

## IN THE HIGH COURT OF JHARKHAND AT RANCHI

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**L.P.A. No. 565 of 2022**

**1.**Rajendra Institute of Medical Science (RIMS), an autonomous Institute under the Government of Jharkhand, situated at Bariatu, P.O. – Bariatu, P.S.-Bariatu, District-Ranchi through its Director.

**2.**The Director, Rajendra Institute of Medical Sciences (RIMS), an autonomous Institute under the Government of Jharkhand, Bariatu, P.O. – Bariatu, P.S.-Bariatu, District-Ranchi .

... **Respondents/Appellants**  
**Versus**

**1.**Ranjan Kumar Singh, aged about 29 years, Son of Shri Bijendra Prasad Singh, Resident of Upper Chutia, Ayodhyapuri, Road No. -2, P.O.-G.P.O., P.S. Chutia, District-Ranchi (Jharkhand)

**2.**Dinesh Munda, aged about 21 years, Son of Shri Bardhan Munda, Resident of Village Patratu, P.O.-Boreya, P.S.-Kanke, District-Ranchi (Jharkhand).

**3.**Rewati Raman, aged about 32 years, Son of Shri Dharnidhar Das, Resident of Village Sarath, P.O. – Sarath, P.S. Sarath, District-Deoghar (Jharkhand).

**4.**Brajesh Kumar Singh, aged about 33 years, Son of Shri Ramjee Singh, Resident of Village Kushaha, P.O.-Kushaha, P.S. Kandi, District-Garhwa (Jharkhand).

**5.**Prabhakar Mahto, aged about 29 years, Son of Shri Nepal Mahto, Resident of Village Janumpiri, P.O.-Tamar, P.S. –Tamar, District-Ranchi (Jharkhand).

**6.**Srikant, aged about 32 years, Son of Shri Delip Kumar, Resident of Prem Nagar, Hirapur, P.O. Dhanbad, P.S. Dhanbad (Jharkhand).

**7.**Basant Kachhap, aged about 30 years, Son of Shri Ratia Kachhap, Resident of Village Patratu, P.S. – Boreya, P.S. –Kanke, District-Ranchi (Jharkhand).

**8.**Rahul Kumar, aged about 25 years, Son of Shri Ganesh Kumar, Resident of Kashidih, P.O. – Sakchi, P.S.-Sakchi, District-Jamshedpur (Jharkhand).

... **Petitioners/Respondents**

**9.**The State of Jharkhand through the Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand, Nepal House, P.O.-Doranda, P.S.-Doranda, District-Ranchi.

**10.**The Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand, Nepal House, P.O.-Doranda, P.S.-Doranda, District-Ranchi.

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**  
**HON'BLE MR. JUSTICE NAVNEET KUMAR**  
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For the Appellants : Dr. Ashok Kumar Singh, Advocate  
Mr. Prabhat Kumar, Shivam Singh  
Mr. Nilesh Modi, Advocate.  
For the Writ Petitioners: Mr. Dhananjay Kumar Dubey, Adv  
Mr. Raju Koiri, Advocate

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***C.A.V. on 27/07/2023 Pronounced on 11/08/2023***  
***Per Sujit Narayan Prasad, J.:***

**1.** The instant appeal, under clause 10 of the Letters Patent, is directed against judgment/order dated 09.06.2022 passed by learned Single Judge in W.P. (S) No. 3267 of 2021, by which the writ petition has been allowed quashing and setting aside the order as contained in Memo No. 1592 dated 06.04.2021 whereby and whereunder entire selection process initiated in terms of Advertisement No. 955(c) has been cancelled with a direction upon the appellants-authorities to consider the cases of the petitioners for their appointment on Grade-IV posts in view of terms and conditions of appointment as mentioned in the advertisement, if there is no other legal impediments and issue offer of appointment in favour of petitioners.

**2.** Brief facts of the case, as per the pleading made in the writ petition, read as under:

- 3.** In the year 2019, advertisements being Advertisement Nos. 955 (a) and 955 (b) both dated 08.03.2019 were published for appointment for the post of Grade-III Technical and Non-Technical posts; and Advisement No. 955 (c) was published for appointment to Grade-IV posts. The writ petitioners applied for Grade-IV post pursuant to Advertisement No. 955 (c). The appellants-RIMS, after scrutinizing the documents and testimonials submitted by the petitioners and other candidates, published the select list vide Memo No. 4047 dated 20.10.2020, in which, the names of the petitioners also find place.
- 4.** It is the case of the petitioners that in spite of publication of their name in the final select list no offer of appointment was given to them, as such they submitted representation dated 05.01.2021 before the appellants-authorities but no heed was paid. It is further case of the petitioners that while they were waiting for their appointment letters, in the month of June, 2021, they came to know that an order has been issued under the Signature of Secretary, Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand, vide Memo No. 1592 dated 06.04.2021, by which the appellants-authorities have cancelled the recruitment process pursuant to Advertisement No. 955 (c) dated 08.03.2019 for appointment to Grade-IV post, taking into account letter

dated 05.02.2021 issued by the Department of Personnel, Govt. of Jharkhand in terms of order passed by this Court in *W.P.(C). No. 1387 of 2017 (Soni Kumari & Ors. Vs. State of Jharkhand & Ors.)*; and further direction has been issued for publication of fresh Advertisement.

- 5.** Aggrieved thereof, the petitioners approached this Court by invoking writ jurisdiction of this Court conferred under Article 226 of the Constitution of India, by filing writ petition being W.P. (S) No. 3267 of 2021, which was allowed vide order dated 09.06.2022, setting aside order as contained in Memo No. 1592 dated 06.04.2021 whereby and whereunder the entire selection process initiated in terms of Advertisement No. 955(c) has been cancelled, against which the instant *intra-court* appeal has been filed.
- 6.** It appears from the factual aspects, as referred hereinabove, that the appellants-Rajendra Institute of Medical Sciences (in short 'RIMS') came out with advertisement notified on 08.03.2019 being Advertisement Nos. 955 (a) and 955 (b) for appointment to the post of Technical and Non-Technical Grade-III; and Advisement No. 955 (c) for appointment to Grade-IV posts. The writ petitioners applied for Grade-IV post. Their candidature was accepted and accordingly they were allowed to participate in the process of selection along with other eligible candidates. The list of successful candidate was

published vide Memo No. 4047 dated 20.10.2020, in which, the names of the petitioners also find mention. But, grievance of the writ petitioners is that in spite of final selection list having been published, no appointment letters were issued. However, the writ petitioners came to know that the respondent-Secretary, Department of Health, Medical Education and Family Welfare, Govt. of Jharkhand, issued Memo No. 1592 dated 06.04.2021, by which the respondents have cancelled the recruitment process initiated in pursuant to Advertisement No. 955 (c) dated 08.03.2019 for appointment to Grade-IV post, taking into account letter dated 05.02.2021 issued by the Department of Personnel, Govt. of Jharkhand in terms of order passed by this Court in *W.P.(C). No. 1387 of 2017 (Soni Kumari & Ors. Vs. State of Jharkhand & Ors.)*; and further direction has been issued for publication of fresh Advertisement.

7. The aforesaid cancellation of entire selection process was challenged by the petitioners by filing writ petition being W.P. (S) No. 3267 of 2021. The learned Single Judge, vide order dated 09.06.2022, on appreciation of the factual aspect governing the case of *Soni Kumari (supra)* and taking into consideration the fact that the said case pertains to 100% reservation provided for appointment of teachers of the same district which altogether different

issue to that of the present one, has quashed the impugned decision dated 06.04.2021, against which the present *intra-court* appeal has been filed.

- 8.** Dr. Ashok Kumar Singh, learned counsel for the appellants-RIMS has submitted that although the factual aspect governing the case of *Soni Kumari (supra)* is altogether different to that of the fact of the present case which relates to the issue of reservation and even accepting the same the impugned order of cancellation of selection process was not fit to be quashed since there was reference of constitution of enquiry committee which was in progress wherein several irregularities have been pointed out by the enquiry committee regarding the submission of forged experience certificate for which F.I.R. has also been instituted against one of the candidates. Further the reservation earmarked for the E.W.S category has also not been considered in the selection process and as such the competent authority has thought it proper to cancel the entire selection process initiated in pursuance to Advertisement No. 955(c) with a further direction to come out with fresh advertisement so as to complete the selection process with all fairness and transparency.
- 9.** The ground has also been taken that since it is a matter of public employment as such the criteria for fulfilling the post in the public employment is required to be followed so

as to maintain fairness and transparency in the recruitment process and keeping the aforesaid fact into consideration the competent authority had taken decision for cancellation of advertisement being Advertisement no. 955(c) and as such there is no *mala fide* on the part of appointing authority but the learned Single Judge without appreciating the aforesaid fact has quashed the impugned decision, which requires interference by this Court.

**10.** Per contra, Mr. Dhananjay Kumar Dubey, learned counsel appearing for the writ petitioners has submitted by defending the order passed by learned Single Judge wherein the order impugned has been passed taking note of judgment rendered in the case of *Soni Kumari (supra)* holding that there is no nexus with facts involved in this case, and as such submission has been made if on that ground the order dated 06.04.2021 has been quashed by learned Single Judge the same cannot be said to suffer from error. Further argument has been advanced in response to the ground agitated on behalf of appellants-RIMS that the fact regarding process of recruitment is unfair and suffers from malpractice since the candidature of such candidates who have offered their candidature on the basis of experience certificate has been found to be forged and in lieu thereof F.I.R. has also been instituted, it

has been submitted that at the cost of few the genuine candidates cannot be made to suffer.

- 11.** Further submission has been made that although the reservation policy earmarking reservation to the EWS category candidate for whom 12 posts have been earmarked alleged to have not been properly followed but even accepting that the same has not been followed then the remedy was available with the appellant to scrap the select list and prepare a fresh one by considering the candidature of eligible EWS category candidate, if their candidature has not been considered. But in any case the entire selection process was not to be cancelled by cancelling the advertisement.
- 12.** Learned counsel for the writ petitioners-respondents on the aforesaid premise has submitted that the order passed by the learned Single Judge may not be interfered with.
- 13.** We have heard learned counsel for the parties, perused the documents available on record as also the finding recorded by learned Single Judge in the impugned order.
- 14.** The core issue, which is decided in this case for adjudication of *lis*, is as to:

*(I). Whether the cancellation of entire selection process in pursuance to advertisement being Advertisement No. 955(c) can be said to be proper on the ground that the*

*certain irregularities have been committed by the authorities?*

**(II).** *Whether the cancelation of entire selection process in pursuance to advertisement being Advertisement No. 955(c) can be said to be proper even accepting the fact that there is non-consideration of the candidature belonging to the 'EWS' category or non-consideration of reservation roster?*

**(III).** *Whether even accepting that there is non-consideration of candidature of the EWS category candidates or non-consideration of reservation roster, can at this stage the same be rectified by preparing fresh list, based upon the applications submitted by candidates without cancellation of advertisement?*

**(IV).** *Whether the fact demonstrates that candidature of the candidates who allegedly have committed unfair means can be segregated from the case of genuine candidates?*

**(V).** *Whether at the cost of illegality committed by the authority in accepting the incorrect experience certificate or not following the reservation policy, as alleged, so far it relates to EWS Category, the genuine candidate can be allowed to suffer?*

- 15.** Since all the issues are inter-linked, therefore, they are taken up together to be decided.

16. But before answering the issues, this Court deems it fit and proper to first discuss that under which circumstances the Court is to cancel the entire selection process.
17. The law is well settled that public employment is to be based upon fairness and transparency and if the selection process had not been conducted with all fairness and suffers from any mal practice then the endeavour of Court should be to assess from the factual aspect as to whether there can be any segregation in between the candidates who have committed malpractice or involved therein with the candidates who are genuine and have committed no malpractices.
18. The law is further settled that if there is no chance of segregation in between the genuine candidate and the candidates who have committed malpractice the entire selection process is to be quashed by directing the concerned to come up with fresh advertisement for filling up the post. However, if there are chances of segregation by assessing the application form etc. then merely for the fault committed by some illegal doer the genuine candidate cannot be allowed to suffer.
19. The Hon'ble Apex Court in the case of **Anamica Mishra & Ors Vs. U.P. Public Service Commission, Allahabad & Ors [1990 Supp SCC 692]** has been pleased to hold

that when no defect was pointed out in regard to the written examination and the sole objection was confined to exclusion of a group of successful candidates in the written examination from the interview, there was no justification for cancelling the written part of the recruitment examination, on the other hand, the situation could have been appropriately met by setting aside the recruitment and asking for a fresh interview of all eligible candidates on the basis of the written examination and select those who on the basis of the written and the freshly-held interview became eligible for selection.

20. The Hon'ble Apex Court in the case of ***S.P. Biswas & Ors. Vs. State Bank of India [1991 Suppl (2) SCC 354]***, has refused to interfere with the result of the examination holding that honest attempt and necessary action was taken by the Bank to exclude the possibility of the results being affected by use of unfair means by any candidate and there was neither any mass copying at the examination centers nor is the final result shown to have been influenced by use of unfair means by any candidate.
21. The Hon'ble Apex Court in the judgment rendered in ***Benny T.D. & Ors Vs. Registrar of Cooperative Societies & Anr. [(1998) 5 SCC 269]***, has been pleased to hold by repelling the contention raised therein that in view of the findings of the Public Inquiry Commission that there

has been tampering of marks in respect of several candidates and as such there has been no fair and objective selection, the public interest demands annulment of the entire selection. The Hon'ble Apex Court has held that the same could not be done as same tantamount to gross violation of principles of natural justice which cannot be brushed aside on the ground that public interest demands annulments of the entire selection process.

**22.** The Hon'ble Apex Court in the case of ***Union of India Vs. O. Chakradhar [(2002) 3 SCC 146]***, has been pleased to hold at paragraph 12 as under:

***“12.As per the report of CBI the whole selection smacks of mala fides and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing the final result. In such circumstances it may not be possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any***

*individual notice of misconduct to each selectee and seek his explanation in regard to the large-scale, widespread and all-pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise, but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishan Yadav [(1994) 4 SCC 165 : 1994 SCC (L&S) 937 : (1994) 27 ATC 547] applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserves to be allowed.*

**[Emphasis supplied]**

**23.** The Hon'ble Apex Court in the case of **Union of India & Ors Vs. Rajesh P.U., Puthuvalnikathu & Anr [(2003) 7 SCC 285]**, it has been held at paragraph at paragraph 6 as under:”

*“6. On a careful consideration of the contentions on either side in the light of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates, filed on our directions — which report itself seems to have been also produced for the perusal of the High Court — there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of the written examination — either by the candidates or by those who actually conducted them. If the Board itself decided to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of*

*invigilators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answer-sheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by re-evaluating the answer-sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, **the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and***

***totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.***

***[Emphasis supplied]***

**24.** The Hon'ble Court in the judgment rendered in **Sachin Kumar & Ors Vs. Delhi Subordinate Service Selection Board (DSSSB) & Ors [(2021) 4 SCC 631]**, has been pleased to hold that in case of large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrongdoing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities. For ready reference, the paragraph 35 thereof is quoted as under:

“35.The rival submissions now needs to be analysed.

***F.The position in law***

**35.** *In deciding this batch of SLPs, we need not reinvent the wheel. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the*

*process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the process. There are cases which border upon or cross over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of malpractices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrongdoing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrongdoers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article*

*14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in malpractices and to penalise them for their wrongdoing, it would be unfair to impose the burden of their wrongdoing on those who are free from taint. To treat the innocent and the wrongdoers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.*

**25.** Recently, the Hon'ble Court further in the case of ***Tanvir Singh Sodhi & Ors. Vs. State of Jammu and Kashmir & Ors [2023 SCC OnLine SC 344]***, similar view was taken, relevant paragraph of which is quoted as under:

*“78. In light of the pertinent selection procedure that was followed, we are unable to hold that the same was mechanical or casual or suffered from irregularities which were so grave or arbitrary in nature so as to justify quashing the entire selection process. Further, we are unable to trace the requirement of individual rolls being signed and verified by the members of the Selection Board, to any statute or rule. Therefore, we cannot sustain the finding of the High Court that the entire selection process*

*was vitiated by such irregularity. The High Court was not justified in quashing and setting aside the entire selection process, more so when sixty-four candidates including the appellants had been serving on the said post for over a decade.”*

**26.** It is, thus, evident from the aforesaid settled position of law that where a recourse to unfair means has taken place on a large scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. However, in cases, where some candidates are guilty of irregularities in that circumstance, the endeavour should be to segregate the candidature of genuine candidate and oust the candidates who have been found to be in commission of the illegality instead of cancelling the entire selection process

**27.** The law is equally settled that there cannot be any interference with the process of selection since the same is not within the domain of the Court exercising the power of judicial review to enter into the merit of selection process, a task which is prerogative and is within the exclusive domain of the selection committee subject to course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of

inherent arbitrariness, can the Courts intervene, as would appear from the judgment rendered in **Tanvir Singh Sodhi & Ors. Vs. State of Jammu and Kashmir & Ors (supra)**, in particular paragraph 66 and 67, which reads as under:

*66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.*

*67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection board/interview panel in assessing the suitability of candidates, namely, (i) that the candidates who had done their post-graduation had been awarded 10 marks and in the viva-voce, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.*

**28.** This Court on the basis of aforesaid legal proposition is now proceeding to answer the issue formulated hereinabove.

**29.** Admitted fact herein is that an advertisement being Advertisement No. 955(c) was issued for filling up the post of Class IV posts in RIMS. The writ petitioners, including other candidates, participated in the selection process, in which, the writ petitioners were declared successful and final list of selected candidates has been recommended for appointment to the said post. But, after publication of the select list, the advertisement itself was cancelled vide order dated 06.04.2021 on the ground of certain irregularities committed on the part of candidates as also on the part of recruiting body.

**30.** It is settled position of law that till the date of offer of appointment candidate has got no indefeasible right to claim such appointment merely on the basis of recommendation of their name in the final select list.

**31.** Reference in this regard be made to the judgment rendered in the case of ***Shankarsan Dash Vs. Union of India [(1991) 3 SCC 47]***, wherein at paragraph 7, it has been held as under:

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be*

*legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha, Neelima Shangla v. State of Haryana or Jatinder Kumar v. State of Punjab.*

**32.** But the fact which requires to be considered by this Court is that even though the writ petitioners have no indefeasible right for claiming appointment but can for no fault of their own can they be deprived from the fruits of their labour and success on the ground of illegality committed by others.

**33.** Herein, it is admitted case of the appellants-RIMS that certain candidates have submitted their experience certificate which are said to to be not proper and one of the certificate of having been issued by the AIIMS, Patna has been reported to be forged and in consequence thereof F.I.R. was also instituted.

**34.** Further ground, which prompted the selection committee to cancel the selection process, is that the experience certificate has not been issued on the corresponding work as required under condition no. B (ii) of the advertisement, wherein the requirement of experience of work in 500 bed hospital has been required.

**35.** The third ground has been taken that as per advertisement, the quota of the EWS category candidate has been fixed under which 12 posts have been earmarked for the EWS category but there is no selection of the candidate falling under EWS category. However, all the grounds are not available in the impugned order but justification has been given by learned counsel for the appellants that there is reference of report of enquiry committee in which all these things have come and as such it is to be construed that the reason is there in the impugned order.

**36.** We, in order to examine the aforesaid submission and considering the fact that it is a matter of public employment think it is not proper to deviate from the settled position of law that the reason cannot be allowed to be improved by way of affidavit or any supportive document, if not available in the impugned order, as per the ratio laid down by Hon'ble Apex Court in the case of ***Mohinder Singh Gill and Anr. vs. The Chief Election Commissioner, New Delhi and Ors.***

**[(1978)1 SCC 405]**, wherein at paragraph 8, it has been held as under:

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji. Public orders, publicly made.....itself.”*

**37.** Likewise, the Hon’ble Apex Court in the judgment rendered in **East Coast Railway and Anr. Vs. Mahadev Appa Rao and Ors., [(2010) 7 SCC 678]** at paragraph 9 has been pleased to held as under:

*“9. There is no quarrel with the well-settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the court where the validity of any such order is under challenge. The legal position in this regard is settled by the decision of this Court in Commr. of Police v. Gordhandas Bhanji wherein this Court observed: Public orders, publicly made.....itself.”*

**38.** The consideration has been thought to be given by this Court by taking into consideration the fact that if there is any illegality in the matter of public employment the Court cannot shut its eyes.

**39.** This Court considering the aforesaid aspect has considered the enquiry report and found therefrom that the allegation is not against all the candidates rather the name of some of the candidates have been shown to have no experience in the corresponding work and some of the experience certificate has been pointed out to be obtained by commission of fraud.

**40.** There is no dispute that if any intent of fraud is there from the side of candidate their candidature is required to be rejected on the principle that fraud vitiates all solemnity of act but the question is that whether for the fault committed by some of the candidates can it adversely affect the interest of genuine candidates which is the main issue for consideration in this appeal.

**41.** The other issue that the benefit of reservation for the EWS/reserved category has not been given, which prompted the recruiting agency to cancel the final select list prepared in pursuance to advertisement no. 955(c), we are of the view that there is no dispute that the appointing authority has got power to cancel the entire selection process if the mass malpractice has been committed and there is no chance of segregation in between the fair and unfair candidate as per the discussion made hereinabove placing reliance upon the judgment referred in the preceding paragraphs.

**42.** In view thereof, this Court is now proceeding to examine as to whether the nature of irregularities is curable or not and whether for the fault committed by some candidates the genuine candidate can be allowed to suffer?

**43.** This Court requires to refer herein that there is no allegation of commission of malpractice or unfair means at large-scale by the candidates rather it is mainly against the competent authority who had issued the advertisement and conducted the entire selection process and as such the case is to be seen if there is fault lies on the part of recruiting agency which can be rectified even without cancelling the entire selection process then why to cancel the same.

**44.** Therefore, the foremost thing is to see that there cannot be any segregation then only the extreme step of cancellation of advertisement can be taken.

**45.** Herein, the advertisement is of the 2019 and the successful candidates waited for its fruit for the last four years and if for no fault of their own the entire selection process including the advertisement is quashed it will be harsh for them but even then the same can be done if there is no chance of picking up the illegal doer from the final select list, as prepared by the recruiting agency.

**46.** The alleged irregularities said to have been committed by the recruiting agency/authority of acceptance of the candidature of such candidate who have offered their

candidature by submitting forged/improper experience certificate, the same according to our considered view cannot be a ground to cancel the entire selection process instead thereof, the candidature of such candidate is required to be cancelled, who submitted forged certificates or involved in malpractices.

**47.** The second ground that is the benefit of reservation to the EWS/reserved category has not been provided. We are of the view that even the said ground cannot be said to be a ground to cancel the advertisement since the same can be assessed by scrutiny of the application submitted by the candidates falling under EWS/reserved category. The irregularity/illegality could have been said if there was no reference in the advertisement calling upon the application for EWS category but that is not the fact herein since there is specific reference of EWS category earmarking 12 posts for such category and as such the candidate must have applied after going through the advertisement and hence the same can be looked into without cancellation of advertisement also.

**48.** This Court is also required to refer herein that the RIMS is the main hospital in the State of Jharkhand having been established to extend medical facilities to the people of State of Jharkhand at large including the persons falling under BPL category by extending free medical facilities/aid and as such the importance of filling up the class IV posts is of much

relevance but delay has been caused by cancelling the entire selection process since the advertisement was published in the year 2019 and now we are in the year 2023 and still the posts are lying vacant and it has been reported that the work are being done by outsourcing.

**49.** This ground cannot be said to be the grounds not to cancel the advertisement but for cancellation of advertisement the condition *sine qua non* is that if the irregularity committed is to be rectified even without cancelling the entire selection process then why advertisement is to be canceled at the cost of genuine candidate.

**50.** So far as the propriety of the impugned order is concerned admittedly there is no relevance of the judgment passed in the case of *Soni kumari (supra)*. However, the said judgment was challenged before the Hon'ble Apex Court which pertains to 100% reservation in the scheduled area for filling up the post of Assistant Teachers. The Hon'ble Apex Court has modified the direction of this Court wherein the decision of the Court for keeping 100% reservation in the scheduled area has though been held to be incorrect law, however, striking balance between the competing rights of the original writ petitioners and persons already appointed, it was directed that instead of fresh/de novo recruitment process by setting aside the appointments already made in

the Scheduled Districts/Area, as directed by High Court, the State was directed to revise the merit list based on already published cut off obtained by the last selected candidates in each TGT subject against the respective categories with respect to entire State, taking into consideration the peculiar facts and circumstances of the case more particularly consideration the already vacant posts of teachers in the State (in both scheduled and non-scheduled area).

**51.** For ready reference, relevant paragraphs of the judgment passed by Hon'ble Apex Court in ***Satyajit Kumar & Ors Vs. The State of Jharkhand & Ors [2023 1 JCR (SC) 5]*** wherein facts of the case and finding recorded by Hon'ble Apex Court are quoted as under:

*“3.3. That thereafter, the State Government came out with Notification No. 5938 and Order No. 5939 dated 14.7.2016 directing that **in Thirteen Scheduled Districts of the State, the local residents of the concerned Districts (Thirteen Scheduled Districts) only shall be eligible to be appointed on the District Cadre Class III and Class IV posts**, for a period of ten (10) years from the date of publication of the Notification. It appears that said order had been issued by the Governor of Jharkhand in exercise of powers conferred under sub-paragraph (1) of paragraph 5 of the Fifth Schedule of the Constitution of India. In the order dated 14.07.2016 it is observed as under:*

*“And whereas, the scheduled Area in the State are characterised by low Human Development Indices, backwardness, remoteness poverty and whereas the social indicators of the Scheduled Areas are on an average, inferior to the average of social indicators in the State due to uneven*

*topography, lack of water resources, loss in canopy coverage of forest and uncontrolled rapid industrialization;*

*And whereas, recognizing the factors identified above, the Tribal Advisory Council of Jharkhand has recommended issuing of a notification by the Governor for suspension of eligibility conditions as enshrined in various appointment rules for the appointment of class 3 and class 4 posts at district level for a period of 10 years in the 13 districts namely- Sahebganj, Pakur, (Dumka, Jamtara, Latehar, Ranchi, Khunti, Gumla, Lohardagga, Simdega, East Singhbhum, West Singhbhum and Sraikelakharsawan for appointment of cent-percent District level class 3 and class-4 posts by the local residents of the district concerned;*

*And Whereas, the Governor of Jharkhand in order to improve the quality of people in the Scheduled Areas, by providing additional opportunities of employment, in favour of the local residents of Scheduled Areas.”*

**3.4.** *That thereafter, further order came to be published on 11.11.2016 specifically making it clear that in compliance of Notification No.5938 dated 14.07.2016, local residents of concerned Districts only are deemed eligible for appointment in the vacant post of District-Level Class III and Class IV in 13 notified Districts out of 24 Districts of the State and appointment of people from other Districts/ other States is not permissible in these Districts. Meaning thereby, it was made clear that the candidate belonging to the Non-Scheduled Districts cannot participate in the process of selection in the Scheduled Districts.*

**3.5.** *That pursuant to the advertisement no. 21 of 2016 published on 28.12.2016 as modified by advertisement dated 4.2.2017 which was issued in pursuance of the Notification No.5938 dated 14.07.2016, applications were invited for filling up 17,784 Trained Graduate Teachers out of which 13,398 posts (75% posts of total advertised posts) were to be filled up by direct recruitment and remaining 25% posts i.e., 4386 posts were reserved for primary teachers. The said advertisement was issued through Jharkhand State Staff Selection Commission (hereinafter referred to as the “JSSC”). In the*

*advertisement in para 5(iii), it was stated that so far as vacancies in the Scheduled Districts and State are concerned, only the local residents of those Scheduled Districts shall be entitled to apply. As per the para 5(i) of the advertisement, a candidate could apply against the vacancy in only one District of his/her choice. At this stage, it is required to be noted that in all 8423 posts were advertised for filling up the vacancies in the Thirteen Scheduled Districts in the State, whereas 9149 posts were advertised for the remaining non-scheduled districts in the State.”*

***28. In view of the above discussion and for the reasons stated above, we uphold the common impugned judgment and order passed by the High Court declaring the impugned Notification/Order dated 14.07.2016 as unconstitutional and ultra vires Articles 14, 16(2), 16(3) and 35(ai) of the Constitution of India. We are in complete agreement with the view taken by the High Court. Present Appeals challenging the impugned common judgment and order passed by the High Court are hereby dismissed to the aforesaid extent.***

***However, at the same time, the directions issued by the High Court in the impugned judgment and order while setting aside all the appointments made pursuant to the Notification/Order dated 14.07.2016 and Advertisement No.21 of 2016 dated 28.12.2016 as modified on 04.12.2017 and to go in for fresh/de novo recruitment process for the Scheduled Areas/Districts is hereby modified. It is now directed that instead of fresh/de novo recruitment process by setting aside the appointments already made in the Scheduled Districts/Areas, the State shall revise the merit list based on the already published cut off obtained by the last selected candidates in each TGT subject against the respective categories with respect to entire State and respective candidates belonging to the non-Scheduled Areas and Scheduled Areas (Districts) shall be adjusted accordingly on the basis of individual merit of the candidates. The present directions are issued***

**considering the peculiar facts and circumstances of the case and more particularly considering the fact that there are already vacant posts of teachers in the State (in both Scheduled and non-Scheduled Area).** We are of the view that if the appointments already made are set aside and fresh *de novo* recruitment process for such posts is initiated, a number of schools in the Scheduled Areas shall be without any teacher which may ultimately affect larger public interest and education of concerned children in the Scheduled Areas.

Present direction is issued in exercise of powers under Article 142 of the Constitution of India in the larger public interest of Scheduled Areas/Districts.

**Present appeals are partly allowed to the aforesaid extent modifying the impugned common judgment and order passed by the High Court as observed herein above.**

*In the facts and circumstances of the case, there shall be no order as to costs."*

**52.** It is thus evident that the factual aspect involved in the *Soni kumari (supra)* is having no nexus with the facts of this case but even then the impugned order 06.04.2021 by which the entire selection process has been cancelled by making reference of the judgment passed in ***Soni kumari (supra)***.

**53.** Therefore, according to our considered view the reason assigned in the aforesaid impugned order is not proper.

**54.** The learned Single Judge has quashed the impugned order dated 06.04.2021 taking into consideration that there is no nexus of the factual aspect in the case of *Soni kumari (supra)* with the present one.

**55.** This Court is not in disagreement with such finding since the fact of *Soni kumari (supra)* is having no nexus with the present case.

**56.** But this Court after taking into consideration the enquiry report wherein certain irregularity has surfaced in course of enquiry as also enquiry committee has come out with the conclusion that the benefit of reservation has not been extended as per reservation roster prescribed by State of Jharkhand, therefore such enquiry report cannot be given go by.

**57.** But the fact remains that even on these grounds was the only remedy available with the recruiting agency to cancel the advertisement being Advertisement No. 955(c)?

**58.** The cancellation of advertisement can only be said to be remedy if irregularity is incurable; meaning thereby if there cannot be any chance of picking the malpractice/irregularity committed in course of recruitment process.

**59.** But according to our considered view and on discussion of the facts and circumstances herein above, based upon the finding of the enquiry report, this Court is of the view that the instant selection process can be proceeded further by picking candidature of the unsuitable candidate out and by taking recourse of re-consideration of the application of such candidate who have offered their candidature for consideration under reserved category.

**60.** Therefore, this Court is of the view that reason assigned by the learned Single Judge in the impugned order cannot be said to be unjustified but taking into consideration the discussion made hereinabove and considering the fact that even there is some irregularity since the same can be cured or segregated hence cancellation of advertisement/entire selection process will be said to be at the cost of genuine candidate which cannot be said to be proper and justified otherwise for the reason that for no fault of successful candidates they are subjected to suffering, hence fresh select list is required to be prepared.

**61.** This Court in entirety of facts and judicial pronouncements, as discussed hereinabove, since is of the view that fresh select list is required to be prepared, after segregating the candidates who have resorted to malpractice or submitted forged experience certificate, including the candidate falling under reserved Category.

**62.** Therefore, the appellant-RIMS is hereby directed to:

**(I).**Scrutinize all the applications of the candidates afresh, as per advertisement.

**(II).**Further scrutinize the experience certificate/other testimonials attached with the applications properly and weed out the forged/improper one.

**(III).**The experience certificate, if found to be forged, the candidature of such candidate must be rejected

outrightly by taking consequential follow-up legal action against such candidate, if required.

**(IV).**The competent authority will take sincere endeavour for consideration of candidature of candidates who are applicants under EWS/reserved category by well scrutinizing their eligibility criteria based upon the proper certificate issued in terms of the policy decision of the State Government and if they are coming under the parameter of such reservation policy, the benefit of reservation under EWS/reserved category must be extended to them.

**(V).**Since the recruitment process has stretched fairly for four years for no fault on the part of the applicants, which put the institution like RIMS in adverse situation due to urgent requirement of class IV employees, therefore, it is directed to complete the whole exercise of recruitment by publication of 'Fresh select list' within a stipulated period of three months from the date of receipt of copy of this order.

**(VI).**Further, there is allegation of certain irregularities in the process of selection, as such this Court deems it fit and proper to direct the Director, RIMS to take appropriate legal action by identifying the officers/staffs who were/are involved in the faulty process of selection so as to deal with properly in accordance with law.

Since the evasive control over the RIMS is upon the State Government, therefore, the Additional Chief Secretary, Health Department is directed to monitor the issue regarding the action to be taken against illegal doers so that such type of instance may not happen in future. Accordingly, the instant appeal stands disposed of.

- 63.** With the aforesaid modification in the impugned order passed by the learned Single Judge and directions passed, as above, the instant appeal stands disposed of.
- 64.** Pending Interlocutory Applications stand disposed of.

**I Agree**

**(Sujit Narayan Prasad, J.)**

**(Navneet Kumar, J.)**

**(Navneet Kumar, J.)**

**Jharkhand High Court, Ranchi**  
Alankar / **A.F.R.**