

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6240 of 2020

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1. Muhammad Umar Iqbal Son of Iqbal Alam, Resident of Village-Singhari, P.S.-Kochadhaman, P.O.-Singhari, District-Kishanganj.
 2. Arvind Kumar, Son of Vipin Kumar Mandal, Resident of Village-Malhararia, P.S. and P.O.-Garhbanili, District-Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Under Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Bihar Technical Staff Selection Commission through Chairman, Patna.
5. The Secretary, Bihar Technical Staff Selection Commission.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Ritika Rani, Advocate
For the Respondent/s : Mr. Kinkar Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 01-10-2020

The present writ petition has been filed seeking the
following reliefs:-

A. To declare and hold shortlisted list for
counseling dated 06.02.2020 and 28.05.2020 as
contained in Annexure 6 and 10 and merit list
dated 10.06.2020 as contained in Annexure-11
prepared by Respondents are void ab initio, bad
in law, contrary to the Rule 5, 9(1)(iii)(a), 9(1)
(iii)(b), 10 and Rule 11 of Bihar Urban
Development and Housing Department,



Subordinate Engineering (Civil) Cadre
Recruitment (Amendment) Rule, 2018
hereinafter referred in short as Rules, 2018
violation of Article 14 and 16 of Constitution of
India and without jurisdiction.

- B. Also for quashing shortlisted list for counseling dated 06.02.2020 and 28.05.2020 as contained in Annexure 6 and 10 and merit list dated 10.06.2020 as contained in Annexure 11 and any consequential action taken on the basis of Annexure-6, 10 and 11 during pendency of this writ application.
- C. For direction to respondents for counseling of the petitioners against advertisement dated 10.01.2020 as contained in Annexure 3 by the competent body.
- D. For commanding the respondents to include the name of the petitioners in the counseling list as per Rule 2018 by competent authority against advertisement as contained in Annexure 3.
- E. For commanding the respondents to include the name of petitioners in counseling list for appointment to the post of Junior Engineer Civil against advertisement dated 10.01.2020 as contained in Annexure 3 after awarding marks 20 marks and 25 marks to petitioner no. 1 and 2 as per Rule 10(2) and Rule 11 of Rules, 2018 as



contained in Annexure 12 and 13 after awarding marks of working experience of 4 years and 5 years respectively to the post of Junior Engineer, (Civil) in the State of Bihar.

F. For commanding the respondents to consider the case of petitioners for appointment against the advertisement dated 10.01.2020 as contained in Annexure 3 merely on the reason that the petitioners have working experience to the post of Junior Engineer Civil for last five years in the State of Bihar.

2. The brief facts of the case, according to the petitioners, are that the petitioners have passed diploma in Civil Engineering. The petitioner no. 1 is stated to be possessing working experience certificate as Junior Engineer in Nagar Panchayat Banmankhi, Purnea with effect from 03.01.2015 to 31.12.2018. Similarly, petitioner no. 2 is stated to be possessing working experience certificate as Junior Engineer in the office of Nagar Panchayat Jogihat, Araria since 31.12.2014 till date. An advertisement is stated to have been published by the Urban Development & Housing Department, Government of Bihar on 13.12.2019 for appointment of Junior Engineers on 463 posts and it was indicated therein under Clause 5(ii) that selection of Junior Engineers will be made as per Rule 15 of the Bihar



Urban Development & Housing Department Junior Engineer (Civil) Cadre Appointment Rules, 2015, as amended by the Rules, 2018. The petitioner no. 1 is stated to have made online application for the post of Junior Engineer (Civil) on 20.12.2019 and the petitioner no. 2 had made online application on 05.01.2020. It is the case of the petitioners that subsequently the aforesaid advertisement dated 13.12.2019 was cancelled by a notice dated 09.01.2020, whereafter a fresh advertisement dated 10.01.2020 was issued for appointment of Junior Engineers on 463 posts, inviting online applications in between 14.01.2020 and 27.01.2020. Thereafter, a notice was issued on 13-14/01/2020 stipulating therein that the candidates who have already submitted online applications against the advertisement dated 13.12.2019 are not required to apply afresh. The Urban Development and Housing Department had then declared a list of shortlisted candidates on 06.02.2020, however, a notice dated 07.02.2020 was issued suspending the date of counseling, which was scheduled to be held in between 10.02.2020 and 11.02.2020. A notice was then issued on 30.04.2020, fixing the date of online counseling to be held in between 06.05.2020 to 11.05.2020. The further contention of the petitioners is that subsequently a Committee was constituted for scrutinizing the



shortlisted candidates and on 10.06.2020 a merit list of Junior Engineers, qua the advertisement dated 10.01.2020 was uploaded on the website of the Urban Development and Housing Department. The petitioners were surprised not to find their names in the first and second counseling list as also in the merit list dated 10.06.2020, from which it is apparent that no marks have been awarded for the work experience being possessed by the petitioners herein.

3. At this juncture, the learned counsel for the petitioners has submitted that Rule 10 of the Bihar Urban Development and Housing Department (Civil) Cadre Appointment Rules, 2015 (hereinafter referred to as the 'Rules, 2015'), which came into force with effect from 15.01.2016, prescribes the process of selection, to be conducted by the Bihar Technical Service Commission as also postulates awarding weightage of five marks for every working year up to a maximum limit of 25 marks. Similarly, Rule 10 of the Bihar Urban Development and Housing Department Junior Engineer (Civil) Cadre Recruitment (Amendment) Rules, 2018 (hereinafter referred to as the 'Rules, 2018'), which came into force with effect from 07.03.2018, also provides for grant of



weightage of working experience to the extent of five marks per working year up to a maximum limit of 25 marks. It is also stated that Rule 11 of the aforesaid Rules prescribes that the Commission i.e. the Bihar Technical Staff Selection Commission, will prepare the merit list as per Rule 10 and make recommendation to the Government for appointment. The learned counsel for the petitioners has thus submitted that the merit list prepared by the respondent Department dated 06.02.2020, 28.05.2020 and 10.06.2020 are void ab initio, bad in law and contrary to Rule 5, Rule 9 (1) (iii) (a), Rule 9(1) (iii) (b), Rule 10 and Rule (11) of the aforesaid Rules, 2018. The learned counsel for the petitioners has raised three issues for assailing the aforesaid merit list. Firstly, it has been submitted that the aforesaid Rules 10 & 11 of the Rules, 2015 as amended by the Rules, 2018 have not been followed by the respondent Department inasmuch as neither the petitioners have been granted weightage, qua the working experience being possessed by them, nor the selection process has been conducted by the Commission and instead the respondent Department has itself undertaken the recruitment process, *de hors* the provisions of the Rules and has gone ahead to publish the merit list. It is next contended by the learned counsel for the petitioners that the



State Government has filed a counter affidavit in a writ petition bearing CWJC No. 5642 of 2020 (Aryan Kumar & Ors. vs. The State of Bihar & Ors.), stating therein, in paragraph no. 30, that the vacancy in question shall be filled up as per the Rules, 2015 and amended Rules, 2018, hence it is submitted that the respondent Department cannot now turn around and not follow the Rules, 2015, as amended by the Rules, 2018. It is further contended by the learned counsel for the petitioners that once the Rules have been framed regarding the process of recruitment, they have to be followed in entirety and any merit list de hors the said Rules is *void ab initio*. Lastly, it is submitted that since the new advertisement dated 10.01.2020 is a continuation of the advertisement dated 13.12.2019, which postulates applicability of the Rules, 2015, as amended by the Rules, 2018, it was/is incumbent upon the respondent Department to have followed the said Rules while preparing the merit list in question, in pursuance to the new advertisement dated 10.01.2020. The learned counsel for the petitioners has relied upon various judgments rendered by the Hon'ble Apex Court, citation whereof along with the relevant paragraphs are being reproduced herein below:-

(i) (1990) 1 SCC 411 (P. Mahendran vs. The State of



Karnataka & Ors.), paragraph nos. 5, 7 & 11 whereof are reproduced herein below:-

“5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover



construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

7. In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission. Strangely the Tribunal did not follow the latest authority of this Court as laid down in Calton case [(1983) 3 SCC 33 : 1983 SCC (L&S) 356] , on the ground that the view taken in that case was contrary to the Constitution Bench decision of this Court in State of Andhra Pradesh v. T. Ramakrishna Rao [(1972) 4 SCC 830] . We have carefully considered the decision but we do not find anything therein contrary to the view taken in Calton case .

11. We would now consider the view taken by this Court in I.J. Divakar v. Government of Andhra Pradesh [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] , as the Tribunal has placed strong reliance on the observations made in that decision in setting aside the selection made by the Public Service Commission. It is necessary to ascertain the facts involved in Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] . The Andhra Pradesh Public



Service Commission invited applications for filling posts of Junior Engineers. In response to the advertisement several candidates applied for the said post and appeared at the viva voce test. While the Commission was in process of finalising the select list, the Government of Andhra Pradesh issued a government order under the proviso to Article 320(3) of the Constitution excluding the posts of Junior Engineers from the purview of the Public Service Commission. The government regularised the services of all those who were appointed by direct recruitment to the post of ad-hoc Junior Engineers and were continuing in service on August 9, 1979 without subjecting them to any test written or oral. The candidates who had applied in response to the advertisement issued by the Commission challenged validity of the government order excluding the post of Junior Engineers from the purview of the Commission and also the validity of the decision by the government to regularise the services of temporary employees. Before this Court the government's power of framing regulations excluding any post from the purview of the Commission under the proviso to Article 320(3) was conceded. It was, however, urged that since the advertisement had been issued by the Commission inviting applications for the posts of Junior Engineers and as the Commission was in process of selecting candidates the power under the proviso to clause (3) of Article 320 of the



Constitution could not be exercised. This Court rejected the contention with the following observations:

“The only contention urged was that at the time when the advertisement was issued the post of Junior Engineer was within the purview of the Commission and even if at a later date the post was withdrawn from the purview of the Commission it could not have any retrospective effect. There is no merit in this contention and we are broadly in agreement with the view of the Tribunal that inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application. He only offers himself to be considered for the post. His application only makes him eligible for being considered for the post. It does not create any right in the candidate to the post.”

After making the aforesaid observations the court further held that the relevant service Rules conferred power on the government to fill emergently the vacancies to the post borne in the cadre of service otherwise than in accordance with the rules and therefore the government had power to regularise temporary appointments made without the consultation of the Public Service Commission. Even after upholding the government order, the court directed the Commission to



consider the case of all those candidates who had applied for the post of Junior Engineers in response to the advertisement issued by the Commission and to finalise the select list on the basis of viva voce test and to forward the same to the government. The court further directed the government to make appointments from the select list before any outsider was appointed to the post of Junior Engineers. Thus, the observations made by this Court as quoted earlier were made in the special facts and circumstances of the case, which do not apply to the facts of the instant case. In Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] since the jurisdiction of the Public Service Commission had been denuded by the government in exercise of its constitutional power the Commission had no jurisdiction to conduct selection or prepare select list. In this background the court made observations that a candidate merely by making applications does not acquire any right to the post. It is true that a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules he acquires right to be considered for selection in



accordance with the then existing Rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. In the instant case the Commission had acted in accordance with the then existing rules and there is no disputethat the appellants were eligible for appointment, their selection was not in violation of the recruitment Rules. The Tribunal in our opinion was in error in setting aside the select list prepared by the Commission.”

(ii) (1983) 3 SCC 33 (A. A. Calton vs. Director of Education & Anr.), paragraph no. 5 whereof is produced herein below:-

“5. It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under Section 16-F(4) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under Section 16-F of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under Section 16-F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under Section 16-F(4) (as it stood then) is



an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16-F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in



accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned counsel for the appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case.”

(iii) (1983) 3 SCC 284 (Y. V. Rangaiah & Ors. vs. J. Sreenivasa Rao & Ors.), paragraph no. 9 whereof is reproduced herein below:-

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than Respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the



new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

(iv) (2019) SCC online SC 1632 (Meeta Sahai vs. The State of Bihar & Ors.); paragraph nos. 38 & 39 whereof are reproduced herein below:-

“38. We are of the view that the purpose behind formulation of the Rules was to recognize the unique challenges of hospitals in Bihar and incentivise doctors to work in non-private hospitals. There is some substance in the submission of learned counsel for the respondents that Bihar is predominantly poor and thus requires doctors having exposure to such challenging environment as compared to their counterparts in private hospitals. Experience in a non-private hospital instills sensitivity in its doctors, making them more adept to understand the ail and agony of poor patients. Such experience will undoubtedly be useful in furthering the object of Government hospitals and must be given due weightage while selecting suitable candidates. Interpreting ‘Government hospitals’ to include only a small class of persons who have worked under the Government of Bihar, is thus clearly erroneous and



anti-merit. Such an objective would not be defeated by the understanding of the Rules as has been construed by us.

39. For the reasons stated above, the appeal is allowed. Rule 5 & 6(iii) of the Bihar Health Service (Appointment and Service Conditions) Rules, 2013 are construed to include the experience gained by a doctor in any hospital run by the Bihar Government or its instrumentalities, as well as any other non-private hospital (including those run by the Central Government, Municipalities and Panchayati Raj Institutions; or other public authorities) within the territory of Bihar. Respondents are accordingly directed to rework and prepare a fresh merit list by granting due weightage to the appellant and other similarly placed candidates, within two months. We however clarify that grant of weightage on the basis of work experience shall have no bearing on the suitability of a candidate.”

4. Per contra, the learned counsel for the respondents, by referring to the counter affidavit filed by the respondents in the present case has submitted that the actual facts of the case are that the first advertisement for making appointment on 463 sanctioned/vacant posts of Junior Engineers (Civil), (Mechanical) and (Electrical), on contract basis, was issued by the Urban Development and Housing Department, Government



of Bihar, Patna on 13.12.2019, however, the same was cancelled and thereafter the respondent Department had issued the advertisement in question on 10.01.2020. A communiqué was also published wherein it had been mentioned that those candidates who had applied earlier, online, for appointment on the post of Junior Engineer are not required to apply afresh and they can use the earlier login id and password and in case they login, all the information qua the said candidates shall be displayed on the portal. It is further submitted that a large number of candidates including the petitioners had applied for appointment on the post of Junior Engineers and after scrutiny of the papers/documents a list of shortlisted candidates was prepared for counseling and after the counseling was held a merit list was prepared. The list of candidates, shortlisted for the purposes of counseling, dated 06.02.2020 and 28.05.2020, (Annexur-6 and Annexur-10 to the writ petition) and the merit list dated 10.06.2020 (Annexure-11 to the writ petition), would show that the names of the petitioners are nowhere to be found inasmuch as they had failed to qualify.

5. The learned counsel for the respondents, adverting to the first contention of the learned counsel for the petitioners, to the effect that the Rules, 2015 as amended by Rules, 2018



have illegally been not applied in the aforesaid recruitment process and the petitioners have wrongly been not awarded weightage marks for their work experience, has submitted that a bare perusal of clause-2 of the advertisement dated 10.01.2020 would show that the appointments on the sanctioned and vacant post of Junior Engineers are being made on contract basis till regular appointments are made, in light of the resolution of the General Administration Department as contained in Memo No. 2401 dated 18.07.2007, which has been annexed as Annexure-R/A to the counter affidavit filed on behalf of the respondent nos. 2 & 3. The learned counsel for the respondents has drawn attention to various clauses of the said resolution dated 18.07.2007 to submit that on account of various/divergent procedures being adopted by different departments to make appointments on contractual basis, the Government has issued guidelines regarding the common methodology to be adopted by the various departments of the Government of Bihar for making appointments on contractual basis. The said resolution dated 18.07.2007 further postulates that the contractual appointments shall be made against the sanctioned post, after issuing appropriate advertisement and clause 2(7) thereof postulates that such contractual appointments shall be made by the concerned



Department itself, which shall constitute a selection committee and the Department shall make appointment of such candidates who are selected by the said committee or on the basis of the panel recommended by the said committee. It is further submitted that the recruitment rules, whether it be the Rules, 2015 or the amended Rules, 2018, are to be followed only for the purposes of regular appointment and not for the purposes of contractual appointment. It is also clear from the terms and conditions stipulated in the advertisement dated 10.01.2020 that firstly the appointment on the post of Junior Engineer is to be made purely on a contractual basis and secondly there is no reference with regard to the applicability of either the Rules, 2015 or the amended Rules, 2018. Nonetheless, it is submitted that the advertisement dated 10.01.2020, under clause-4 specifically mentions about following the State Government reservation policy, hence it is submitted that as far as the reference of the petitioners to the case of Aryan Kumar (supra) is concerned, the same pertains to the issue of reservation and since clause-4 of the advertisement dated 10.01.2020, itself provides that reservation policy of the State Government is required to be followed, the respondents in the counter affidavit filed in the aforesaid case have mentioned that reservation



policy, as provided in the Rules shall be followed. Thus, it is submitted that the petitioners cannot derive any mileage from the counter affidavit filed by the respondent-State in the case of Aryan Kumar (supra). Moreover, it is submitted that since the resolution of the General Administration Department dated 18.7.2007 itself postulates carrying out of the recruitment process by the respondent Department for the purposes of making contractual appointments, the argument advanced by the learned counsel for the petitioners that only the Commission is competent to carry out the recruitment process has got no merit and is fit to be rejected.

6. The learned counsel for the respondent-State has next contended that the aforesaid advertisement dated 10.01.2020 was challenged in a writ petition bearing ***CWJC No. 1728 of 2020 (Ravi Ranjan Giri & Ors. vs. The State of Bihar & Ors.)***, more or less, on same and similar grounds, as has been raised in the present petition and the said writ petition has stood dismissed by a judgment dated 19.05.2020.

7. At this juncture, this Court deems it fit and appropriate to reproduce the relevant extracts of the judgment dated 19.05.2020 rendered in the case of Ravi Ranjan Giri



(supra), by a coordinate Bench of this Court, herein below:-

“The petitioners are before this court challenging advertisement dated 10.01.2020. The advertisement invites applications from the candidates desirous of contractual appointment as Junior Engineers in the Urban Development Department. The advertisement prescribed requisite qualification of Diploma in Engineering. The grievance of the petitioner is that the advertisement supersedes the earlier advertisement dated 15.12.2019, which provided for giving weightage to the candidates’ experience based on contractual working in the Urban Local Bodies as Junior Engineers.

Mr. Chakrapani, learned counsel appearing for the petitioners, submits that the impugned advertisement dated 10.01.2020, being contrary to the guideline dated 18.07.2007, notification dated 15.01.2016 as well as the amended notification dated 07.03.2018 is not sustainable. The impugned advertisement has been issued ignoring the experience of the contractual employee. The advertisement in so far as it does not grant any weightage to the petitioners' experience based on contractual services rendered in the Urban Local Bodies is also causing grave prejudice to the petitioners, and is therefore fit to be quashed.

The claim of the petitioners that they should be



given weightage for such services rendered under the Urban Local Bodies, contrary to the direction of the State Government, amounts to seeking perpetuation of an illegality, on account of their existence in the Urban Local Bodies, which is illegal and contrary to the mandate of the State Government. If any benefit is to be granted for such services, that would also offend Article 14 of the Constitution of India. The petitioners cannot be given any weightage for such illegal services so as to steal a march over other applicants in the process of selection. The other applicants cannot be placed at undue disadvantage merely for the illegal continuance of the petitioners by the Urban Local Bodies, contrary to the clear and explicit mandate of the State Government, to the contrary.

It is further admitted case that the instant petitioners were not applicants pursuant to earlier advertisement dated 15.12.2019, in supersession of which the impugned advertisement dated 10.1.2020 has been issued. No right has been created in favor of the petitioners therefore under advertisement dated 15.12.2019 as they chose not to participate/apply pursuant to the said advertisement. They cannot contend that any prejudice has been caused by abandoning the process of selection initiated under advertisement dated 15.12.2019.

No case has been made out by the petitioners for



quashing the advertisement dated 10.1.2020.

The writ petition is devoid of merit and the same is dismissed.”

8. The learned counsel for the respondent-State has lastly submitted that neither the advertisement has been challenged nor the selection process in question has been challenged, hence the petitioners cannot raise the issue regarding the applicability of either the Rules, 2015 or the amended Rules 2018, at this juncture and moreover, they cannot turn back and challenge the merit list after having participated and failed. It is also submitted that the instant selection process has been initiated for making contractual appointment of Junior Engineers, keeping in view the exigency of work and its timely completion under the different urban local bodies and the Urban Development Housing Department, as a short gap arrangement in view of the delay in regular appointment. It is also submitted that the Bihar Technical Staff Selection Commission, Patna does not conduct any selection process for contractual appointment rather it only conducts the selection process for regular appointment and the process of sending recommendation for making regular appointment is underway. The learned counsel for the State has submitted that the Hon'ble Apex Court in a



catena of judgments has held that such candidates, who have participated in the selection process being fully aware about the criteria and have taken a chance without any protest at any stage, cannot turn back to state that the procedure adopted was wrong and without jurisdiction, after having been declared unsuccessful in the selection process. Thus it is submitted that the petitioners are barred from challenging either the process of selection or the constitution of the Committee at this stage.

9. The learned counsel for the petitioners has placed reliance on the following judgments, which are being cited herein below along with their relevant extracts:-

(i) ***(1995) 3 SCC 486 (Madan Lal & Ors. vs. The State of J&K & Ors.)***, paragraph no. 9 whereof is reproduced herein below:-

“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as



well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644 : AIR 1986 SC 1043] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

(ii) (2011) 1 SCC 150 (Vijendra Kumar Verma vs. Public Service Commission Uttrakhand & Ors.);
paragraph no. 24, 25& 27 whereof are reproduced
herein below:-



“24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant 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 cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

25. In this connection, we may refer to the decision of the Supreme Court in G. Sarana (Dr.) v. University of Lucknow [(1976) 3 SCC 585 : 1976 SCC (L&S) 474] wherein also a similar stand



was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus: (SCC p. 591)

“15. ... 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.”

27. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] in SCC at para 18 it was held that: (SCC p. 107)

“18. ... It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.”

10. Moreover, it is submitted by the learned counsel for the respondents that it is not the case of the petitioners that weightage/ marks for working experience has been given to any other similar candidate and they have been discriminated by not being granted weightage/marks for their working experience. It



is also submitted that no weightage/marks has been given to any candidate qua their working experience and the merit list has been prepared strictly in terms of clause-7 of the present advertisement dated 10.01.2020.

11. At this juncture, the learned counsel for the petitioners has submitted, in riposte, that the judgment rendered in the case of ***Ravi Ranjan Giri & Ors. (supra)*** is not applicable in the facts and circumstances of the present case inasmuch as the issue involved in the said case was regarding the writ petitioners therein being degree holders and not diploma holders, hence their applications were rightly rejected. It is further submitted that the recruitment rules nowhere mentions that the same have been framed only for regular appointment and not for contractual appointment.

12. I have heard the learned counsel for the parties and gone through the materials on record. Having regard to the submissions advanced by the learned counsel for the parties, the first issue to be decided is as to whether the Rules, 2015 as also the amended Rules, 2018, especially clause 10 & 11 thereof are required to be followed for the purposes of making appointments on contractual basis, as a stop gap arrangement, on 463 sanctioned/vacant posts of Junior Engineers. This Court



finds from a bare perusal of clause-2 of the advertisement dated 10.01.2020 that the appointments on the sanctioned and vacant post of Junior Engineer has been sought to be made on contract basis till regular appointments are made, in light of the resolution of the General Administration Department, as contained in Memo No. 2401 dated 18.07.2007. This Court further finds that in the advertisement dated 10.01.2020, there is no whisper about grant of any weightage / marks for the working experience being possessed by the candidates as far as preparation of the merit list is concerned. Moreover, the Rules, 2015 and the amended Rules, 2018 provide for appointment on the post of Junior Engineer (Civil) on regular basis and does not deal with contractual appointments, hence the said Rules, in the considered view of the Court, would not be applicable to the recruitment process pertaining to contractual appointments and in such a situation, the resolution dated 18.7.2017 of the General Administration Department shall be applicable, which contains guidelines, issued by the Government, regarding the common methodology to be adopted by the various departments of the Government of Bihar for making appointments on contractual basis. As regards the second argument of the learned counsel for the petitioners, regarding the Department being not competent



to conduct the selection process for making contractual appointments, this Court is of the view that the aforesaid resolution of the General Administration Department dated 18.7.2007 clearly postulates that the selection process pertaining to contractual appointments would be undertaken by a Selection Committee to be constituted by the concerned Department, hence it is clear that the Commission has got no role to play as far as the contractual appointments are concerned. As far as the counter affidavit filed in the case of Aryan Kumar (supra), by the respondents, is concerned, it would suffice to state that firstly the issue in the said writ petition was different inasmuch as therein the name of the writ petitioners had been de-listed from the selection process inasmuch as they had not obtained diploma from a university recognized by the AICTE and moreover, the State Government had merely stated in the said counter affidavit that the reservation policy of the State Government would be followed, which in any view of the matter has also been followed in the present case inasmuch as clause-4 of the advertisement dated 10.01.2020 mandates that the State Government reservation policy shall be adhered to. Therefore, this Court finds that the petitioners have failed to show as to how the Rule, 2015 and the amended Rule, 2018 are



applicable to the contractual recruitment process in question, although neither the said Rules postulate their applicability in contractual recruitment process nor the advertisement dated 10.01.2020 prescribes regarding applicability of such rules. The judgments referred to by the learned counsel for the petitioners, as aforesaid, do not have any applicability in the facts and circumstances of the present case. Last but not the least, this Court also finds that once the petitioners have participated in the selection process, knowing fully well the procedure laid down therein, it is not open for them to challenge the result/ merit list, upon them having been declared unsuccessful, since the principle of estoppel would operate. In this connection, it would be apt to refer to a judgment rendered by the Hon'ble Apex Court, reported in **(2017) 4 SCC 357 (Ashok Kumar & Anr. vs. The State of Bihar & Ors.)**, paragraph nos. 12 to 18 whereof are reproduced herein below:-

“12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of



estoppel would operate.

13. The law on the subject has been crystallised in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla [Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127 : 2002 SCC (L&S) 830] , this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar [Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] , this Court held that: (SCC p. 107, para 18)

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil [Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission,



(2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345].)”

14. The same view was reiterated in Amlan Jyoti Borooah [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15. In Manish Kumar Shahi v. State of Bihar [Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256], the same principle was reiterated in the following observations: (SCC p. 584, para 16)

“16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC Online Pat 321 : (2009) 4 SLR 272] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found



that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in Madan Lal v. State of J&K [Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712] , Marripati Nagaraja v. State of A.P. [Marripati Nagaraja v. State of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] , Dhananjay Malik v. State of Uttaranchal [Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 : (2008) 3 PLJR 271], Amlan Jyoti Borooah v. State of Assam [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and K.A. Nagamani v. Indian Airlines [K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57].”

16. *In Vijendra Kumar Verma v. Public Service Commission [Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21] , candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had*



appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

17. In Ramesh Chandra Shah v. Anil Joshi [Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309: (2011) 3 SCC (L&S) 129], candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p. 318, para 18)

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In Chandigarh Admn. v. Jasmine Kaur [Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521 : 6 SCEC 745] , it was held that a



candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai v. Dinesh Kumar Pandey [Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493 : (2015) 3 SCC (L&S) 274] , this Court held that: (SCC p. 500, para 17)

“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K. Sivasubramaniyan [Madras Institute



of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164 : 7 SCEC 462] .”

13. It would also be relevant to refer to yet another judgment rendered by the Hon’ble Apex Court, reported in ***(2011) 1 SCC 150 (Vijendra Kumar Verma vs. Public Service Commission Uttarakhand & Ors.)***, paragraph nos. 24 to 28 whereof are reproduced herein below:-

“24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant 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 cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

25. *In this connection, we may refer to the decision of the Supreme Court in G. Sarana (Dr.) v. University of Lucknow [(1976) 3 SCC 585 : 1976 SCC (L&S) 474] wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus: (SCC p. 591)*

“15. ... 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.”

26. *In P.S. Gopinathan v. State of Kerala [(2008) 7 SCC 70 : (2008) 2 SCC (L&S) 225] this Court relying on the above principle held thus: (SCC p. 84, para 44)*

“44. ... Apart from the fact that the appellant



accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992. The application of principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being G. Sarana (Dr.) v. University of Lucknow [(1976) 3 SCC 585 : 1976 SCC (L&S) 474]”

27. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] in SCC at para 18 it was held that: (SCC p. 107)

“18. ... It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.”

28. Besides, in K.H. Siraj v. High Court of



Kerala [(2006) 6 SCC 395 : 2006 SCC (L&S) 1345] in SCC paras 72 and 74 it was held that the candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel.”

14. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above in the preceding paragraphs, I do not find any reason to interfere with either the list of shortlisted candidates dated 06.02.2020 and 28.05.2020 or the merit list dated 10.06.2020 inasmuch as the writ petition is bereft of any merit and none of the issues raised by the learned counsel for the petitioners merit any consideration, hence the present writ petition stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	28.09.2020
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