

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3178 of 2015**

1. Narayan Singh Paikra S/o Late Son Singh Paikra, Aged About 32 Years, Occupation: Sub Engineer, Public Works Department (PWD) (E/M) Sub Division Bilaspur, District Bilaspur (CG)
2. Pawan Kumar Bhosale, S/o Shri Uday Singh Bhosale, Aged About 26 Years Occupation: Unemployed, R/o Near Shiv Chowk, Kududand, Bilaspur, Tahsil & District Bilaspur (CG)
3. Kailash Ram Banjare, S/o Shri Chhabilal Banjare, Aged About 34 Years Occupation: Sub Engineer, PWD, (E/M) Sub Division, Bilaspur (CG)
4. Sachin Singh Kshatriya, S/o Late Ramkumar Kshatriya, Aged About 38 Years Occupation: Testing Assistant Grade-II, C.G. State Electricity Board, Nehru Nagar, Bilaspur, District Bilaspur (CG)

---- Petitioners**Versus**

1. The Public Service Commission Through The Secretary, Shanker Nagar, Raipur, (Chhattisgarh)
2. State Of Chhattisgarh, Through Secretary, Public Works Department (P W D), Mantralaya, Mahanadi Bhawan, New Raipur, (Chhattisgarh)

---- Respondents

For Petitioners	: Mr. Ashok Kumar Shukla and Mr. Atanu Ghosh, Advocate
For Respondent No.1	: Mr. Ashish Shrivastava and Mr. Soumya Rai, Advocate
For Respondent No.2	: Mr. Y.S. Thakur, Dy. Advocate General and Mr. Dhiraj K. Wankhade, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**

20/11/2015

1. Top question that falls for consideration in this writ petition is whether the Chhattisgarh Public Service Commission is justified in including additional post for recruitment over and above notified, number of vacancies advertised, that too after the selection process is over ?
2. The respondent No.1/Chhattisgarh Public Service Commission advertised 117 posts of Assistant Engineer (Civil/Electrical/Mechanical) in the various departments excluding the Department of Public Works laying down the qualification for different branches including civil, electrical, mechanical and agriculture engineering and pursuant to the advertisement issued, examination was held on 25/26.4.2015. Admittedly, the petitioners did not apply for the said posts. Thereafter, the respondent No.1 issued corrigendum on 23.7.2015, which was published on 29.7.2015 adding 24 posts of Assistant Engineer (Civil) for the Department of Public Works. The present petitioners filed this writ petition stating inter-alia that they are eligible candidates for the post of Assistant Engineer in the said department, but for want of proper advertisement, petitioners No.1, 3 and 4 working in the Department of

Public Works could not apply for the said posts. It has been further pleaded that on account of non-advertisement of the said posts, they have been denied from their constitutional right guaranteed under Articles 14 and 16(1) of the Constitution of India and as such, posts advertised for appointment of Assistant Engineer by corrigendum dated 23.7.2015 (Annexure P/1) deserves to be quashed.

3. The respondent No.1 has filed the return opposing the said writ petition stating inter-alia that corrigendum has been issued adding more posts as it is based on the requisition dated 12.6.2015 (Annexure R-1/1) issued by the Public Works Department, Government of Chhattisgarh and as such, the writ petition deserves to be dismissed.
4. Mr.Ashok Kumar Shukla and Mr.Atanu Ghosh, learned counsel appearing for the petitioners would submit that posts subsequently sought to be added by way of corrigendum (Annexure P/1), thereby the respondent No.1 has sought to add 24 posts of Assistant Engineer in the originally issued advertisement, which is clearly impermissible in law as appointment to be made beyond number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of

India and as such, the writ petition deserves to be allowed.

5. Countering the arguments Mr.Ashish Shrivastava, learned counsel for the respondent No.1 and Mr.Y.S. Thakur, learned Deputy Advocate General for the respondent No.2 would submit that addition of subsequent posts over and above advertised post is based on the requisition of the concerned Public Works Department as the requirement of Public Works Department could not be included in the advertisement issued on 17.12.2014, therefore, no exception can be taken in such addition of posts for the recruitment and therefore, the writ petition deserves to be dismissed.
6. I have heard learned counsel appearing for the parties, considered rival submissions made therein and also gone through the record of the case with utmost circumspection.
7. It is not in dispute that in the regular advertisement issued on 11.12.2014, which was published on 17.12.2014 by which State Public Service Commission advertised only 117 posts of Assistant Engineer, in which 24 posts of the Assistant Engineer in the Department of Public Works were not included. It is also not in dispute that 24 posts of the Assistant Engineer of Department of Public Works were

sought to be included vide corrigendum dated 23.7.2015. It is apparent that 24 posts were sought to be included/increased, but no fresh applications were invited through open advertisement and it was only in addition to the posts already notified and advertised by the Chhattisgarh Public Service Commission, that too after holding of the examination for the posts of 117 of the Assistant Engineer.

8. The law in this regard is very well settled. In the matter of **Rakhi Ray and others v. High Court of Delhi and others**¹, Their Lordships of the Supreme Court have considered the earlier decisions on the point and clearly held that appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law and held in paragraph 12 as under:-

“12. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case

¹(2010) 2 SCC637

the vacancies notified stand filled up, the process of selection comes to an end. Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more.”

9. The law laid-down in the matter of **Rakhi Ray (supra)** has been followed with approval by Their Lordships of the Supreme Court in the matter of **Smt.K. Lakshmi v. State of Kerala**². The aforesaid decision has been followed and has been held that appointment to an additional post would deprive candidates who were not eligible for appointment to the post on the last date of submission of the applications mentioned in the advertisement and who became eligible for appointment thereafter or the opportunity of being considered for such appointment. Paragraph 15, 16, 17, 18 and 19 of the report states as under:-

“15. The legal position regarding the power of the Government to fill up vacancies that are not notified is settled by several decisions of this Court. Mr. Rao relied upon some of those decisions to which we shall briefly refer. [In Rakhi Ray v. High Court of Delhi](#)

² (2012) 3 S.C.R. 581

(2010) 2 SCC 637, this Court declared that the vacancies could not be filled up over and above the number of vacancies advertised as recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates violative of [Article 14](#) and [16\(1\)](#) of the Constitution of India. This Court observed:

"It is settled law that vacancies cannot be filled up over and above the number of vacancies advertised as recruitment of the candidates in excess of the notified vacancies is a denial being violative of Articles 14 and 16(1) of the Constitution of India."

16. [In Hoshiar Singh v. State of Haryana](#) 1993 Supp (4) SCC 377, also this Court held that appointment to an additional post would deprive candidates who were not eligible for appointment to the post on the last date of submission of the applications mentioned in the advertisement and who became eligible for appointment thereafter or the opportunity of being considered for such appointment. This Court observed:

"The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts."

17. [In State of Haryana v. Subhash Chander Marwaha](#) (1974) 3 SCC 220, this Court held that the Government had no constraint to make appointments either because there are vacancies or because a list of candidates has been prepared and is in existence. So, also this Court in [Shankarsan Dash v. Union of India](#) (1991) 3 SCC 47, [UPSC v. Gaurav Dwivedi](#) (1999) 5 SCC 180, [All India SC & ST Employees' Association v. A. Arthur Jeen](#) (2001) 6 SCC 380 and [Food Corporation of India v. Bhanu Lodh](#) (2005) 3 SCC 618, held that mere inclusion of a name in the select list for appointment does not create a right to appointment even against existing vacancies and the State has no legal duty to fill up all or any of the vacancies.

18. In the light of the above pronouncements the power vested in the Government under Rule 39 (supra) could not have been invoked for filling up the vacancies which had not been advertised and which had occurred after the issue of the initial advertisement much less could that be done for purposes of protecting the service of someone who had found a place in the merit list on account of additional marks given to him and who was bound to lose that place by reasons of the judgment of the Court.

19. The upshot of the above discussion is that the number of vacancies notified for recruitment remained limited to six and did not get increased to ten as the condition precedent for such increase had failed not only because no decision was taken by the Government to invoke its power under Rule 39 but also because even if a decision had been taken the same would have had no effect in the face of the judgement in Jayachandran's case. Besides the power vested in the Government was not exercisable so as to utilise subsequent vacancies for the

purpose of saving someone who had no legitimate right to continue even after being removed from the merit list.”

10. Applying the law laid-down by Their Lordships of the Supreme Court in the aforesaid cases, it is quite vivid that the Chhattisgarh Public Service Commission, in the present case, after examination was held, sought to include 24 posts of Assistant Engineer, which were not included in the post duly notified and advertised on 17.12.2014 for 117 posts of Assistant Engineer, thus, the petitioners No.1, 3 and 4, who are working in the Department of Public Works and similarly placed candidates were deprived by issuance of corrigendum dated 23.7.2015 (Annexure P/1) to apply for the post of Assistant Engineer in the Department of Public Works as no open advertisement was issued for recruitment of said post and thus, it is violative of their constitutional right guaranteed under Articles 14 and 16(1) of the Constitution of India and such an act is not only arbitrary, but in teeth of the decisions rendered by the Supreme Court in the matters of **Rakhi Ray** (supra) and **Smt.K. Lakshmi** (supra), thus, corrigendum dated 23.7.2015 (Annexure P/1) directing addition of 24 posts for recruitment of Assistant Engineer deserves to and hereby quashed. However, it is made clear that

recruitment/selection pursuant to the original advertisement dated 17.12.2014 would continue and this Court has not made any order with regard to that advertisement and selection. However, the Chhattisgarh Public Service Commission is at liberty to issue fresh advertisement with regard to 24 posts of Assistant Engineer in the Department of Public Works.

11. Accordingly, the writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3178 of 2015

Petitioners

Narayan Singh Paikra and others

Versus

Respondents

The Public Service Commission and
another

Head-note

(English)

Recruitment of candidates in excess of the notified vacancies is denial of constitutional right of candidates.

(हिन्दी)

अधिसूचित रिक्तियों से अधिक अभ्यर्थियों की भर्ती अभ्यर्थियों के संवैधानिक अधिकारों का हनन है।