ... Respondents****Eligibility – Requisite Qualification:**

The petitioners who applied for appointment to the post of Primary Teachers though declared successful by P.S.C. were not appointed on the ground that they do not possess the requisite qualification from an Institute recognised by N.C.T.E.

Held:

The appellants/petitioners having no requisite qualification of teachers training as per Rule, many of them having obtained training qualification from unrecognised institutions, no relief can be granted to any of them.

ORDER

As in all the appeals and writ petition, common questions of law are involved, relating to appointment to the posts of Primary Teachers in Nationalized Primary Schools, they have been heard together and are being disposed of by this common judgment.

In pursuance of an advertisement, published by the Jharkhand Public Service Commission, Ranchi (hereinafter to be referred as UPSC), all the appellants/petitioners applied for appointment to the post of Primary Teachers; most of them were declared successful by the J.P.S.C. but they have not been appointed on the ground that they do not possess the requisite qualifications, i.e. degree/diploma/certificate of teachers training from an institute, recognized by the National Council for Teachers Education (hereinafter to be referred as 'NCTE').

In fact, after selection of the candidates, the JPSC recommended the names of the selected candidates on the condition that appointment letter(s) should be issued only after proper verification of the certificates, relating to academic, training and other qualifications as also the caste certificates etc, One of the questions raised was “whether the Institution(s)/University(s), which has/have issued training certificate(s), is/are recognized or not”. The Human Resources Development (Primary and Secondary Education) Department, Govt. of Jharkhand, Ranchi issued clarification by way of guidelines vide Memo No.2912 dated 13th November, 2002, followed by Letter No.B-1-423/03-404 dated 16th February, 2004 to identify the recognized Institutes/Degree/Diploma/Certificates. Being dissatisfied with the same, different writ petitions, including W.P.(S) No.588 of 2004 (Suresh Kumar & ors. Vrs. State of Jharkhand & ors.), were preferred by the appellants along with others. They were heard together by the learned Single Judge, who by a common judgment dated 4th March, 2004, held that no direction can be given to the respondents to appoint the writ petitioners on the basis of Teachers Training Certificates, issued by unrecognized and private Institutions, who have conducted the examinations at their won and have declared the results. All the writ petitions were dismissed with the aforesaid observations.

Some other similar writ petitions, preferred by some of the appellants, were subsequently dismissed, following the decision of the learned Single Judge, passed in ‘Suresh Kumar & ors’. (supra).

Question of law:

The main questions of law, involved in the present cases, are

(i) Whether the expression “recognized training institute”, as mentioned in Rule 2(kha) of the Jharkhand Primary School Recruitment Rules, 2002 (hereinafter to be referred as Rules, 2002’) means a Training Institute/University, recognized by NCTE or by a Statutory/ Regulating Body or by any Government?

(ii) Whether Teachers Training Degree/Diploma/Certificate, obtained by the appellants/ petitioners, have been granted by a recognized Training Institute/ University, as occurring in Rule 2 (kha) of Rules, 2002?

(iii) Whether the Degree/Diploma/Certificate of ‘Acharya’, granted by Kamaleshwar

Singh Darbhanga Sanskrit Vishwavidyalaya, Darbhanga, Bihar, Laxmi Devi Sarraf Adarsh Sanskrit Mahavidyalaya Jharkhand, Ranchi; 'Certificate of Guidance' ('C.I.G' for short.), granted by Indira Gandhi National Open University, New Delhi; 'Moallim-E-Urdu', granted by Jamia Urdu, Aligarh, Uttar Pradesh; 'Shiksha Alankar', granted by Rashtriya Patrachar Sansthan, Allahabad, Uttar Pradesh, are equivalent to equivalent to Degree/Diploma/Certificate of Teachers Training ?

Relevant common facts of all the cases:

The JPSC issued an advertisement in different newspapers in the month of August, 2002 inviting applications from the eligible candidates for filling up the posts of Primary Teachers in Nationalized Primary Schools. In the said advertisement, apart from district-wise vacancies, necessary educational qualifications i.e. (i) Matriculate or equivalent and (ii) Two year Teachers Training or B.Ed./Dip.in Ed./Dip.in Teach or C.P.D., were also prescribed.

A large number of candidates, including the appellants/petitioners applied and were allowed to appear at the written competitive test, held on 27th May, 2003. The results of successful candidates, including some of the appellants, were published by the JPSC on 13th/14th November, 2003. The JPSC simultaneously issued Letter No.1/Exam.JPSC-99/2003-132/Sa.Ko. dated 13th November, 2003 to the Secretary, Primary & Secondary Education, Human Resources Development Department, Jharkhand, Ranchi. By the said letter while district-wise list of successful candidates were circulated, a separate district-wise list of successful candidates was also forwarded whose certificate and others informations' were found doubtful. It was informed that the result of those candidates have been kept in waiting. The competent authorities were also asked to accept the joining of the newly recruited persons, only after necessary verification of certificates as also other documents and in case of anything wrong, instead of appointing such candidate(s), to fill up the post(s) by persons whose names are appearing in the waiting list of successful candidates and who possess the requisite documents/certificates.

The Secretary, Primary, Secondary & Mass Education, Govt. of Jharkhand, Ranchi, thereafter, by Letter No.8/B1-199-03-2912 dated 13th November, 2003 forwarded guidelines to all the Deputy Commissioners for appointment of the recommended candidates. It was informed that before issuance of letters of appointment, District Education Establishment Committee should keep in mind that:-

(1) As per Rule 2(kha) of Rules, 2002, it should be verified that the candidate has obtained training from a “recognized Training Institute” and is successful. It should be kept in mind that National Council of Teachers Education Act, 1993 (hereinafter to be referred as NCTE Act, 1993) has come into force with effect from 17th August, 1995 (*), according to which a Teachers Training Institute should be recognized by NCTE. For those candidates, who have obtained training after 17th August, 1995 from a Teachers Training Institute, it should be verified whether such institute is recognized by NCTE or not. For those, who have obtained training before 17th August, 1995, it should be verified whether the Teachers Training Institute is recognized by the State Government, where the institute is situated.

(2) Under Clause (3) of Rule 2(kha) of the Jharkhand Primary School Amendment Recruitment Rules, 2003, a candidate who has obtained CP.Ed. or Dip. in Ed. Certificate” can be appointed against a post of Physical Teacher. Such physical trained candidate can be appointed only against the post of Physical Teacher, etc. Secretary, Human Resources Development (Primary & Secondary Education) Department, Jharkhand, Ranchi, vide Letter No.8/B1-199/03-3139/Pri.Edn, dated 4th December, 2003. by the said letter, while all the Deputy Commissioners, Regional Deputy Directors of Education and the District Superintendents of Education of the State of Jharkhand were directed to verify the certificates and other documents of the recommended candidates, it was also informed that a large number of forged/doubtful certificates have been found during the district-wise verification in the districts of Sahibganj, Hazaribagh, Chatra etc. The officers were directed to ensure that no candidate is appointed on the basis of a forged or doubtful certificate. They were directed to follow the instructions, earlier given vide letter No.2912 dated 13th November, 2003 and Memo No.2992 dated 21st November, 2003 and Memo No.3010 dated 22nd November, 2003 issued by the Director, Primary Education. It was further asked to forward the list of candidates to the JPSC and Director, Primary Education, whose certificates were found to be forged/ doubtful.

Detailed instructions and guidelines were issued by the Secretary, Human Resources Development (Primary & Secondary Education) Department, Govt. of Jharkhand, Ranchi, vide Letter No.8/B-1-423/03-404 dated 16th February, 2004 after considering the relevant Rules, gist of which are mentioned hereunder:

Sl. No.	Subject	Guidelines
a.	Regarding appointment of the candidates. Who have passed Teachers Training Examination from the State of J & K.	The candidates who have passed the requisite Teachers Training Examination as per Rule 2 (kha) from any University or Statutory Board/Council, situated within the State of J & K., they may be appointed as the NCTE Act, 1993 is not applicable in the State of J & K. But affidavit should be obtained to the effect that they have passed the requisite Teachers Training Examination from a recognized Teachers Training Institute and their certificates are genuine and in case the Institute is not found recognized by the State of J & K, their certificates may be declared illegal and their services may be terminated without prior notice, followed by legal action.
b.	Regarding appointment of the candidates, who have passed Teachers Training Examination after commencement of N.C.T.E. Act, 1993 i.e. 17 th August, 1995.	Those candidates, who have passed Teachers Training Examination, as prescribed under Rule, as regular students or through correspondence course or distant education medium and the Institute has been recognized by the NCTE., they may be appointed, subject to the condition that those who have passed through correspondence course or distant education medium should have requisite teaching experience during the period of training. If any institution has not been recognized by the NCTE after 17 th August, 1995 i.e. for the Sessions 1995-96 onwards the candidates, having passed Teachers Training Examination from such unrecognized institutions after 17 th August, 1995 shall not be appointed in any circumstance.
c.	Regarding appointment of the candidates who have passed Teachers Training from the institute, situated within the Examination prior to 17 th August, 1995 territory of unified State of Bihar.	With regard to the candidates, who have passed requisite Teachers Training Examination prior to 17 th August, 1995 i.e. up to the Sessions 1994-96 from Govt. and Non- Govt. Primary Teachers Training Colleges, situated within the territory of unified State of Bihar, it is made clear that the examination of students of such institutes used to be conducted and result used to be published by the Bihar School Examination Board As such, those candidates, who have passed Teacher Training Examination from Bihar School Examination Board up to the Session 1994-96, can be appointed Similarly those candidates, who hold B.Ed Degree, granted by any recognized University of the then State of Bihar prior to 17 th August, 1995 i.e. up to the Sessions 1995-96, may also be appointed. But the certificates granted by B.N.Mandal University; Magadh University & Kameshwar Singh Darbhanga Sanskrit University should be verified from the concerned University by sending special messenger (Gazetted Officer) prior to appointment of such candidates.

Sl. No.	Subject	Guidelines
d.	Regarding appointment of the candidates, who have passed Teachers Training Examination from other States.	The candidates, who have passed requisite teachers Training Examination prior to coming into force the N.C.T.E. Act, i.e. prior to 17 th August, 1995 from different Universities, situated in other States and are recognized by the University Grant Commission, may be appointed on receipt of affidavits that they have passed requisite Teachers Training Examination from a recognized Teachers Training Institute and their certificates are genuine. In case, it is found that their institutes are not recognized by the concerned State Govt. and/or certificate is found fake, their services can be terminated without prior notice, followed by legal action.
e.	Regarding appointment of the candidates, who have passed Teachers Training Examination from the institutes. Registered under Societies Registration Act and situated within the State of West Bengal.	Those candidates who have passed from certain institutes situated within the State of West Bengal, such as, Devid Hare College of Correspondence, Kolkata, Dr.B.C.Roy Education College, Kolkata. All India Education Society, Kolkata All India Correspondence Coaching Society, Kolkata ; etc. should not be appointed as these institutes themselves hold and publish the Teachers Training Examination. Though these institutes are registered under the Societies Registration Act but their Teachers Training Examination are neither conducted nor their Degree/ Diploma are granted by any Statutory Body.
f.	Regarding appointment of the candidates, who are untrained 'Acharya.	In those cases, where the candidates hold degree of 'Acharya'/Fazil but are not trained, they should not be appointed as the degrees aforesaid are 'educational qualification' along with which Teachers Training qualification is mandatory.
g.	Regarding appointment of the candidates, who have completed six months Teachers Training Course.	Those candidates, who have passed six months Teachers Training Course, should not be appointed as none of the Teachers Training Course as prescribed under Rule 2(kha) is of six months duration.
h.	With regard to recognized institutes, situated in the State of U.P.	So far as the Teachers Training Institutes situated within the State of U.P. such as, Hindi Sahitya Sammelan, Prayag, Allahabad Hindi Sahitya Sammelan, Allahabad Rashtriya Patrachar Sansthan, Kanpur, Zamia Urdu, Aligarh, Rashtriya Kendriya Adhyapan Sansthan Allahabad: Indira Gandhi College, Allahabad, Vocational Training College, Allahabad etc., are concerned, information have been sought for from the Director, S.C.E.R.T. Lucknow and Director, Higher Education, Allahabad in regard to Teachers Training Certificates, granted by them prior to 17 th August, 1995. On receipt of information, appropriate decision will be taken and communicated.

It is not denied in these cases that the appellants/ petitioners have not obtained Teachers Training Certificates from any Teachers Training Institute/University, recognized by the N.C.T.E. On the other hand, there is a dispute, raised by the respondents “whether the Degree/Diploma/ Certificate, obtained by one or other appellant/petitioner is equivalent to B.Ed./Dip.in Teach or any other Teachers Training qualification and whether they are specified or unspecified degree/ diploma/ certificate.”

For determination of the issue “whether the institutes from where the appellants/petitioners have obtained degree/diploma/certificate are recognized institute, as envisaged under Rule 2(kha) of Rules, 2002 and whether such degrees/diplomas/certificates, are equivalent to B.Ed./Dip.in Ed./Dip.in Teach”, it is necessary to notice the standard of degrees/diplomas/certificates, obtained by the appellants/petitioners and the status of the Institute/University from where they have obtained such degrees/ diplomas/certificates. It is also necessary to notice the instructions and guidelines, as were issued from time to time by the then State of Bihar.

Recognition of Teachers Training Institute

In the year, 1980 for the first time when it came to the notice of the State of Bihar that large number of private Primary Teachers Education Institutes, were being opened without fulfilling the minimum requisite criteria, it promulgated Ordinances and brought Acts viz. ‘Bihar Non-Government Physical Training College & Non-Government Teachers Training College and Non-Government Primary Teachers Education College (Control & Regulation) Ordinance, 1980 (Bihar Ordinance 40, 1980)’ followed by Non-Government Primary Teachers Education College (Control & Regulation) Act 1981’, prohibiting opening of private Primary Teachers Education Institutions without prior permission of the State Government, Stringent penal provisions, such as, imprisonment of three years or fine of Rs.10,000/- or both were laid down in case of violation of the legal provisions,. Opening of such private Teachers Training Institutions without prior permission of the State Government was made an offence.

By Letter No.10/M8-018-86 Part-5-Edn, 388 dated 12th May, 1987 Commissioner-cum-Secretary, Education Department, Govt. of Bihar, Patna, giving reference of the aforesaid Act,

1981, informed that the Government has opened Teachers Training Institutes so that teachers can be trained in future. It was also clarified that the policy of the Government is not to encourage the private Teachers Training Colleges /Institutes.

In the year, 1991 it came to the notice of the State of Bihar that in spite of the provisions of the Act, 1981 and Letter No.1107 dated 25th November, 1987 a large number of persons were enrolling themselves in unrecognized Teachers Training Colleges/Institutions. In Govt. Teachers Training Colleges (Matric & Graduate) admissions are taken on merit but no such procedure is followed for admission in private Teachers Training Colleges. Most of the private Teachers Training Colleges/Institutions were not following/fulfilling the prescribed norms/standards and became a source of earning. In such circumstances, Human Resources Development Department, Govt. of Bihar, Patna, vide Memo No.10/Ba 3-56/80/116, Patna dated 6th March, 1991 decided to delete the mandatory requirement of Teacher Training for the appointment of teachers and instead decided to impart in service training in Govt. Teachers Training Colleges, after their appointment.

The National Council for Teachers Education, was set up in 1973 by a Central Government's resolution, as a National Expert Body to advice Central and State Governments in all matters, pertaining to Teachers Education. Its role has so far been purely advisory due to which it has had very little impact on the standard of Teachers Training Institutions in the country and on their unplanned growth. To provide statutory powers to NCTE with an objective of determination, maintenance and co-ordination of standards in teacher education, laying down norms and guidelines etc., and to empower the Council to make qualitative improvement in the system of teachers education in phasing out sub-standard institutions and sources for teacher education and with a view to empower NCTE to grant recognition to the institutions for a teacher education and permission to recognise institution for a new course or training in teacher education, the Central Government brought "**National Council for Teachers Education Act, 1993**"(**Act No.73 of 1993**), but it was given effect from 1st day of July, 1995. Chapter iv of Act, 1993 deals with recognition of Teachers Education Institution. Under Section 14 of Act, 1993, for offering or intending to offer a course or training in the Teacher Education it was made mandatory for an

institute to obtain recognition from NCTE. Under Section 16 of the Act, affiliated body, including the Examination Body, were prohibited from granting affiliation and to hold examination, unless the institution concerned has obtained recognition from NCTE, as is evident from the relevant provisions, quoted hereunder:

“14. Recognition of institutions offering course of training in teacher education; (1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make on application to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

Provided that an institution offering a course of training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made on application for recognition within the said period and until the disposal of the application by the Regional Committee.

2) The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

3) On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary; it shall-

a) if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such condition as may be determined by regulation; or

b) if it is of the opinion that such institution does not fulfill the requirements laid

down in sub-clause(a) pass an order refusing recognition to such institution for reasons to be recorded in writing:

Provided that before passing an order under sub-clause (b) the Regional Committee shall provide a reasonable opportunity to the concerned institutions for making written representation.

(4) Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section 3 shall be published in the official gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

(5) Every institution in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of subsection(3).

(6) Every examining body shall, on receipt of the order under sub-section (4)-
(a) grant affiliation to the institution, where recognition has been granted or
(b) cancel the affiliation of the institution, where recognition has been refused.

“16. Affiliating body to grant affiliation after recognition or permission by the Council: Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed any:

(a) grant affiliation, whether provisional or otherwise, to any institution: or
(b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution.

Unless the institution concerned has obtained recognition from the Regional Committee concerned under section 14 or permission for a course or training under section 15.”

In exercise of power, conferred by Clause (d)(i) of Sub-section(2) of Section 32 read with Section 12(d) of the Act, 1993, the NCTE framed regulation, known as “National Council for Teachers Education (Determination of Minimum qualifications for Recruitment of Teachers in School) Regulations, 2001” (hereinafter to be referred as ‘Regulation, 2001’), published in the Gazette of India vide Notification No.238 of September 4, 2001, whereunder, qualification for recruitment of teachers in Educational Institutions was laid down, relevant portion of which is quoted hereunder:

First Schedule to the National Council for Teacher Education Determination of Qualifications for Recruitment of Teachers)

Regulations 2001

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATION
1. <u>Elementary</u> a. Primary	i. Senior Secondary School certificate of Intermediate or its equivalent; and ii. Diploma or certificate in basic teachers’ training of a duration of not less than two years OR Bachelor of Elementary Education (B.El.Ed) i. Senior Secondary School certificate of Intermediate or its equivalent; and ii. Diploma or certificate in elementary teachers’ training of a duration of not less than two years. OR
b. Upper Primary (Middle School Section)	Bachelor of elementary Education (B.El.Ed) OR Graduate with Bachelor of Education (B.Ed) or its equivalent

Note:

1. For appointment of teachers for primary classes, basic teachers’ training

programme of 2 years' duration is required. B.Ed. is not a substitute for basic teacher's training programme.

2. Some of the States are having basic teacher's training courses of one year duration only, while in some other States students passing secondary level examination are admitted to primary level teacher training courses. Such States may, by 2005, conduct basic teachers' training programmes of a duration of not less than two years with admission being open to Senior Secondary/Intermediate pass candidates. In the meantime, candidates who have undergone basic teachers' training courses of one year duration or were admitted to such training programmes after passing secondary level examination only may be given employment in the concerned States only.

The State of Bihar was reorganized and two successor States, namely, State of Bihar and State of Jharkhand came into effect since 15th November, 2000. After re-organization, the State of Jharkhand issued a Rule, known as "Jharkhand Primary School Recruitment Rules 2002", which came into effect from 1st July 2002. Passing of Teachers Training Course/ Degree/ Diploma/Two years Teachers Training Course was made mandatory for appointment as Primary Teacher under Rule 2(Kha), as amended by Jharkhand Primary School Amended Recruitment Rules, 2003, English version of which reads as follows"

"2. Definitions-

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(Kha) "Trained" mean those persons who have got and passed the following training from a recognized Training Institution-

- (i) Two years Teachers Training, or
- (ii) B.Ed Dip. In Ed. Dip in teach

However, in special circumstances i.e in absence of requisite number or trained candidates, provision was made to appoint untrained candidates as primary teachers under proviso to Rule 4, English version of which is as follows:

4. Applications shall be invited by the Jharkhand Public Service Commission through

publication in newspapers on the basis of district wise vacancies from the following qualifying candidates:

(Ka) who is citizen of India

(Kha) who has passed the Matric or equivalent Examination,

(Ga) who has got the training, as mentioned in Rule 2(Kha) however, in special circumstances, examination will be held separately for untrained candidates and the successful candidates will be appointed on the posts of teachers only after passing the Training Examination. Those untrained candidates will get only stipend. Which will be equal to first payment of Matric Untrained Scale, training will be managed by the State Government. After training, appointment of successful candidates will be made by the State Government only for three years in Matric Trained Scale on the basis of Sambida (Years of Passing)".

In the original Jharkhand Primary Teachers Recruitment Rules, 2002, minimum qualification of "matriculation or equivalent" was prescribed under Rule 4(Kha). The vires of the aforesaid Rule 4(Kha) was challenged before this Court by one 'Satya Narayan Pandey and others (W.P (S) No. 5170 of 2002)' which was heard along with another case, namely, 'Citizen cause, Ranchi Vrs. State of Jharkhand & ors. (W.P(C) No. 6135 of 2002)'. A Division Bench of this Court, having noticed the provisions of law and different decisions, rendered by the Supreme Court, including the case of T.M.A Pai Foundation & ors. Vrs. State of Karnataka & ors. Reported in J.T 2002(9) SC 1, held Rule 4(Kha) against the public interest and struck down the said provision, leaving it open for the State to suitably recast the Rules in Public interest, as per the observation of the Court.

In terms of the Court's observations, standard of examination was raised by the State from Matriculation to Graduation, on the basis of which written examination was conducted.

The first contention, urged on behalf of the appellants, was that the reorganization of the institution by the NCTE, prior to 1st July 1995, was not required, NCTE Act, 1993 having come into effect from 1st July 1995. The next submission on their behalf was that the institutions,

situated within the State of West Bengal, being recognized by the State of West Bengal and the then State of Bihar having earlier appointed the candidates, who have completed Teachers Training Course from the institutions, situated within the territory of the State of West Bengal, should be accepted as recognized institutes.

Learned counsel for some of the appellants also contended that the candidates who have completed Teachers Training Course and have been granted Degrees/Diploma/Certificates by any of the Universities, those Universities being recognized by the University Grant Commission, can not be deprived of their appointments.

At one stage, Mr. Gopal Subramanyam, learned Sr. Advocate, based his argument on what he called, the intention of this Court, in raising the written test standard from Matriculation to Graduation level, expressed in the judgment, passed in the case of Satya Naryan Pandey & ors. (Supra). It was submitted that the State of Jharkhand, having upgraded the standard of a competitive examination from Metric standard to Graduate standard, as per the Courts order, intended to appoint even untrained teachers and thereafter to send them for in-service training as prescribed under proviso to Rule 4(ga), wherein, provision was also made to appoint untrained teachers in special circumstances. It was submitted that the order prohibiting appointment of any untrained teacher as has been made by the Secretary, primary & Secondary Education, Human Resource Development Department, Govt. of Jharkhand, Ranchi, vide Letter No. 2912 dated 13th November 2003, and letter No. 8/b-1-423/03-404 dated 16th February 2004, is contrary to the proviso Rule 4(ga) and are ultra vires.

Counsel for the appellants placed reliance on a number of decisions and orders passed by one or the other Court, including Patna High Court, Jharkhand High Court and the Supreme Court, as discussed hereunder.

In the case of ‘Sri Mahendra Prasad Mehta Vrs. District Superintendent of Education, Katihar & anr., as reported in 1985 P.L..J.R 709’ Patna High Court noticed that the said petitioner had passed Basic Training Examination from a college of West Bengal, known as “ Kalingpong

College, West Bengal”. He had obtained one year Teachers Training Degree. The State of Bihar took plea that the requirement was that of two years Teachers training Course. A Division Bench of Patna High Court having noticed that the petitioner had already recommended for appointment and there was a favorable recommendation, made by the District Superintendent of Education, directed the respondents to consider the case of the said petitioner for appointment, if he had fulfilled the requirement and was otherwise entitled to appointment. In the said case, the main issue i.e. whether the Training Institute was recognised or not was neither decided nor the meaning of the expression was answered. Even no finding was given whether the said writ petitioner fulfilled the requisite qualification and was otherwise eligible for appointment, which was left open for the respondents to decide.

Another case of ‘Arjun Kumar Mundal & ors. Vrs. State of Bihar & ors. (C.W.J.C.NO. 1629 of 1988)’ fell for consideration before a Division Bench of Patna High Court. By judgment and order dated 8th February 1989 a Division Bench of Patna High Court noticed that the petitioner of the said case after matriculation had obtained Teachers Training Certificate from an institute located in West Bengal and were included in the panel but were not appointed. In the counter affidavit the District Superintendent of Education took plea that the duration of training course in Bihar was of two years while in West Bengal it was only for a period of one year and therefore the petitioners were not trained. The Court by its order dated 8th February, 1989, following the decision of the Court, rendered in the case of ‘Mahendra Prasad Mehta’ (supra), directed the respondents to appoint those petitioners to the posts of Assistant Teacher. The issue “whether the Teachers Training Institutes at West Bengal, from where those petitioners had passed, were recognized or not,” was neither raised nor answered in the said case. One of the persons namely ‘Jaba Pal’ who obtained training certificate from “Sister Nivedita College, Calcutta” filed writ petition bearing C.W.J.C.No. 2584 of 1992R (Jaba Pal Vrs. State of Bihar & ors.) She pleaded that she had completed her Teacher Training Course from Sister Nivedita Training College Calcutta and was entitled to be treated as trained teacher. Two judges of Ranchi Bench of Patna High Court by order dated 16th February, 1993 observed that if the Degree, Diploma or Certificate, granted by Sister Nivedita College, Calcutta, has been recognised by the State of Bihar, as an adequate qualification for being designated as ‘trained teacher’, there was no reason why the

said petitioner should not have the same benefit, which was extended to others. The petitioner Jaba Paul was allowed to represent the respondents, who in their turn, were directed to decide such representation. The issue i.e whether ‘Sister Nivedita College, Calcutta’, is an institute, recognized by the State Government, was neither determined by the High Court nor the Court referred to or noticed any Institution/Guidelines, issued by the then State of Bihar, recognizing “Sister Nivedita College, Calcutta”.

In the case of ‘Md. Halim & ors. Vrs. State of Bihar & ors. (CWJC No. 8829 of 1989)’, a Division Bench of Patna High Court disposed of the case with a direction to the respondents to consider the case of the petitioner in the light of the direction, given in the case of ‘Sri Mahendra Prasad Mehta (Supra)’ but has not decided the issue, as has been raised in the present case. One Ram Binay Kumar & ors. Who also obtained Teachers Training Certificate from private Teachers Training Institution, not having been granted the benefit of training in the matter of recruitment to the post of Assistant Teachers in Elementary/Primary Schools in the State of Bihar, moved up to the Supreme Court. The Supreme Court in S.L.P (C) No. 23187 of 1996 by its order dated 5th September 1997, having noticed the advertisement dated 8th October 1991 and the fact that although selection for appointment to the post of Assistant Teacher was made in August 1994, no step had been taken by the State Government for imparting training to the untrained teacher, directed the State Government to take immediate steps to finalize the Syllabus of training course and to complete the training of untrained teachers. The issue, as raised in these appeals/writ petition, i.e “whether the institutes, in question, situated at Kolkata, West Bengal are recognized or not” was neither raised nor determined by the Supreme Court in the aforesaid cases.

To understand and appreciate the binding effect of a decision, it is necessary to notice the facts of each case on which decisions have been given and the points of law has been decided. One is also supposed to notice the law, applicable at times when the judgment was rendered by the court of law and then to compare with the existing law. In the case of ‘Union of India Vrs. Dhanwanti Devi & ors., reported in (1996)6 SCC 44’, the Supreme Court held as follows.:

“A decision in only and authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically

follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ration and not every observation found therein.”

Their Lordships Further observed as under:

“Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, judges are to employ an intelligent technique in the use of precedents”.

Therefore, the appellants/petitioners cannot derive any advantage of one or other order either passed by the Patna High Court or by the Jharkhand High Court or the Supreme Court, as referred to and discussed above in cases having facts and circumstances.

To determine the issue it is also necessary to look into the dictionary meaning of the word “recognized”. As per chambers Dictionary, New Edition (2000), it is “to know again”, “to identify as known”, “to acknowledge the validity of a claim”, “to acknowledge the status”. The meaning of “recognition” is also “acknowledgement of status”.

It is settled law that when the language of statute is clear, literal construction must be adhered to. In case of any ambiguity, one can take help of the intention of the Legislatures. The definition of “recognized institute” has not been laid down under rules, 2002. In the aforesaid background, I have noticed and discussed the circulars, issued by the then State of Bihar to find out the intention of the Legislatures in the matter of appointment of Primary Teachers. It has already been noticed that the unified State of Bihar was against the mushroom growth of private

Teachers Training Education Institutes, which were being opened without fulfilling the minimum requisite criteria and were not under the control of any statutory Body/University? Board. In these background, ordinance was promulgated as back as in the year, 1980 known as BIHAR ORDINANCE NO40, 1980, followed by Non- Govt. Primary Teachers Education College (Control and Regulation) Act, 1981. by Letter No-10/m-8—018-86-part-5-Edn. Dated 12th May, 1987, issued by the Govt. of Bihar while it was informed that the State Government has opened Teachers Training Institutes; it was also intimated that the policy of the Government was not to encourage the private Teachers Training Colleges/Institutes, which were enrolling large number of candidates as their students without holding any competitive examination and without following

Therefore, the aforesaid submission, as made on behalf of the appellants for relaxation of qualification and appointment of untrained teachers, cannot be accepted.

In the facts and circumstances, having regard to the guidelines, issued by the State from time to time, and the provisions of the Ordinances, Acts and Rules, as discussed above, in my considered opinion:-

- (a) “ Recognized Institute” means an institution recognized or established by State Government or Union Government or by Statutory Bodies/ Organizations, maintained and controlled by either State Government or Central Government or recognized University or affiliated by a recognized University for imparting education (training herein);
- (b) After 1st July, 1995 or at best for another period of six months i.e. after 1st January, 1996 nobody, offering a course or training in Teachers Education, can run the institute without prior recognition by the N.C.T.E. There being bar to run such institute under sub-section (1) to Section 14 of the N.C.T.E. Act, 1993.
- (c) Even if a Teachers Training Institute is affiliated to a University, recognized by the University Grant Commission, no Teachers Training Examination can be held by the University whether provisional or otherwise, for the students of such Teachers Training College after 1st January, 1996, if the institute is nor recognized by the N.C.T.E., in view of clause (b) to section 16 of the N.C.T.E., Act, 1993;
- (d) a person, who as completed and obtained a degree/Diploma/Certificate in teachers Training Course prior to 31st January, 1996, i.e. six months after promulgation of the N.C.T.E, .Act, 1993 from an institute, recognized or established by the State government or Union Government or by Statutory Bodies/Organizations, maintained and controlled by either State Government or Central Government or recognized University or affiliated by a recognized University for imparting Teachers Training Education, is eligible for appointment to the post of Primary Teachers, if otherwise found fit and

- (e) since 4th September, 2001 i.e. the date N.C.T.E (Determination of qualification & Recruitment of Teachers) Regulations, 2001 came into force, no untrained person can be appointed to the post of Primary teacher.

Institutes, situated at kolkata (West Bengal):

The appellants of LPA Nos' 246 of 2004, 301 of 2004, 271 of 2004, 308 of 2004, 445 of 2004, 236 of 2004, 269 of 2004, 235 of 2004, 548 of 2004, 518 of 2004, 300 of 2004, 178 of 2004 and 273 of 2004 claim to have passed "Sr, Teachers Training Course" from different institutions, located at Kolkata, namely,

- i) Sister Nivedita College, Kolkata
- ii) Oxford College of Education, Kolkata
- iii) Devid Hare College of Correspondence, Kolkata
- iv) Dr. B.C.Roy College of Education, Kolkata
- v) D.C. College of Engineering College, Kolkata
- vi) St. Thomas College of Correspondence, Kolkata
- vii) ALL India Education Society, Kolkata
- viii) All India Correspondence Coaching Society, Kolkata
- ix) Montessary teacher Training College, Kolkata

Most of the aforesaid colleges claim to be affiliated to one All India Education Society, Kolkata (AIES for short), which itself claim to be Training Institute And a society, registered under the Societies Registration Act.

Immediately after examination, at the time of recommendation of successful candidates, the J.P.S.C. doubted the genuineness of Training Certificates, submitted by a number of candidates, including the appellants, whose results were kept pending, which was informed by the Incharge Secretary, J.P.S.C. vide Letter No.1/ Exam.- JPSC-99/2003-132/Sa.Ko. dated 13th November, 2003. In view of the aforesaid doubt, the secretary, Primary, Secondary & Higher Education, Govt. of Jharkhand, issued clarifications vide Letter No. 8/B1- 199/03-2912 dated 13th November, 2003, letter No.8/B1-199/03-3139 dated 4th September. 2003 and Letter No. 8/B1-423/03/03-404 dated 16th February, 2004.

In these cases, though no specific stand has been taken by the parties, relating to genuineness of one or other Institution, situated at Kolkata, West Bengal, with a curiosity, to find out the status of the Institutes, I have gone through the certificates, as enclosed by the appellants with their writ petitions/memo of appeals, issued by one or other Institutions. On bare perusal of those certificates, the following facts emerged.

(i) Formate of all the certificates, granted by the Institutions, such as, (1) Sister Nivedita College, Kolkata; (2) Oxford College of Education, Kolkata; (3) Devid Hare College of Correspondence, Kolkata; (4) Dr.B.C. roy College of Education, Kolkata; (5) D.C. College and D.C. Engineering College, Kolkata (6) St. Thomas College, Kolkata; (7) All Education Society, Kolkata; (8) All India Correspondence Coaching Society, Kolkata and (9) Montassary Teacher Training College, Kolkata, are same.

(ii) The signature of Principal(s) of almost all the Training Institutes, as aforesaid, is same. That means, one person has signed as Principal of almost all the aforesaid nine Institutions, situated at Kolkata, West Bengal.

(iii) The signature of Examiner, as is appearing in the Certificates, granted by 4 to 5 Institutions, is also common.

(iv) Even the address of some of the Institutions are common; for example- the addresses of Sister Nivedita College, Kolkata, All India Correspondence Society, Kolkata and Dr. B.C.Roy college of Education, Kolkata, are same i.e. “740 and 741” lake town, block-A, Kolkata- 700089. (see enclosure, attached to W.P.(s) No. 1294 of 2004, L.P.A. No 246 of 2004, L.P.A No. 269 of 2004, L.P.A .No 548 of 2004 and L.P.A. No.300 of 2004.

The addresses of All India Education Society, Kolkata, Devid Hare College, of Correspondence, Kolkata are also same i.e. 736, lake town, Block-a, Kolkata .

(v) From circular No-041 dated 1st October, 2002 (page 64 of Paper book in L.P.A. No- 236 of 2004) it appears that Dr. B.C. Roy College of Education. Kolkata, is on paper, which is

stated to have been amalgamated with oxford College of Education, kolkata. Therefore, notice has been given for general information that the candidate, who gets himself/herself admitted at Dr. B.C.Roy College of Education on or after 10.10.2002, his/her name will be transferred and enrolled at Oxford College of Education, kolkata but mark sheet and other certificates will be issued under the name and style of dr. B.C.Roy College of Education, Kolkata.

(vi) From the senior Teacher Training Course Certificates, granted by Devid Hare College of correspondence, Kolkata, as enclosed with L.P.A. No. 236 of 2004, it appears that the Teachers Training Course was for a period of six months. If the particulars of one of the students, namely, Anand Gopal (page 92 of L.P.A. No. 236 of 2004) are considered, it will appear that the date of admission, as has been shown, is 30th January, 1995 and the date of examination, as has been shown, is 25th August, 1995 i.e. after 6 to 7 months of admission. At column-11 with regard to affiliation of the Institution, it is mentioned that the institute is independent, having no tie up with the NCTE.

The aforesaid facts clearly raise doubt with regard to sr. Teachers Training Course Certificate, granted by the aforesaid nine Institutions, as referred to above, situated at Kolkata, West Bengal, and there being nothing on the record to suggest that any of the institutions is either recognized by any of the State Governments, such as, State of West Bengal or state or Bihar or State of Jharkhand or Central Governments or Statutory Body/Institution or affiliated with any University, those, who have obtained such Certificates of Sr. Teachers Training Course can not claim their appointment in terms of Recruitment Rules, 2002, read with teachers Training qualification, as laid down in the advertisement, published by the J.P.S.C. in August, 2002.

Further, the course of Sr. Teachers Training Being of 6 to 7 months duration, it can not be called equivalent to B.Ed./ Dip. in Ed./Dip in Teach or the other training certificate. As prescribed under rule 2 (kha) of Rules, 2002.

In view of the aforesaid findings, the appellants of L.P.A Nos. 246 of 2004, 301;2004, 271 of 2004, 308 of 2004, 236 of 2004, 269 of 2004, 235 of 2004, 548 of 2004, 518 of 2004, 300 of 2004, 289 of 2004 and 273 of 2004, having obtained training Certificates from the aforesaid

nine institutions, situated at Kolkata, West Bengal, can not be granted the relief, prayed for by them.

Institutions, situated in the State of Uttar Pradesh:

Some of the appellants/petitioners have submitted certificates, obtained from the following Institutions, situated with the State of Uttar Pradesh:

- (i) Hindi sahitya Sammelan, Prayog, Allahabad.
- (ii) Jamia Urdu, Aligarh.
- (iii) Gandhi Hindi Vidyapeeth, Prayog, Allahabad.
- (iv) Rastriya Pratrachar Sansthan, Khanpur.
- (A) Hindi sahitya Sammelan, Prayag, Allahabad.

Appellants of L.P.A. Nos. 306 of 2004, 382 of 2004, and 298 of 2004 have passed “Sahikha Bisharad” Examination from Hindi Sahitya Sammelan, Prayog, Allahabad. According to them, Hindi sahitya Sammelan, Prayog, Allahabad is a University and the qualification of “shiksha sivharad” is equivalent to B.Ed., / Trained Graduate. Their counsel has relied on different orders, Issued by the State Government from time to time in their support, as discussed hereunder:

Hindi Sahitya Sammelan is an institute of national importance, established under the “the Hindi Sahitya Sammelan Act, 1962” (hereinafter to be referred as “The Act, 1962.”) It has been constituted to perform the functions, as envisaged under section 6 of the Act, 1962, such as:

- (i) to promote the spread of Hindi language:
- (ii) To work for the promotion advancement and development of Hindi literature in India and foreign countries.
- (iii) To work for promotion development and advancement of Devnagari script
- (iv) To arrange for holding the examinations through the medium of Hindi language and so confer degrees/ diplomas and other academic distinctions.
- (v) To establish and maintain school. College and other institutions for instruction in Hindi language and Hindi literature and also to affiliate schools, colleges and other institutions for its examinations:

- (vi) To affiliate institutions. Having their object “The promotion of Hindi language and Hindi literature:
- (vii) To award honorary Degrees and other academic distinctions to persons, who may have rendered distinguished services to the course of Hindi etc.,

Government of India from its Ministry of Human Affairs, New Delhi, issued Notification No.P26/4/.52 C.C (Annexure–1/1 to LPA No, 298 of 2004), giving reference to an earlier Notification No.26/4/52 CC dated 20th September, 1952, issued in consultation with the Union Public Service Commission informed the Public in general that in case of degree/diploma, awarded by the Universities in India, which are incorporated by one act of Central or Part of A or B state Legislation of India, no formal order, recognizing such degrees/ diplomas need be issued by the governments. Such degree should be recognized automatically for the purposes of employment.

A list of Universities and other comparable Institutions of Higher Education was issued, wherein, the name of “Hindi Sahitya Sammelan, Prayag, Allahabad (U.P.) has been shown at serial no-2 of the list of “Universities” and as one of the Institutions of National importance.

In view of The aforesaid provisions and other provisions, made under the Hindi Sahitya Sammelan Act, 1962, there can not be any doubt that “Hindi Sahitya Sammelan, Prayag, Allahabad’s is a statutory Body, a University of national importance.

In the present case, the only question arises “whether the decree/certificate of ‘Shiksha Visharad’ is equivalent to B.Ed. or any other Teachers Training course, as prescribed under Rule 2 (kha) of Rules, 2002.

From letter No. BHI/vi/100-94/36224 dated 3rd September, 1994, issued from the director of Secondary Education (Orissa), Bhubaneswar, it appears that the Diplomas/Degrees, awarded by ‘Kendriya Hindi Sansthan, Agra’ and “Hindi Sahitya Sammelan, Allahabad’ were approved as equivalent for the purposes of employment in Orissa Government Service, as quoted hereunder.

(A) Examination of Kendriya Hindi	Equivalent to
Sansthan, Agra	
(i) Hindi Shiksha Praveen	Teachers Training Certificate Diploma
(ii) Hindi Shiksha Nishant	M.Ed. degree of an Indian University
(iii) Hindi Shiksha Parangat	B.T./B.ED., degree from an Indian University.
(B) Examination of Hindi Sahitya	Equivalent to
Sammelan, Allahabad,	
(i) Prathama	H.S.E
(ii) Madhyama	I.A.
(iii) Sahitya Ratna	B.A
(iv) Shiksha Visharad	B.T.C./C.T.

From the letter aforesaid, it appears that the Govt. of Orissa while treated “Hindi Shiksha Parangat” equivalent to B.T./B.ED., degree and “Hindi Shiksha Praveen” Equivalent to Teachers Training Certificate, “Shiksha Visharad, Certificate, granted by the “Hindi Sahitya Sammelan, Allahabad” has not been treated equivalent to B.T./B.ED., Degree rather equivalent to B.T.C/C.T., which is not the qualification laid down under Rule 2(kha) of Rules 2002.

Counsel for the appellants placed reliance on a letter No.12/3116-17/2000-152 dated 29th March 2000, issued by the Deputy Director (Secondary Education), Bihar, Patna to suggest that the Govt. of Bihar has also accepted the certificate of “Shiksha Visharad’ granted by Hindi Sahitya Sammelan, Allahabad, equivalent to B.ED. In the said Letter, giving reference to a query, made by the Secretary, School Examination Board, Patna, vide letter no,40 dated 15th January, 2000, it has been informed that the Govt, of Bihar by Resolution No, 394 dated 11th April, 1983 has accepted that the degrees “Shiksha Visharad’ and Shiksha shashtri’ granted by the Hindi Sahitya Sammelan, Allahabad and Sampurnanand Sanskrit Shiksha Mahavidyalaya, Varanasi respectively are equivalent to B.Ed course. But on perusal of original Resolution No.394 dated 11th April, 1993, issued from the Education Department, Government of Bihar, I find that the Deputy Director (Secondary Education), Bihar, Patna having distorted the fact had sent wrong

information to the Secretary, School Examination Board, Patna by the aforesaid letter dated 29th March 2000.

The Government of Bihar through its Education Department while issued Resolution No. 394 dated 11th April 1983 the subject was shown as 'Regarding recognition of examination, conducted by Sampurnand Sanskrit Vishwavidyalaya, Varanasi Uttar Pradesh. The following degrees/diplomas/certificates, issued from Samprunand Sanskrit Vishwavidyalaya Varanasi Uttar Pradesh has been treated equivalent to the degree/diploma/certificate as mentioned against their names.:

<u>Degree/Diploma</u>	<u>Equivalent to</u>
1. Purv Madhayama (With English)	Matric
2. Uttar Madhyama (with English)	Intermediate
3. Shashtri (with English)	B.A
4. Acharya	M.A
5. Shiksha Shashtri	B.Ed

The aforesaid Resolution No. 394 dated 11th April 1983 issued from Education Department of the Govt. of Bihar does not deal with any of the Degree/Diploma granted by the examination, conducted by the Hindi Sahitya Sammelan, Allahabad and thereby the appellants cannot derive any advantage of Letter No.152 dated 29th March 2000.

The State of Bihar time to time issued different letters/circulars from its Education Department/Human Resources Development Department, showing equivalent of a Degree/ Diploma/Certificate, granted by different institutions. By Resolution No. VI/M7018/63E-374 dated 29th March 1963 equivalency of various Sanskrit degrees and diplomas, awarded by the former Bihar Sanskrit Association and Kameshwar Singh Darbhanga Sanskrit Vishwavidyalaya has been shown with those degrees and diplomas, awarded by the Bihar School Examination Board and other Universities in the State. By order No. 6/R1-203/64Ni 10275 dated 16th August 1965 the degrees granted after 1947 from National Universities, such as, Kashi Vidhyapith, Varanasi, Gurukul Kangri, Mandar Vidyapith, Mandar, Bhagalpur Hindi Vidyapith, Deoghar,

Hindi Vishwavidyalaya, Allahabad, Prayag Mahila Vidyapith, Allahabad; Gujrat Vidyapith, Ahmadabad; Rashtrabhasha Prachar; Assam Rashtrabhasha Prachar Samiti, Guahati; Hindi Prachar Sabha, Hyderabad; Bombay Hindi Vidyapith, Bombay; Maharashtra Bhasha Sabha, Puna; Manipur Hindi Parishad, Imphal; Akhil Bhartiya Hindi Parishad, Agra; Maisoor Hindi Prachar Parishad, Bangalore and Dakshin Bharat Hindi Prachar Sabha, Madras, were shown to be equivalent to one or other degree/diploma/certificate as being awarded by School Examination Board and other Universities in the State. Similar circulars including Letter No. 7/M 605/73 (Part-21) Edn. 4927 dated 29th September 1974 order No. 8/R2/203/73 Ka. 12860 dated 21st July 1975 issued from personal Department Letter No. I/B 9-III/76 Edn. 1926 dated 24th August 1976 and other order No. 8/R1-1010/76-Ka-4236 Patna dated 11th March 1977 issued from Personal Department and Memo No. 2204/Patna dated 6th May 1988 were also issued from time to time. None of the aforesaid Circulars/Orders/Letters recognize the examination of Shiksha Visharad conducted by the Hindi Sahitya Sammelan, Allahabad, as equivalent to B.Ed or any other Teachers Training Degree/Diploma/Certificate, as prescribed under Rule 2(Kha) of Rules 2002 and thereby, the appellants of L.P.A No. 306 of 2004, 382 of 2004 and 298 of 2004 can not be held to have obtained any degree/Diploma Certificate in Teachers training as prescribed under Rule 2(Kha) of Rules 2002 and as such, being not eligible, cannot claim appointment in pursuance of the advertisement published by the J.P.S.C in August 2002.

The appellants have also not made it clear as to whether the Institute from where they have completed Teachers Training Course is a recognized institute and/or affiliated to Hindi Sahitya Sammelan or not. In absence of any such averment, relating to the issue from where they completed their Teachers Training Course, no finding can be given that they obtained degree/ diploma from a recognized institute.

(B) Zamia Urdu, Aligarh

The appellants of L.P.A. No. 594 of 2004 have passed the examination of “Moallim-E-Urdu” from an institute known as Jamia Urdu, Aligrah. According to them, the “Moallim-E-Urdu” is equivalent to the Urdu Teachers Training Course. They have relied on certain circulars issued from on or other State.

The Jharkhand Public Service Commission, Ranchi has also raised doubt with regard to the institute, in question, namely, Zamia Urdu, Aligarh. From the records, it is not clear as to whether the institute, namely, Zamia Urdu, Aligarh, is recognized by any State Government or Central Government or any Statutory Authority/Body or is affiliated to any one or the other University/Statutory Board. A letter of the Director of Education, Delhi bearing no. DE-3(21) Estt.III-85 D/796 dated 28th April 1986 issued to the Register, Zamia Urdu, Aligarh, suggests that the degree of “Moallim-E-Urdu” is considered equivalent to B.Ed by the Director of education, Delhi Administration, Delhi. Another letter No.C/3-4-96/3/F, Bhopal dated 19th March, 1986, issued from the General Administrative Department of Madhya Pradesh Government suggests that “Moallim-E-Urdu” has been treated as a qualification for teaching Urdu students up to the Secondary standard but it has not been treated equivalent to any Teachers Training course. There is nothing on the record to suggest that the Govt. of Bihar or any other Govt. has recognized the institute, namely Zamia Urdu, Aliharh, for the purpose of imparting Teachers Training Course.

Admittedly, the appellant Kalamat Ali Ansari has passed “Moallim –E-Urdu” examination from Zamia Urdu, Aligarh held in February 2001 (Examination of the year 2000). By the said date the provision of National Council for Teachers Education Act 1993, having come into effect (from 1st July 1995) the appellant Kalamt Ali Ansari can not claim appointment to the post, in question Zamia Urdu, Aligarh not having been recognized by the National Council for Teachers Education. The appellant Kalamat Ali Anasari of L.P.A No. 594 of 2004 therefore cannot be granted the relief as sought for.

(C) Gandhi Hindi Vidyaoith, Parayag, Allahabad

The appellants of L.P.A. No. 597 of 2004 claim to have passed Teachers Training Examination from Gandhi Hindi Vidhyapith, Prayag, Allahabad. According to them, it is equivalent to B.Ed and has been recognised by the Govt. Of Bihar vide Letter No. 12/Ma-028/91-62 dated 30th January 1993 issued from Human Resource Department Development, Patna. Though such statement has been made copy of letter aforesaid has not been enclosed to verify the genuinity. In the compendium of circulars/rules/Acts of primary Teachers i.e Bihar Rajya Parambhik Shikaha Vidhi Ebam Vidhan, published by Malhotra Brothers, Patna (2nd Edition,

2002) neither any such reference of such letter no 12/Ma-028/91-62 dated 30th January 1993, has been made nor copy of the same has been printed however, I have some doubt relating to the aforesaid statement, made by the appellants in their representation for the following reasons:

It came to the notice of the University Grant Commission that a number of fake Universities and Institutions have been opened, which are awarding degrees/diplomas/other certificates. A list of fake Universities, as on May 1, 2000 was published by the University Grant Commission, which was also circulated by the Secretary, Human Resources Development Department (Primary Education) Govt. of Jharkhand, Ranchi vide Memo No.3477/Ranchi dated 30th December, 2003 (Annexure-5 to W.P.S No.4298 of 2004). At serial no.6 of the list of fake Universities, the institutions, in question i.e “Gandhi Hindi” Vidyapith, Prayag, Allahabad (UP) has been shown and declared to be a fake University by the University Grant Commission. That apart, there is nothing on the record to suggest that so called Teachers Training Examination, passed by the appellants of L.P.A. No.597 of 2004 is equivalent to B.Ed. degree, as prescribed under Rule 2(kha) of Rules, 2002. Therefore, the appellants of L.P.A No. 597 of 2004 cannot be given appointment in pursuance to the advertisement, published by the J.P.S.C in August 2002 they not being qualified.

(D) Rashtriya Patrachar Sansthan, Kanpur

Both the petitioners of W.P.(S) No. 4298 of 2004 claim to have passed ‘Shiksha Alankar’ from Rashtriya Patrachar Sansthan, Kanpur in May, 1994 and May, 1991 respectively. They have enclosed the copies of the marksheet as Annexures-6 & 6/1. According to them, the qualification ‘Shiksha Alankar’ is equivalent to ‘Bachelor of Education’ (B.Ed.), as shown and printed in their mark sheets. However, no pleading has been made that the Institution, in question, namely, ‘Rashtriya Patrachar Sansthan, Kanpur has been recognized by either any Statutory Body, such as, University or Board or by any Government. Counsel for the petitioners has relied on a copy of the order, passed by Lucknow Bench of Allahabad High Court in W.P.No.5496(S) of 2003 (Ram pyare Pankaj & ors.Vrs. State of U.P. & ors.) to show that the degree/diploma, awarded by Rashtriya Patrachar Sansthan, Kanpur, has been recognized by the Government of U.P. vide letter dated 6th September, 2000, as also by the Director of Samaj Kalyan, Govt. of U.P.

by letter dated 25th June, 2002. The orders were issued in pursuance of the order, passed in another Writ Petition No.1208(S) of 1995.

Even if such stand taken by the petitioner is accepted, the petitioner cannot derive any advantage of the same, they having passed ‘Shiksha Alankar’ from Rashtriya Patrachar Sansthan, Kanpur’ in May 1994 and May 1991 respectively. When the Institution i.e. ‘Rashtriya Patrachar Sansthan, Kanpur’ was not recognised by the Govt. of U.P. Further, N.C.T.E. Act, 1993 having come into effect from 1st July 1995, it was not open to the Govt. of U.P. to recognise any Training Institute in the year, 2000/2001, without prior permission of the National Council for Teachers Education. Therefore, though the Degree/Diploma awarded by ‘Rashtriya Patrachar Sansthan, Kanpur’ can be recognized as a degree/diploma of any academic distinction, it cannot be recognized as a degree/diploma of Teachers Training Course.

Admittedly, the Govt. of Bihar and the Govt of Jharkhand have neither recognised ‘Rashtriya Patrachar Shansthan, Kanpur’ nor it has been recognized by the National Council for Teachers Education. Therefore, no relief can be granted to them.

Training Colleges/Institutions, Situated in the States of Bihar & Jharkhand

(a) Kameshwar Singh Darbhanga Sanskrit University, Darbhanga

Eight appellants of L.P.A.No. 322 of 2004 have passed ‘Acharya Examination’ from ‘Kameshwar Singh Darbhanga Sanskrit University, Darbhanga’. According to them the degree of ‘Acharya’ is equivalent to ‘B.Ed degree’. Counsel for the appellants has relied on different circulars, issued from time to time by then unified State of Bihar.

Kameshwar Singh Darbhanga Sanskrit University, Darbhanga, was initially constituted under ‘Kameshwar Singh Darbhanga Sanskrit Vishvidyalaya Act 1960 (Bihar Act of 1960)’. Subsequently Bihar State Universities Act 1976 covered almost all the Universities, situated within the territory of the State of Bihar, except Patna University, Rajendra Agriculture University and Birsa Agriculture University for which separate Acts were passed. Under Section 3 of the ‘Bihar State Universities Act, 1976’, “the establishment and incorporation of the Universities”

within the territory of the then State of Bihar have been shown, which includes 'Kameshwar Singh Darbhanga Sanskrit University', having the headquarters at Darbhanga and the jurisdiction over whole of the then State of Bihar, including the successor State of Bihar and Jharkhand. Therefore, there should not be any dispute relating to recognition of any Degree/Diploma/Certificate granted by Kameshwar Singh Darbhanga Sanskrit University, Darbhanga. The only question arises "whether the Sanskrit degree 'Acharya' is equivalent to B.Ed or any other 'Teachers Training Course' as prescribed under rule 2(kha) of Rules 2002".

The respondent State of Jharkhand has taken up plea that the Sanskrit degree of 'Acharya' is equivalent to 'M.A' in Sanskrit for the purpose of appointment of Sanskrit Teacher. However according to the appellants, it is a degree in Teachers Training Course.

For determination of the issue, one should notice the decision of the Govt. of Bihar as was circulated vide Resolution No.VI/M7018/63E374 dated 29th March 1963 issued from Education Department, Govt. of Bihar. While considering the question of equivalence of various Sanskrit Degree and Diplomas awarded by the former Bihar Sanskrit Association and Kameshwar Darbhanga Sanskrit University, Darbhanga with those of Degree and Diplomas awarded by the Bihar School Examination Board and other Universities in the State of Bihar, after careful consideration of the matter, it will appear that the state of Bihar, in consultation with the Public Service Commission, Bihar had been pleased to decide the equivalence of various Sanskrit degrees as detailed below.:

(a) For the purpose of appointment to the Public Service

Name of degrees and diplomas of which deemed equivalent		
Name of Sanskrit degrees, Diplomas and certificates	For Sanskrit teaching and inspection of Sanskrit Institutions only.	For other appointments
NAVIN SYSTEM		
Pratham(ii)	Middle	Middle
Uttar Madhyam(ii)	Matriculation or S.S	under Matric

(without English)	Examination	
Uttar Madhyam(ii)	Matriculation or S.S	Matriculation or S.S
(without English)	Examination	Examination. Pre-university or Higher Secondary
Shastri(with English)	B.A	I.A or B.A (part-I)
Acharya(without English)	M.A(Sanskrit)	I.A or B.A(Part-I)
At Shastri stage		
Acharya (with English)	M.A (Sanskrit)	B.A
At Shastri stage		

PARACHIN SYSTEM

Name of the degrees and diplomas of which deemed equivalent		
Name of Sanskrit Degrees	For Sanskrit teaching	For other appointments
Diplomas and certificates	& inspection of Sanskrit Institutions only	
Prathma	Middle	Middle
Madhyam	Matriculation or S.S Examination	Under Matriculate
Shastri	I.A or B.A (Part-I)	Matriculation or S.S Examination
Acharya	B.A (Hons) Sanskrit	I.A
Acharya	M.A(Sanskrit)	B.A
(With pass in English or Navin Shastri or equivalent standard)		

It was reiterated by the letter, issued by the Director Primary Education-Cum-Joint Secretary, Education Department, Govt. of Bihar, vide letter No. 7/M605/73(Part-21) Edn. 4927 Dated 25th September 1974 (Reference of Resolution No. VI/M7018/63E-374 dated 29th March 1963 and letter no. 7/M605/73(Part-21) Edn. 4927 dated 25th September 1974, has been taken from pages nos.922 and 931 of the Bihar Rajya Prarambhik Shiksha Vidhi Ebam Vidhan, published by Malhotra Brothers, Patna (2nd Edition, 2002).

From the decision aforesaid it is clear that the degree of 'Acharya' can at best be treated an "M.A" Degree in Sanskrit or "B.A" for appointment of Sanskrit Teacher, but it cannot be treated to be a Degree in 'Teachers Training Course' for the purpose of Rule 2(Kha) of Rules, 2002.

Council for the appellants relied on different Resolutions/Circulars, issued by the State of Bihar. Reliance was also placed on Resolution dated 24th October 1982, whereby, it was informed that the Degree 'Acharya' [Sahitya (Literature or Vyakaran/ Grammar) or Fazil (Arbi or Farsi)) are also qualifications for appointment of primary Teachers. In the Note below the direction, it was mentioned that a candidate who has obtained Acharya/Fazil from a recognized University or Govt. recognized Training Institute will be given preference. But this resolution cannot be relied upon for determination of the issue of equivalence i.e "whether the Degree 'Acharya' is equivalent to 'Teachers Training Degree/B.Ed' or not". The other letter no. 6066 dated 24th November 1986 issued by the Director (Secondary education)-Cum-Joint Secretary, Education Department, Govt. of Bihar, Patna, relates to grant of Selection Grade scale to the teachers. By the said letter, it was informed that the State Govt. has placed the teachers, holding 'Acharya'/'Fazil' Degree in the category of Trained Teachers for the purpose of seniority and grant of scale of pay but that does not mean that the Govt. of Bihar has treated 'Acharya' or 'Fazil' Degree equivalent to a Degree in 'Teachers Training Course/B.Ed'. Resolution No. II/P1-05/68E-1439 dated 4th May 1968 and Resolution no. 2/B-90319/73/Edn.-237 dated 20th January 1976 both issued from the Education Department, Govt. of Bihar, relate to grant of scale of pay. If the teachers, holding qualification of 'Acharya' or 'Fazil' have been allowed the scale of pay as is allowed to the Trained Teachers that does not mean that the degree of 'Acharya' or 'Fazil' has been treated equivalent to "Teachers Training Course/B.Ed Degree".

Thus, the appellants of L.P.A No. 322 of 2004 cannot be treated to be holding any Teachers Training Degree/Diploma nor their degree of 'Acharya' can be treated to be equivalent to the degree of B.Ed. and thereby they cannot be granted any relief for appointment in question.

(b) Laxmi Devi Sarraf Adarsh Sanskrit Mahavidyalaya, Deoghar

These three applicants of L.P.A No. 344 of 2002 claim to have passed 'Acharya Examination' from 'Laxmi Devi Sarraf Adarsh Sanskrit Mahavidyalaya, Deoghar'. According

to them, the Degree of 'Acharya' obtained from 'Laxmi Devi Sarraf Adarsh Sanskrit Mahavidyalaya, Deogarh', is equivalent to 'Trained Graduate/B.Ed.'.

However, there is nothing on the record to suggest that said 'Laxmi Devi Sarraf Adarsh Sanskrit Mahavidyalaya, Deogarh' is a College, affiliated with any University, or is a constituent College of any University. It is not the case of the appellants that 'Laxmi Devi Sarraf Adarsh Sanskrit Mahavidyalaya, Deogarh' is a Govt. college or recognized by the Govt. of Bihar or the Central Govt. Therefore, it cannot be held that 'Laxmi Devi Sarraf Adarsh Mahavidyalaya, Deogarh', is a recognized institute for the purpose of Rule 2(Kha) of Rules 2002.

So far as degree 'Acharya' is concerned, it has already been discussed and held above that the Degree of 'Acharya' is not a 'Teachers Training Degree/B.Ed. Degree' and thereby it cannot be treated to be equivalent to 'Trained Graduate'. As such, no relief can be granted to the appellants of L.P.A No. 344 of 2004.

Indira Gandhi National Open University (IGNOU), New Delhi

These three appellants of L.P.A No. 240 of 2004 have passed 'Certificate in Guidance' (C.I.G) from 'Indira Gandhi National Open University, New Delhi' ('IGNOU for short). According to them, the 'Certificate of Guidance' is equivalent to 'Dip. In.Ed/Dip.in Teach'. The appellants have enclosed the relevant portion of IGNOU prospectus for admission in 'Certificate in Guidance' which reads as follows:

SCHEMATA OF C.I.G

1. LIST OF COURSES OFFERED

ES 101 : UNDERSTANDING THE ELEMENTARY SCHOOL CHILD

ES 102 : FACILITATING GROWTH AND DEVELOPMENT

ES 103 : GUIDING CHILDREN'S LEARNING

ES 104 : GUIDING SOCIO-EMOTIONAL DEVELOPMENT OF CHILDREN

2. TO QUALIFY FOR CIG, A STUDENT SHOULD HAVE SUCCESSFULLY COMPLETED ALL THE FOUR COURSES.

3. RESULT IS DECLARED IN BETTER GRADES ON A FIVE POINT SCALE

4. LETTER GRADE AND GRADE POINTS FOR PURPOSES OF COMPUTATIONS ARE AS UNDER :

LETTER GRADE	GRADE POINT
A-EXCELLENT	5
B-VERY GOOD	4
C-GOOD	3
D-SATISFACTORY	2
E-UNSATISFACTORY	1

5. FOR COURSE GRADING PURPOSE, 30% WEIGHTAGE IS GIVEN TO CONTINUOUS EVALUATION AND 70% TO THE TERM END EXAMINATION.

6. ON THE BASIS OF AVERAGE GRADE POINT SECURED, THE FINAL GRADE IS AWARDED ACCORDING TO THE FOLLOWING RANGE:

AVERAGE GRADE POINT RANGE	GRADE
4.50 & ABOVE	A
3.50 – 4.49	B
2.50 – 3.49	C
1.50 – 2.49	D
0 – 1.49	E

7. IN ORDER TO SUCESSFULLY COMPLETE A COURSE THE CANDIDATE MUST OBTAIN AT LEAST GRADE 'D' IN EACH OF THE CONTINUOUS EVALUATION AND IN THE TERM-END EXAMINATION HOWEVER, OVERALL AVERAGE GRADE OF CONTINUOUS EVALUATION & TERM EXAMINATION SHOULD BE AT LEAST 40%.

From the aforesaid prospectus, it is clear that the 'Certificate in Guidance' is not a Degree, equivalent to 'Trained Graduate or B.Ed. Degree'. It has already been noticed that Teachers Training, such as, "two years Primary Teachers Training or B.Ed. or Dip. in Ed." from recognized "Training Colleges/institute" has been prescribed under Rule 2(Kha) of Rules 2002, for appointment of 'Primary Teachers'. The 'Certificate in Guidance', as referred to above, cannot be held to be 'Two Years Primary Training Certificate' nor can it be held equivalent to 'B.Ed or Dip.in Ed.'. So far as IGNOU is concerned, it being a recognized University, the case of the appellants cannot be rejected on the ground that they have not passed from a recognized institute. However, they being not qualified in terms with Rule 2(Kha) of Rules 2002, these appellants cannot be granted the relief, as sought for.

5. The Supreme Court has taken serious view in allowing the students of unrecognized institutions to appear at public examinations. In the case of *State of Maharashtra Vrs. Vikash Saheb Rao Roundley & ors.* Reported in AIR 1992 SC 1926, the Supreme Court has observed as follows:

“..... In short teachers need to be endowed and energized with needed potential to serve the needs of the society. The qualitative training colleges or schools would inspire and motivate them into action to the benefit of the student. For equipping such trainees students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Art. 226 of the constitution, directing the appellants to permit the students to appear for the examination etc.”

6. Taking into consideration the facts and circumstances of the case, the statutory Rules 2002 and the decisions, rendered by the Supreme Court, as discussed above, in my view no ground is made out to interfere with the orders, passed by the Secretary, Human Resources Development Department (Primary Education) Govt, of Jharkhand, Ranchi, as affirmed by the learned Single Judge or to grant any relief to the appellants / petitioners. The appellants/ Petitioners, having no requisite qualification of Teachers Training as per Rule 2(kh) of Rules, 2002, many of them having obtained training qualification from unrecognized institutions and one institution even found fake by the UGC and the degree / diploma / certificate obtained in other cases are not being equivalent to Trained Graduate/ Teachers Training, no relief can be granted to any of them. There being no merit all the appeals and the analogous writ petition are hereby dismissed. However, in the facts and circumstances, there shall be no order as to cost.

Hon'ble Mr. Justice M.Y.Eqbal

State of Jharkhand & Ors. ... Respondents

2000 (3) PLJR 231 – Dr. Rabindra Kumar Singh & Ors. Vs. State of Bihar & Ors.

2. The petitioner is an Advocate presently practicing in Dumka Civil Court. The Jharkhand Public Service Commission (in short 'The Commission'), vide its advertisement no.03/2004-05 invited applications for appointment on the post of Additional Public Prosecutor. One of the conditions put in the advertisement is that the upper age limit as on 31.1.2005 should not exceed 35 years for the general category candidates.

3. Mr. Mazumdar, learned counsel appearing on behalf of the petitioner submitted that although the State of Jharkhand came into existence in November 2000, no examination for filling up the post of Public Prosecutor was held and for the first time the impugned advertisement has been issued for filling up the post of Public Prosecutor and, therefore relaxation in age should be given to those candidates who have completed 35 years of age before the cut off date i.e 31.5.2005.

4. Mr. S. Pipriwal, learned counsel appearing on behalf of the Commission, on other hand, submitted that for the first time on 18.8.2004 the respondent-State sent a petition to the Commission for starting the recruitment process for appointment of A.P.Ps in the State of Jharkhand. In the said requisition respondent no.3, the Secretary, department of Law & Justice, Govt. of Jharkhand, did not give any information regarding minimum and maximum age limit or any other relevant information. It is stated that as per Rule 35 of the prosecution Manual, 2002 the minimum age limit prescribed for a candidate is 18 years whereas fixation of upper age limit is to be decided by the Government time to time.

5. There is no dispute that by virtue of Bihar Re-organization Act, 2000 the state of Jharkhand came into existence on 14th November 2000. Admittedly, since the creation of the State of Jharkhand no examination was held for selection of A.P.Ps and it is for the first time in 2005 respondents have come with an advertisement. The candidates who were eligible for applying to the said post and now have crossed 35 years of age, have certainly been deprived of the said post because of the inaction of the respondents. In such circumstances, relaxation in age is to be given to those candidates who have crossed their maximum age limit.

6. Mr. Piprawal, learned counsel appearing on behalf of the Commission has produced before me a copy of order dated 22.1.2003 passed in WPS No. 289/2003 and submitted that in similar circumstances a writ petition was dismissed by this Court. From perusal of the order it appears that the Commission had issued advertisement for Combined Competitive Examination for appointment in Jharkhand Civil Service. The writ petition prayed for a direction upon the respondents to give relaxation of three years in the upper age limit of 35 years for General Categories. The learned Single Judge of this court dismissed the writ petition holding that the

power to relax age for appointment or the power to fix the maximum age for appointment or the power to fix cut off date for appointment is vested with the Appointing Authority/State of Jharkhand however, Mr. Pipriwal, learned counsel, very fairly submitted that after dismissal of the said writ petition the respondent-State gave two years relaxation in age for appearing in the Combined Competitive Examination.

7. A similar question arose before the Patna High Court in the case of “Dr. Rabindra Kumar Singh & Vs. State of Bihar & ors” 2000(3) PLJR 231. In that case a dispute arose relating to fixation of upper age limit of 35 years on the cut off date i.e 1.10.98 for making application for the post of Medical Officer in Bihar Health Services. The grievance of the writ petitioners was that during last 9 years after 1989, no recruitment for the basic grade post of Medical Officer in the State of Bihar Health Service was made with the result that many candidates became over-age. Considering various decisions of the Supreme Court their Lordship of the Patna High Court held that petitioners are entitled to get the benefits in the relaxation of age.

8. For the reason aforesaid this writ application is allowed and the respondents are directed to allow the petitioners to fill up the application form and to appear in the selection process for the post of Additional Public Prosecutor. Since petitioner has approached this Court, it is clarified that this order shall be confined to the writ petitioners only.

D.D. 23.9.2005

Hon'ble The Acting Chief Justice S.J.Mukhopadhaya

Vs.

State of Jharkhand & Ors. ... Respondents

The candidature of the applicant who appeared for competitive examination for appointment to the post of Primary School Teachers was rejected on the ground that she failed to produce B.Ed. certificate – It was found that the Institute from which she completed the training course was not recognised by N.C.T.E. – Hence writ petition dismissed.

This application has been preferred by the petitioner for direction on the respondents to evaluate the answer sheet for recruitment to the post of Primary School Teachers.

According to the petitioner, she appeared in the competitive examination held by the Jarkhand Public Service Commission for appointment to the post of Primary School, teachers. After examination, she was expelled on the ground that she has not produced B.Ed Certificate.

Learned counsel for the J.P.S.C on instructions, submitted that, in fact, the petitioner failed in the written test and was not successful. He produced a Letter No. 793 dated 3rd September 2003, issued by the Deputy Commissioner, Bokaro. By the said letter, the Deputy Commissioner informed the in charge Secretary of the J.P.S.C Ranchi that the examination was conducted peacefully. The petitioner was not expelled form the examination.

Apart from the aforesaid statement made by the counsel for the J.P.S.C from the Admit

Card enclosed by the petitioner, at page-28, it appears that the petitioner completed the Teachers Training Course from one Dr. Zakir Hussain Teachers Training College, Laheriasarai. She passed the examination some time in August 2002.

There is nothing on the record to show that Dr. Zakir Hussain Teachers Training College, Leheriasarai was recognized by the National Council for Teachers Education (NCTE). In such circumstances, no relief can be granted.

There being no merit, the writ petition is dismissed.

IN THE HIGH COURT OF JHARKHAND, RANCHI**W.P (S) No. 5882 of 2005****D.D. 16.12.2005****Hon'ble Mr. Justice S.J.Mukhopadhaya****Prabhash Chandra Gupta ... Petitioner**

Vs.

State of Jharkhand & Ors. ... Respondents**Eligibility:**

The petitioner challenged the advertisement calling for applications for the Limited Competitive Examination for appointment to the post of Deputy Collector from persons having experience as Class-III service in the State – High Court holding that the petitioner has no locus standi dismissed the writ petition.

Held:

The petitioner who has less than 5 years of experience has no locus standi to challenge the advertisement on the ground that 10 years of experience is required for appointment.

ORDER

The petitioner has challenged the Advertisement no. 5/05, whereby and where under while applications have been called for appearing in the Limited Competitive Examination for appointment to the post of Deputy Collector, it has been mentioned that a person, who has five years of experience as Class – III service in the State of Jharkhand is eligible to apply.

According to counsel for the petitioner, the prescribed period of five years of experience has no nexus with the object sought to be achieved by the respondents. It will exclude all the fresh appointees of the State of Jharkhand. However, such submission cannot be accepted as it is for the State Government to determine the minimum experience for the appointment against one or other post.

The question as to whether ten or five years of experience is required for appointment to the post of Deputy Collector cannot be determined in the present case, as the petitioner having less than five years of experience, has got no locus stand to challenge the advertisement on the ground that ten years of experience is required for appointment. However, the authorities before filling up the said post will ensure as to what is the minimum experience prescribed under the rule.

This writ petition is dismissed, with the aforesaid observations.
