

(2021) 05 JH CK 0010

In the Jharkhand High Court

Case No : L.P.A. No. 568, 609 Of 2017, 164 Of 2018, I.A. No. 9717 Of 2017,
3567 Of 2018, 3099 Of 2019

Jharkhand Public Service Commission And Ors

APPELLANT

Vs

Akhilesh Prasad And Ors

RESPONDENT

Date of Decision : 12-05-2021

Acts Referred:

Bihar Reorganization Act, 2000 — Section 72, 72(1), 72(2), 73, 73(1), 73(3)
Bihar Junior Civil Service (Recruitment) Rules, 1951 — Rule 3, 3(1), 5, 5(k), 7, 8, 12
Jharkhand Cooperative Service Rule, 2012 — Rule 2(iii)
Constitution Of India, 1950 — Article 14, 16, 226, 309

Citation : (2021) 05 JH CK 0010

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Sanjay Piprawall, Manoj Tandon, Arun Kr. Dubey, Amrit Raj Kisku,
Sachin Kumar, Manoj Tandon, Sanjay Piprawall, Amrit Raj Kisku, Sachin Kumar,
Sanjay Piprawall

Final Decision : Allowed/ Disposed Of

Judgement

1. With the consent of the parties, hearing of the matter has been done through video conferencing and there is no complaint whatsoever regarding audio and visual quality.
2. These three appeals are listed together for analogous hearing since the issue fell for consideration is common, as such heard together and are being disposed of by this common order.
3. L.P.A. No.609 of 2017 preferred by the Jharkhand Public Service against the order/judgment dated 22.09.2017 passed in the case of Akhilesh Prasad, the writ petitioner [In W.P.(S) No.3480 of 2013], L.P.A No. 164 of 2018 preferred by the State of Jharkhand against the order/judgment

dated 22.09.2017 passed in the case of Akhilesh Prasad, the writ petitioner [In W.P.(S) No.3480 of 2013] and L.P.A.No.568 of 2017 preferred by the

State of Jharkhand against the order/judgment dated 11.04.2017 passed in the case of Manoj Kumar, the writ petitioner [In W.P.(S) No.4880 of 2013],

whereby and whereunder, the writ petitions have been allowed by directing the respondents to consider the case of the writ petitioners for

appointment to the post of Deputy Collector, pursuant to the limited competitive examination, if the writ petitioners qualify and come within the zone of

consideration.

4. The brief facts of the case of the writ petitioner which required to be enumerated herein reads hereunder as:-

L.P.A.No.609 of 2017 & L.P.A. No.164 of 2018

5. The writ petitioner, namely, Akhilesh Prasad in W.P.(S) No.3480 of 2013 had appeared in the competitive examination in pursuant to an

advertisement issued by the Bihar Public Service Commission, in short 'BPSC', in the unified State of Bihar for appointment to the different posts.

The writ petitioner had applied being eligible under the Scheduled Tribe Category. He was declared successful having his name appeared in the merit

list in the result published by the BPSC on 24.07.1995, accordingly, the writ petitioner had joined his service to the post of Cooperative Extension

Officer in terms of appointment letter dated 10.11.1995.

The State Reorganization Act came into being on 15.11.2000 by which, two States have been created i.e., the successor State of Bihar and the

successor State of Jharkhand. The writ petitioner was allocated the cadre of the successor State of Jharkhand. He joined his service to the State of

Jharkhand in the capacity of Cooperative Extension Officer and while in service, an advertisement was published by the Jharkhand Public Service

Commission, in short 'JPSC', inviting application for appointment on the post of Deputy Collector through limited competitive examination(LEC)

being Advertisement No.05/2005.

The writ petitioner considered himself to be eligible, applied in pursuant to Advertisement No.05 of 2005 for consideration of his appointment to the

post of Deputy Collector but the result of the examination in pursuant to the said advertisement was not notified and again a fresh advertisement was

issued being Advertisement No.09/2010 for appointment on the post of Deputy

Collector through limited competitive examination in which, again the writ petitioner had appeared but the name of writ the petitioner did not figure in the list of successful candidates. The writ petitioner, on enquiry, came to know after downloading the marks statement of his own and one Asim Bara and found that he has secured total 123.68 marks and while the said Asim Bara has secured 119.73 marks in total but the writ petitioner was not declared successful while the said Asim Bara was selected.

The writ petitioner, in consequence thereof, had approached to this Court by invoking the jurisdiction conferred under Article 226 of the Constitution of India seeking therein the reliefs for issuance of direction upon the respondent to consider the case of the writ petitioner for appointment on the post of Deputy Collector through limited competitive examination pursuant to Advertisement No.09 of 2010 issued by the respondent no.2, in as much as, the writ petitioner has secured 123.68 marks and the last candidate under the Scheduled Tribe category has secured 113.70 marks, to hold and declare that the writ petitioner belongs to Schedule Tribe category, which is apparent from the panel prepared for initial appointment by the BPSC on the post of Cooperative Extension Officer, as such, the JPSC has no power and jurisdiction to treat the writ petitioner as unreserved category candidate in the examination conducted in terms of Advertisement No.09 of 2010 and to direct the respondent to issue appointment letter to the writ petitioner as the petitioner has secured 123.68 marks and the other candidates exactly similarly situated person, namely, Asim Bara who is of the same department, has secured 119.73 marks, but he has been selected for appointment on the post of Deputy Collector through the limited departmental examination pursuant to Advertisement No.09 of 2010.

The writ petitioner has agitated the ground before the writ court that the respondents have acted illegally to treat the writ petitioner as un- reserved category candidate without considering the fact that he had been selected by the BPSC to the post of Cooperative Extension Officer under the Scheduled Tribe Category and as such, not treating the writ petitioner a candidate of the Scheduled Tribe Category rather treating him as un- reserved category is absolutely illegal and improper and contrary to a circular issued by the State of Jharkhand, wherein it has been decided in the policy decision that those who were appointed prior to bifurcation of the State of

Jharkhand, would be entitled for reservation for all practical purpose.

The competent authority of the Cooperative Department has duly certified that the writ petitioner belongs to 'GOND' Caste falling under the

Scheduled Tribe Category and as such, the respondents have got no power and jurisdiction to change the status of the writ petitioner, particularly

when the writ petitioner had produced all the relevant certificates as prescribed under the advertisement.

Further ground has been agitated that the respondent State of Jharkhand has considered the case of the writ petitioner treating him under the reserved

category in the matter of promotion, as such, he is entitled for same treatment in the matter of appointment and denying the same would amount to

discriminatory attitude of respondents and as such, violation of Articles 14 and 16 of the Constitution of India.

Further, the writ petitioner has secured higher marks than the last selected candidate under the Scheduled Tribe Category, namely, Shri Girwar Minz

who has obtained only 113.70 marks and as such, the appointment of Shri Girwar Minz is required to be cancelled and the writ petitioner is fit to be

appointed.

It has further been urged that the Caste 'GOND' is a Scheduled Tribe in the successor State of Jharkhand and is Scheduled Tribe in the existing

State of Bihar also.

6. The respondents have refuted the aforesaid contention inter-alia stating before the writ court that the writ petitioner did not fulfill the required

criteria for reserved category and as such, his candidature was rightly treated under the un-reserved category, since, the writ petitioner had not

enclosed copy of the caste certificate and residential certificate issued by the Sub Divisional Magistrate, after creation of the State of Jharkhand in

terms of Clause-13 of the advertisement, rather, the writ petitioner had enclosed caste certificate issued on 03.06.1995 by the Sub Divisional

Magistrate, Sonapur, District-Saran, Bihar, wherein it has been mentioned that he is the resident of Village-Purildpur, District-Saran, Bihar and as

such, JPSC had no option but to treat the writ petitioner as un-reserved category candidate and accordingly, admit card was issued to the writ

petitioner for his appearance in the written examination of instant selection process.

It has been submitted that Rule 73 of the Bihar Re-organization Act is not applicable in the present case as it relates to cadre allocation, the case in hand relates to fresh appointment by the JPSC.

The respondent has submitted that the writ petitioner has secured less marks than the last selected/recommended candidate under un- reserved category i.e., 138.81 marks and as such, the writ petitioner was not declared successful in the written examination.

On the point of consideration of the case of one Asim Bara, submission has been made that the said Asim Bara has submitted proper caste certificate

and residential certificate issued by the Sub Divisional Magistrate, Simdega after creation of State of Jharkhand, as such, his candidature was

considered by the JPSC as Schedule Tribe Category candidate. Since, he has secured more marks than the last recommended candidate in Scheduled

Tribe Category i.e., 113.70 marks and as such, said Asim Bara had been recommended for appointment by JPSC under Scheduled Tribe Category

candidate, hence, there is no illegality in recommending the name of Asim Bara as a Scheduled Tribe Category candidate.

Further plea was taken that as per government circular dated 14.08.2008, the writ petitioner is entitled for promotional benefit under the reserved

category since his service has been allocated to the newly created State of Jharkhand by virtue of cadre division after bifurcation of the State of Bihar

but for the purpose appointment to any post, benefit of reservation cannot be extended to the writ petitioner especially in view of non-fulfillment of

terms of the advertisement.

The respondents have relied upon the judgment passed by the Division Bench of this Court in L.P.A. No.361 of 2015 and L.P.A. No.169 of 2015.

7. The learned Single, Judge after deliberating on issue, considering the rival submissions made on behalf of the parties, has allowed the writ petition on

the ground of applicability of resolution no.4722 dated 14.08.2008 which provides that the government servants who are appointed in the reserved

category before the creation of the State and on the basis of cadre division have been posted in the Jharkhand State and are resident of Bihar State,

their reservation category shall remain unaffected and they shall be treated as government employee of reserved category.

Therefore, the learned Single Judge, however, has observed that appointment to

the post of Deputy Collector may be a fresh appointment but the process of the said appointment has to be seen as because the examination is not a general open competitive examination rather it is open for in-service candidates of the Government of Jharkhand only, therefore, the Government employee is entitled to appear in the said examination and if such employee succeeds in the examination and is appointed on the post of Deputy Collector, his past services with the State are also counted for all purposes and in view of the said fact, direction has been passed upon the respondent to consider the case of the writ petitioner for appointment to the post of Deputy Collector, in pursuant to the Advertisement No.09/2010 as a reserved category (Scheduled Tribe). L.P.A. No.568 of 2017

8. The writ petitioner, namely, Manoj Kumar, had participated in the process of selection in pursuant to advertisement published on 08.10.2010 for appointment on the post of Deputy Collector, under Jharkhand Administrative Service cadre by the limited competitive examination under B.C-I Category.

The writ petitioner was appointed on the post of typist on 08.08.1997 in the erstwhile State of Bihar. After bifurcation of the State of Bihar, the writ petitioner was allocated to the cadre for State of Jharkhand and has been posted as a typist in the department of Cooperative, under the Government of Jharkhand.

The writ petitioner had appeared in the selection process but his name did not find place in the merit list. He, on enquiry, has come to know that he obtained 137.70 marks out of 200, whereas other candidate, namely, Ajoy Kumar Verma under B.C.-I Category, obtained 137.82 marks out of 200, as Ajoy Kumar Verma had obtained 0.12 marks more than the writ petitioner, he was recommended for appointment.

The contention raised by the writ petitioner that there is no provision of awarding marks in decimal fraction.

It was the case of the writ petitioner that when marks allotted to both the candidates is equal, the person, who is older in age, has to be recommended.

Since, the writ petitioner is older in age than that of respondent no.4, he should have been recommended for appointment.

His further case was that Ajoy Kumar Verma, who was recommended against B.C.-I Category, was later on recommended as B.C.-II candidate and

since the post of B.C.-I, fell vacant and the writ petitioner is the next candidate, he is entitled to get the benefit under B.C.- I Category.

He claims that his condition of service is protected by virtue of Section 73 of the Bihar Reorganization Act, 2000, and the State must consider him as

B.C.-I candidate.

9. The respondent/State of Jharkhand has appeared before the writ court and filed the counter affidavit stating inter-alia therein that the writ petitioner

is not entitled to get the benefit of Section 73 of the Bihar Reorganization Act, 2000, as the appointment to the post of Deputy Collector, pursuant to

the limited examination is a fresh appointment.

Thus, Section 73 of the Bihar Reorganization Act, 2000 cannot be applied in the case of the present petitioner.

It has further been contended that the writ petitioner is a permanent resident of Bihar and thus, he cannot be provided the benefit of reservation of

Backward Class-I by the State of Jharkhand.

10. The writ court, after appreciating the rival submission of the parties, however, has not accepted the argument of the writ petitioner of allotting the

marks in decimal fraction.

But the case of the writ petitioner was considered on the ground that one post under B.C.-I Category fell vacant due to reconsideration of the

candidature of the respondent no.4 from B.C.-I Category to B.C.-II Category.

The writ court has considered that since the writ petitioner belongs to B.C.-I category, under which category he was selected in the undivided State of

Bihar as typist and therefore, he is entitled to be given the benefit of reservation under B.C.-I in pursuant to the resolution nos.4722 dated 14.08.2008

and 5448 dated 12.09.2011 but denial of the claim of benefit of reservation to the writ petitioner treating the selection to the post of Deputy Collector

as a fresh appointment cannot be said to be proper, even though, the appointment to the post of Deputy Collector is a fresh appointment but after

considering the process of appointment which is not an open appointment for persons in general rather it is by way of limited examination, in which

only employees who are already in-service of the State, are allowed to appear, therefore, if any employee succeeds in the examination and appointed

on the post of Deputy Collector, his past services with the State are also counted for his benefit. Thus, it is in continuation of his earlier service.

Considering these facts, the writ petition has been allowed by remitting the matter to the respondent no.3 to take appropriate decision, in view of the findings made above and to consider the case of the writ petitioner for appointment on the post of Deputy Collector, pursuant to the Combined Examination-2013, as B.C.-I candidate only if the petitioner qualifies and comes within the zone of consideration taking into consideration the marks obtained by him.

11. These orders are the subject matter of L.P.A.No.609 of 2017 having been preferred by the Jharkhand Public Service Commission while L.P.A.

Nos.164 of 2018 and 568 of 2017 have been preferred by the State of Jharkhand.

12. Mr. Sachin Kumar, learned Addl. A.G.-II representing the appellant- State in L.P.A.No.164 of 2018 and L.P.A.No.568 of 2017, has submitted

that the orders passed by the learned Single Judge are not proper as because even though, the learned Single Judge has recorded an observation that

the selection is by way of fresh appointment but even then the consideration has been made about the past services rendered by the writ petitioner

before the erstwhile State of Bihar, it cannot be said to be justified in the matter of granting benefit of reservation as because, if the selection has been

observed to be a fresh appointment, the policy of reservation applicable to the State of Jharkhand, in pursuant to the policy decision issued in this

regard by the State of Jharkhand, will be applicable, however, the said principle will not be applicable if the question of cadre promotion would be

there.

It has been submitted that even in the advertisement as under condition no.13 thereof, it has specifically been stipulated to produce the caste

certificate and residential certificate duly been issued by the Sub Divisional Magistrate posted within the jurisdiction of the State of Jharkhand and

therefore, the writ petitioners ought to have applied after fulfilling the said condition but having not done so, they cannot be allowed to raise the issue

by seeking relaxation of the said condition and if at all, they were aggrieved with the said condition, they ought to have assailed the same at the threshold.

Submission has been made that it will be against the principle that if a candidate participated in pursuant to the open advertisement looking to the

condition stipulated therein with naked eye, in case of unsuccessful, they cannot be allowed to question the terms and conditions of the advertisement.

These aspects of the matter have not been appreciated by the learned Single Judge in the impugned orders.

13. Mr. Sanjay Piprawall, learned counsel appearing for the appellant in L.P.A. No.609 of 2017 has adopted the argument advanced on behalf of the

appellant-State in L.P.A. No.164 of 2018 and L.P.A.No.568 of 2017, however, with the addition that the policy dated 14.08.2008 meant for

consideration of the case for promotion and not for the fresh appointment.

14. Per contra, Mr. Manoj Tandon, learned counsel appearing for the writ petitioners in L.P.A.No.609 of 2017 and L.P.A.No.164 of 2018 as also Mr.

Manoj Kumar, writ petitioner appears in person in L.P.A.No.568 of 2017 have submitted that there is no error in the impugned orders passed by the

learned Single Judge since the consideration has been given in the impugned orders by taking into consideration the appointment made to the writ

petitioners prior to bifurcation of the State of Bihar, wherein the writ petitioners had been appointed under the Scheduled Tribe/OBC Category and by

virtue of bifurcation of the State of Jharkhand, if the writ petitioners have been allocated the cadre for the State of Jharkhand, their status of caste

cannot be taken away and if taken away, the same will amounts to alteration in the service condition which is contrary to the provision of Section 73

of the Bihar Reorganization Act, 2000.

They further submits that the appointment through limited competitive examination cannot be construed to be a fresh appointment rather it is for

promotion and once it is a promotion, the status of caste of the writ petitioners would be considered which was at the time of their initial appointment.

It has further been submitted by refuting the argument advanced on behalf of the appellant to the effect that the condition of advertisement has not

been assailed for the reason that even if the writ petitioners had not complied with the condition stipulated under condition no.13 of the advertisement,

they should not have been allowed to participate in the process of selection and once allowed to participate in the selection process, it is not available

with the appellant to deviate from such decision.

15. We after having heard the learned counsel for the parties and on appreciating the argument as also the material available on record are of the

view that following questions are required to be considered in these appeals:-

(i) Whether the appointment through limited competitive examination is a fresh

appointment or by way of promotion?

(ii) Whether the provision of Section 73 of the Bihar Reorganization Act, 2000 will be applicable in the process of selection to be made through limited

competitive examination after final order passed by the Central Government under Section 72(2) of the Act, 2000?

(iii) Whether condition of advertisement can be allowed to be assailed by the candidates who have participated in the process of selection but declared unsuccessful?

(iv) Whether in the matter of fresh appointment, reservation can be said to be a condition of service for making applicable the provision of Section 73 of the Bihar Reorganization Act, 2000?

16. The issue no.(i), (ii) and (iv) are interlinked with each other, therefore, the same are being discussed and answered jointly.

In order to answer the issue, it is relevant to discuss about the relevant provisions for recruitment and Section 72 and Section 73 of the Bihar

Reorganization Act.

The erstwhile State of Bihar has published a rule, namely, the Bihar Civil Service (Executive Branch) and the Bihar Junior Civil Service (Recruitment)

Rules, 1951 published in the Bihar Gazette (Extraordinary) dated 17.11.1995 by enacting the law in exercise of powers conferred under the proviso to

Article 309 of the Constitution of India.

The post of Bihar Civil Service (Executive Branch) and the Bihar Junior Civil Service shall be recruited:-

(a) by direct recruitment in accordance with the rules in Part II and /or

(b) by direct recruitment in accordance with the rules in Part II-A and/ or

(c) by promotion or transfer of officers already in Government service in accordance with the rules in Part III.

The rule-3 of Rules, 1951 provides that the Governor shall decide in each year the number of vacancies in each of the services to be filled in that year

by direct recruitment and/or by promotion respectively.

Provided that the number of vacancies to be filled by promotion in the Bihar Civil Service (Executive Branch) in any one year shall not, unless the

Governor is satisfied that there is not a sufficient number of officers fit for promotion, be less than half the total number of vacancies to be filled in any

such year.

Part II under which the process for direct recruitment by competitive examination has been provided.

The examination to fulfill the post through direct recruitment will be on the result of the competitive examination.

Part II-A provides for process of direct recruitment of persons with Zamindari Experience which has meant to consider the candidature of such

candidates who were having at least six years experience of managing a Zamindari or tenure.

Part III deals with promotion of Officers already in Government service.

The post would be filled up through promotion by the recommendation to be made by the Member Board of Revenue who acts as a President and

other Members.

The provision provides that appointment to the Bihar Civil Service (Executive Branch) by promotion of any Officers other than a Sub-Deputy

Collector is not ordinarily desirable and no such appointments will be made save for reasons of an exceptional kind, and on the express

recommendation of the Head of the Department in which the officer is serving and of the Board of Revenue.

Further, no Sub-Deputy Collector is eligible for promotion unless he has passed the departmental examination in law and language by the higher

standard and in accounts.

The candidature of such candidate will be considered only on the basis of recommendation made by the head of the department.

It is, thus, evident that at the time of framing of Rules, 1951, there was no provision to fill up the post through limited competitive examination.

The provision to fill up the post through limited competitive examination has come for the first time on 2nd May, 1980 by the erstwhile State of Bihar

through the Personnel, Administrative Reforms and Rajbhasha Department.

The Rule as contained in notification no.5857 dated 2nd May, 1980 was repealed and a new rule has been enacted by the State of Bihar in exercise of

power conferred under the proviso to Article 309 of the Constitution of India to be known as "Bihar Administrative Service (Appointment through

Limited Competitive Examination) Rules, 1991".

It is evident from the said rule that the appointment by way of selection would be made through limited competitive examination.

Under Chapter II thereof provides that the State Government is to fix the vacancies by 31st March of the year to fill up the posts through direct recruitment and by way of selection from the working employee under the Government Service but selection which is to be made through the limited competitive examination will not exceed 25 per cent of the total vacancies.

The reservation policy notified by the Government will be applicable in the matter of selection in pursuant to the provision of Rule 3(1).

The State Public Service Commission will conduct the limited competitive examination by inviting application from the working employee in the Government Service and from amongst them the vacant posts will be filled up from the successful candidate.

The eligibility criteria have been provided under the provision of Rule 5, wherein under Rule 5(k), it has been provided that:

- (i) a candidate is to be graduate from the recognized university,
- (ii) a candidate is required to have continuous service for three years in the Class-3 category and
- (iii) the candidate will not exceed the age of 45 years of the first August of the year of the batch of the examination.
- (kha) The candidate will not be allowed to participate in the limited competitive examination for more than three chances.

The course of examination for limited competitive examination has been provided consisting of written examination with no seniority rule. In the written examination, 40 per cent marks has been fixed as a minimum qualifying marks, however, for the Scheduled Caste and Scheduled Tribe Category, there will be relaxation of 5 per cent marks as would appear from the provision of Rule 8.

It further appears from the provision of Rule 8 that in case, the vacancies would not be filled up due to non-availability of the meritorious candidate, the remaining vacancies will be added in the vacancy of the next year.

Chapter-IV provides that any provision contained in the provision of Rule, 1951 if inconsistent with the provision of Rule 1991, the inconsistent provision of Rule 1951 will not be applicable.

The advertisement is of the year 2010 and as such, the provision of Rule 1991

will be applicable for fulfilling the post through limited competitive examination.

However, the State of Jharkhand has come out with a rule in exercise of power conferred under the proviso to Article 309 by notifying it on

23.04.2015 to be known as "Jharkhand Administrative Service Rules, 2015", wherein the process of selection in the Bihar Administrative Service is

to be filled up through three modes:-

- (i) by way of direct recruitment;
- (ii) through promotion and
- (iii) through limited competitive examination.

Therefore, the Rule, 2015 enacted by the State of Jharkhand, the post falling under the cadre of the Jharkhand Administrative Service will be filled up

through three modes:-(i) direct recruitment, (ii) through promotion and (iii) through limited competitive examination.

Prior to coming into effect of the Rule, 2015 of the State of Jharkhand, the Rule 1951 enacted by the erstwhile State of Bihar was in vogue, wherein

the selection was to be made to fill up the post of Bihar(Jharkhand) Administrative Service through two modes only, first through direct recruitment

and second through promotion on the basis of the recommendation to be made by the Selection Committee headed by the Member Board of Revenue.

Subsequently in the year 1991, a new rule was enacted under the proviso to Article 309 of the Constitution of India for fulfilling the post of 25 per cent

of the total vacancies under the Bihar Administrative Cadre by way of limited competitive examination.

The question whether the appointment through limited competitive examination will be treated to be promotion in the cadre or a fresh appointment?

It is not in dispute that filling up the post is through various modes, it can be filled up through direct recruitment, it can be filled up through promotion or

it can be filled up on transfer.

So far as the fulfillment of post through direct recruitment is concerned, the process to fill up the post through the said mode is by inviting application

from the open market depending upon the eligibility of one or the other candidate as also the applicability of the reservation policy etc. The direct

recruitment to fill up the post is always to the post at entry level which is also

known as "Basic Cadre Post". But if the post is to be filled up by way of promotion, the same is to be filled up from the employee working in the Basic cadre.

It is not in dispute that the posts are to be filled up through direct recruitment at entry level, and if such posts are having hierarchy of the posts, are to be filled up through promotion.

Herein, the post of Deputy Collector is the basic cadre post, and are having hierarchies of posts, the next hierarchy is the post at Sub Divisional

Officer rank or the Junior Selection Grade, then the post at Addl. District Magistrate rank or equivalent to Senior Selection Grade, then the Super

Selection Grade which is equivalent to the rank of Joint Secretary.

If the post of Junior Selection Grade is to be filled up, the posts being promotional one, the same is to be filled up from amongst the officers of the

basic cadre. If the posts of Senior Selection Grade is to be filled up which is also a promotional post, the same is to be filled up from amongst the

officers who are having in the Junior Selection Grade and the posts of Super Selection Grade are to be filled up from amongst the officers of the

Senior Selection Grade.

We have considered the Jharkhand Cooperative Service Rule, 2012 wherein, the service has been defined under the provision of Rule 2(iii) which

means the Jharkhand Cooperative Service, meaning thereby, the services as under the provision of Rule 1991 under which the advertisement in

question has been advertised is totally different to that of the services to which the writ petitioner of L.P.A.Nos.609 of 2017 and 164 of 2018 belongs,

as also the writ petitioner of L.P.A.No.568 of 2017 who is holding the post of typist under the Cooperative Department, therefore, he will come under

the fold of definition of 2(vii) of the Jharkhand Cooperative Society Rule, 2002 and hence, the writ petitioners who are claiming the recruitment as

Deputy Collector through limited competitive examination to be a cadre promotion is a misconceived argument.

17. It is evident from the provision of Rule, 1991 that 25 per cent of the total vacancies are to be filled up through limited competitive examination.

In the provision of Rule, 1951, there was no stipulation to fill up the post of Bihar Administrative Service through limited competitive examination and it

has come for the first time in the year 1991 by enacting the rule in exercise of

power conferred under the proviso to Article 309 of the Constitution of India and therefore, from the year 1951 till the enactment of the rule for conducting limited competitive examination, the post of Administrative Service was to be filled up either through direct recruitment or through promotion but after enacting the provision of Rule, 1991, out of total vacancies, 25 per cent has been fixed to be filled up through limited competitive examination, meaning thereby, the rest of the vacancies are to be filled up through direct recruitment or promotion as per the decision of the competent authority. It is further evident from the provision of Rule, 1991 that any provision contained in the provision of Rule, 1951 if found to be consistent with the provision of Rule, 1991, the same is not to be followed, meaning thereby, the provision of Rule, 1991 has been given overriding effect over the provision of Rule, 1951.

Therefore, after coming into the effect of provision of Rule, 1991, the posts of Administrative Service, are to be filled up through direct recruitment and promotion but by way of direct recruitment, two modes have now come into operation after 1991 Rule, first through direct recruitment by inviting application from the open market from eligible candidate and 25 per cent vacancies by inviting application from the public servant already working as Class-3 in the State Government.

It can further be clarified by taking aid of the provision of rule formulated by the State of Jharkhand notified on 23.04.2015 in exercise of power conferred under the proviso to Article 309 of the Constitution of India, however, the said provision is not applicable for the present fact of the case but in order to clarify the position of mode of recruitment through limited competitive examination to fill up the post through promotion, the same is being referred herein.

It is evident from the provision of Rule, 2014 that under Rule 3, service means basic category of Jharkhand Administrative Service, Sub Divisional Officer and equivalent level, Additional Collector and equivalent level, Joint Secretary Level, Additional Secretary Level and Special Secretary Level. Under the provision of Rule 6 thereof, the vacancies are to be determined year-wise and by following the reservation policy, a requisition is to be made to the Jharkhand Public Service Commission for fulfilling the post.

The benefit of reservation has to be followed as would appear from the provision of Rule 7, wherein two heads have been prescribed, first direct

recruitment and second through promotion.

Under direct recruitment, it has been stipulated therein that against the 75 per cent of sanctioned posts of basic cadre will be filled up through direct

recruitment and rest 25 per cent of sanctioned posts will be filled up through limited competitive examination while under the promotion category, it has

been stipulated that the post of Sub Divisional Officer and equivalent level, Additional Collector and equivalent level, Joint Secretary Level, Addl.

Secretary Level and Special Secretary Level, will be filled up through promotion.

It would be evident from the provision of Rule 7 that two modes have been provided for fulfilling the post i.e., through direct recruitment and through

promotion but the direct recruitment process will be applicable only for the basic cadre post to the extent of 75 per cent posts through direct

recruitment and 25 per cent posts through limited competitive examination but to fill up the post through promotion, the same is not to be filled up

through the basic cadre posts rather to fill up the post higher in hierarchy in the basic cadre i.e., Sub Divisional Officer and equivalent level, Additional

Collector and equivalent level, Joint Secretary Level, Addl. Secretary Level and Special Secretary Level, for ready reference, the provision of Rule 7

is being referred herein which read hereunder as:-

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It is further evident from Chapter-III, wherein the process to fill up the post has been provided. Rule 12 provides process for direct recruitment while

Rule 6 under Chapter-IV provides process for recruitment through limited competitive examination.

But herein, admittedly, the writ petitioners had been appointed in the capacity of Cooperative Extension Officer or Typist prior to bifurcation of the

State i.e., totally in different cadre and the day when they have been allotted the final allocation of cadre in exercise of power conferred to the Central

Government under Section 72(2) of the Bihar Reorganization Act, 2000, the writ petitioners have been treated to be under reserved category and they have been allowed to join the duty and they are carrying on their services without change in their caste status but once the advertisement has been issued in pursuant to the provision of Rule, 1991 for fulfilling the 25 per cent total vacancies of the Jharkhand Administrative Service Cadre, the requirement stipulated in such advertisement is to be fulfilled from all the candidates working in the government service irrespective of the fact as to whether the employee has come from the erstwhile State of Bihar on bifurcation of the State.

It cannot be the situation that the caste and residential certificate is not required to be submitted to such government servants who are willing to

participate in the process of limited competitive examination after having come to the successor State of Jharkhand on bifurcation of the erstwhile

State of Bihar and if that would be allowed to be done, there will be two sets of candidate, the first one will be the candidate who have come to the

State of Jharkhand after bifurcation for whom there will be no requirement to submit the caste and residential certificate and the other sets will be the

government servants who are working in the State of Jharkhand and finally allocated the cadre of the State of Jharkhand which is not permissible and

therefore, once the advertisement has been issued the advertising agency i.e., the JPSC has come out with an advertisement with the specific

condition at paragraph-13 stipulating therein that the candidates who are willing to participate in the process of selection will have to furnish caste and

residential certificate duly been issued by the Sub Divisional Officer posted within the jurisdiction of the State of Jharkhand.

It cannot be denied rather it is admitted that the Advertisement No.09 of 2010 has been published in pursuant to the provision of Rule 1991 meant for

conducting limited competitive examination.

The condition stipulated at paragraph-13 of the said advertisement since clarifies to produce caste and residential certificate to be issued by the Sub

Divisional Officers posted within the territory of the State of Jharkhand, as such, it is incumbent upon all the candidates to furnish such certificate for

consideration of their candidature.

The admitted position herein is that the condition as stipulated under condition

no.13 of the advertisement has never been assailed by the writ petitioners.

Since herein, the cadre of the writ petitioners is of Class-3 or Cooperative Extension Officer and they are willing for consideration of the cases for appointment in the Jharkhand Administrative Service which is totally different cadre to that of the cadre to which the writ petitioner belongs and hence, the appointment made through limited competitive examination cannot be construed to be promotion for fulfilling the 25 per cent of the vacancies through limited competitive examination.

In such a circumstances, if a candidate has been appointed under the reserved category as Deputy Collector at the time when the State of Bihar was not divided and on bifurcation of the State if such employee comes to the State of Jharkhand on final allocation of cadre and if such candidate will not be considered under the reserved category for the purpose of further hierarchal promotion i.e., under Junior Selection Grade or Senior Selection Grade or Super Selection Grade by treating him not under the reserved category rather under the un-reserved category certainly, such candidate will have a case to the effect that their caste status cannot be allowed to be changed by virtue of bifurcation of the State otherwise the reservation being the service condition of in-service candidate, will be altered which will be detrimental to the interest of such employee, which is not permissible and certainly, such decision will not be sustainable in the eye of law.

But fulfillment of criteria about caste to take benefit of reservation as per policy for appointment of entry level post, the same being a condition of pre-appointment as such the same cannot be construed to be a service condition.

18. One of the argument advanced by Mr. Tandon that if the benefit of reservation will not be provided to the writ petitioners in the State of Jharkhand, their candidature cannot be considered even in the successor State of Bihar after final allocation of cadre to the State of Jharkhand and thereby, the chances of consideration of candidature of the writ petitioners will be snatched away and hence, the action of the State of Jharkhand is arbitrary but we are not impressed with such argument as because it is not that the case of the writ petitioners have not been considered rather their cases have been considered under un-reserved category by considering the fact that the writ petitioners have not submitted their caste and residential

certificates as provided under condition no.13 of the advertisement in question and as such, it cannot be said that the chances of consideration of the writ petitioners to such appointment has been snatched away.

19. This Court, therefore, is of the view after going through the provision of Rule, 51, Rules 1991 and Rules 2015 if read together, there is no hesitation in holding that 25 per cent of posts are to be filled up through limited competitive examination which is by way of fresh appointment..

20. The next question is that whether the provision of Sections 72 and 73 of the Bihar Reorganization Act, 2000 is applicable in the facts of this case?

To answer this issue, it requires to refer the provision of Sections 72 and 73 of the Act, 2000 which reads hereunder as:-

72. Provisions relating to services in Bihar and Jharkhand.-(1) Every person, who immediately before the appointed day is serving in connection with

the affairs of the existing State of Bihar shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Bihar

unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of

Jharkhand:

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which

every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or

be deemed to have taken effect.

(3) Every person, who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made

available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such

agreement, as may be determined by the Central Government.

73. Other provisions relating to services.-(1) Nothing in Section 72 shall be deemed to affect on or after the appointed day the operation of the

provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with

the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Bihar or to the State of Jharkhand under Section 72 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person.-

(a) if he is deemed to have been allocated to any State under Section 72, shall be deemed to have been rendered in connection with the affairs of that

State:

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Jharkhand shall be deemed to have been rendered

in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service.

(3) The provisions of Section 72, shall not apply in relation to members of any All India Service.

Section 72(1) provides that every person, who immediately before the appointed day, is serving in connection with the affairs of the existing State of

Bihar shall, on and from that day provisionally continue to serve in connection with the affairs of the State unless he is required, by general or special

order of the Central Government to serve provisionally in connection with the affairs of the State of Jharkhand.

This provision provides that as on 15.11.2000 if a public servant serving in connection with the affairs of the existing State of Bihar will discharge duty

in connection with the affairs of the State of Bihar unless he is required, by general or special order of the Central Government to serve provisionally

in connection with the affairs of the State of Jharkhand.

Provision as contained in sub-section (1) of Section 72 provides that no direction shall be issued under this Act after the expiry of a period of one year

from the appointed day.

Sub-section (2) of Section 72 provides that as soon as may be after the appointed day, the Central Government shall, by general or special order,

determine the Successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from

which such allotment shall take effect or be deemed to have taken effect, meaning thereby, the public servant as on 15.11.2000 till the expiry of the

period of one year if working in the existing State of Bihar will discharge his duty in the State of Bihar unless his service required and transferred to

the successor State of Jharkhand by the Central Government and such decision as under Section 72 (1) will be valid till the final decision as under

Section 72(2), will be issued.

Sub-section (3) of Section 73 provides that every person who is finally allotted under the provision of sub-section (2) to the successor State shall, if he

is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments

concerned or in default of such agreement, as may be determined by the Central Government, meaning thereby, if the public servant is already

working in the successor State and by virtue of decision taken by the Central Government under Section 72(2), his services have been allotted to the

other successor State, in that circumstances, there can be exchange of allocation with the permission of both the successor states and determined by

the Central Government.

It is evident from the provision of Section 73(1) that nothing in Section 72 shall be deemed to affect on or after the appointed day the operation of the

provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with

the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to

the State of Bihar or to the State of Jharkhand under Section 72 shall not be varied to his disadvantage except with the previous approval of the

Central Government.

Sub-section 2 thereof provides that all services prior to the appointed day rendered by a person.-

(a) if he is deemed to have been allocated to any State under Section 72, shall be deemed to have been rendered in connection with the affairs of that

State:

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Jharkhand shall be deemed to have been rendered

in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service.

Sub-section 3 of Section 73 provides that the provisions of Section 72, shall not apply in relation to members of any All India Service.

Thus, it is evident that Section 73 has been enacted only for the purpose to protect the service condition of the employee during the transitory period

i.e. the period in between Section 72(1) and decision which is to be taken by the Central Government under Section 72(2) of the Bihar Reorganization

Act, 2000.

The object and intent of such provision is that suppose a public servant is working as on the date of appointment i.e., on 15.11.2000 in the affairs of the

existing State of Jharkhand, the service condition cannot be altered by the successor State of Jharkhand without the approval of the Central

Government as because till the date of taking final decision by the Central Government under the provision of Section 72(2), there is every likelihood

that the persons serving with the affairs of the existing State of Jharkhand may go to serve in the existing State of Bihar and during that period, if any

decision would be taken by the successor State of Jharkhand without approval of the Central Government, the same will not be proper as because the

competency to take such decision will only come to the successor States after final decision of the Central Government under Section 72(2) of the

Act, 2000 and therefore, the provision of Section 73(1) has been inserted to deal with the situation of such employees whose cadre allocation have

tentatively been allotted to either of the successor State to take such decision only with the approval of the Central Government.

It is further evident that the provision of Section 72 read with Section 73 of the Bihar Reorganization Act, 2000, it cannot be construed that after final

allocation of cadre, if the successor State either the State of Bihar or the State of Jharkhand wants to alter the service condition by taking policy

decision, such employee cannot take the aid of provision of Section 73 since after the order of final allocation having been passed by the Central

Government under Section 72(2) of the Act, 2000, the service condition of the employee working in either of the successor State will depend upon the

service condition, applicable in either of the successor State.

However, we are not expressing any opinion with respect to the general principle that any service condition which is detrimental to the interest of the

concerned employee cannot be changed without providing an opportunity of

hearing to such employee but the said fact is not applicable in the matter of a policy decision if taken by the State at public interest.

Herein, the fact of the writ petitioners are not of the tentative allocation of cadre, rather the allocation of cadre has already been finalized by taking a decision by the central government in exercise of power conferred under Section 72(2) of the Bihar Reorganization Act, 2000 and therefore, if any policy decision of providing benefit of reservation in the direct recruitment by floating an advertisement stipulating a condition to submit the caste and residential certificate duly been issued by the competent authority at the rank of Sub Division Officer of the State of Jharkhand, the same cannot be construed to be illegal and if such condition has been provided in the advertisement, the same has to be filled up by the candidates who are seeking for consideration of their candidature.

In view thereof, the provision of Section 73 (1) of the Act, 2000 is not applicable in the facts of the case.

21. The third question would be that once the condition has been stipulated in the advertisement for furnishing the caste and residential certificate and the candidates have chosen not to follow the same and if they became unsuccessful, they cannot be allowed to assail the same.

In this regard, the proposition has been laid down by the Hon^{ble} Apex Court in Dr. G. Sarana Vs. University of Lucknow & Ors. reported in (1976)

3 SCC 585, for ready reference, paragraph 15 of the said judgment is quoted hereunder as:

15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as

despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even

his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance

of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the Constitution of the

Committee. This view gains strength from a decision of this court in Manak Lal's case where in more or less similar circumstances, it was held that

the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The

following observations made therein are worth quoting:

It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found

that he was confronted with unfavourable report, he adopted the device of raising the present technical point.

Likewise, the Hon^{ble} Apex Court in Omprakash Shukla Vs. Akhilesh Kumar Shukla and Ors. reported in (1986) (supp) SCC 285, it has been held

that if a candidate had appeared in the examination without protest, he cannot invoke the jurisdiction of the High Court under Article 226 realizing that

he would not succeed in the examination.

Marripati Nagaraja Vs. Govt of Andhra Pradesh and Ors. reported in (2007) 11 SCC 522, wherein it has been held that if the appellants had appeared

at the examination without any demur, they did not question the validity of fixing of the said date before the appropriate authority, therefore, they were

stopped and precluded from questioning the selection process.

In the judgment rendered by the Apex Court in Vijendra Kumar Verma vs. Public Service Commission, Uttarakhand and Ors. reported in (2011) 1

SCC 150 at paragraph 24 it has been held that ""....All the candidates knew the requirements of the selection process and were fully aware that must

possess the basis knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office Operation. Knowing the said

criteria, the appellants also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and

opportunity therein without any protest at any stage and now they cannot turn back to state that the aforesaid procedure adopted was wrong and

without jurisdiction.

Herein also the specific condition has been stipulated at paragraph no.13 of the advertisement and the writ petitioners after seeing the same with open

eye had participated in the process of selection without any demur and once they have been declared to be unsuccessful, they cannot be allowed to

question such condition.

However, it has been agitated in this regard that the candidature of the candidates ought to have been rejected at the threshold as because since

admittedly the writ petitioners have not furnished the caste and residential certificate issued by the State of Jharkhand as also the examination fee of

Rs.150/- as prescribed for the reserved category candidates has been deposited but having not done so, the same cannot be allowed to be agitated by

the respondents in the later stage but we are not impressed with such argument as because if any condition has been provided even if the candidature

of such candidates had not been rejected at threshold that does not mean that for any wrong done by the respondent the benefit would be granted to

the candidate and if the wrong will be allowed to be continued, it will nothing but allowing the illegality to perpetuate which is not permissible in the eye

of law, as has been held by the Hon'ble Apex Court in Basawaraj & Anr. Vs. Special Land Acquisition Officer reported in (2013) 14 SCC 81,

wherein at paragraph 8, which reads hereunder as:

8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong

decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly

situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the

same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and

therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual

or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for

repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular

party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for

otherwise it would make functioning of administration impossible.

Likewise, the Hon'ble Apex Court in Kulwinder Pal Singh & Anr Vs. State of Punjab & Ors reported in (2016) 6 SCC 532 at paragraph 16 held

hereunder as:

16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the

same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage

negative equalities. In *State of U.P. v. Rajkumar Sharma* it was held as under:

15. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the

Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake.

Further, such indulgence cannot be granted to the writ petitioners otherwise the same will amount to relaxing the condition of advertisement which is

not permissible, as has been held by the Hon^{ble} Apex Court in *Bedanga Talukdar Vs. Saifudaullah Khan & Ors* reported in AIR 2012 SC 1803. The

relevant paragraph nos. 28 and 29 of the said judgment, are quoted hereunder as:

28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public

office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any

undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection

procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be

any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the

relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such

power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This

would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and

compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14

and 16 of the Constitution of India.

29. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an

error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing

in the preliminary examination could be relaxed in the case of respondent No. 1.

Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.

22. In view of the aforesaid settled position of law and considering the fact that the condition stipulated under Clause-13 pertaining to furnishing caste and residential certificate duly been issued by the Sub Divisional Officer working in the State of Jharkhand since has not been complied with, the candidature of the writ petitioners have rightly been rejected.

23. This Court, after having gone across the judgments rendered by the learned Single Judge, has found therefrom that even though the appointment through limited competitive examination has been considered to be a fresh appointment, the orders have been passed for consideration of candidature of candidates under the reserved category without appreciating the fact that they have not complied with the condition stipulated under condition no.13 of the advertisement in question.

The learned Single Judge has given a finding to the effect that in case of appointment through limited competitive examination, the past services rendered in the erstwhile service will be counted but we are completely in disagreement with such finding for the reason that when the writ petitioners are not working in the cadre of Jharkhand Administrative Service rather they are totally in different cadre, past services for the purpose of inter se seniority of the employees working in the cadre of Deputy Collector cannot be considered, however the same may be considered for the purpose of pensionary benefit, subject to a decision to be taken by competent authority.

Further for other reason also that if the candidate would be appointed through limited competitive examination in totally a different cadre, they cannot be allowed to claim benefit of upgradation under the Assured Career Progression Scheme as because rendering service in the erstwhile service cannot be counted for the purpose of upgradation in that cadre to which, the candidate had been appointed and if the past services will be counted for the purpose of granting upgradation in pay-scale, the employee who have appointed through limited competitive examination, even though they have not taken birth in the cadre of Deputy Collector will have the past services, for the purpose of counting period making such employee entitled for upgradation.

Therefore, the candidates who have not taken birth in the cadre, the services would be counted prior to the date of appointment which cannot be allowed.

Reference in this regard may be made to the judgment rendered in K. Meghachandra Singh & Ors. Vrs. Ningam Siro & Ors. reported in (2019) SCC

Online SC 1494, while reversing the decision rendered in Union of India and Ors. Vrs. N.R. Parmar, reported in (2012) 13 SCC 340, it was observed

at paragraph-40 that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre.

The learned Single Judge has considered while passing the order that the examination was for in-service candidate of the State of Jharkhand and

while making such observation, the mode of fulfilling the post of Deputy Collector under the Administrative Service Cadre through direct recruitment

and promotion and through limited competitive examination has not been considered properly as discussed hereinabove and even if the selection from

amongst the in-service candidate even then the candidates are required to fulfill the condition stipulated in the advertisement to the effect of furnishing

the caste and residential certificate as prescribed to be submitted under condition no.13 of the advertisement.

Further, the learned Single Judge has relied upon the resolution of the government dated 14.08.2008 which is admittedly for the purpose of

consideration of candidature of the candidate for promotion but has applied in the case of fresh appointment.

Learned Single Judge has also not considered the order passed by the Coordinate Division Bench of this Court passed in L.P.A.No.169 of 2015 and

L.P.A.No.361 of 2015, wherein it has been decided that the conditions stipulated in Advertisement requiring caste certificate and residential certificate

to be submitted in prescribed format, is required to be observed and in case of non-fulfillment, the candidature of candidate is not to be considered.

24. This Court, therefore, is of the view that the learned Single Judge without appreciating the fact as referred in detail as above and without

appreciating the legal aspects and as such, we are of the view that impugned orders cannot be said to be a correct law.

25. Accordingly, the impugned orders are quashed and set aside.

26. In the result, the W.P.(S) No.3480 of 2013 and W.P.(S) No.4880 of 2013

stand dismissed.

27. In consequent thereto, the instant appeals being L.P.A Nos.609 of 2017, 164 of 2018 and 568 of 2017 stand allowed.

28. In consequent to disposal of these appeals, I.A.No.9717 of 2017, I.A.No.3567 of 2018 and I.A.No.3099 of 2019 also stand disposed of.