

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P. (S) No. 1083 OF 2017**

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1. Ranjeet Kumar Gupta, son of Sri Janki Saw;
2. Rituraj Singh, son of Sri Arun Kumar Singh;
3. Ajay Kumar, son of Sri Ramesh Mahto;
4. Deepak Prakash Pandey, son of Sri Nakul Kumar Pandey.

... .. **Petitioners**

**V E R S U S**

1. State of Jharkhand through Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Vibhag, Government of Jharkhand, Ranchi
2. Jharkhand State Staff Selection Commission, through Controller of Examination, Namkom, Ranchi
3. Joint Secretary, Personnel, Administrative Reforms and Rajbhasha Vibhag, Government of Jharkhand, Project Building, Ranchi

... .. **Respondents.**

**CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK**

For Petitioner	:	Mr. Rajiv Kumar, Advocate. Ms. Suchitra Pandey, Advocate
For Respondent – State:		Mr. Rajesh Kumar, GP-IV Ms. Shruti Shrestha, JC to AG
For JSSC	:	Mr. Tejo Mistry, Advocate

**C.A.V. On 09/10/2017**

**Pronounced on 03/11/2017**

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**Dr. S.N.Pathak, J.** Heard learned counsel for the parties.

2. Petitioner has approached this Court with a prayer for quashing the decision of the respondents – State to recall the requisition and cancel advertisement for Graduate Level Combined Competitive Examination, 2015, cancelling the result of preliminary examination published in the press release dated 03.02.2017 of respondent no. 1 and 04.02.2017 of respondent no. 1. Petitioner has further prayed for a direction to go ahead with the recruitment process initiated by holding the mains examination as per Jharkhand Staff Selection Commission Examination Rule, 2015 so that uncertainty may not hamper career prospects of the petitioners who are selectees of the preliminary examination.
3. The facts of the case giving rise to the instant writ application is that on 28.12.2015, respondent no. 1 issued an advertisement being advertisement no. 14/2015 on the basis of certain requisition issued by the

respondent no. 2, as mentioned in the advertisement, for filling up posts of (i) Block Supply Officer (ii) Block Welfare Officer (iii) Cooperative Extension Officer (iv) Secretariat Assistant (v) Circle Inspector. However, another corrected advertisement was issued for 4 different types of other posts i.e. (i) Block Agriculture Officer (ii) Assistant Research Officer (iii) Plant Conservation Officer (iv) Statistical Assistant. Thereafter, again corrected advertisement had been published which included certain other posts i.e. (i) Labour Officer (ii) Senior Auditor (iii) Industrial Extension Officer (iv) Fisheries Supervisor (v) Geological Analyst, etc. The petitioners are applicants for the Combined Graduate Level Competitive Examination for which different advertisement/ corrigendum etc. had been published. From perusal of para-10(Ka) of the advertisement, it appears that an Agriculture Degree Holder could have applied for other posts earlier advertised i.e. the 1<sup>st</sup> advertisement viz, Block Supply Officer, Block Welfare Officer etc. and likewise, Math Graduate/ Economics Graduate/ Graduate in Statistics/ B.Com/ B.CA/ Graduate in Food Technology etc. could have applied for the post of Block Supply Officer/ Block Welfare Officer/ Cooperative Extension Officer/ Secretariat Assistant posts.

4. A preliminary examination was held on 21.08.2016 and results thereof was published fixing cut off marks for all category of posts except for the post of Block Agriculture Officer, Assistant Research Officer, Plants Conservation Officer, where all 1731 candidates were permitted to appear at mains examination as the number of applicants itself were less than 15 times the notified vacancies i.e. 250. Many of the candidates with Agriculture Statistics/ Mathematics etc. had applied for the posts available to general graduates and hence repetition of roll number was inevitable there. However, there was no complaint of malpractices in the conduct of examination.
5. Rule 7(ii) of the Rule provides holding of examination for Graduate Level, as mentioned in Schedule (i) to the Rule which includes all the posts advertised including Block Agriculture Officer, Fisheries Officer etc., there is no provision separate for holding separate examinations even though the applicant for Schedule 1 posts possesses special qualification under Rule 7(ii) of 2015 Rule. This was clearly provided in Clause No. 13 of the advertisement that the syllabus for main examination shall be common for all posts. The date of final examination was fixed as 27.11.2016 but the examination was postponed to an indefinite date vide notice dated

13.11.2016, published by the Controller of Examination (respondent no. 2.). It is further alleged that on the question raised by one MLA in Legislative Assembly regarding repetition of Roll No. in the result, which was accepted by the Government, the explanation of possibility/ permissibility because of one candidate having applied on more than one posts. It was further replied that the recruitment process itself against the rule of natural justice to have asked the persons with special qualification have appear at the examination with the same set of questions as is meant of any simple graduate and as such government wanted to amend the rule and recall the vacancy so that persons with specialized qualification may be examined with respect to their qualification. Thereafter, a press release was issued on 03.02.2017 in which it was stated that the Government wanted to keep the further recruitment process in abeyance. Thereafter, on the very next date i.e. 04.02.2017, the respondent no. 2 issued a notice in news paper cancelling the results of preliminary examination. Being aggrieved, petitioners have filed the instant writ petition challenging the order of cancellation.

6. Mr. Rajiv Kumar, learned counsel for the petitioners assisted by Ms. Suchitra Pandey, strenuously urges that action of the respondents in cancelling/ recalling the Preliminary Results is not tenable in the eyes of law and is a glaring example of arbitrariness on the part of the respondents – State. Learned counsel further argued that cancellation of the result was against Rule 57 of the Rules of executive business and taking decision to keep the further recruitment process in abeyance was not within the competence of respondent no. 2. Learned counsel argued that there was no allegation of any malpractice in examination or of any procedural illegality rather just on the question raised by an MLA regarding republishing the result in the Notification and Rules, the results had been cancelled hurriedly on the ground that there was repetition in the result and candidates with specialized qualification have appeared at the examination with the same set of questions as were meant for any simple Graduates. Learned counsel further submits that Rule 7(ii) of the Jharkhand Staff Selection Conduct of Examination (Graduate Level) Rule, 2015 provided the same and the Rule was framed by the Government itself and as such, action of the respondents to recall vacancies so that persons with specialized qualifications may be examined with respect to their qualification, is not at all tenable in the eyes of law. Learned counsel further submitted that as the petitioners along with others qualified in the Preliminary Test and no amendment in Rules

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regarding petitioners and similarly situated persons were done and even in view of Page-101 (in Rules), the fresh Preliminary Test was to be held in view of Special Yogyatadhari Graduates, then why the petitioners be allowed to suffer and as such, the Mains Examination may be conducted and the candidates who have cleared Preliminary Tests, may be allowed to appear in the said examination. The examination of the petitioners and other simple Graduates will be on the basis of Rule 2015 whereas, the examination of other Specialised Yogyatadhari Graduates will be on the basis of 2017 Rules and as such, there cannot be any combined examination as separate Rules have already been framed for separate examination of Specialised Yogyatadhari Graduates. Learned counsel submitted that in the circumstances, there is no question of any combined examination.

Mr. Rajiv Kumar has placed reliance on the Judgment of Hon'ble Supreme Court and further argued that the respondents cannot go beyond the advertisement and in the instant case, the respondents have crossed the jurisdiction by giving go-bye to the results of Preliminary Test. It has further been argued that the rules of game could not have been changed when the game is over. In order to strengthen his arguments, Mr. Kumar relies on the Judgment of Hon'ble Apex Court in the case of ***Md. Sohrab Khan Vs. Aligarh Muslim University & Ors.*** reported in ***JT 2009 (S) SC 666*** wherein the Hon'ble Court has held that the ***Selection Committee cannot go behind advertisement. No interference with the impugned judgment called for.*** Learned counsel has further relied in the case of ***K. Manjusree Vs. State of A.P. & Ors.***, reported in ***AIR 2008 SC 1470*** and in the case of ***Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors.*** reported in ***(2013) 4 SCC 540***. Mr. Kumar has further relied in the case of ***Yogesh Kumar and others Vs. Govt. of NCT, Delhi and others*** reported in ***(2003) 3 SCC 548*** and submitted that *recruitment to public services should be made strictly in accordance with the terms of advertisement and recruitment rules. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post.* Learned counsel further relied in the case of ***Bishnu Biswas and others Vs. Union of India and others*** reported in ***(2014) 5 SCC 774***.

7. Per contra, counter affidavit has been filed.

Mr. Rajesh Kumar, learned counsel appearing for the respondents - State and Mr. Tejo Mistry, learned counsel appearing for respondents –

Jharkhand State Staff Selection Commission have vehemently opposed the contention of learned counsel for the petitioners. Learned counsel emphatically argued that it is an open competitive examination and as such by Annexure-C, fresh requisites has been issued for holding fresh Preliminary Test and as such, there is no harm in conducting a fresh examination. The action of the respondents is fully justified as the Rules have been amended, fresh Preliminary Tests are to be held in view of amended Rule.

Mr. Rajesh Kumar further submitted that the action of the respondents does not amounts to *changing of rule of game after the game had begun*. The said principles of law is not applicable in the instant case. It cannot be said to be a straight jacket formulae but has to be applied in the facts of each case.

Learned counsel has placed reliance in the case of:

- (i) ***Yogesh Yadav Vs. Union of India – (2013) 14 SCC 623 [Para-13];***
- (ii) ***University Grants Commission Vs. Neha Anil Bobde – (2013) 10 SCC 519 [Para-25 – 31];***
- (iii) ***Ritesh Tiwari Vs. State of Utter Pradesh – (2010) 10 SCC 677 [Para-26].***

Learned counsel submitted that there is no illegality and the action of the respondents are quite justifiable and the Rules have been amended in order to sort out the most suitable candidates for appointment in the posts advertised by the respondents.

8. I have heard counsel for the parties, perused the records as well as the Judgments relied upon by the parties. The issue to be decided in the instant case is

**A. WHETHER THE RESPONDENTS CAN BE ALLOWED TO DENY THE PETITIONERS AND OTHERS TO SIT IN MAINS EXAMINATION EVEN AFTER PUBLICATION OF RESULTS OF PRELIMINARY TESTS?**

**B. WHETHER THE RESPONDENTS CAN BE ALLOWED TO RE-CONDUCT THE PRELIMINARY TEST EVEN THOUGH THERE IS NO COMPLAINT OF ANY MALPRACTICE OR ANY ILLEGALITY AND PETITIONERS AND OTHERS HAVE ALREADY QUALIFIED FOR MAINS EXAMINATION?**

The Hon'ble Apex Court in the case of ***Ritesh Tiwari vs. State of Utter Pradesh*** reported in ***(2010) 10 SCC 677***, para-26 has held that

*“26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right merely errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the Court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner.”*

**In Yogesh Yadav Vs. Union of India – (2013) 14 SCC 623 [Para-13]**

it has been held that

*“... .. In the absence of any rule on this aspect in the first instance, this does not amount to changing the “rules of the game”. The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of the game. On the contrary, in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed. The fixation of such benchmark is permissible in law.*

The Hon'ble Apex Court in the case of **University Grants Commission and another Vs. Neha Anil Bobde (Gadekar)** reported in **(2013) 10 SCC 519** has held at para-31

*“31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore v. C.D. Govinda Rao, Tariq Islam v. Aligarh Muslim University and Rajbir Singh Dalal v. Chaudhary Devi Lal University, has taken the view that the court shall not generally sit in appeal over the opinion expressed by the expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the university. For attaining the said standards, it is open to UGC to lay down any “qualifying*

*criteria”, which has a rational nexus to the object to be achieved, that is, for maintenance of standards of teaching, examination and research. The candidates declared eligible for Lectureship may be considered for appointment as Assistant Professors in universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. UGC has only implemented the opinion of the experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Article 14 of the Constitution of India.”*

9. It transpires that the petitioners have approached before this Court for holding Mains Examination as per the Jharkhand State Staff Selection Commission Rules, 2015 so that uncertainty may not hamper their career prospects who are selectees of Preliminary Test. It is specific stand of the respondents that on 21.08.2016, the Preliminary Test had been organized and subsequently the Preliminary Test Results had been published by the Commission. Thereafter, the Department received representation from many candidates through various sources pointing anomaly in the published result. Upon going through the representations, established rules and published results, the Department figured that since the post requiring specific qualifications were included with the post requiring general qualification in the Combined Examination, **equal level playing field was not provided to all the candidates** which is not only against the candidates who qualified for more than one posts in the Preliminary Test result. It also obstructed selection of equal number of unsuccessful candidates. If the specialized posts were treated mutually exclusive approximately 5000 more candidates would have been declared qualified for the Mains Examination. Therefore, it had been decided to make appropriate amendment in the syllabus of Preliminary Examination and the Mains Examination detailed in the Jharkhand Staff Selection Commission Rules, 2015. The State Government, vide letter no. 563, Dated 18.01.2017, issued by Personnel, Administrative Reforms & Rajbhasha Department, has decided to amend the stipulate courses of study for Preliminary and Main Examination incorporated in Jharkhand Staff Selection Commission Examination (Graduate Level) Conduct Rules, 2015, so that after suitable amendment separate examination may be conducted for particular posts requiring specific qualification. It has also been decided to stay further action on the basis of results of Combined Graduate Level Competitive Examination, 2015 and to withdraw all the requisitions related to it. The

respondents have come out with a fresh Rule vide its Notification No. 6474, dated 24.05.2017 as *Jharkhand Staff Selection Commission Examination Graduate Level Technical/ Specific Qualification Posts (Conduct) Rules, 2017* for the Technical/ Specific posts included in the Combined Graduate Level Competitive Examination, 2015 and henceforth it was decided that the Commission shall organize the examination for the General Level posts on the basis of *Jharkhand Staff Selection Examination Graduate Level (Conduct) Rules, 2015* and for the Technical Level posts, on the basis of *Jharkhand Staff Selection Commission Examination Graduate Level, Technical/Specific Qualification Posts (Conduct) Rules, 2017*. A decision was also taken to allow the candidates who appeared in the Combined Graduate Level Examination, 2015 and a provision has also been made to waive off the fee of the candidates who had earlier applied for the examination.

10. Going through the relevant Rules of 2015 as well as 2017, it is amply clear that 2017 Rules are applicable only in the case of the candidates having specialized Degree/ qualification and not for the candidates who are holding general Degree and as such, it has rightly been held by the State as well as the Commission that separate examination will be held for the candidates of specialized Degree in view of Rule, 2017 and the candidates of General Category will be guided by the same Rule 2015 and there is no change in the syllabus as it has been specifically mentioned in para-9 of the counter affidavit filed by the respondents, dated 07.09.2017. The date of the Mains Examination have not yet been declared, though the earlier results of the Preliminary Tests have been withdrawn for holding the fresh Preliminary Test in view of Rule 2017.
11. It is an admitted fact that no allegations have been made regarding malpractices or any bungling or favouritism at the level of the authorities regarding publication of results or holding of examination or even evaluation of papers. No allegation of any unfair means in the examination have been leveled at any point of time. Regarding general candidates, the results have not been cancelled for holding the fresh examination in view of new Rules. It is admitted case that the general candidates will be guided by the Rules 2015 itself and as such, I do not find any logic in cancellation of the results of Preliminary Tests of the candidates holding general degree. If fresh examination will be held in view of 2015 Rules i.e. same Rule, same syllabus, then there is no occasion for cancellation of result of Preliminary



Test. As far as fresh examination for the candidates holding the specialized degree in view of 2017 Rules is fully justified and the respondents themselves have said that a separate examination will be held for General Degree holders in view of 2015 Rules and for specialized Degree holders in view of 2017 Rules. No combined examination are going to be held.

12. In the circumstances, this writ petition is allowed and the decision of the respondents – State to recall the requisition and cancel advertisement for Graduate Level Combined Competitive Examination, 2015, cancelling the result of preliminary examination published in the press release dated 03.02.2017 of respondent no. 1 and 04.02.2017 of respondent no. 1, are hereby quashed. The respondents are further directed to conduct the Preliminary Test for the Specialised Degree Holder in view of Rule, 2017 and further to go ahead with the recruitment process by fixing the date for holding the mains examination as per Jharkhand Staff Selection Commission Examination Rule, 2015 by allowing the candidates who have already been declared successful in the earlier Preliminary Test so that uncertainty may not hamper career prospects of the petitioners who are selectees of the preliminary examination.
13. In view of aforesaid, this writ petition stands allowed.

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High Court of Jharkhand at Ranchi

Dated - November 3, 2017

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