

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.1309 of 2019**

1. Hemlal Dewangan S/o Shri S.R. Dewangan Aged About 43 Years R/o Nagar Panchayat Tundra, Tahsil Kasdol, District Balodabazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
2. Sashikant Dhurve S/o Shri Rainuram Dhruve Aged About 37 Years R/o Amapara, Balod, District Balod Chhattisgarh., District : Balod, Chhattisgarh
3. Ved Prakash Gadhewal S/o Shri Sukhdev Prasad Gadhewal Aged About 32 Years R/o Krishna Nagar, Belgahna, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Prashant Kumar Paikra S/o Shrivpal Signh Paikra Aged About 37 Years R/o Village Pali, Tehsil Katghora, District Korba Chhattisgarh., District : Korba, Chhattisgarh
5. Nikhil Bhardwaj S/o Shri Ghanshyam Bharadwaj Aged About 41 Years R/o Village Aundhi, Tehsil Aundhi, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Planning, Economics And Statistics, Mahanadi Bhawan, Atal Nagar (Naya Raipur), District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Publi Service Commission Through Its Chairman, Shankar Nagar Road, Bhagat Singh Square, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

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1. Sandeep Kumar Netam S/o Shri C S Netam Aged About 34 Years R/o House No. 41, Piyush Colony, Amlidih Road, Police Station New Rajendra Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Ghanshyam Lal Sahu S/o Shri S R Sahu Aged About 35 Years R/o Room No. 302, Block 53, Sector, 29, Police Station Rakhi, Atal Nagar, Raipur

Chhattisgarh., District : Raipur, Chhattisgarh

3. Rohit Kumar Mehra S/o Shri T R Mehra Aged About 32 Years R/o Room No. 303, Block 31, Sector, 27, Police Station Rakhi, Atal Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Satish Kumar Goswami S/o Shri Ramesh Giri Goswami Aged About 40 Years R/o Balla Sahu Plot, Behind Active Kids Academy School, Canal Road, Ward No. 63, Rawatpur Colony / Matpuraina, Sundar Nagar, Police Station Sundar Nagar Raipur Chhattisgarh., District : Raipur, Chhattisgarh
5. Renuka Ekka D/o Shri Mikhail Ekka Aged About 30 Years R/o House No. 266-1, Cheer Bagicha Behind Ware House Godown Jashpur Nagar (M. Corp.) Police Station Jashpur Nagar, Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh
6. Rashmi Netam W/o Shri Santosh Kumar Netam Aged About 35 Years R/o House No. 41, Piyush Colony, Amlidih Road, Police Station New Rajendra Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
7. Syed Shoaullah S/o Shri Syed Motiullah, Aged About 38 Years R/o Tulip 24, Chauhan Green Valley, Junwani, Bhilai, Motilal Nehru Nagar, Police Station Junwani Bhilai, Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Planning, Economics And Statistics, Mantralaya, Mahanadi Bhawan Atal Nagar, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Commissioner - Cum - Director, Directorate Of Economics And Statistics, Block 2, Ground Floor, Indraeati Bhawan, Naya Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Public Service Commission Through The Secretary, Shankar Nagar Chowk, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

PRESENT:-

WPC No.1309 of 2019

Shri P. K. Bhaduri with Shri Utsav Mahiswar, counsel for petitioner/s.

WPS No.2359 of 2019

Shri N. Naha Roy, counsel for petitioner/s.

Shri Alok Bakshi, Additional Advocate General for State.
Shri Anand Mohan Tiwari, counsel for respondent-PSC.

D.B.: Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Manindra Mohan Shrivastava, Judge

Order on Board

Per Manindra Mohan Shrivastava, Judge

13/05/2019

1. This common order shall govern disposal of aforesaid two writ petitions, which involve challenge to the constitutional validity of rules laying down eligibility criteria prescribed under Chhattisgarh State Economic and Statistical (Gazetted) Service Recruitment Rules, 2013 (hereinafter referred to as the Rules of 2013”), in the matter of appointment to the post of Assistant Director/District Statistical Officer in the Department of Planning, Economics and Statistics, Government of Chhattisgarh.
2. Relevant facts, necessary for adjudication of controversy involved in the petition, are stated infra.
3. Recruitment to posts borne in the cadre of Assistant Director in the Department of Planning, Economics and Statistics, Government of Chhattisgarh is governed by the Recruitment Rules framed by the Governor in exercise of Constitutional powers conferred under proviso to Article 309 of Constitution of India, published in the State Official Gazette on 01-01-2014 and called as Chhattisgarh State Economic and Statistical (Gazetted) Service Recruitment Rules, 2013. Rule 8(II) mandates regarding educational qualification that the candidates must be possessed of educational qualification and experience as specified in the Schedule III. In the said schedule, educational qualification for direct recruitment to the post of Assistant Director have been statutorily

prescribed. It is apt to mention here that rules framed in the year 2014 repealed previous rules in operation and force governing such services. Prior to coming into force of the Rules of 2013, recruitment to various posts including post of Assistant Director was governed by the Rules of 1980, extract of which, have been filed as Annexure P-4 in WPC No.1309 of 2019.

4. For the purpose of making recruitment to the post of Assistant Director, the State Public Service Commission proceeded to issue an advertisement on 20-02-2019, inviting applications from those candidates, who are possessed of the prescribed eligibility criteria and qualifications under the Rules of 2013.

The petitioners in the aforesaid two petitions felt aggrieved by the statutory prescription of eligibility, as they are not possessed of those prescribed eligibility qualifications, have approached this Court, not only challenging the advertisement, but also the statutory prescription relating to eligibility criteria as contained in Schedule III, referable to Rule 8 of the Rules of 2013, in the matter of recruitment to the post of Assistant Director.

5. The challenge to the constitutional validity is two-fold. Firstly, the prescription of eligibility criteria of being possessed of educational qualification is challenged on the premise that in the earlier rules, holders of Master Degree in the subject of Sociology were also eligible. According to learned counsel for the petitioners, as the nature of duties and functions attached to the post of Assistant Director involves systematic collection, scientific analysis and objective interpretation of statistical data relating to various aspects of Socio-economic activities in the State and also involves effective co-ordination of Statistical data basis for effective policy making towards department, in the very nature of such functions and duties, subject of Sociology is as much relevant and important as the subjects of Economics, Statistics, Maths, Commerce as

well as Computer Application. It is argued that acting arbitrarily, without any rationale and logic longstanding eligibility with reference to Master Degree in Sociology, has all of a sudden, been done away within the new rules. This, according to learned counsel for the petitioner, results in arbitrary exclusion of entire class of those, who are possessed of Master Degree in Sociology.

Secondly, the prescription of minimum 55% of marks in the eligibility qualification seeks to exclude at the threshold, and at the same time, ignore longstanding experience, which may have been acquired by the in-service candidates working on lower posts and possessed of educational qualification in any of specified subjects. It is argued that providing cut off marks, by way of eligibility criteria, results in arbitrary classification denying those, who are possessed of lesser percentage of marks, an opportunity to compete with other candidates, possessed of the same qualification. The bone of contention is that though, minimum cut off marks could be provided at a later stage of selection for the purpose of preparing merit list, such prescription of minimum cut off marks in the educational qualification, by itself, is negation of right of equality as enshrined under Article 14 of the Constitution of India.

6. On the other hand, learned State counsel would submit that the prescription of educational qualification for appointment to various public posts is essentially, in the realm of legislative function. Unless the challenge is laid on the ground of lack of competence or violation of any of the constitutional provision or fundamental rights, legislative policy is beyond the scope of challenge in a petition under Article 226 of the Constitution of India. It is argued that responding to the needs of changing time, advent of computer age and other modern techniques, the rule making authority in its wisdom decided to prescribe new qualifications for appointment to the post of Assistant Director by way of direct recruitment. Merely because, the new rules are different than the

earlier one, by itself, without anything more, would not provide sufficient ground to lay attack on the legislative function. Learned State counsel further highlighted that the in-service candidates, who are occupying lower posts, otherwise have promotional avenues on higher posts including that of Assistant Director. Filling up of the posts by direct recruitment and promotion are two different streams, well recognized in service jurisprudence. Infiltration of young minds from open markets is essential. Merely because, qualification possessed by in-service candidates are not recognized for the purpose of making direct recruitment, rules cannot be held to be arbitrary or suffering from unreasonable classification.

- 7. We have heard learned counsel for the parties and perused the records.
- 8. The relevant rules under assail in the present petitions, as contained in Schedule III referable to Rule 8 of the Rules of 2013, in the matter of direct recruitment to the post of Assistant Director, is as below:-

SCHEDULE III
(SEE RULE 8)

Age and qualification of the officer to be direct recruited

S.No .	Name of the Post	Minim um age limit	Maxim um age limit	Prescribed educational qualification	Remar ks
(1)	(2)	(3)	(4)	(5)	(6)
	Assista nt Directo r	21 years	30 years	Master Degree in one of the subjects viz. Economics/Statistics/Commerce/Mathematics/ Computer Application with at least 55% marks from any recognized University. Or Engineering Degree in Computer Science/Information Technology.	

The aforesaid provision lays down eligibility qualification for appointment to the post of Assistant Director that the candidate must be possessed of Master Degree in one of the five subjects. These subjects are Economics, Statistics, Commerce, Maths and Computer Application. According to the rules, mere possession of a degree is not enough. The candidate must be possessed of at least 55% of marks from any recognized University.

Alternatively, the candidate must be possessed of engineering degree in computer science/information technology. The comparison drawn with earlier rules finds mention in Para 8.5 of the writ petition which shows that earlier, for appointment to the post of Assistant Director, the candidate was required to be possessed of Master's Degree in Economics or Statistics or Commerce or Maths or Sociology or Agriculture Economics. At that time, there was no prescription with regard to degree and qualification in Computer Science, Information Technology or Computer Application, which has been subsequently included in the new Rules of 2013. Moreover, the educational qualification of M.A. (Sociology), is no longer included in the eligibility criteria.

9. The purpose of comparison between old and new rules is not towards the exercise to find out which of the two rules, lays down better policy, for, such exercise is constitutionally impermissible being outside the scope of judicial interference, it is only intended to highlight that with the changing time, legislative wisdom coupled with scientific temper, responding to new developments and scientific advancement as also host of relevant factors, has led to framing of new set of eligibility criteria under the new rules which only reflects legislative pragmatism.

10. In order to judge the validity of the rules, this Court would not undertake

the exercise in the nature of roving inquiry, at the instance of the petitioners, as to what could be better scheme under rule making policy in the matter of laying down eligibility qualification for appointment to any post in public employment. The scope of judicial interference is limited to find out whether rule making exercise lacks competence with reference to the source of power whether it be constitutional or legislative enactment by the legislature or whether such law violates any of the fundamental rights or the provisions of the Constitution itself. This principle with regard to scope of judicial interference in the matter of challenge to the recruitment rules framed by the Governor in exercise of power under Article 309 of Constitution of India, has to be adopted, because it has been well settled legal position that rule making authority of the Governor, in exercise of powers under Article 309 of the Constitution of India, is legislative and not executive. The rules framed in exercise of power under the aforesaid provision constitutes 'law' within the meaning of Article 235 of the Constitution of India. (please see- *B. S. Yadav and others vs. State of Haryana and others, 1980 supplementary SCC 524, Wing Commander J. Kumar vs. Union of India and others, 1982 (Vol. I) SCC 116.*)

11. It is equally well settled that the nature of exercise of rule making function is legislative in nature and the rule can be struck down only on the such grounds as may invalidate a legislative measure. (please see *P. Murugesan and others vs. State of Tamil Nadu and Others, 1993 Vol. II SCC 340*).

12. Present is not a case where the challenge to the rule is laid on the ground that it is inconsistent with or contrary to any law made by the legislature, governing terms and conditions in the matter of recruitment to the post of Assistant Director in the Department of Statistics, laying down eligibility criteria, other than and/or inconsistent with what has been prescribed in the Rules of 2013. The challenge essentially to the legislative wisdom. According to the

petitioners, the respondent ought to have retained M. A. (Sociology) as one of the eligibility criteria, so as to ensure that those in service candidates, even in open market candidates, who have possessed of M. A. (Sociology) qualification, are able to compete.

13. We are afraid, contentions of learned counsel for the petitioner has no legs to stand. Unless it could be demonstrated that eligibility qualifications, which are wholly irrelevant and bear no nexus with the nature of duties and functions required to be performed by the Assistant Director in the Department of Statistics, it would not be within the domain of judicial interference. It is not the function of the Constitutional Courts to suggest alternative legislation on the subjects. The prescription of eligibility criteria shows that those who are possessed of Masters Degree in Economics or Statistics or Maths or Commerce or Computer Application, are eligible. Even though, the Sociology as a subject, may be relevant, that by itself, would not be sufficient for the writ Court to declare the rules as arbitrary. The argument that the rule laying down eligibility criteria permits unreasonable classification, does not impress us, because a candidate possessed of Masters Degree in the subject of Sociology cannot be said to be similarly situated as holders of Master Degree in the subject of Economics/Statistics/Maths/Commerce/Computer Application or even degree of Engineering in Computer Science or Information Technology. The rule making authority in its wisdom has decided to restrict the appointment only from the amongst those, who are possessed of certain specific qualification and it is not open for the other class of candidates, possessed of other qualifications to seek judicial intervention and issuance of direction for inclusion of any particular educational qualification so as to ensure their participation for appointment to any post in Public Employment. It essentially would be seeking substitution of one rule in place of other or its modification, amendment etc.

14. Grievance has been raised against prescription of minimum 55% marks in the educational qualification on the ground that it unduly restricts competition amongst those who are possessed of the same qualification. This argument has no merit. It is essentially a matter of rule making policy as to whether or not, cut off marks on educational qualification should be prescribed. True it is that earlier such minimum cut off marks was not prescribed. However, it does not mean that it was not permissible for the rule making authority to prescribe such minimum cut off marks. It is common knowledge that in the matter of appointment to various public post, while laying down minimum eligibility criteria with regard to qualification and experience, minimum cut off percentage is also, at times prescribed in the rules. This only aims at competition amongst those who are possessed of a minimum level of merit. Those who have obtained less than 55% could not seek any comparison or parity with those, who have obtained more than 55% in the eligibility qualification. The classification is based on merit, which has reasonable nexus with the object sought to be achieved, which is to select meritorious among those, who are possessed of eligibility qualification. We find nothing wrong in making such prescriptions based on minimum qualifying marks percentage.

15. On principles, in the case of *D. C. Bhatia versus Union of India, (1995) 1 SCC 104*, it was held that the doctrine of equality is a glorious and precious doctrine enshrined in Article 14 of the Constitution. Any action of the executive or the legislature which is in conflict with the equality clause in Article 14 is ultra vires and has to be struck down. The Courts have evolved the doctrine of classification as a subsidiary rule to give a practical content to the doctrine of equality. The safeguard provided by Article 14 of the Constitution can be invoked to invalidate a classification in a statute if the ground of classification is totally irrelevant to the object of the statute. But if there is some nexus between

the object sought to be achieved and the classification, the Legislature shall be presumed to have acted intra vires. The classification in practice may result in some hardship, but a statutory discrimination cannot be set aside if there are facts on the basis of which the statutory classification can be justified.

16. In the result, we do not find any substance whatsoever in the grounds raised by the petitioners in the aforesaid two writ petitions so as to warrant interference with the statutory prescriptions relating to eligibility criteria in the matter of direct recruitment to the post of Assistant Director, Department of Planning, Economics and Statistics, Government of Chhattisgarh. The two writ petitions being *sans-substratum*, are liable to be dismissed and accordingly dismissed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Manindra Mohan Shrivastava)
Judge