

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.238 of 2024

In
Civil Writ Jurisdiction Case No.14755 of 2023

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1. The State of Bihar through the Additional Chief Secretary, Health Department, Bihar, Patna.
 2. Director, Directorate of Health Department, Bihar, Patna.

... .. Appellant/s

Versus

1. Archana Kumari Wife of Shri Ram Naresh Singh Resident of Sahwajpur Shabhazpur Salem P.O.- Muzaffarpur P.S.- Ahiyapur District-Muzaffarpur, Pin-842004.
2. Pinki Kumari Daughter of Shri Suresh Choudhary Resident of Alampur, P.O.- Barh, P.S.- Barh, District- Patna, Pin Code- 803213.
3. Usha Kumari Wife of Shri Arun Mehta Resident of Mohammadpur, Near Imam Medical, Mahendru, P.S.- Sultanganj, P.O.- Mahendru, District- Patna, Pin Code- 800006.
4. Veena Kumari Wife of Shri Surjit Kumar Resident of C/o Suresh Yadav, Jeet Lal Path, Back of Cold Storage, Karbigahiya, P.O.- G.P.O., District- Patna, Pin Code- 800001.
5. Bihar Technical Service Commission, Patna through its Secretary.
6. Chairman, Bihar Technical Service Commission, Patna.
7. Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

with
Letters Patent Appeal No. 241 of 2024
In
Civil Writ Jurisdiction Case No.17653 of 2023

1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
2. The Principal Secretary, General and Administrative Reforms Department, Govt. of Bihar, Patna.
3. The Director, Health Department, Govt. of Bihar, Patna.

... .. Appellant/s

Versus



1. Sarita Kumari W/o Mukesh Kumar Thakur Resident of Village- Kerma Road, Mahant Maniyari, P.S.- Silot, Baijnath, District- Muzaffarpur.
2. Nibha Kumari W/o Manoj Singh Resident of Village- Ward No. 25, Bichla Tola, Madhurapur, P.S.- Teghara, District- Begusarai.
3. Priyanka Kumari W/o Laxman Shah Resident of Village- Hitampur, P.S.- Jagdishpur, District- Bhojpur at Ara.
4. Rekha Kumari W/o Pappu Kumar Resident of Village and P.O.- Mani Bhakurahar, P.S.- Sarai, District- Vaishali.
5. Munchun Rani @ Munchun Kumari W/o Satish Kumar Resident of Village- Kanti Kasba, P.S.- Kanti, District- Muzaffarpur.
6. Seema Kumari W/o Vikash Kumar Thakur Brahmsthan, Sabhagpur @ Salempur, P.S.- Salempur, District- Muzaffarpur.
7. The Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.
8. The Secretary, Bihar Nursing Registration Counsel, Patna.
9. The Incharge Secretary, Bihar Nursing Registration Counsel, Patna.
10. District Magistrate-cum-President, District Health Committee of concerned District- Muzaffarpur, Begusarai, Bhojpur at Ara and Vaishali.
11. The Civil Surgeon-cum-Secretary, District Health Committee of concerned District- Muzaffarpur, Begusarai, Bhojpur at Ara and Vaishali, Patna.

... .. Respondent/s

with
Letters Patent Appeal No. 242 of 2024
In
Civil Writ Jurisdiction Case No.37 of 2024

1. The State of Bihar
2. The Director, Directorate of Health Department, Bihar, Patna.

... .. Appellant/s

Versus

1. Rita Kumari Wife of Surendra Kumar Singh, Resident of Majhauili Road P.O. and P.S. Mairwa, District-Siwan.
2. Minta Kumari, D/o Brajesh Thakur, Resident of Village- Dhobawat, P.O.- Dhano, P.S.- Baniyapur, District- Saran.
3. The Secretary, Bihar Technical Service Commission, Bihar, Patna.
4. The Deputy Secretary, Bihar Technical Service Commission, Patna.
5. The Chairman, Bihar Technical Service Commission, Patna.



- 6. The Joint Secretary, Health Department, Government of Bihar, Patna.
- 7. The Incharge Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

with
Letters Patent Appeal No. 243 of 2024
In
Civil Writ Jurisdiction Case No.16501 of 2023

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
- 2. The Additional Chief Secretary-cum-Principal Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
- 3. The Deputy Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
- 4. The Director In-Chief, Health Services (Nursing), Department of Health, Government of Bihar, Old Secretariat, Patna, of Bihar, Patna.

... .. Appellant/s

Versus

- 1. Arti Kumari Daughter of Om Prakash Singh, Resident of Jahanabad Road Shanti Complex, Ekangarsarai, P.S. - Ekangarsarai, District - Nalanda.
- 2. Nitu Kumari, Daughter of Raj Kumar Ram, Resident of Ahirauli, Ward No. 2, P.S. - Industrial Area Buxar, District- Buxar.
- 3. Abha Kumari, Daughter of Subodh Kumar, Resident of Village - Dhanhar, P.S. - Ekangarsarai, District - Nalanda.
- 4. Nikki Kumari, Daughter of Jay Prakash Ram, Resident of Village - Rahthua, P.S. Brahmapur, District - Buxar.
- 5. Kumari Anita Singh, Wife of Rakesh Kumar, Resident of Village - Darauli, P.S. Ramgarh, District- Kaimur.
- 6. Kiran Kumari, Wife of Pankaj Kumar, Resident of Village - Giridharpur, P.S. - Itarhi Sikraul, District - Buxar.
- 7. Sangeeta Kumari, Wife of Santosh Chaudhary, Resident of Village- Paniyari, P.S. - Nawa Nagar Sikraul, District - Buxar.
- 8. Amrawati Kumari, Wife of Fulendra Chaudhari, Resident of Village - Dhankutiya, P.S. - Dinara, District - Rohtas.
- 9. Guddee Kumari, Wife of Sanjay Kumar, Resident of Village - Paniyari, P.S. Nawa Nagar Sikraul, District- Buxar.
- 10. Muni Kumari, Wife of Sunil Kumar Ram, Resident of Village - Rahthua, P.S. - Brahmapur, District - Buxar.
- 11. Preeti Kumari, Wife of Rajeev Kumar, Resident of Village/Mohalla - Harnaha Tola Patna City, P.S. - Patna Sadar, District - Patna. Sri Mantu Kumar, R/o Village- Hasanchak, P.S. - Chandi, District - Nalanda.
- 12. Bihar Technical Service Commission through its Secretary, 19, Harding



Road, Patna through its Secretary.

- 13. The Chairman, Bihar Tchanical Service Commission, 19, Harding Road, Patna.
- 14. The Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 244 of 2024

In

Civil Writ Jurisdiction Case No.9395 of 2023

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- 1. The State of Bihar through the Additional Chief Secretary, Department of Health, Govt. of Bihar, Patna.
- 2. The Joint Secretary, Department of Health, Govt. of Bihar, Patna.
- 3. The Deputy Secretary, Department of Health, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

- 1. Anita Kumari W/o Sri Ganesh Prasad Thakur, Resident of Village- Ayma, P.S. - Saraiya, District - Muzaffarpur.
- 2. Sanjukta Kumari, W/o Sri Rajeev Ranjan, Resident of Village- Arawan, P.S. - Ben, District - Nalanda.
- 3. Seema Kumari, D/o Sri Naresh Prasad Singh, Resident of village- Uttrawan, P.S. - Kurtha, District - Arwal.
- 4. Sarita Kumari, W/o Sri Chandramani Prasad, Resident of Village - Ganipur, P.S. - Hilsa, District - Nalanda.
- 5. Priyanka Kumari, W/o Sri Mantu Kumar, R/o Village- Hasanchak, P.S. - Chandi, District - Nalanda.
- 6. The Director in Chief (Nursing) Health Services, Bihar, Patna.
- 7. Bihar Technical Service Commission through its Secretary, 19, Harding Road, Patna.
- 8. The Chairman, Bihar Technical Service Commission, 19, Harding Road, Patna.
- 9. The Deputy Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 246 of 2024

In

Civil Writ Jurisdiction Case No.113 of 2024

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- 1. The State of Bihar through the Principal Secretary, Health Department Govt.



of Bihar, Patna.

2. The Principal Secretary, General and Administrative Reforms Department, Govt. of Bihar, Patna.
3. The Director, Health Department Govt. of Bihar, Patna.
4. The Civil Surgeon-cum-Secretary, District Health Committee of concern District- Patna, Lakhisarai, Nalanda, Muzaffarpur, Sheikhpura, Chapra, Aurangabad, Bhojpur (Ara), Vaishali (Hajipur).

... .. Appellant/s

Versus

1. Sapna Kumari D/o Vidyanand Tiwari Resident of village-Amhara, P.S. Bihta, District-Patna
2. Kumari Mamta W/o Sanjay Kumar Resident of village and post Geruapur Sanda, P.S. Halasi, District Lakhisarai.
3. Neelam Kumari W/o Shashi Munna Kumar Resident of village Badalpur, Post-Nalanda, P.S. Telhara, District Nalanda.
4. Mamta Kumari W/o Ranvir Prasad Singh resident of village Sohijan, Post-Beriya, P.S. Hathauri, District Muzaffarpur.
5. Sudha Kumari W/o Akhilesh Kumar Sharma Resident of village Naubatpur, P.O. Jamalpura, P.S. Korawan,, District- Patna.
6. Maya Kumari W/o Ramadhar Sharma Barah Resident of village-Barah, P.S. Barah, District Patna.
7. Mamta Kumari W/o Rajib Kumar Resident of village-Gokhula Rupauli, P.S. Rupauli, District-Muzaffarpur.
8. Sabita Kumari W/o Sudhir Pandey, resident of village post Maghol Sushta, P.S. Kurahani, District Muzaffarpur.
9. Bindu Kumari W/o Mrityunjay Kumar resident of village Bahrapur, Dubaha Bujurg, P.S. Sakra, District-Muzaffarpur.
10. Baby Kumari W/o Late Gautam Kumar resident of village and post Khandpar, Bhitthapar P.S. Sheikhpura, District Sheikhpura.
11. Ruby Kuamri W/o Singar Shukla Resident of village Parumathiya Post-Paru, P.S.-Paru, District Muzaffarpur.
12. Poonam Kuamri W/o Surendra Sharma Resident of Village-Sahnajpur, P.S.- Bhikhapur (Musahri), District- Muzaffarpur.
13. Namita Kumari W/o Chandan Kumar Choudhary Resident of village Kanti Tiary Tola, P.S. Kanti, District Muzaffarpur.
14. Babita Kumari W/o Arvind Kumar Resident of village Madapur Choubey near of Shivmandir Kharindih, P.S. Musahri, District Muzaffarpur.
15. Prity W/o Kumar Pankaj Resident of village Narharpur Chamari, P.S. Naharpur, District Saran Chhapra.
16. Rama Kumari W/o Rajesh Kumar Choubey, Resident of village Hamidnagar, Post Badhoipi, P.S.-Upahara, District Aurangabad.
17. Manju Kumari W/o Pradip Ram Resident of village Gidha, P.S. Garhani, District Bhojpur.



18. Ragni Kumari W/o Rakesh Kumar Pandey resident of Village Braharup, P.S. Bhagwanpur, District-Muzaffarpur.
19. Pritanjli Kumari W/o Sandhir Kumar Singh Resident of village Madhopur Ram, P.S. Vaishali, District-Vaishali.
20. Rinku Kumari W/o Vimlesh Kumar Resident of village and post Kolhua, P.S.Saraiya, District Muzaffarpur.
21. Anju Kumari W/o Prakash Kumar Resident of village and post-Basant Kharona, P.S. Kurahani, District Muzaffarpur.
22. Secretary, Bihar Technical Service Commission, Patna
23. The Secretary Bihar Nursing Registration Counsel, Patna.
24. The Incharge Secretary Bihar Nursing Registration Counsel, Patna.
25. District Magistrate-cum-President District Health Committee of concern District- Patna, Lakhisarai, Nalanda, Muzaffarpur, Sheikhpura, Chapra, Aurangabad, Bhojpur (Ara), Vaishali (Hajipur).

... ... Respondent/s

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with
Letters Patent Appeal No. 269 of 2024
In
Civil Writ Jurisdiction Case No.14755 of 2023

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1. Pooja Kumari D/o Mr. Durga Prasad Gupta, Resident of village and post-Babhandiha, P.S- Obara, District- Aurangabad, Bihar, Pin- 824124.
2. Sangeeta Kumari, W/o Chandan Kumar Paswan, Resident of 165, Jaidev Prasad ke najdik, West Ramsagar Tank Chandchaura, P.S- Vishnupat, District- Gaya, Bihar, Pin 823001.
3. Priyanka Kumari, D/o Chitaranjan Prasad, Resident of village Khajuri, P.O- Khajuri, P.S- Konch, District Gaya, Pin- 824207.
4. Deep Shikha Kumari, D/o Binay Kumar, Resident of village Supahali, P.S- Mashaurhi, District- Patna. Pin- 804452.
5. Nahid Praveen, D/o Md. Sahid, resident of Kinaru, Turki, P.S- Maniyari, District Muzaffarpur, Pin- 844127.
6. Kumari Amrita, D/o Shailendra Kumar Singh, resident of village - Parbhara, P.S- Tarapur, District Munger, Pin- 813321.
7. Somya Raj, D/o Sunil Kumar, Resident of Chandraniwas, House No.76, Bibi Ganj, Bhatta Road, Danapur Cant, P.S- Danapur, District Patna, Pin 801503.
8. Guddi Kumari, D/o Ram Nath Sharma, Resident of Mohammdabad Sarai, P.S Sarai, District Vaisali, Pin 844125.
9. Rekha Kumari, W/o Sudhir Kumar, Resident of Jahangirpur, Patedha, P.S- Sarai, District-Vaisali, Pin- 844125.
10. Rozy Kumari, D/o Mithilesh Mehta, Resident of mohalla-Madhubani, Ward No.10, Supaul, P.S- Balua Bazar, District- Saharsa, Pin 852125.
11. Sabitri Kumari, W/o Abhay Kumar, Resident of Balia, Post- Balia, P.S-



Guraru, District Gaya, Pin- 824118.

... .. Appellant/s

Versus

1. Archana Kumari W/o Ram Naresh Singh, Resident of Sahwajpur, Shahbazpur Salem, P.O-Muzaffarpur, P.S-Ahiyapur, District- Muzaffarpur, Pin 842004.
2. Pinki Kumari, D/o Suresh Choudhary, Resident of Alampur, P.O-Barh, P.S-Barh, District-Patna, Pin 803213.
3. Usha Kumari, W/o Shri Arun Mehta, Resident of Mohammadpur, Near Imam Medical, Mahendru, P.S- Sultanganj, P.O- Mahendru, District- Patna, Pin- 800006.
4. Veena Kumari, W/o Shri Sujit Kumar, Resident of C/o-Suresh Yadav, Jeet Lal Path, Back pf Cold Storage, Karbigahiya, P.O-G.P.O, District- Patna, Pin- 800001.
5. The State of Bihar, through the Additional Chief Secretary, Health Department, Bihar, Patna.
6. The Director, Directorate of Health Department, Bihar, Patna.
7. Bihar Technical Service Commission, Patna, through its Secretary.
8. Chairman, Bihar Technical Service Commission, Patna.
9. Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

with

Letters Patent Appeal No. 322 of 2024

In

Civil Writ Jurisdiction Case No.14755 of 2023

1. Rubi Kumari Wife of Anil Kumar Nishad, resident of village Kanahauli Bishundat, Mohan Sahni Tola, Police Station- Mithanpura, District- Muzaffarpur, Bihar Pin- 842002
2. Puja Kumari w/o Ritu Raj, resident of Akhtiyarpur Pateraa, ward no.01, P.S- Bhagwanpur, District Vaishali, Bihar, Pin-844125.
3. Monika Kumari D/o Achhelal Singh, resident of mohalla Laliyahi, P.s- Katihar, District-Katihar, Bihar, Pin-854105.
4. Rakhi Kumari D/o Upendra Paswan, resident of Village Mansahi, P.S- Mansahi, District- Katihar., Bihar, Pin-854103.
5. Ravina Kumari D/o Subhash Chandra Sharma, resident of village Orhora, P.o- Orhore, P.S- Rajaun, District Banka, Bihar, Pin- 813109.
6. Bebi Kumari D/o Lalan Prasad, resident of village Karnamepur, P.S- Karnamepur, District- Bhojpur, Bihar, Pin-802112.



7. Anjali Kumari W/o Subodh Kumar, resident of Village Kosla Tarpar,, P.O- Kosla, P.S- Nardiganj, District Nawada, Bihar, Pin-805109.
8. Dimple Kumari D/o Amrendra Prasad Singh, resident of Ganguli, P.O and P.S- Aurai, District Muzaffarpur.
9. Kiran Kumari D/o Shivnarayan Thakur, resident of village- Tilakpur, Post Tilakpur, P.S- Sultanganj,, District Bhagalpur, Bihar, Pin- 813228.

... .. Appellant/s

Versus

1. Archana Kumari W/o Ram Naresh Singh Resident of Sahwajpur, Shahbazpur Salem, P.O-Muzaffarpur, P.S-Ahiyapur, District- Muzaffarpur.
2. Pinki Kumari D/o Suresh Choudhary Resident of Alampur, P.O-Barh, P.S- Barh, District-Patna.
3. Usha Kumari W/o Shri Arun Mehta Resident of Mohammadpur, Near Imam Medical, Mahendru, P.S- Sultanganj, P.O- Mahendru, District- Patna, Pin- 800006.
4. Veena Kumari W/o Shri Sujit Kumar Resident of C/o-Suresh Yadav, Jeet Lal Path, Back of Cold Storage, Karbigahiya, P.O-G.P.O, District- Patna, 800001.
5. The State Of Bihar through the Additional Chief Secretary, Health Department, Bihar, Patna.
6. The Director, Directorate of Health Department, Bihar, Patna.
7. Bihar Technical Service Commission, Patna through its secretary.
8. Chairman, Bihar Technical Service Commission, Patna.
9. Secretary, Bihar Technical Service Commission, Patna.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 238 of 2024)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
For the Respondent/s : Mr.Abhinav Srivastava,adv
For the BTSC : Mr.Nikesh Kumar, Advocate

(In Letters Patent Appeal No. 241 of 2024)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
Mr. Ajay (GA-5)
For the Respondent/s : Mr.Shambhu Sharan Singh, Advocate
For the BTSC : Mr.Nikesh Kumar, Advocate

(In Letters Patent Appeal No. 242 of 2024)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
For the Respondent/s : Mr.Anil Kumar Sinha, Advocate
For the BTSC : Mr.Nikesh Kumar, Advocate



(In Letters Patent Appeal No. 243 of 2024)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
For the BTSC : Mr.Nikesh Kumar, Advocate

(In Letters Patent Appeal No. 244 of 2024)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
For the Respondent/s : Mr. Mrigank Mauli, Sr. Advocate
Mr. Sanket, Advocate
Mr.Navin Kumar Singh, Advocate
For the BTSC : Mr.Nikesh Kumar, Advocate

(In Letters Patent Appeal No. 246 of 2024)

For the Appellant/s : Mr. P.K. Shahi, Advocate General
Mr. Ajay (GA-5)
For the Respondents : Mr.Awadhesh Kumar Pandit, Advocate
Mr. Manish Kumar No. 13, Advocate
Mr. Rohit Kumar, Advocate
Mrs. Priti Kumari, Advocate
Mrs. Nitu Kumari, Advocate
For the BTSC : Mr.Nikesh Kumar, Advocate

(In Letters Patent Appeal No. 269 of 2024)

For the Appellant/s : Mr.Ashok Kumar Choudhary, Advocate
Ms. Sushmita Kumari, Advocate
For the State : Mr. P.K. Shahi, Advocate General
For the BTSC : Mr.Nikesh Kumar, Advocate

(In Letters Patent Appeal No. 322 of 2024)

For the Appellant/s : Mr. Ashok Kumar Chaudhary, Advocate
Ms. Sushmita Kumari, Advocate
For the State : Mr. P.K. Shahi, Advocate General
For the BTSC : Mr.Nikesh Kumar, Advocate
For the respondents : Mr. Manish Kumar No. 13, Advocate
Mr. Rohit Kumar, Advocate
Mrs. Priti Kumari, Advocate
Mrs. Nitu Kumari, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-04-2024

The above appeals arise from a common judgment
in a batch of writ petitions which challenged the second
advertisement issued for selection of Auxiliary Nurse-



Midwife (ANM); by changing the procedure of selection as prescribed in the Bihar Lady Health Worker (ANM) Cadre Rules, 2018 (the Rules of 2018, for brevity). The first advertisement was issued based on the Rules of 2018 and before the selection was concluded, the impugned advertisement was issued in consonance with the new Rules promulgated under Article 309 of the Constitution of India; termed the Bihar Lady Health Worker (ANM) Cadre Rules, 2023 (for short 'the Rules of 2023').

2. The procedure of selection was the only change made in the second advertisement; abandoning the marks awarded to the basic qualification of ANM, stipulating in its place a competitive test. All the other parameters with respect to essential qualification, age, relaxation in age, cut-off date for acquisition of qualification as also the marks provided for higher qualification and experience remained the same. The learned Single Judge interfered with the second advertisement and selection procedure on the ground that there is a 'change of rule midway' in the selection; based on various authorities.

3. The State is aggrieved with the interference



caused and has filed the appeals from the impugned judgment. Some of the persons, who applied under the second advertisement have also filed an appeal, since they had not applied under the earlier advertisement and if the second advertisement is set aside, they would lose their eligibility to participate in the selection process.

4. Learned Advocate General, Sri P.K. Shahi, who appeared for the State pointed out that there was absolutely no prejudice caused to the persons, who applied under the earlier advertisement. The first advertisement admittedly was issued under the Rules of 2018 and the procedure of recruitment contemplated 60 marks to be awarded for the ANM qualification, 15 marks for any higher qualification and 25 marks for working experience. While, the process of selection was ongoing, the new Rules came into force in the year 2023. The only change, insofar as the marks for ANM qualification being abandoned in favour of a competitive examination, was a policy decision of the Government stemming from past experience in recruitments, considering the marks obtained for the essential qualification. The Government realized that selection on the basis of marks



obtained in the qualifying exams does not enable an accurate assessment of the actual worth of a candidate. The candidate's eligibility for appointment has to be evaluated through a competitive test; which would ensure a fair assessment and evaluation of the suitability of the candidate who has acquired the essential qualification.

5. The State, as a general policy has amended all the recruitment rules to ensure skill/competitive test being made the basis of selection and appointment. Merely because a competitive test was introduced and there was a fresh advertisement made; wherein it was specifically stipulated that the earlier applicants will also be participated in the selection process and they need not apply again; there cannot be alleged any prejudice. The earlier applicants cannot have any grievance and the only prejudice, if at all can be alleged, is the enhancement of the number of applicants; who also have to satisfy the essential criteria as per the earlier notification, since the Rules of 2018 & that of 2023 are identical on that aspect.

6. The learned Advocate General urged that the employer has the plenary power to decide on the eligibility



and the manner in which a selection for appointment has to be proceeded with. Reliance was placed on *State of Uttar Pradesh v. Karunesh Kumar & Ors.*; 2022 SCC Online SC 1706 to assert the said power and draw a distinction from the decision in *K. Manjusree v. The State of A.P. & Anr.*; (2008) 3 SCC 512. *A.A. Calton v. Director of Education & Anr.*; (1983) 3 SCC 33 is relied on to contend that a rule can be amended retrospectively and in the present case, even that has not been attempted. A candidate, who applies under an advertisement gets no vested right to be appointed on the basis of a notification for selection. It is trite that even when a merit list is drawn up the State can decide not to proceed with it. *State of M.P. & Ors. v. Raghuveer Singh Yadav & Ors.*; (1994) 6 SCC 151 is relied on to contend that there can be no legitimate expectation when an accrued or vested right is absent. The State has decided to proceed as per the new rules which cannot result in any prejudice to the applicants who applied under the earlier rules since all parameters as per the earlier rules were retained.

7. Insofar as the online exams proposed, it is too



late in the day to assert lack of familiarity with computers. In any event there is no assessment of the computer literacy of a person; since what is required is only a mere acquaintance with the computers, to appear in the online exams. The advertisement indicates the curriculum to be that applicable to ANM and the mode of examination to be objective with multiple choice of answers. The only requirement is to use a computer in answering the objective type test which do not call for even computer skills as such. It is pointed out that even as per the earlier advertisement the applications were invited online and all the applicants including the writ petitioners had applied online. The applicants cannot now turn around and allege lack of computer literacy; which anyway is not required and it only requires basic knowledge of operation of computers which in the present digital age cannot at all be said to be non-existent.

8. Mr. Chittranjan Sinha, learned Senior Counsel appearing in one of the appeals for the candidates who applied under the second advertisement adopts the arguments of the Advocate General and contends that the



writ petitioners cannot approbate and reprobate. The computer test has already been conducted and all the petitioners had appeared in the same and have thus relinquished their right to challenge the second advertisement.

9. Learned Senior Counsel Sri Mrigank Mauli asserts that there is in fact a 'change in the rule midway' to the selection as has been declared in ***K. Manjusree (supra)***. ***Raghuveer Singh Yadav (supra)*** is referred to urge that the Hon'ble Supreme Court in that case recognized that though a candidate passing an examination would not acquire a vested right for selection, there arise a legitimate expectation. Therein, the amended rules were put in place, in which context it was held that the State is entitled to withdraw the earlier notification and issue a fresh notification on the basis of the amended rules. No such exercise was carried out in the present case. The new rules were relied on only to change the mode of selection but all the other parameters as per the Rules of 2018 were retained. Reference is also made to Rule 21 of the Rules of 2023, which has the nominal heading of 'Repeal and Savings'.



The Rules of 2018 though repealed, any action taken or anything done under the earlier rules were deemed to be taken or done as per the Rules of 2023. It is pointed out that the legislative exercise of providing for validation of only such actions which are not inconsistent with the newly amended Rules has not been incorporated. Reliance was placed on ***Bishambhar Nath Kohli & Ors. v. State of Uttar Pradesh & Ors.; AIR 1996 SC 573 & Manphul Singh Sharma v. Ahmedi Begum; (1994) 5 SCC 465*** to advance the proposition that even after the Rules of 2023 the appointments pursuant to the selections as carried out under the Rules of 2018 can be made.

10. The principle in ***K. Manjusree*** (supra) was referred for consideration to a Larger Bench which consideration has been made in ***Shivanandan C.T. & Ors. v. High Court of Kerela & Ors.; 2023 SCC OnLine SC 994*** wherein while refusing to differ from the earlier decision; the application of doctrine of legitimate expectation was dilated upon, which can be squarely imported into the present case. The broader question referred to the Constitution Bench was not answered on the



specific facts coming out in *Shivanandan C.T (supra)*. A later decision of the Hon'ble Supreme Court in *Sushil Kumar Pandey & Ors. v. High Court of Jharkhand & Anr.; 2024 SCC OnLine SC 117* again followed *K. Manjusree* (supra) and held the alteration of the selection criteria after the performance of the individual candidates; to be bad in law.

11. Shri. Shambhu Sharan Singh, learned counsel for some of the respondents specifically pointed out that the second advertisement has been challenged in the writ petitions from which the appeals arise. Specific reference is made to Annexure-P/7 produced in C.W.J.C. No. 17653 of 2023, wherein, the petitioners' marks were clearly stated and published. The writ petitioners are persons who have long service and who are not very familiar with computers. The State did not have the power to alter the terms and conditions of selection as published in the first advertisement based on the earlier rule; by reason only of a new rule having been introduced after the selection had concluded.

12. Shri. Abhinav Srivastava, learned counsel



appearing for another set of respondents adopted the earlier arguments and submitted that reference to certain dates is relevant. The Rules of 2018 were brought out on 16.11.2018, produced as Annexure-1 in C.W.J.C. No. 14755 of 2023. Rule 7 required the appointing authority to compute the vacancies as on 1st of April of every year. The age requirement as per the said Rules was 21 years as on the 1st of August of the concerned year. The vacancies as on the 1st April was to be computed by the department, as available in all the districts and requisition had to be sent to the Commission by 30th of April. The aforesaid rules required that a selection should be carried out every year. Admittedly, there were no selections carried out for long, which prompted the State to provide for 6 years relaxation applicable from 01.08.2015 to all the persons who were rendered over-aged, but qualified during the interregnum; of 01.08.2015 and the publication of the first advertisement.

13. The date of eligibility was prescribed as 01.09.2022 and the cutoff date for the age was also as on 01.08.2021; as is prescribed in the Rules of 2018, with the relaxation as afore-noticed. The first advertisement was



inextricably linked with the Rules of 2018 and the new Rules of 2023 is inconsequential. The vacancies sought to be filled up are those prior to the introduction of the new Rules. There is no retrospective operation of the new Rules nor is there power vested in the Government to make it retrospective. The petitioners who applied under the earlier advertisement have a legitimate expectation that the selection would be carried out as prescribed in the earlier Rules, in accordance with which the first advertisement was brought out.

14. It is pointed out from Annexure-4 series in the very same writ petition that the candidates were evaluated and the process had concluded. What remained was only counselling for which a venue was sought for by Annexure-8 dated 28.07.2023. A modification was made purportedly on a policy of the Government and the selection process as per the earlier advertisement was abandoned to introduce a competitive test. What remained was only a counselling which did not have any role in the selection as such; being confined to the verification of certificates. It is also pointed out from the Rules of 2023 that it is not prescribed as to the



manner or mode in which the competitive test has to be held. It is neither stated that it would be an objective or descriptive one, nor was the syllabus specified. There is no retrospectivity given to the Rules and the repeal & savings clause, as argued earlier specifically provided for validation of all actions taken under the earlier rules. The alleged policy decision taken by the Government is only disclosed from Annexure-6 letter issued by a Deputy Secretary of the Health Department. ***B.N. Nagarajan & Ors. v. State of Karnataka & Ors. AIR 1966 Supreme Court 1942*** is relied on to contend that when there is in existence a statute or statutory rule, the government cannot issue executive instructions. The decision is also an authority for the proposition that the amended rules will have only prospective application, unless there is power conferred to make it retrospective and it is expressly stated to be so.

15. ***P. Mahendran & Ors. v. State of Karnataka & Ors.; (1990) 1 SCC 411*** is relied on to advance the proposition that once a selection is initiated on the basis of the existing rule, the eligibility conditions and the procedure cannot be deviated from by reason only of a later rule



coming into force; which also is prospective. Answering the contention of the candidates who applied under the second advertisement, it is pointed out that the second advertisement was dated 19.09.2023 and the writ petitions were filed on 04.10.2023. The competitive test was held on three different dates 05th, 11th and 12th of January 2024. The mere participation in the competitive test would not disable the writ petitioners from pursuing the challenge already made to the second advertisement. The participation was by reason of an abundant caution, lest the challenge to the later advertisement fail before this Court, then they would at least be considered as per the new selection process introduced.

16. The learned Advocate General asserts in reply that the earlier selection is not complete. The Deputy Secretary is competent to issue communications regarding the policy of the Government as per the 'Rules of Business' and Annexure-6 specifically indicates the communication having been addressed; based on instructions. There was no selection list or merit list published and there was mere computation of marks. It was on 03.03.2023 that the



Commission came out with a notification regarding the counselling. In the said notification it has been specifically stated that the mere notice issued for counselling would not create a vested right on the applicants nor can the selection be considered to have concluded. The petitioners have no legal right as per the earlier rule, which is an essential requirement before a claim of legitimate expectation is raised as has been held in *State of Bihar & Anr. v. Sachindra Narayan & Ors.; (2019) 3 SCC 803*. The Government has brought out a new policy of having a competitive test for all selections only to curb inefficiency in administration and to ensure the best among the candidates being taken; which is a justifiable ground. The second advertisement clearly indicate the manner and mode of test as also the curriculum. The interference caused to the selection process by the impugned judgment has to be set aside and the appointment has to be proceeded with especially since the competitive test is over and the results are ready for publication. The learned A.G. also vehemently urged the expediency in making appointments to bolster the health care within the State.



17. There is some cleavage of opinion regarding the manner in which the selections for appointments are to be proceeded with; when there is a new rule introduced or the earlier rules are amended. Whether it should be under the earlier rules or the unamended rules itself. The divergence in opinion is also separated by a thin line of distinction; which demarcating line though thin and subtle, puts these opinions in clearly defined compartments resulting in no conflict as such.

18. In ***Raghuveer Singh Yadav*** (*supra*) a two Judge Bench of the Hon'ble Supreme Court considered the selection which reached upto the issuance of interview cards. A fresh selection was initiated based on the amendment to the rules brought in the meanwhile; changing the very qualification of eligibility. ***P. Mahendran*** (*supra*) a three Judge Bench of the Hon'ble Supreme Court was noticed but it was held to be not applicable in the facts of the present case. ***Raghuveer Singh Yadav*** (*supra*) observed that in ***P. Mahendran*** (*supra*) there were additional qualifications introduced by the new rules from the qualifications earlier prescribed which additional



qualifications prescribed had no retrospective effect to the recruitment already set in motion. It was held that only under these circumstances the additional qualifications were directed to be not taken into account for considering the claims of the candidates on the basis of the original advertisement. With all the respect at our command, we have to notice that in ***P. Mahendran*** (*supra*) the original rules prescribed a Diploma in Automobile Engineering or Mechanical Engineering as the minimum qualification based on which selections were proceeded with and the new rules omitted the Diploma from the prescribed qualification. In any event ***Raghuveer Singh Yadav*** (*supra*) upheld the new recruitment initiated by the State Government based on the new qualifications, despite the selection initiated under the earlier rules having reached the stage of issuance of interview cards, on the ground that the candidates did not have an accrued or vested right merely for reason of participating and passing in the written examination, but only had a legitimate expectation to be considered for selection. The amended rules though were prospective, it was held that in the absence of any vested right on the



candidates who appeared under the earlier notification, the State was entitled to withdraw the notification and issue a fresh notification.

19. On facts it has to be observed that ***Raghuveer Singh Yadav (supra)*** does not have any application to the present case since there was no withdrawal of the earlier advertisement and the selection was proceeded with on the very same terms as the earlier advertisement but only altering the mode of selection that too confined to the aspect of marks to be awarded under one among the three heads; putting in place a competitive examination as against the marks of the essential qualification.

20. ***K. Manjusree (supra)*** was a case in which the minimum qualifying marks for interview was prescribed after the interviews were over. It was categorically held by a Three Judge Bench that the Selection Committee, before the commencement of the selection process had prescribed minimum marks for written examination and not for interview; the selection being made on the basis of the aggregate marks obtained in the written test and the interview. On the proposition that the rules of the game



cannot be changed midway, it was held that during the selection process or after the selection process there cannot be added an additional requirement of the candidates being required to secure minimum marks in the interview.

21. ***K. Ramulu & Another v. S. Suryaprakash Rao and Others; (1997) 3 SCC 59*** was a case in which the panel for promotion for the year 1995-96 was not prepared and operated upon since the Government had taken a decision to amend the rules of 1977 and also taken a conscious decision not to fill up any vacancy till the amendment is brought about. A One Man Commission was appointed to examine the anomalies in the earlier rules and the Government framed new rules in the year-1996 after taking a conscious decision not to fill up any vacancy in the year 1995-96 till the new Rules are brought in. The Government was found to have the power not to prepare the panel and not consider for promotion to the existing vacancies pending amendment of the rules or recasting of the rules afresh. The respondents, in the context of no preparation of panel having been carried out was held to have acquired no vested right for being considered for



promotion in accordance with the repealed rules in view of the policy decision taken by the Government. The said decision is not applicable to the facts of the case since here the Government had not taken any decision to keep the selection pending for amending the rules.

22. Despite the existence of the Rules of 2018 which mandated selection every year, obviously there was no selection conducted in accordance with the Rules till the year 2022 when the first advertisement was published. Even prior to the Rules of 2018, from 2015 there were no regular appointments made as is evident from the first advertisement as also the second advertisement provided for relaxation in age for those persons who had qualified in the interregnum between 2015 and 2022. The persons who acquired the qualification in the interregnum between 2015 and 2022; but had become overaged, were given relaxation to participate in the selection process held after long years. It is also very relevant that during the years in which the selection was not conducted there were contractual appointments made and the regular appointments were not held up by reason of any decision taken to amend the rules.



In fact, in the year 2022 before the Rules of 2023 were brought out, selections were commenced and proceeded with under the Rules of 2018.

23. *A.A. Calton v. Director of Education (1983) 3*

SCC 33 reiterated the competence of the legislature to pass laws with retrospective effect subject only to the recognized constitutional limitations and repeated the caveat that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute expressly or impliedly makes it retrospective. Therein the process of selection commenced with the calling for applications based on the existing provisions and what remained was only the exercise of the power to make the appointments. The amending Act which was only prospective, did not take away the power of the appointing authority to make appointments, though such power was to be exercised subsequent to the coming into force of the amending Act. The proceedings had to be continued in accordance with the law as it stood at the commencement of such proceedings.

24. *Karunesh Kumar (supra)* on facts



distinguished the decision in ***K. Manjusree (supra)***. In the said decision the State was aggrieved with the fact that the High Court had directed consideration of candidates who were not part of the list forwarded by the Commission in the vacancies arising in which the selected candidates did not join. The relevant Rules applicable were of the year 1978, a government order of 1999 and Rules of 2015 brought under a statute of 2014. It was found that even under the 1978 Rules, there was no provision in existence enabling operation of a waiting list to fill up the vacancies at a later point of time merely for reason of non-joining of a selected candidate. The list provided under the Rules only facilitated filling up of vacancies and not appointment of candidates after the entire vacancies are filled up. The situation as arising in ***K. Manjusree (supra)*** never came into play on the facts and application of law as arising in the said decision.

25. In ***Sushil Kumar Pandey (supra)***, the High Court approved the decision of the Department Selection Committee in reducing the qualifying marks for Class-III posts after the publication of results, to facilitate the



inclusion of candidates constituting horizontal reservation. Relying also on *K.Manjushree (supra)* and the principle of ‘no midway change of the rule’ it was held that though a candidate in the selected list acquired no vested right to be appointed; no candidate could be excluded from appointment in violation of the statutory rule without finding him/her to be unsuitable. It was held that there could be no alteration of the selection process after the individual candidates were assessed.

26. *N.T Devin Katti Vs. Karnataka Public Service Commission* ;(1990) 3 SCC 157, declared that a candidate merely on making application pursuant to an advertisement does not acquire any vested right of selection, but has a right to be considered for selection in accordance with the rules as they existed on the date of advertisement; unless there is an amendment in the rules during the pendency of selection which amendment is also retrospective in nature.

27. *Tamilnadu Computer Science B.Ed Graduate Teachers Welfare Society Vs. Higher Secondary School Computer Teachers Association*; (2009) 14 SCC 517, was a case in which one-time exercise was initiated for absorption



of existing computer instructors. The criteria of a minimum qualifying marks of 50 per cent, was laid down which was reduced to 35 per cent after holding the examination, before the selection process was completed. It was found that the change in criteria towards the end of the game was arbitrary and unjustified. The decision to reduce the cut off marks after the selection was over, to accommodate otherwise ineligible candidates was held to be extraneous to the object sought to be achieved. The above decision was followed in ***Suresh Kumar Patel v. State of Gujarat 2023 SCC Online 167.***

28. ***Shivanandan C.T. (supra)***, considered again the question of provision of minimum marks for the interview when the scheme of examination as per relevant rules did not stipulate any cut off marks for the viva voce. The notification brought out also stipulated that the merit list would be prepared on the basis of the total marks obtained in the written examination and the viva voce. The statutory rule coupled with the scheme as coming out from the notification it was held generated expectation in the candidates that the merit list would be drawn up on the



basis of aggregate marks obtained in the written examination and viva voce. There was no expectation that there would be a minimum cut off marks prescribed for the viva voce; which was a legitimate expectation and also had the sanction of the statutory rules, scheme of the examination and the notification issued by the High Court. When the High Court lawfully committed itself to preparing such merit list, it could not have altered the selection process by providing for minimum cut off marks for the viva voce, was the declaration in the aforecited decision of a three Judge Bench. The Bench refused to consider the broader question referred to the Constitution Bench, being the doubt expressed on the principle laid down in ***K.Manjushree*** (*supra*); especially when the matter was pending before the Constitution Bench.

29. With the above propositions of law in mind we have to look at the facts coming out in the present case. The Rules of 2018 as was pointed out by the writ petitioners provided for computation of vacancies and selection on a yearly basis. It is not so specified, but the procedure of recruitment as coming out in Rule-7 requires the appointing



authority to calculate the vacancies on the basis of the position as on 1st of April so as to send requisition to the department after getting roster clearance. The department would also compile the vacancies of all the districts and send requisition to the Commission by 30th of April. The age stipulation was as on the 1st of August of the concerned year as per Rule-6. Admittedly, prior to the Rules of 2018; from 2015 onwards, and after the Rules came into force there was no regular selection conducted to make regular appointments to the post of ANM. Appointments were made on contract basis and it was in the year 2022 an advertisement was issued, calling for applications for regular appointment for the first time.

30. Annexure-2 produced in CWJC No. 14755 of 2023 is the first Advertisement bearing No. 7 of 2020 issued on 28.07.2022. The minimum age limit is 21 years as on 01.08.2021 as per the Rules of 2018 and the maximum age limit is 40 years for the open category and backward class and 42 years for Scheduled Castes and Scheduled Tribes. Relaxation is provided for candidates who fulfilled the eligibility criteria prescribed in the advertisement as on



01.09.2015 and could not apply for reason of no selection having been notified. The relaxation was of six years in the category wise maximum age limit. Here we have to also notice that the total vacancies that were to be filled up as per Annexure-2 advertisement are 10709; which cannot be those which fell vacant in the preceding year.

31. The process of selection has already been noticed in the arguments. Insofar as the work experience is concerned, it was specified that experience accrued on contract basis in the Government Hospitals of the Bihar State would be reckoned. The Government hence consciously gave a preferential weightage to those persons who were appointed on contract basis. In the period after 2015; when no regular appointments were made to the post of ANM, admittedly contractual appointments were made to the available vacancies; even when a valid rule to make regular appointments was in place. It is very pertinent that the work experience which had a preferential weightage was only for experience garnered in the Government Hospitals of the State of Bihar that too on contract basis.

32. The cut-off date for the eligibility certificates



was fixed as 01.09.2022 by the advertisement which was issued on 28.07.2022. As has been brought out from the records of the case and admitted by the State, the selection process was proceeded with, which commenced with the applications made online. The candidates also submitted the copies of their certificates alongwith the online application forms. The Commission has tabulated the marks as per Annexure-2 notification clearly under three heads; i.e. the marks obtained on (i) the basic qualification of ANM, (ii) higher qualification and (iii) work experience as contract employees in the Hospitals under the State of Bihar.

33. Learned Counsel have specifically referred to the tabulation of the individual petitioners which indicated that the selection process was almost over and what remained was only a counselling for verification of the certificates. It is not in dispute that there was nothing further to be done to assess the merit of the candidates and what remained was only the verification of the certificates, produced alongwith the application, based on which the individual candidates were assessed and evaluated.

34. As has been pointed out by the respondents by



Annexure-8, the Commission had sought for a venue to conduct the counselling. Annexure-8 was dated 28.07.2023, after Annexure-6 dated 12.06.2023 when the Commission was informed that the Rules of 2023 have been constituted and notified on 01.06.2023. It was requested that the recommendations be sent for appointment as ANM, only after conducting a competitive examination under the provision of the new Rules. Annexure-6 was issued by the Deputy Secretary of the Health Department. We will for the moment accept the contention of the learned Advocate General that a Deputy Secretary is competent to issue communications regarding the policy decision; but it has to be specifically noticed that the communication is not issued in the name of the Governor nor does it refer to any policy decision taken by the Government. It was also argued that the Government had taken a policy decision to conduct competitive tests for selection and appointment to the posts in government service, replacing the stipulation of selecting the candidates for appointment on the basis of the marks obtained in the essential qualification for appointment. Definitely there cannot be a retrospective application of the



policy nor is there any conscious decision placed on record, of the Government, which required the present selection to the post of ANM to be kept in abeyance and the same proceeded with under the new Rules. The policy decision as asserted in paragraph 11 of the counter affidavit dated 22.01.2024, in CWJC 14755 of 2023, of the Health Department, is the Rules of 2023; which cannot alter the mode of award of marks in a selection already commenced and proceeded with based on the earlier Rules of 2018. Annexure-6 is the understanding of the Health Department, as to the effect of the Rules of 2023 and not a policy decision taken by the Government.

35. As we noticed, while discussing the decisions placed before us, Annexure-2 advertisement issued in the year 2022 and the conditions laid down therein with respect to age relaxation is inextricably linked to the Rules of 2018 and the compelling circumstance of no regular appointments having been made to the post of ANM for a long period of 7 years, commencing from the year 2015. The advertisement which provided for work experience also based on the Rules of 2018, reckoned and sought to



mitigate the hardship of those persons appointed as contract employees and continued for long. Definitely this condition is not changed in the subsequent notifications issued by the State which is produced as Annexure-7 dated 19.09.2023 in CWJC No. 14755 of 2023.

36. We are of the opinion that the facts coming out from the present case is covered by the decisions of the Hon'ble Supreme Court in ***P. Mahendran, K. Manjusree, A.A. Calton, Sushil Kumar Pandey and Shivanandan C.T. (all supra)***.

37. ***Karunesh Kumar (supra)*** was with respect to the rules not providing for a waiting list for appointment to the vacancies in which the selected candidates did not join. ***Raghuveer Singh Yadav (supra)*** was a case in which despite the selection procedure having reached to the stage of issuance of interview cards, the rules were amended and the Government proposed to conduct a fresh selection having abandoned the earlier one by withdrawal of the notification already issued. ***K. Ramulu (supra)*** was also in the circumstance of the change in rule contemplated by the Government and the conscious decision having been taken



not to prepare a panel for promotion in the year in which the rules were framed.

38. Neither is the Rules of 2023 retrospective in its effect nor was there a conscious decision explicitly taken by the Government and placed on record, to keep in abeyance the selection or abandon it, awaiting the promulgation of the new rules. An advertisement was issued in the year 2022 and the selection, commenced with inviting of applications, was proceeded with. The Commission enjoined with the duty of carrying out the selections and making the recommendations for appointment had proceeded with the process and also evaluated the merit of the individual candidates by awarding them marks as would be discernible from the certificates produced alongwith the applications. What remained was only a counselling for the verification of certificates, for which a venue was sought.

39. The Rules of 2023 came into effect almost simultaneous to the evaluation conducted by the Commission as per the earlier Rules of 2018. The Rules of 2023 also by the repeal and saving clause provided for all actions taken or done as per the earlier Rules to be deemed



as having been taken validly under the new Rules. Significant is also the argument raised by the writ petitioners that there was nothing in the repeal and saving clause, providing any action under the earlier rules which was inconsistent with the new rules being rendered invalid. The Government hence in promulgating the new rules specifically wanted the earlier Rules to be continued at least insofar as the selection initiated and proceeded with. The new rule was intended to be prospective. By virtue of the repeal and savings clause in the new rules the selection initiated under the Rules of 2018 could be continued and finalized in accordance with Rules of 2018. Trite is the principle that when there is a statute or statutory rule or as in this case a rule framed under Article 309 of the Constitution of India the Government could not then take a decision on the very same issue under Article 162 of the Constitution of India. We hasten to add that in the present case no such decision was taken under Article 162 of the Constitution of India.

40. We also have to refer to a recent decision of a Division Bench judgment of this Court in ***Surjit Kumar Vs.***



the State of Bihar, reported in **2024 (2) BLJ 443** (authored by one of us). The Rules which came up for consideration in the said decision were of the year 2005, 2014 and 2019. The selection was initiated under the Rules of 2014 and the writ petitioners prayed for their participation in the selection, based on the essential minimum qualifications as required in the Rules of 2005. Intervenors sought for incorporation of the qualifications in the Rules of 2019. **P. Mahendran** (*supra*) was noticed and relied upon. Specific reliance was placed by the writ petitioners therein to the **State of Himachal Pradesh Vs. Raj Kumar; (2023) 3 SCC 773**, which overruled the decision in **Y.V. Rangaiah Vs. J. Sreenivasa Rao; AIR 1983 SC 852**.

41. In **Raj Kumar** (*supra*) what was under challenge before the Hon'ble Supreme Court was a direction of the High Court to consider the writ petitioners for promotion under the Rules that existed when the vacancies arose and not as per the subsequently amended rules following **Y.V. Rangaiah** (*supra*). It was held in **Raj Kumar** (*supra*) that the right to be considered for promotion occurs on the date of consideration of the eligible



candidates and it would be under the applicable rules in force, at the time of such consideration for promotion. The three Judge Bench in ***Raj Kumar (supra)*** reiterated the principle that there is no vested right to be considered for promotion in accordance with the repealed rules in view of the policy decision of the Government and there is no obligation on the Government to make appointments as per the old Rules in the event of restructuring of cadre, intended for efficient working of the unit. It was clarified, that in fresh appointments also the right is only for consideration and not for appointment as such.

42. ***Raj Kumar (supra)*** declared that even when the recruitment process has commenced, the State has the right to stop the recruitment process any time before the appointment takes place; on the ground of there being no vested right to get the process completed. However, it was asserted that even then the State had an obligation to justify its action on the touchstone of Article 14 of the Constitution of India, if it adopts such course.

43. It was held in ***Surjit Kumar (supra)*** that when the State had the power to abandon the recruitment and



initiate a fresh appointment; when it was not done and the already initiated procedure was continued, then the candidates could not ask for inclusion of qualifications as per the earlier rules or the subsequent rules; even if the subsequent rules came into effect before the appointments were made. **K. Ramulu** (*supra*) was noticed, wherein, the Government had taken a conscious decision not to make any appointment till the amendment of the Rules came into operation; which distinguishing feature we have already dealt with. We extract para 38 from **Surjit Kumar** (*supra*), hereinbelow: -

*“38. The clear distinction drawn in **Raj Kumar** (*supra*) is insofar as the Government, despite proceeding with a selection, having dropped it midway to carry out a fresh selection, in accordance with the rules brought in afresh or amending those that existed when the first selection had commenced. In the present case, the selection was commenced as per the Rules of 2014 and it was proceeded with despite an amendment to the Rules in 2019. The amended rules were not retrospective. The Government also did not commence a fresh selection after the amendment which amendment was only prospective. **Y. V. Rangaiah** (*supra*) which held every selection to be held in accordance with the rules that existed at the time of arising of vacancy was found to be wrongly decided. But, **P. Mahendran** (*supra*) a co-ordinate Bench decision was left untouched by **Raj Kumar** (*supra*). The declaration of law in **P. Mahendran** (*supra*) is that which is applicable herein.”*



44. As we noticed at the outset, there is a cleavage of opinion only based on the distinguishing facts. When there is retrospective operation given to a new or amended rule, then the filling up of vacancies are to be made based on the amended rules without reference to the date on which the vacancies arose; whether it be prior to or after the amendment or the new rule. Even when there is no retrospective operation given to the amended or new rules, if the Government consciously decides to abandon the earlier selection process; whatever be the stage at which the selection is, if it is prior to the appointment orders being issued, the State is competent to abandon the earlier selection and proceed for a new selection however there should be a conscious decision so to do.

45. In the present case, there is a new Rule brought in but without any retrospective effect given to it. The selection as per the earlier rule had commenced in the year 2022 and was proceeded with and was nearing completion. Even after the new Rule was brought in, the Commission had proceeded on the basis of the earlier advertisement, which was in accordance with the Rules of



2018. The new rules by the repeal and saving clause while repealing the Rules of 2018 deemed every action taken and done under the Rules of 2018 to be valid under the Rules of 2023; without reference to any inconsistencies existing in the two rules. The Rule of 2018 and Rule of 2023 had divergence only in the mode of selection; which inconsistency is inconsequential in so far as proceeding under the Rules of 2018 to make appointments, since even such inconsistent selection is saved under the new Rules of 2023.

46. At this juncture appropriate would be reference to *A.A. Calton (supra)* and paragraph 5 therefrom which is extracted hereunder: -

“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.”

47. The situation is identical here and despite the Rules of 2023 having come into effect, the proceedings commenced and continued for selection of ANM as per the



Rules of 2018 have to be taken to its logical conclusion. The selection and mode of marks have to be as prescribed under the Rules of 2018; which for the restricted purpose of the instant selection commenced prior to the Rules of 2023, stands validated by the saving clause in the Rules of 2023 despite the Rules of 2018 having been repealed by the very same clause.

48. The marks for the qualifying examination were done away with and in its place a competitive test was to be held. The Deputy Secretary by a communication addressed to the Commission requested recommendations to be made after conducting a competitive test in accordance with the Rules of 2023. This would go against the specific rule framed in the year 2023 under Article 309 of the Constitution of India. The repeal and saving clause of Rules of 2023 validated every action taken under the earlier rule. On the above reasoning, we have to hold that the second advertisement brought in, calling for fresh applications, without any change in eligibility or age criteria but resulting only in the mode of selection being altered; definitely is a 'change of rule midway' to the selection



which prejudices the candidates who applied under the earlier advertisement. They had a reasonable legitimate expectation to be assessed and evaluated for selection and appointment as per the Rules of 2018 and the scheme of selection as coming out from the Rules of 2018 and the advertisement of 2022.

49. We hence, uphold the judgment of the learned Single Judge setting aside the further advertisement, brought out impugned in the writ petitions. We also hold that the applicants under the second advertisement are not entitled to be considered for the selection.

50. If the selection was given up in its entirety and the persons who qualified later to the first advertisement had also been made eligible; then the position probably would have been different. We are not called upon to decide such hypothetical situation.

51. What we discern from the new Rules of 2023 is that, what was intended was that the earlier selection would be carried out as per the Rules of 2018 and the Rules of 2023 would apply prospectively. There is no challenge against the Rules of 2023 which would have prospective



application. The advertisement issued in the year 2022 has to be proceeded and the selection conducted based on the Rules of 2018. There is no rationale in inviting further applications from the persons who could have applied under the first advertisement, by reason only of a change in the process of selection. The attempt of the State only is to resist a contention taken of ‘change in the rule midway’.

52. The present modification made is definitely a ‘change in the rule midway’ since the criteria for application has not at all been changed and only the mode of selection has been changed. The writ appeals of the State and those who applied under the second notification are dismissed. We perfectly understand the expediency as raised by the learned Advocate General for regular appointments to be made in the existing vacancies which also would augment the health care within the State. Whether it be under the first advertisement or the fresh advertisement the selection is at the threshold of issuance of a merit list and appointments being made from that. The State would be obliged to finalize the selections as per the earlier advertisement of the year 2022 and make appointments.



53. We order, accordingly.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

(Harish Kumar, J)

ranjan/-

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