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**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 2215 of 2013**

1. Ranjan Kumar Sharma S/o Late Gopal Prasad Sharma, aged about 34 years, R/o House No. 16/352, Behind Vipra Bhawan, Bajrang Nagar, Aamapara, Raipur, Police Station and Post Amapara, Police and Revenue District Raipur, Chhattisgarh.
2. Kiran Kumar Premi S/o Lalsai Premi, aged about 32 years, R/o village and Post Singhari via Ratanpur, Police Station and Post Ratanpur, Police and Revenue District Bilaspur Chhattisgarh.
3. Rajkumar Bandhe S/o Ramchand Bandhe, aged about 31 years, R/o village Matwari, Police Station and Post Sundravan, via Palari, Police and Revenue District Baloda Bazar-Bhatapara Chhattisgarh.
4. Sushil Kumar S/o Vasuki Prasad, aged about 33 years, R/o Indira Nagar, Charoda, Police Station and Post Bhilai Marshalling Yard, Police and Revenue District Durg Chhattisgarh.
5. Ku. Vandana Ekka D/o P.S. Ekka, aged about 33 years, R/o LIG 68 MP Housing Board Colony, Avanti Vihar, Raipur, Police Station and Post Raipur, Police and Revenue District Raipur Chhattisgarh.
6. Jawahar Lal Rajput S/o Panchram Rajput, aged about 36 years, R/o village Sundari, Post Sisdevri, Police Station Palari, Police and Revenue District Baloda Bazar Chhattisgarh
7. Chandan Singh Nirala S/o Mochanlal Nirala, aged about 35 years, R/o village Pathariya, Police Station and Post Pavani, Tahsil Bilaigarh, Police and Revenue District Baloda Bazar, Chhattisgarh.
8. Sant Kumar Dheemar S/o Umedram Dheemar, aged about 36 years, R/o village Police Station and Post Sonthi Nagar (Champa) via Bamhanidih, Police and Police and Revenue District Janjgir-Champa Chhattisgarh.
9. Smt. B. Neelam Rao, W/o Shri B.Srinivas Rao, aged about 29 years, R/o Maa Bhawani Nagar, Behind Ramteke Bhawan, Sirgitti Bilaspur, Police Station and Post Bilaspur, Police and Revenue District Bilaspur Chhattisgarh.

---- **Petitioners****Versus**

1. State of Chhattisgarh Through: Secretary, Panchayat and Gramin Vikas Vibhag, Mantralaya, Capital Complex, Mahanadi Bhawan, New Raipur, Police Station

Raipur, Head Post Office Raipur, Police and Revenue District Raipur, District Raipur Chhattisgarh.

2. Development Commissioner, Panchayat & Gramin Vikas Vibhag, Chhattisgarh, Raipur, Vikas Bhawan, Civil Lines, Raipur, District Raipur, Chhattisgarh.
3. Chief Engineer Rural Engineering Services, Office of Development Commissioner, Chhattisgarh, Raipur Civil Lines, Raipur, District Raipur, Chhattisgarh.

---- Respondents

**Writ Petition (S) No. 2445 of 2013**

1. Rajkumar Bandhe S/o Ramchand Bandhe, aged about 31 years, R/o village Matwari, Police Station and Post Sundravan, via Palari, Police and Revenue District Baloda Bazar-Bhatapara Chhattisgarh.
2. Ranjan Kumar Sharma S/o Late Gopal Prasad Sharma, aged about 34 years, R/o House No. 16/352, Behind Vipra Bhawan, Bajrang Nagar, Amapara, Raipur, Police Station and Post Amapara, Police and Revenue District Raipur, Chhattisgarh.

---- Petitioners

**Versus**

1. State of Chhattisgarh Through: Secretary, Panchayat and Gramin Vikas Vibhag, Mantralaya, Capital Complex, Mahanadi Bhawan, New Raipur, Police Station Raipur, Head Post Office Raipur, Police and Revenue District Raipur, District Raipur Chhattisgarh.
2. Development Commissioner, Panchayat & Gramin Vikas Vibhag, Chhattisgarh, Raipur, Vikas Bhawan, Civil Lines, Raipur, District Raipur, Chhattisgarh.
3. Chief Engineer Rural Engineering Services, Office of Development Commissioner, Chhattisgarh, Raipur Civil Lines, Raipur, District Raipur, Chhattisgarh.

---- Respondents

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|---------------------------|---|------------------------------------|
| For Petitioners           | : | Shri Manoj Paranjpe, Advocate.     |
| For Respondents/State     | : | Shri UNS Deo, Government Advocate. |
| For Respondent/Intervenor | : | Ms. Sofiya Khan, Advocate.         |

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**Hon'ble Shri Navin Sinha, Chief Justice**  
**Hon'ble Shri P. Sam Koshy, J.**

**Order on Board**

**Per Navin Sinha, Chief Justice**

**05/08/2015**

1. In these two writ petitions, the issue involved is common with regard to an advertisement dated 28.4.2012 inviting applications, inter alia, for the post of Sub Engineer (Civil), Assistant Draughtsman (Civil), Tracer etc.
2. The Petitioners were applicants for the post of Assistant Draughtsman (Civil). The number of posts advertised was 44. Some of them applied in the general category and others in the reserved category. The qualification prescribed in the advertisement for the post of Assistant Draughtsman (Civil) was Diploma in Draughtsman (Civil) from any government recognized institute in the State of Chhattisgarh or Diploma in Civil Engineering or Architecture from a Polytechnic. The maximum age prescribed for applying was 30 years.
3. In Writ Petition (S) No. 2215 of 2013, the challenge is to the denial of appointment after consideration and empanellment on the ground that the Petitioners do not possess qualification of Diploma in Draughtsman (Civil) but that they possessed certificate from a Government ITI which was not one of the qualifications mentioned in the advertisement.
4. In Writ Petition (S) No. 2445 of 2013, the challenge by the Petitioners who also have certificate from a Government ITI is to the legality of the Chhattisgarh Development Commissioner Panchayat and Rural Development, Class III (Ministerial and Non-Ministerial) Service Recruitment Rules, 1999 (hereinafter called 'the Recruitment Rules') in Schedule III, Entry 2 prescribing qualification for the post of Assistant Draughtsman (Civil) as Diploma in Draughtsman (Civil).
5. The two writ petitions have therefore been heard together and are being disposed by a common order.

6. Learned Counsel for the Petitioners submits that in the State of Chhattisgarh, for that reason in the entire country, there is no diploma qualification in Draughtsman (Civil). Other departments of the State Government have therefore considered the certificate from Government ITI as adequate qualification for the post of Draughtsman (Civil) and have made appointments including the present Respondents who have earlier also appointed such persons as Draughtsman (Civil).

7. After the writ petitions were filed, realising their folly, the Respondents have published notification on 17.12.2014 by making necessary amendment in the Recruitment Rules by incorporating certificate course from the Government ITI as a valid qualification for appointment in lieu of Diploma in Draughtsman (Civil). But the notification has not been given retrospective effect. The present advertisement having been published prior to the amendment, the Respondents are declining to consider the candidature of the Petitioners despite the amendment.

8. It is further submitted that once the applications submitted by the Petitioners were accepted and considered, they were allowed to participate in the selection process leading to empanelment in the merit list also, the Respondents realized their mistake and have made necessary amendment in the Recruitment Rules, the interest of justice and equity demands that the remaining 31 unfilled vacancies be filled up by considering the candidature of the Petitioners in accordance with law.

9. Learned Counsel for the State submits that the Recruitment Rules have been amended but with prospective effect. There were two other qualifications mentioned in the advertisement and against which 13 candidates have been selected and appointed. Any direction today to relax the eligibility as mentioned in the Recruitment Rules prior to amendment may violate Article 14 of the Constitution as others who may have possessed certificate from

Government ITI may not have applied thinking themselves to be ineligible. It may be an unfortunate situation where the qualification mentioned was not available in the State of Chhattisgarh but merely because the applications of the Petitioners may have been accepted contrary to the eligibility prescribed, it cannot amount to and neither can the Respondents condone the essential condition of eligibility and consider appointments.

**10.** We have considered the submissions on behalf of the parties and are satisfied that in the facts of the present case, relief sought is required to be moulded appropriately.

**11.** We are in concurrence with the Petitioners that it was highly unreasonable for the Respondents to incorporate a qualification not available in the State of Chhattisgarh itself. But even if their applications were entertained contrary to the eligibility prescribed in the advertisement, it cannot amount to condonation by the Respondents as the essential eligibility can never be relaxed.

**12.** Learned Counsel for the State has rightly submitted that any direction today to consider persons like the Petitioners in the merit list may amount to re-writing the advertisement and also be contrary to Article 14 of the Constitution in as much as, others who may have held the certificate from a Government Polytechnic and who may not have applied thinking that it was not an eligibility prescribed would stand to suffer and be discriminated.

**13.** The notification published by the Respondents correcting the eligibility on 17.12.2014 is prospective in operation. Even otherwise, if the Petitioners were wrongly called for consideration and have been empanelled deviating from the advertisement, no legal vested right can be said to have accrued to them.

**14.** But it cannot be lost sight of that the Petitioners were not at fault in any

manner. It is possible that some of them may become over-age by the time the next advertisement is published. It is therefore necessary to protect their interest also. We therefore direct that as and when the Respondents publish the next advertisement, any one of the persons who possessed certificate qualification from Government ITI and had applied in response to the advertisement dated 28.4.2012 and was within the maximum age limit prescribed of 30 years as on the last date of advertisement, irrespective of the fact whether he was called for interview or not, was successfully empanelled or not, if such a candidate applies afresh and is found to be overage, he shall be deemed to be a candidate within age to be considered afresh in accordance with law.

**15.** In case of a candidate possessing certificate from the Government ITI who was called earlier for consideration and was empanelled in the merit list and successfully competes in the fresh selection process under the new advertisement that may be published by the Respondents, other things being equal, the Respondents shall consider giving preference to them.

**16.** The writ petitions are disposed with the aforesaid directions.

Sd/-  
(Navin Sinha)  
**CHIEF JUSTICE**

Sd/-  
(P. Sam Koshy)  
**JUDGE**