

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14413 of 2019**

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Neelmani Jaiswal S/o Rambaboo Chaudhary, resident of village- Rustampur,  
P.O.- Hayaghat, P.S.- Hayaghat, Distt.- Darbhanga, Bihar-847301.

... .. Petitioner/s

Versus

1. Union Public Service Commission through its Secretary, Dholpur House, Shahjhan Road, New Delhi-110069
2. Union of India through Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001
3. Under Secretary to the Govt. of India, Ministry of Labour and Employment, Govt. of India, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001
4. Ashwani Kumar Chaturvedi(Roll No. 0003009) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
5. Ram Chandra Jakhar(Roll No. 0002130) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
6. Rajnish Sangwan(Roll No. 0007889) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
7. Rajendra Singh Rajpur(Roll No. 0008584) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
8. Ravi Shankar Kumar(Roll No. 0006613) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
9. Sunil Sharma(Roll No. 0006567) Son of not known to the appellant at present working as Assistant Labour Commissioner (Senior Time Scale) and equivalent posts, Central Labour Service
10. Sakshi Chugh(Roll No. 0003374) Son of not known to the appellant at present working as Assistant Labour Commissioner (Senior Time Scale) and equivalent posts, Central Labour Service
11. Rohit Kumar(Roll No. 0005775) Son of not known to the appellant at



present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service

12. Dhruv(Roll No. 0002230) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
13. Hari Prasad Chaurasiya(Roll No. 0007853) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
14. Kulasekaran A(Roll No. 0000405) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
15. Randeep(Roll No. 0005077) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
16. Mukesh Kumar Tiwary(Roll No. 0001101) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
17. Kshitij Sharma(Roll No. 0007657) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
18. Aneish Ravindra(Roll No. 0007271) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
19. Rahul(Roll No. 0008435) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
20. Kumar Amritesh(Roll No. 0003275) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
21. Swapnil Singh Thakur(Roll No. 0007468) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
22. Sarvesh Kumar(Roll No. 0002295) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service



23. Ramesh Kumar(Roll No. 0000176) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
24. Abhinav Tiwari(Roll No. 0007065) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
25. Ravi Ranjan Prasad(Roll No. 0000989) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
26. Parineeta(Roll No. 0000213) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
27. Laxmi Narayan Meena(Roll No. 0000148) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
28. Ajeet Kumar(Roll No. 0005999) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
29. Raghavendra Nayaka M (Roll No. 0002471) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
30. Ayman Jamal(Roll No. 0007988) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
31. Dinesh Kumar(Roll No. 0003059) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
32. Ramesh M(Roll No. 0004108) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
33. Ashwani Yadav(Roll No. 0001455) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
34. Saravanan(Roll No. 0008486) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service



35. Balaji P(Roll No. 0001389) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
36. Pramod Kumar Barua(Roll No. 0005043) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
37. Prachi Gautam(Roll No. 0006377) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service
38. Jayanta Prasad Behera(Roll No. 0006517) Son of not known to the appellant at present working as Assistant Labour Commissioner (Junior Time Scale) and equivalent posts, Central Labour Service.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : M/s Mukul Sinha and Suraj Kumar, Advs.  
For the U.P.S.C. : Mr. Kaushal Kumar Jha, Adv.  
(respondent no. 1)  
For the Union of India : Mr. Rajesh Kumar Verma, ASG  
(respondent nos. 2 &3)  
For the respondent nos. 4 to 38 : M/s Gopal Krishna and Piyush Lall, Advs.  
(except Resp. Nos. 5,11,12 and15)

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**and**  
**HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)**

**Date : 21-01-2020**

Heard the parties.

In the present case, the Tribunal instead of deciding the case on its merit, rejected the application on the ground that the petitioner has appeared in the test conducted by the Union Public Service Commission, now they cannot turn



round and challenge the same, so estoppel would apply against them, placed reliance on the judgment reported in **(2017) 4 SCC 357, Ashok Kumar and another vs. State of Bihar and other**, but in the present case, the line of argument has been advanced by the learned counsel for the petitioner, they are not challenging the terms and conditions of advertisement, but they are challenging the selection of respondents on its merit that they do not possess requisite qualification even then their candidatures were considered and they have been appointed. In the order dated 22.07.2019, this Court has elaborately dealt with the issue and has found, *prima facie* the argument advanced by the learned counsel for the petitioner to be logical, accordingly, the notices have been issued to the different respondents, they have appeared and have filed their respective counter affidavit.

In the present case, the matter relates to selection for the post of Assistant Labour Commissioner and equivalent post of Central Labour Service in Junior Time Scale (Group 'A') wherein the essential qualification has been prescribed that a person must possess minimum qualification (i) Degree of a recognised University, (ii) Diploma in Social Work or



Labour Welfare or Industrial Relations or Personnel Management or Labour Law from a recognized University or Institution. Desirable: Degree in Law from a recognized university. Under the Instructions and Additional Information to Candidates for Recruitment by selection, under that category prescribes the minimum essential qualification which runs, in that manner, all applicants must fulfill the essential qualifications of the post and other conditions stipulated in the advertisement. They are advised to satisfy themselves before applying that they possess at least essential qualifications laid down for various posts. No enquiry asking for advise as to eligibility will be entertained. The prescribed essential qualifications are the minimum and the mere possession of the same does not entitle candidates to be called for interview. At this stage, the rule has also been brought to our notice wherein the essential qualification has been prescribed in the same term as that of advertisement.

The learned counsel for the petitioner has raised the issue that the persons, who have been selected, do not have requisite qualification and they have made selection on the basis of equivalence of the qualification which has not been



stipulated in the advertisement and has placed reliance on the judgment reported in **(2019) 6 SCC 362, Maharashtra Public Service Commission through its Secretary vs. Sandeep Shriram Warade and others, (2019) 2 SCC 404, Zahoor Ahmad Rather and others vs. Sheikh Imtiyaz Ahmad and others, (2011) 12 SCC 85, Bedanga Talukdar vs. Saifudaullah Khan and others (2011) 15 SCC 304, Bhanu Pratap vs. State of Haryana and others, AIR 1990 SC 405, P. Mahendran and others vs. State of Karnataka and others and (1990) 3 SCC 655, District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another vs. M. Tripura Sundari Devi**, on that basis, the learned counsel for the petitioner submits that once the selection process started, it cannot be tinkered or terms and conditions for recruitment cannot be diluted or modified in mid way and the selection is to be made on the basis of terms and conditions of the advertisement whereas the learned counsel for the Union Public Service Commission has said that the respondents possess requisite qualification even the better qualification and after considering their qualification, they have been



selected and this part of argument has been supported or reiterated by the learned counsel for the respondents.

In the present case, the Tribunal has not decided the case on its merit, but on a technical ground on the principle of estoppel, in the manner and principle that a person who has appeared in the examination, he cannot turn round and challenge the selection, but the law is very much settled, though he cannot challenge the advertisement but after result the persons, under wrong premise, have been appointed, certainly, he has a right to challenge the selection on the plea that the persons, who have been selected, do not possess requisite qualification and also the procedure has not been followed as per the terms and conditions of the advertisement.

As the Tribunal has not decided the case on merit, we set aside the order of Tribunal and remand back the matter for fresh consideration, but it is made clear that the Tribunal will decide the case on day to day basis and will not grant any unnecessary adjournment to any party. We further directs that the respondents are not required to give any notice by the Tribunal. They will appear suo motu before the Tribunal within two weeks from today and they will file their



respective written statement within two weeks thereafter and they will serve the same upon the learned counsel for the petitioner. We further give liberty to the petitioner, if so like, may file reply to the written statement within two weeks and the Tribunal will complete the hearing and decide the case on its merit on day to day basis and pass the order on merit of the case. The Tribunal will decide the matter within two months after commencement of proceeding. As we are remanding back the matter, the petitioner is not required to file fresh O.A., the same will be treated to be O.A. for the purposes of deciding the case on its merit. However, the petitioner is given liberty to file additional application/amendment petition for bringing necessary facts for adjudication of the case on its own merit. Respondent nos. 5, 11, 12 and 15 have not appeared before this Court, so in that circumstance, the counsel for the Union of India is directed to communicate this order to the respondents through the concerned Secretary. If so like they would be at liberty to file their appearance before the Tribunal within two weeks from the date of receipt of a copy of this order. Respondents may file written statement individually or collectively.



With the above observation and direction, this petition is  
allowed to the aforesaid extent.

**(Shivaji Pandey, J)**

**( Anjani Kumar Sharan, J)**

Mahesh/-

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