

[An appeal under Clause 10 of the Letters Patent]

L.P.A. No. 82 of 2021

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Secretary Jharkhand Public Service Commission, Circular Road
Ranchi, P.O. & P.S. Lalpur, District Ranchi, Jharkhand

... .. **Appellant**

Versus

1. Ranjeet Kumar Sah S/o Sri Vishwanath Sah, R/o Village & P.O.- Dhamni Bazar, P.S. Sundar Pahari, District- Godda, Jharkhand
2. Uttam Kumar Upadhyay, S/o Sri Sushil Kumar Upadhyay, R/o Village & P.O.- Barwadih, P.S. Barwadih, District- Latehar
3. State of Jharkhand
4. The Secretary, Road Construction Department, Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District Ranchi.
5. The Secretary, Water Resources Department, Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District Ranchi.
6. The Secretary, Drinking Water and Sanitation Department, Project Building, P.O. & P.S. Dhurwa, District Ranchi.
7. The Additional Chief Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District Ranchi.
8. The Principal Secretary-cum-Law Advisor, Department of Law, Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District Ranchi.

... .. **Respondents**

With

L.P.A. No. 85 of 2021

.....

1. The State of Jharkhand
2. The Secretary, Road Construction Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S. Dhurwa, District Ranchi.
3. The Secretary, Water Resources Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S. Dhurwa, District Ranchi.
4. The Secretary, Drinking Water and Sanitation Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S. Dhurwa, District Ranchi.
5. The Additional Chief Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S. Dhurwa, District Ranchi.
6. The Principal Secretary-cum-Law Advisor, Department of Law, Government of Jharkhand, having its office at Project Building, P.O. & P.S. Dhurwa, District Ranchi.

... .. **Appellants**

Versus

1. Ranjeet Kumar Sah, S/o Sri Vishwanath Sah, R/o Village & P.O.- Dhamni Bazar, P.S. Sundar Pahari, District- Godda, Jharkhand
2. Uttam Kumar Upadhyay, S/o Sri Sushil Kumar Upadhyay, R/o Village & P.O.- Barwadih, P.S. Barwadih, District- Latehar
3. The Secretary Jharkhand Public Service Commission, having its office at Circular Road, Ranchi, P.O. & P.S. Lalpur, District Ranchi

... .. **Respondents**

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For the Appellant : Mr. Sanjay Piprawall, Advocate
(In L.P.A. No. 82 of 2021)
For the Appellants : Mr. Rajiv Ranjan, A.G.
(In L.P.A. No. 85 of 2021)
For the Respondents : M/s. Anupam Lal Das, Saurav
(In both appeals) Shekhar, Sameer Srivastava &
Aman Dayal Singh, Advocates

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE RAJESH SHANKAR

THROUGH VIDEO CONFERENCING

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C.A.V. on 23/07/2021

Pronounced on 10/09/2021

R. Mukhopadhyay, J.: Heard Mr. Sanjay Piprawall, learned counsel for the appellant in L.P.A. No. 82 of 2021, Mr. Rajiv Ranjan, learned Advocate General for the appellants in L.P.A. No. 85 of 2021 and Mr. Anupam Lal Das, assisted by Mr. Saurav Shekhar, learned counsels appearing for the respondent nos. 1 and 2 in both the appeals.

2. Since in both these appeals the appellants are aggrieved by the order dated 21.01.2021 passed by the learned Single Judge in W.P.(S). No. 53 of 2020 the same are being disposed of by this common order.

3. The appellants have challenged the order dated 21.01.2021 passed by the learned Single Judge in W.P.(S). No. 53 of 2020 by virtue of which Advertisement No. 05/2019 which was impugned to the writ application has been set aside and the retrospective application of 10 % Economically Weaker Section quota was held to be against Articles 14 and 16 of the Constitution of India and consequently the State Government was directed to modify Advertisement No. 05/2019 to the extent that 10 % quota for Economically Weaker Section shall not be made effective retrospectively for the vacancy of the years 2013 and 2015. The appellants are also aggrieved by the direction of the learned Single Judge to the effect that the vacancies of 2013 and 2015 should be filled up in terms of the rules existing at that point of time.

4. The writ petitioners (respondent nos. 1 and 2 herein)

had preferred W.P.(S). No. 53 of 2020 incorporating the following prayers:

(a) For issuance of appropriate Writ(s), Order(s), Direction(s) specifically a writ in the nature of certiorari for quashing of the Advertisement No. 05 of 2019 published by the respondent no. 7 to the extent so far as it relates to the appointments to be made on the posts of Assistant Engineer (Civil), challenge limited to the extent of retrospective applicability of 10 % Economically Weaker Section reservation which accounts for 52 posts in the current advertisement for all departments in view of the fact that EWS is introduced under Government resolution dated 25.02.2019 and 08.07.2019 but not retrospectively; but respondents by merging and clubbing earlier vacancies that arose in the year 2013 and 2015 advertised vide Advertisement No. 06 of 2015 along with individual, separate and current vacancies of the year 2019 and applying 10 % EWS quota on all the clubbed posts, have given retrospective effect to the provisions of EWS quota published vide resolution dated 25.02.2019 and 08.07.2019.

(b) For appropriate Writ(s), Order(s), Direction(s) specifically a writ in the nature of certiorari for quashing of the decision to conduct single selection process on the vacancies of the year 2013 and 2015 earlier advertisement (Advertisement No. 06/2015), and to that extent (Advertisement No. 05/2019), so far as it relates to the merger of the vacancies in the current advertisement of the year 2019 is being challenged.

(c) For issuance of appropriate Writ(s), Order(s), Direction(s) specifically a writ in the nature of mandamus commanding upon the respondent-authorities to conduct selection process on the vacancies arrived in the year 2013, 2015 and 2019 separately and independently on the basis of applicable rules, regulations and eligibility of the particular years respectively without merging the vacancies; since, the merger would result in the candidates who were ineligible to participate in the appointment process for the vacancies of the year 2013/2015 respectively on account of their lesser age in eligibility becoming eligible in the year 2019 for the same seats due to the merger of those earlier seats along with current vacancies of the year 2019 in Advertisement No. 05/2019 and conducting single selection process thereby encroaching upon the right of fair competition of eligible candidates of the years 2013 and 2015.

5. Shorn of the details the factual matrix reveals that the

writ petitioners are already working on the post of Junior Engineers in the Road Construction Department and are desirous of being selected as direct recruit Assistant Engineers in accordance with the provisions of law and rules on account of their eligibility. For the first time the Road Construction Department had earmarked vacancies to be filled up for the post of Assistant Engineer (Civil) in the year 2013 and pursuant thereto Advertisement No. 06/2015 was published by the respondent no. 7 in the writ petition (the appellant in L.P.A. No. 82 of 2021) for selection of eligible candidates. The writ petitioners being eligible as per the criteria laid down in the Advertisement applied for their selection in the post of Assistant Engineer (Civil). The total number of unreserved posts advertised was 105 against which the writ petitioners had applied for their selection. The total number of unreserved posts under the Road Construction Department was 93. The Advertisement No. 06/2015 did not reach its logical conclusion and in the meantime the Government of India vide Office Memorandum dated 31.01.2019 had taken a decision by which 10 % reservation of Economically Weaker Section (herein after referred to as EWS for the sake of brevity) in direct recruitment in Civil Posts and Services in Government of India was notified. Pursuant to the Government of India decision, the State of Jharkhand introduced the reservation quota of 10 % for EWS in the Civil Posts and Services of the Government of Jharkhand. The amendment in the reservation rules of 2001 increased the percentage of reservation to 60 %. The decision of the State Government in earmarking 10 % for the EWS was published vide government notification dated 25.02.2019 which was superseded vide another government notification dated 08.07.2019. The application of the notifications were post facto and not retrospective.

6. A fresh advertisement was published being Advertisement No. 05/2019 seeking to make appointment to the posts of Assistant Engineer (Civil) and Assistant Engineer (Mechanical). This advertisement superseded the earlier advertisement and merged the vacancies of 2013 and 2015 and the

vacancies of 2019.

7. The Advertisement No. 05/2019 was impugned to W.P.(S). No. 53 of 2020. An interim order was passed on 14.01.2020 to the effect that the final appointment shall be subject to the outcome of the writ application. The writ application was finally disposed of vide order dated 21.01.2021 by which the impugned Advertisement No. 05/2019 was set aside and it was declared that retrospective application of 10 % EWS quota is against Articles 14 and 16 of the Constitution of India. The State Government was further directed to modify the Advertisement No. 05/2019 to the extent that 10 % quota for EWS shall not be made effective retrospectively for the vacancies of the year 2013 and 2015 and those vacancies are to be filled up in terms of the rules prevalent at that point of time.

8. Aggrieved by the impugned order dated 21.01.2021 passed by the learned Single Judge in W.P.(S). No. 53 of 2020, the Jharkhand Public Service Commission and the State of Jharkhand have preferred separate appeals being L.P.A. No. 82 of 2021 and L.P.A. No. 85 of 2021 respectively which are being dealt with in this order.

9. Mr. Rajiv Ranjan, learned Advocate General appearing for the appellants in L.P.A. No. 85 of 2021 has commenced his argument by referring to the Constitution (One Hundred and Third Amendment) Act, 2019 which came into effect from 14.01.2019. He has submitted that Article 15 and 16 of the Constitution of India are enabling provisions for making reservations. In pursuance of the Government of India notification dated 14.01.2019, the State of Jharkhand had also come out with a resolution dated 15.02.2019 made effective from 15.01.2019 in which 10 % reservation for EWS was prescribed. It has further been submitted that the rules were accordingly amended by an ordinance dated 25.02.2019. Learned Advocate General has referred to the Advertisement No. 05/2019 while submitting that the advertisement of the year 2015 was cancelled and Advertisement No. 05/2019 featured additional posts

and earmarking 10 % reservation for EWS. Countering the issue raised by the writ petitioners and upheld by the learned Single Judge to the effect that 10 % reservation for EWS could not have been given a retrospective effect regarding the vacancies of 2013 and 2015, it has been contended that since the law had been amended the vacancies have to be filled up as per the new rules. He submits that the law existing on the date of issue of advertisement has always to be given primacy. Every year when vacancies arise the advertisement has to be on the basis of the rules on the day when vacancies arise which is the argument advanced by the writ petitioners and which according to the learned Advocate General is contrary to the law of the land.

10. Reference has been made to the resolution no. 13026 dated 27.11.2012 of the State Government more specifically to Clause 3 (XV) which reveals that if due to non-joining of candidate(s) within the stipulated period or for any other reasons the vacancies are not filled up the said vacancies are to be forwarded for the next advertisement. Learned Advocate General adds that in the Advertisement No. 06/2015 the vacancies of Assistant Engineer (Civil) and Assistant Engineer (Mechanical) for Road Construction Department, Water Resources Department and Drinking Water and Sanitation Department have been shown as 392. This advertisement was cancelled and superseded by Advertisement No. 05/2019 which had earmarked 542 vacancies for the post of Assistant Engineer (Civil) and 95 vacancies for the post of Assistant Engineer (Mechanical). The impugned judgment according to the learned Advocate General is bereft of any discussion how retrospectivity is involved as an issue. It has been contended that the candidate who had applied in 2015 does not have an indefeasible right to claim selection on the basis of the reservation rules existing at that point of time since after issuance of Advertisement No. 06/2015 no further progress was made. Learned Advocate General sums up his argument by submitting thus:

- (a)** The vacancies have to be filled up as per the law existing on the date of the advertisement,
- (b)** The entire procedure of appointment will go

haywire if every year vacancies are filled up as per the rules existing on that particular date irrespective of the advertisement for filling up such vacancies being issued at a later date,

(c) Only the Advertisement No. 05/2019 was challenged and not the amended rules,

(d) The findings of the learned Single Judge that 10% quota for EWS shall not be made effective retrospectively for the vacancies of the year 2013 and 2015 is against the settled principles of law.

(e) The related rules does not prohibit clubbing of the vacancies.

11. Mr. Sanjay Piprawall, learned counsel appearing for the appellant in L.P.A. No. 82 of 2021 has referred to the factual aspects of the case and has stated that the Advertisement No. 05/2019 is based on the requisition of the concerned departments but the writ petitioners have not challenged the requisitions. While referring to Advertisement No. 05/2019, Mr. Piprawall, submits that challenge has been made only to the EWS quota with respect to the vacancies of Assistant Engineer (Civil). He submits that the last date for application as per Advertisement No. 05/2019 was 11.11.2019 while the writ petition was filed on 10.01.2020. It has been stated that on 19.01.2020 examinations were held and the writ petitioners had participated. He further submits that on 14.08.2020 the results were published and the writ petitioners were declared unsuccessful. Learned counsel submits that additionally he is adopting the arguments advanced by the learned Advocate General in L.P.A. No. 85 of 2021. In support of his various contentions he has referred to the judgment in the case of "*Ranjan Kumar and Others versus State of Bihar and Others*", reported in (2014) 16 SCC 187.

12. Mr. Anupam Lal Das, learned counsel for the writ petitioners (respondents nos. 1 and 2 in both the appeals) has initiated his argument by submitting that the learned Single Judge had applied the correct law in deciding the issue in question. He has referred to the Advertisement No. 06/2015 and Advertisement No. 05/2019 and has pointed out the cut off dates for the various posts as enumerated in the said advertisements. While referring to Advertisement No. 05/2019, learned counsel submits that so far as

the posts of Assistant Engineer (Civil) in the Road Construction Department is concerned the same includes three cut off dates for calculating the age being 01.08.2013, 01.08.2015 and 01.08.2019. He submits that there is no ambiguity in the said conditions. Mr. Das adds that what would fall from the above is that there has been a merger of advertisement and not merger of vacancies. The factual aspects of the case relating to the earlier advertisement for filling up the posts which did not however come to a logical conclusion and the subsequent advertisement earmarking 10 % reservation for EWS as noted in the impugned order dated 21.01.2021 has also been referred to by the learned counsel for the respondent nos. 1 and 2. Mr. Das, submits that the only question which was to be answered by the Court was whether EWS reservation can be given a retrospective operation or not. It has been submitted while putting stress on the notification of the Central Government dated 14.01.2019 and the subsequent Resolution of the Government of Jharkhand dated 15.02.2019 that the understanding of the State Government was that it cannot be applied retrospectively and as such the learned Single Judge was correct in interpreting the EWS quota to be inapplicable for the vacancies of the year 2013 and 2015. Mr. Das, has also submitted that the conditions enunciated in the earlier advertisement of the year 2015 have been retained primarily because of the fact that Advertisement No. 05/2019 is a merger to the earlier advertisement. Learned counsel for the respondent nos. 1 and 2, countering the judgments cited by the learned Advocate General submits that these judgments pertain to cases of promotion and are not at all applicable to the facts and circumstances of the present case. He has stressed on the proposition that once the game has begun the rules of the game cannot be changed. It has been contended that the EWS quota was not in existence in the year 2013 and therefore once the vacancies had arisen in the said year the rights of the applicants could not have been curtailed with the introduction of 10 % EWS quota. Mr. Das, has referred to para 18 of the impugned order and has submitted that the same reveals as to why the learned Single

Judge has referred to so many judgments regarding reservation. He adds that during the relevant period of 2015 when the advertisement was issued the reservation was capped at 50 % and if the said advertisement is clubbed with Advertisement No. 05/2019 the net result would be 60 % reservation which is impermissible in law. Mr. Das, has also referred to Advertisement No. 1/2020 of Haryana Staff Selection Commission and Advertisement No. CEPTAM-09/A&A issued by the Defence Research & Development Organisation (DRDO) to buttress his point that even in spite of 10 % reservation for EWS coming into force vide notification of the Government of India dated 31.01.2019 the said quota has not been made available. Concluding his submission, Mr. Das, prays that both the appeals be dismissed as the impugned orders permeates all reasons before arriving at a conclusion in favour of the writ petitioners.

13. Mr. Rajiv Ranjan, learned Advocate General as well as Mr. Sanjay Piprawall, learned counsel appearing for the appellant(s) in L.P.A. No. 85 of 2021 and L.P.A. No. 82 of 2021, in reply have reiterated their submissions made at the initial stage of the proceedings. They however have submitted that the advertisement of Haryana Staff Selection Commission and DRDO as referred to by Mr. Das, were not part of the writ application and cannot at all be considered at this stage. They have further submitted that the vacancies depend on the roster point and absence of facts cannot lead this Court to consider such submission. Mr. Rajiv Ranjan, learned Advocate General has also submitted that the said advertisement does not state that 10 % EWS has not been applied.

14. We have given our anxious consideration to the arguments advanced by the learned counsels for the respective parties and have also gone through the records.

15. We must make it clear at the threshold that the writ petitioners had not challenged the resolution issued by the State of Jharkhand dated 15.02.2019 and 25.02.2019 categorizing 10 % reservation for the Economically Weaker Section. The petitioners have basically challenged the Advertisement No. 05/2019 so far as it

relates to the appointments to be made on the posts of Assistant Engineer (Civil) and limited to the retrospective applicability of 10 % reservations for the EWS. The question therefore would be whether the learned Single Judge was correct in deciding that the 10 % reservation for the EWS cannot be given retrospectivity for the vacancies which had arisen in the years 2013 and 2015 ?

16. The grievance of the writ petitioners who are applicants pursuant to the issuance of Advertisement No. 06/2015 seems to stem from the increase in reservation consequent to the advent of 10 % reservation for the EWS which gained its way in the subsequent Advertisement No. 05/2019.

17. The writ petitioners, no doubt had applied for the posts of Assistant Engineer (Civil) pursuant to issuance of Advertisement No. 06/2015 but merely on account of making such application the same does not give a right to the writ petitioners to be appointed on the said posts.

18. In the case of “*Mohd. Rashid versus Director Local Bodies New Secretariat and others*” reported in (2020) 2 SCC 582, it was held as follows:

“13. The appellants who are aspirants for direct recruitment have no right for appointment merely because at one point of time the vacancies were advertised. The candidates such as the appellants cannot claim any right of appointment merely for the reason that they responded to an advertisement published on 12-9-2013. Even after completion of the selection process, the candidates even on the merit list do not have any vested right to seek appointment only for the reason that their names appear on the merit list. In Shankarsan Dash v. Union of India, a Constitution Bench of this Court held that a candidate seeking appointment to a civil post cannot be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list. This Court held as under: (SCC pp. 50-51, para 7)

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

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

19. The Advertisement No. 06/2015 for whatever reasons did not culminate in appointment to the respective posts and in the subsequent Advertisement No. 05/2019 all the vacancies were clubbed together. Taking a cue from the aforesaid judgment, it can be concluded that the writ petitioners did not gain an indefeasible right for appointment merely because they had applied against Advertisement No. 06/2015. Mr. Rajiv Ranjan, learned Advocate General in support of his submission that the vacancies have to be filled up as per the law existing on the date of the advertisement has referred to the case of *“Deepak Agrawal & Another versus State of U.P. & Others”* reported in (2011) 6 SCC 725. The relevant part of the said judgment is extracted hereinbelow:

“26. *It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the “rule in force” on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case lays down any particular time-frame, within which the selection process is to be*

completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.

27. The judgments cited by the learned counsel for the appellants, namely, *B.L. Gupta v. MCD*, *P. Ganeshwar Rao v. State of A.P.* and *N.T. Devin Katti v. Karnataka Public Service Commission* are reiterations of a principle laid down in *Y.V. Rangaiah* case. All these judgments have been considered by this Court in *Rajasthan Public Service Commission v. Chanan Ram*. In our opinion, the observations made by this Court in SCC paras 14 and 15 of the judgment are a complete answer to the submissions made by Dr. Rajeev Dhavan. In that case, this Court was considering the abolition of the post of Assistant Director (Junior) which was substituted by the post of Marketing Officer. Thus the post of Assistant Director (Junior) was no longer eligible for promotion, as the post of Assistant Director had to be filled by 100% promotion from the post of Marketing Officer. It was, therefore, held that the post had to be filled under the prevailing rules and not the old rules.

28. In our opinion, the matter is squarely covered by the ratio of the judgment of this Court in *Dr. K. Ramulu*. In the aforesaid case, this Court considered all the judgments cited by the learned Senior Counsel for the appellant and held that *Y.V. Rangaiah* case would not be applicable in the facts and circumstances of that case. It was observed that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. It was also held that when the Government takes a conscious decision and amends the rules, the promotions have to be made in accordance with the rules prevalent at the time when the consideration takes place.”

20. He has also referred to the case of “*Union of India and Others versus Krishna Kumar and Others*” reported in (2019) 4 SCC 319, wherein it was held thus:

“**10.** In considering the rival submissions, it must, at the outset, be noted that it is well settled that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This Court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision of this Court in *Y.V. Rangaiah v. J. Sreenivasa Rao* has been

construed in subsequent decisions as a case where the applicable Rules required the process of promotion or selection to be completed within a stipulated time-frame. Hence, it has been held in *H.S. Grewal v. Union of India* that the creation of an intermediate post would not amount to an interference with the vested right to promotion. A two-Judge Bench of this Court held thus: (*H.S. Grewal case*, SCC p. 769, para 13)

“13. ... Such an introduction of an intermediate post does not, in our opinion, amount to interfering with any vested rights cannot be interfered with, is to be accepted as correct. What all has happened here is that an intermediate post has been created prospectively for future promotions from Group B Class II to Group A Class I. If, before these Rules of 1981 came into force, these officers were eligible to be directly promoted as Commandants under the 1974 Rules but before they got any such promotions, the 1981 Rules came in obliging them to go through an intermediate post, this does not amount to interfering with any vested rights.”

12. Recently, in *State of Tripura v. Nikhil Ranjan Chakraborty*, another two-Judge Bench of this Court held thus: (SCC pp. 650-51, para 9)

“9. The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in *Deepak Agarwal*, in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24-11-2011.”

13. In view of this statement of the law, it is evident that once the structure of Assam Rifles underwent a change following the creation of the intermediate post of Warrant Officer, persons holding the post of Havaldar would be considered for promotion to the post of Warrant Officer. The intermediate post of Warrant Officer was created as a result of the restructuring exercise. The High Court was, in our view, in error in postulating that vacancies

which arose prior to the amendment of the Recruitment Rules would necessarily be governed by the Rules which existed at the time of the occurrence of the vacancies. As the decided cases noted earlier indicate, there is no such rule of absolute or universal application. The entire basis of the decision of the High Court was that those who were recruited prior to the restructuring exercise and were holding the post of Havaldars had acquired a vested right of promotion to the post of Naib Subedar. This does not reflect the correct position in law. The right is to be considered for promotion in accordance with the Rules as they exist when the exercise is carried out for promotion.

21. Similarly in the case of “*Subodh Kumar & Others versus Commissioner of Police & Others*” reported in (2020) 13 SCC 201, it was held as follows:

“16. *It is equally a settled proposition of law that a candidate has a right to be considered under the existing rules, which implies the “rule in force” on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up earlier year vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion.”*

22. Mr. Rajiv Ranjan, learned Advocate General has also referred to the case of “*State of Bihar & Others versus Md. Kalimuddin & Others*” reported in (1996) 2 SCC 7, to substantiate his submission that the State can revise the reservation policy for new appointment. The following paragraphs have been extracted and quoted hereinbelow which is germane to such submission:

“5. *The fact that the empanelment was done in pursuance of the advertisement issued and selections made as per the prevailing legal position, is not in question. So also it is unexceptionable that merely because a candidate’s name is included in the panel does not confer any right to be appointed. See *Shankarsan Dash v. Union of India*. The question, however, is, if the posts are not abolished or reduced and the vacancies need to be filled up, can it lie in the mouth of the Government to say that since a new reservation policy has been adopted, the rules would be amended and appointments would be made thereafter consistent with the revised rules and new policy? The advertisement was issued in 1988. Memo No. 22 dated*

19-1-1991 shows that the panel was received in the office of the Regional Director on 18-1-1991. This memo says that the vacancies in matric-trained category in the division were 160. It further desired that the list may be approved at an early date so that long-standing vacancies may be filled up. It also points to the paucity of matric-trained teachers in various schools. The subsequent letter of 5-6-1991 directs that a panel of candidates of different categories of reservation in order of merit be prepared as per the modified rules of reservation and the same be sent for approval. It further says that unless this is done, no recruitment shall take place. In response to the said letter the Regional Deputy Director of Education informed the Director (Primary Education), vide letter dated 26-8-1991, that he had already submitted the approved panel in the Secretariat for appointment of teachers under the amended rules of reservation. This is how the position stood when the writ petition was filed on 20-1-1992.

7. Next, it must be noted that the State Government had by the letter of 27-5-1993 desired to revise its reservation policy and, therefore, had placed a general embargo against recruitment from old waiting-lists. It was also stated that rules as per the modified policy are in the process of being formed and further appointments will be as per the revised rules. However, in the present case as pointed out earlier the list had expired long back and had ceased to be operational. The State Government was entitled in law to change its reservation policy inconsistent with the Constitution. If it was considering a change in the reservation policy of the State, it was not obliged to fill up the existing vacancies.

8. As held in the case of Shankarsan Dash even if vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire an indefeasible right to be appointed, unless the relevant rules indicate to the contrary. It is indeed expected of the State to act bona fide and for valid reasons in refusing to make the appointments after the selection process has been gone through. The High Court has, however, come to the conclusion that the State had acted arbitrarily and irrationally in refusing to make appointments from the select list. We find it difficult to subscribe to this view. In the first place, as pointed out earlier, the select list had lapsed on the expiry of one year. Secondly, the process of appointment was halted as the reservation policy was intended to be amended or modified. The High Court, however, approached the matter thus:

“The panel thus does not appear to be violative of the reservation policy of the State. So far as the proposed

rules of recruitment are concerned, the details of which have not been furnished from which it could be gathered as to whether any substantial or drastic deviation is sought to be made from the existing rules regarding the procedure of recruitment except that training is no longer to be a necessary qualification or condition of eligibility I do not want to go into the correctness of the policy of the State dispensing with the necessity of the training as a condition of eligibility. However, I have serious doubt whether appointment of untrained teachers in preference to the trained ones who are already in panel and available for appointment can be said to be in public interest.”

It is on this line of reasoning that the High Court came to the conclusion that the action of the State Government was arbitrary and irrational. Now, as held in Shankarsan Dash case, a decision to adopt a different policy with respect to the reserved vacancies can be a justifiable cause for halting further appointments from the panel or select list and such an action cannot be condemned on grounds of arbitrariness and/or illegal discrimination. Whether doing away with the training is in public interest or otherwise would depend on the facts and circumstances of each case and that would be a matter to be put in issue if the rules in that behalf are sought to be challenged on the ground of unreasonableness or discrimination. The High Court has said in terms that it does not want to go into the correctness of that policy, yet, expressing a “serious doubt” it has virtually condemned the policy. In the instant case the Government was desirous of amending or modifying the reservation policy and, therefore, it took a decision to suspend all further appointments from existing panels or select lists. The ultimate outcome of that exercise is not fully brought out on record but it is obvious that the State Government was not acting mala fide and merely with a view to denying appointment to the respondents herein. Merely because notwithstanding the availability of trained personnel the State Government was inclined to change the rules in that behalf does not appear to be a valid ground for contending that the Government had acted mala fide. Without knowing the nature of change it was not open to the High Court to anticipate the policy and brand it as unreasonable.

9. *For the above reasons, we are of the opinion that even if it is assumed that the panel or select list had not expired at the date of filing of the writ petition, the refusal on the part of the Government to make appointments from the panel or select list, vide letter dated 27-5-1993, could not be condemned as arbitrary, irrational and or mala fide. We, therefore, reverse the view taken by the High Court, set it aside and hold that*

the original writ petition was liable to be dismissed and we hereby dismiss the same. No order as to costs.”

23. Some of the aforesaid judgments were cited by the learned Advocate General before the learned Single Judge who had not given much consideration to the same primarily on account of the fact that the said cases were decided on the point of promotion. No doubt the cases related to promotion but only on such score the applicability of the said judgments cannot be forestalled. What can be culled out from the judgments of *“Deepak Agrawal & Another versus State of U.P. & Others”* (supra), *“Union of India and Others versus Krishna Kumar and Others”* (supra) and *“Subodh Kumar & Others versus Commissioner of Police & Others”* (supra) is that vacancies are not to be filled up invariably by the law existing on the date when the vacancy arises. The “rule of force” has to be applied on the date the consideration took place. The said cases dealt with filling up of vacancies through promotion while the issue in the present case is filling up of vacancies through appointment. The principles for filling up the vacancies remain the same. The carrying forward of the vacancies of 2013 and 2015 and incorporating the same in Advertisement No. 05/2019 is a prerogative of the State and the prospective application of 10 % for EWS quota on the merger of the vacancies as per advertisement had been rightly adopted. In this context, we may once again refer to the submission of Mr. Das, learned counsel for the respondent nos. 1 and 2, that it was a merger of advertisement and not merger of vacancies. This proposition advanced by him cannot be accepted simply for the reason that Advertisement No. 05/2019 was a fresh advertisement with additional features wherein the vacancies arising in the year 2013 and subsequent thereto were merged. We may also refer to the case of *“Balbir Kaur & Another versus U.P. Secondary Education Services Selection Board, Allahabad & Others”* reported in (2008) 12 SCC 1. The submission of the learned counsel for the petitioner in the said case that since the vacancies have to be notified each year it would naturally mean that they are also to be filled up each year from

amongst the eligible candidates available of that recruitment year and the person who became eligible subsequently could not be considered in respect of the vacancies accruing in respect of the earlier recruitment year was negated and it was held that since neither the rules or the principle Act mandated that selection or determination of vacancies must be year-wise, all the vacancies which are existing or which are likely to fall vacant during the year of recruitment can be clubbed irrespective of the year of occurrence of the vacancy. The same principle would apply in the present case with respect to merger of vacancies/ clubbing of vacancies.

24. Mr. Anupam Lal Das, learned counsel for the respondent nos. 1 and 2 has relied upon the case of "*Maharashtra State Road Transport Corpn. & Others versus Rajendra Bhimrao Mandve & Others*", reported in (2001) 10 SCC 51. The factual aspects of the said case reveal that the writ petitioners before the High Court had applied for the post of Drivers along with other persons and after passing the driving test they were called for interview and thereafter the selection list was displayed. The grievance was with respect to the applicability of the circulars dated 23.01.1995 and 04.04.1995 and not the subsequent circular dated 24.06.1996 when the selection test of the petitioners was underway. It was held that the circular dated 24.06.1996 will have no relevance or application to the selections in question conducted pursuant to the advertisement issued on 20.09.1995.

25. Learned counsel for the respondent nos. 1 and 2 herein has also referred to the case of "*K. Manjushree versus State of Andhra Pradesh and Another*", reported in (2008) 3 SCC 512. In the said case, it was held as follows:

“33. *The Resolution dated 30-11-2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the*

minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

26. None of the cases cited by the learned counsel for the respondent nos. 1 and 2 are applicable in the facts and circumstances of the present case. In both the above noted cases the rules of the game were changed once the selection process had started. The legal matrix enunciated therein is inconsequential given the fact that the rules of the game prior to issuance of Advertisement No. 05/2019 continued to hold its field during the selection process and introduction of 10 % reservation for the EWS by clubbing together the existing vacancies was not a subsequent act but was an act which was already existing consequent to the Resolutions of the State of Jharkhand dated 15.02.2019 and 25.02.2019.

27. Mr. Sanjay Piprawall, learned counsel for the appellant in L.P.A. No. 82 of 2021, had primarily submitted apart from adopting the argument of the learned Advocate General that no candidate has a right to be appointed and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection and appointment on revised criteria. Reference in this connection is made to the case of *“Jai Singh Dalal and Others versus State of Haryana & Another”*, reported in 1993 Supp. (2) SCC 600, *“State of Jharkhand & Another versus Ranjit Kumar Gupta & Others”* (L.P.A. No. 614/2017) and *“Ranjan Kumar & Others versus State of Bihar &*

Others”, reported in (2014) 16 SCC 187. We are not elaborating on the aforesaid judgments as it would be a repetition since the principles culled out from the aforesaid judgments have already been dealt with in the preceding paragraphs.

28. Based on the findings recorded by this Court, it is abundantly clear that the issuance of Advertisement No. 05/2019 incorporating 10 % reservation for the Economically Weaker Section by the State Government cannot be said to be an arbitrary action on the part of the State. The learned Single Judge has committed an error of law in mandating inapplicability of reservation of 10 % for the Economically Weaker Section for the vacancies of the year 2013 and 2015 while passing the impugned order dated 21.01.2021 in W.P.(S). No. 53 of 2020.

29. Consequently, the order dated 21.01.2021 passed in W.P.(S). No. 53 of 2020, is hereby set aside with a direction to the Jharkhand Public Service Commission to expedite the process of selection.

30. Both these appeals are accordingly allowed.

31. Pending I.As, also stand disposed off.

(Rongon Mukhopadhyay, J.)

I Agree

(Rajesh Shankar, J.)

(Rajesh Shankar, J.)