

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1386 of 2021**

- 
1. Amit Kumar Ajad, Son of Sri Shiv Shankar Yadav Resident of Mohalla-Laxmipuri, Ward No.14, P.S. and Town and District- Madhepura.
  2. Ritesh Kumar, Son of Jagan Prasad Yadav Resident of Village- Godhailya, P.S.- Madhepura, District- Madhepura.
  3. Kumar Suryamani, S/o Arvind Singh Resident of Village and P.O.- Apasrah, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
3. The Special Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
4. The Director of Land Records and Survey, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.

... .. Respondent/s

---

**Appearance :**

|                      |   |                                                                   |
|----------------------|---|-------------------------------------------------------------------|
| For the Petitioner/s | : | Ms. Nivedita Nirvikar, Sr. Advocate<br>Ms. Shashi Priya, Advocate |
| For the Respondent/s | : | Mr. Lalit Kishore (AG)                                            |

---

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL JUDGMENT**

**Date: 20-07-2024**

1. The petitioners submitted their candidature in pursuance of Advertisement No. 3 of 2019, dated 4<sup>th</sup> of March, 2019 for the post of Special Survey Assistant Settlement Officer. It is to be recorded at the outset that by virtue of a notification dated 27<sup>th</sup> of February, 2019 issued by the Department of Revenue and Land Reforms, Government of Bihar, the Bihar Special Survey honorarium based Contractual employment Rules, 2019 was promulgated. This Court already found vide an



order dated 8<sup>th</sup> of May, 2024 that though the above-mentioned notification was for contractual appointment of Special Survey Assistant Settlement Officer and Others on contractual basis, the notification was issued in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. Therefore, it is made clear that any person employed to the post of Special Survey Assistant Settlement Officer shall get protection of Article 311 of the Constitution of India, in spite of the fact that State-Respondent decided to appoint the above-named Officers on contractual basis.

2. The Advertisement notification, *inter alia*, states in Clause 6:-

Minimum Educational qualifications and weightage in Employment:- Description of minimum Educational qualifications and weightage of the posts mentioned above rule 3 shall be as below:-

| Sr. | Name of posts                               | Minimum Educational abilities and qualifications                                                                                                            | In percentage, Maximum weightage in Contractual Employment                                               | Remarks                                                                        |
|-----|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| 1   | 2                                           | 3                                                                                                                                                           | 4                                                                                                        | 5                                                                              |
| 1.  | Special Survey Assistant Settlement Officer | Bachelor Degree in Civil Engineering + Minimum 2 Years working Experience (2 Years working Experience in Government/recognized Non-Government Organization) | 1.Matriculation -10<br>2. Intermediate -15<br>3.Graduation-50<br>4.Post Graduation-05<br>5.Experience-20 | 1. 5 marks shall be given for every year works Experience and maximum 20 marks |
| 2.  | Special Survey kanoongo                     | Diploma in Civil Engineering +                                                                                                                              | 1.Matriculation-10<br>2.Diploma-70                                                                       |                                                                                |



|    |                      |                                                                                                                      |                                                                                       |            |
|----|----------------------|----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|------------|
|    |                      | Minimum 2 Years working Experience (2 Years working Experience in Government/recognized Non-Government Organization) | 3.Experience-20                                                                       | admissible |
| 3. | Special Survey Amin  | Diploma in Civil Engineering                                                                                         | 1.Matriculation-10<br>2.Diploma-90                                                    |            |
| 4. | Amin                 | Amanat Degree from Government recognized institutions or I.T.I (Suveyor) training pass.                              | 1.Matriculation-10<br>2.Diploma/I.T.I.-90                                             |            |
| 5. | Special Survey Clerk | Graduate                                                                                                             | 1.Matriculation -10<br>2. Intermediate -15<br>3.Graduation-70<br>4.Post Graduation-05 |            |
| 6. | Executive Assistant  | As fixed by the District                                                                                             |                                                                                       |            |
| 7. | Date Entry Operator  | As fixed by the Belrton                                                                                              |                                                                                       |            |
| 8. | I.T. Boy             | As fixed by the Belrton                                                                                              |                                                                                       |            |

3. We are concerned about the procedure of appointment of Special Survey Assistant Settlement Officer whose minimum educational qualification, maximum weightage in contractual employment and weightage for work experience are delineated in Serial No. 1 of Clause 6 of the advertisement notice.

4. It is admitted by the learned Advocate for the State-Respondents that the minimum educational qualification and weightage in employment as described in Rule 6 has already been stated in the statutory rules.

5. Thus, it is admitted on behalf of the State-Respondents that the advertisement was published on the basis of the statutory rules and there was no deviation in the



advertisement notification.

6. In clause 3, it is stated that the selection would be valid till 30<sup>th</sup> of March, 2020 and if required, it may be extended further.

7. The same qualification and calculation of weightage was published in Press Notification No. 3/2019, dated 4<sup>th</sup> of March, 2019, especially in Clause 7 (Selection Process).

8. That on 25<sup>th</sup> of May 2019, another notice was issued *vide* a Notification No. 801, dated 25<sup>th</sup> of May, 2019, in continuation of the original advertisement letter and the candidates were informed about the guidelines to be applicable for the counselling and recruitment process.

9. In the said notification, it is stated under the Heading “B” **Educational Qualification** .....

*“4. If the applicant has mentioned in their online application form that he / she has passed out from Government Engineering / Polytechnic (as applicable for the position) Colleges of Bihar whereas during counselling same could not be established by the documents produced by the applicant, this would amount to misrepresentation of the facts and candidature of the applicant will be rejected.”*

10. The above-mentioned notice also states the



requirement of Work-Experience in Clause C. The same is quoted below:-

*“1. For the positions of Assistant Special Survey Settlement Officer and Special Survey Kanungo, only post qualification work-experience will be considered for calculation of points.*

*2. For the positions of Assistant Special Survey Settlement Officer and Special Survey Kanungo, the applicant must mandatorily bring relevant original documents related to their relevant experience at the time of counseling as filled in the application form to establish duration of experience. If the applicant fails to produce such original documents at the time of counselling to establish the minimum requisite experience, candidature of the applicant will be rejected.”*

11. Thus, it is clear that for the position of Special Survey Assistant Settlement Officer, only post qualification work experience will be considered for qualification of points, meaning thereby, that candidates having work experience would be preferred than the candidates having academic qualification only.

12. In Clause C(2), the applicants were mandatorily directed to bring relevant original documents relating to their



relevant experience at the time of counselling as filled in the application form to establish duration of experience. If the applicant fails to produce such original documents, at the time of counseling to establish the minimum requisite experience, candidature of the applicant will be rejected.

13. Again, it is stated in Clause 6 of the said notification that in case of non-production of original documents related to experience of the applicant (over and above minimum required experience), such experience will not be considered for calculation of points.

14. Clause D refers to the requirement with regard to documentation at the time of counseling, which states as follows:-

**“D. Documentation Required at the time of counseling**

*“1. All applicants must ensure that they produce all relevant documents in original (including but not limited to essential educational qualification, essential professional experience and all other qualification and experience for which points have been awarded, as applicable for the position) related to all details filled in their application form, at the time of counseling.*

*2. It must be noted that Counseling will be the*



*final opportunity to produce and submit documents and no further opportunity would be provided. If the claims made by the applicants in their application form are not supported by original documents at the time of counseling, their candidature will be rejected.”*

15. It is contended on behalf of the petitioners that over and above the marks obtained in the examination, the appointment authority decided to give weightage of 5 marks/points for each years’ work experience upto marks 20 points.

16. By another notification, dated 21<sup>st</sup> of November, 2019, issued by the Department of Revenue and Land Reforms, the candidates were directed to upload the following documents in the official website of the department:-

- (i) Appointment letter issued by the organization;
- (ii) Salary Slip;
- (iii) Bank Statement of Salary Account;
- (iv) Form 16 issued by Employer;
- (v) PF UAN No. and Statement; and
- (vi) ESIC Membership No.

17. It was further stipulated in paragraph 2 and 3 that the above-mentioned documents were to be uploaded



between 23<sup>rd</sup> of November, 2019 and 30<sup>th</sup> of November, 2019.

The said notification further states that if any candidate fails to upload the documents, as stated above, his candidature would not be considered. The notification further states that their candidature would be withheld and authenticity of work experience would be treated separately.

18. Thereafter, on 21<sup>st</sup> of January, 2020, another notification was issued by the concerned department in modification of previous notices with regard to requirement of uploading of documents on the official website and the candidates were directed to file even one document out of the aforesaid six documents and in such case their candidature would be accepted. Thereafter, the department published final result. The names of the petitioners did not appear in the final result.

19. On the petitioners' finding that the requisite marks/points for work experience was not properly awarded to them. They filed representations before the concerned authority.

20. As the representations were not considered by the department, the petitioners were compelled to file a writ petition before this Court which was registered as ***C.W.J.C. No. 7005 of 2020 (Amit Kumar Ajad & Ors. v. The State of Bihar***



**& Ors.).**

21. A Co-ordinate Bench of this Court vide an order dated 3<sup>rd</sup> of July, 2020, disposed of the said writ petition with the following order:-

*“Considering the fact that the representations are pending before the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna (respondent no.1) since 23.01.2020, the writ petition is disposed of with a direction to the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna to appropriately decide the representations and dispose of the same by a speaking order at the earliest preferably within a period of fifteen days from the date of receipt/production of a copy of this order. In the event position of the petitioners improves on account of revision of marks, the petitioners should be granted appropriate consequential reliefs.”*

22. The Additional Chief Secretary of the Land Reform and Land Revenue Department, Bihar disposed of the representations filed by the petitioners by an order dated 18<sup>th</sup> of August, 2020. In paragraph 3 of the order, it is clearly admitted by the Additional Chief Secretary, Land and Land Revenue Department that one candidate, namely, Mayank Kumar did not



produce any document with regard to work experience. One Manish Kumar submitted three documents out of the said six documents. One Ranjeet Kumar Chaudhary and Ms. Siya Verma also did not produce any document at the time of counselling. However, the above-named candidates were selected. The Additional Chief Secretary, Land and Land Revenue Department had to support the notification dated 21<sup>st</sup> of January, 2020 and opined that the candidates who even filed one document were selected.

23. The petitioners, being aggrieved against the purported reasoned order, have approached this Court by filing the instant writ petition for the following reliefs:-

*“A. For quashing the order dated 18-08-2020 contained in Memo No. 19 (annexure-11) passed by the Additional Chief Secretary, Revenue and Land Reforms Department, Govt. of Bihar (respondent no. 1), the aforesaid order of respondent authority is contrary to the term and condition given under Advertisement No. 3 of 2019 dated 04-03-2019 (annexure-2), Notification No. 801 dated 25-05-2019 (annexure-4) and Memo No. 115 dated 21-11-2019 (annexure-6) which contains basic rule and guideline for selection & appointment for the post of 'Special Survey Assistant Settlement Officer.*



*B. For quashing and setting aside the Notice dated 21-01- 2020 (annexure-7) issued by the respondent no. 4 which is inconsistent and contrary to the Notification No. 801 dated 25-05-2019 (annexure-4) and Notice contained in Memo No. 115 dated 21-11-2019 (annexure-6).*

*C. For quashing and setting aside the Provisional Selection List of Special Survey Assistant Settlement Officer' dated 03-03-2020 (annexure-8) including BC & EWS Category candidates published by the respondent authority, the aforesaid selection list is discriminatory and contrary to the term & condition given under clause-7 of Advertisement No. 3 of 2019 dated 04-03-2019 and further said selection list is also in teeth of Notification No. 801 dated 25-05-2019 (annexure-4) and Notice contained in Memo No. 115 dated 21-11-2019 (annexure-6).*

*D. For direction to consider the candidature of petitioners for selection & appointment of for the post of "Special Survey Assistant Settlement Officer', by removing discrimination in award of providing weightage of point on the basis of work experience in terms & condition of the Notification No. 801 dated 25-05-2019 (annexure-4) and Notice contained in Memo No. 115 dated 21-11-2019 (annexure-6) and further prayer to consider the name of*



*petitioners for selection & appointment on remaining vacant post of 'Special Survey Assistant Settlement Officer.*

*E. And for any other reliefs/reliefs for which the petitioner is found to be entitled under the provision of law involved in the present case.”*

24. It is submitted by the learned Senior Counsel on appearing on behalf of the petitioners that the appointing authority cannot change the rule of procedure of appointment when the process has already been started. It is further submitted by the learned Senior Counsel on behalf of the petitioners that the requirements of production of documents was found to be necessary because the appointing authority held that for each years of experience, the candidates would get 5 marks/points. Maximum weightage was held to be awarded upto 20 marks/points, i.e., 4 years' experience. The documents which were directed to be submitted, were for considering the work experience of the candidates. Therefore, if a candidate was having 1 year's experience he / she would get 5 marks/points. On the contrary, if a candidate has 4 or more than 4 years' experience he would get 20 marks/points.

25. The authority was of the opinion that 6 documents as stated in the notification dated 21<sup>st</sup> of November, 2019 were deemed to be necessary for calculation of weightage.



Subsequently, the same weightage cannot be given to a candidate who filed one or two documents in violation of the notification dated 21<sup>st</sup> of November, 2019. The appointing authority also cannot change the rule of the game when the process has started and is in operation.

26. In support of her argument, the learned Senior Counsel refers to the decision of the Hon'ble Supreme Court in the case of ***N.T. Devin Katti & Ors. v. Karnataka Public Service Commission & Ors.*** reported in ***(1990) 3 SCC 157***. Paragraph 11 of the said judgment is relevant for our purpose and quoted below:-

*“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the*



*advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the*



*relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.”*

27. The learned Senior Counsel on behalf of the petitioners next refers to the case of ***Tamil Nadu. Computer Science BED. Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association and Ors.*** reported in ***(2009) 14 SCC 517.***

28. In the said decision after introduction of process of selection, the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after holding of the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game, the Hon’ble Supreme Court nullified the Government’s decision holding, *inter alia*, that the subsequent decision of the Government of reduction of the minimum percentage of marks/points was not justified. The Hon’ble Supreme Court held the decision of the Government as arbitrary and unjustified,



following the decision of the Hon'ble Supreme in ***Hemani Malhotra v. High Court of Delhi*** reported in (2008) 7 SCC 11.

29. The State-Respondents No. 4 has filed a counter affidavit wherein the issues raised on behalf of the petitioners were not specifically denied. It is contended by the State-Respondent No. 4 that the reasoned order was justified and there was no arbitrary decision of weightage marks/points on work experience. It is the specific case of the respondents that the petitioners secured less merit points in their respective categories and the appointing authority decided to appoint more meritorious candidates than petitioners. Therefore, there was no deduction in respect of 20 weightage marks/points and the said marks/points were awarded to all the candidates.

30. Learned Advocate for the State-Respondents refers to Annexures - 1, 4 and 6 to apprise this Court that there was no illegality in the selection process. Moreover, it is submitted by the learned Advocate on behalf of the respondents that selection process have already been concluded and at present new advertisement has been published for selection of Special Survey Assistant Settlement Officer for the year 2023 and at this stage, the case of the petitioners cannot be considered.



31. It is also contended by the learned Advocate for the petitioners that in the absence of suitable guidelines in the rules as well as advertisement notification, the appointing authority failed to appreciate as to how marks/points are to be given to the candidates on work experience and therefore the candidates who submitted at least one documents were awarded 20 marks/points.

32. The learned Senior Counsel on behalf of the petitioners has submitted a list of 120 candidates with experience detail.

33. It is submitted by the learned Advocate on behalf of the State-Respondents that the name of Mayank Kumar is in Serial No. 14 of the list and he submitted previous appointment letter. Name of Ranjeet Kumar Chaudhary is at Serial No. 20 and he also submitted the previous appointment letter. Name of Ms. Siya Verma is appearing in Serial No. 89 and she submitted her previous appointment letter and salary statement. It is also contended that Manish Kumar submitted three documents during first counselling. Therefore, it is wrong to say that the selected candidates did not file any document.

34. I am constrained to note that the list submitted by the learned Advocate on behalf of the respondents has not



been annexed with his counter affidavit. The petitioners did not get any opportunity to look into those documents.

35. Moreover, it is found from the aforesaid document that four persons put their initial below the said documents. However, I do not find any designation of the said persons in the documents. It is not clear for this Court that these documents were contemporaneously created at the time of selection process or not.

36. On the contrary, paragraph 3 of the reasoned order which I have already quoted hereinabove has dealt with the issue differently.

37. There is no ambiguity in the advertisement notice and subsequent notices that 5 marks/points will be awarded for each years' work experience. Therefore, selected candidates cannot be awarded 20 marks/points without considering the fact as to whether the candidates had four years' work experience or not. The documents which were asked to be uploaded by the candidates was to verify their work experience. The Selection Committee/Counselling Committee did not consider work experience of each of the candidate individually. If the impugned result is to be considered then this Court is required to hold that all the candidates had 4 years' experience.



It is not that 20 marks/points will be awarded only when the candidates would file 6 documents as stated in the notification. The documents were required to come to a finding as to the years of experience each candidate had before their recruitment to the post Special Survey Assistant Settlement Officer under Land and Land Revenue Department. The said exercise has not been done by the appointing authority.

38. This Court is not concerned about the issue as to whether a candidate filed 6 documents or 1 document. This Court is concerned about the previous work experience and on the basis of such work experience, the candidates ought to be awarded 5 marks/points for each years of work experience. If such exercise were taken out, there would have been topsy-turvy in the merit list.

39. This Court is aware that compliance of any notification is not always required and scrutinized scrupulously to see as to whether the requirement of “cutting ts and dotting is” have been done. This Court is concerned as to whether the candidates received weightage as per their previous work experience since the result published by the department and the reasoned order (Annexure-11) did not speak about the work experience. Those are quashed and set aside.



40. Before I part with, I am tempted to record the observation of the Hon'ble Supreme Court in *Aureliano Fernandes v. State of Goa & Ors.*, reported in (2024) 1 SCC 632. It is held by the Hon'ble Supreme Court that the principles of natural justice that are reflected in Article 311, are not an empty incantation. They form the very bedrock of Article 14 and any violation of these principles tantamount to a violation of Article 14 of the Constitution. Denial of the principles of natural justice to a public servant in depriving public servant equal protection of law and can invalidate a decision taken on the ground that it is hit by the vice of arbitrariness.

41. Article 14 is "Constitutional Guardian" of the principles of natural justice, expressly forbids the State, as defined in Article 12, from denying to any person, equality before the law or equal protection of the laws. Article 13(3)(a) defines "law" to include any ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India, the force of law. Thus, principles of natural justice guaranteed under Article 14 prohibit a decision-making adjudicatory authority from taking any arbitrary action, substantive or procedural in nature.

42. However, rules of principles of natural justice



are neither statutory nor rigid, but are flexible and can be adapted and modified by statutes, depending on exigencies of different situations, facts and circumstances of case and framework of law. Ordinarily, Courts interpret statutory provisions in sync with principles of natural justice.

43. The Government employees work under the doctrine of pleasure. The doctrine of pleasure makes tenure of government servants subject to pleasure of the President or the Governor of a State, except as expressly provided for by Constitution. All members of such services who receive their stipend from the public exchequer are finally answerable to the public and expected to discharge their duties responsibly, efficiently, effectively and for the higher good of the public. Thus, though origin of government servants may be contractual, but once appointed to the post or office, they acquire a status and their rights and obligations are no longer determined by the consent of both the parties, but are governed by the Statute or Statutory Rules.

44. Therefore, this Court ends the judgment considering the above-mentioned observation of the Hon'ble Supreme Court in a very recent decision as well as the introductory paragraph where this Court held that even if the



petitioners were to be appointed contractually, there case is amenable to writ jurisdiction.

45. On this count also, I find the writ petition maintainable.

46. In view of the above discussions, the reasoned order passed by the Additional Chief Secretary, Land and Land Revenue Department, Government of Bihar, Patna, dated 18<sup>th</sup> of August, 2020 is liable to be quashed.

47. The learned Senior Counsel on the behalf of the petitioners has vehemently urged that the petitioners are entitled to be appointed to the post only on the ground that they have uploaded 6 documents which were sought for vide notification dated 21<sup>st</sup> of November, 2019. The candidates who did not upload the said 6 number of documents, their candidature ought not to have been considered as per the notification, dated 21<sup>st</sup> of November, 2019.

48. Therefore, at this stage, it is under consideration of this Court as to whether the requirement of notification, dated 21<sup>st</sup> of November, 2019 would be changed by subsequent notification, dated 21<sup>st</sup> of January, 2020. If the notification dated 21<sup>st</sup> of January, 2020 is considered to be a game changing rule, the said notification cannot be made effective for final selection



of the candidates because during the pendency of selection process, rule of the game/selection process cannot be changed.

49. It is contended, on the other hand, by the learned counsel for the State-Respondents that the requirement of uploading those documents was found to be essential in order to consider work experience of the candidates and it was directed in the advertisement for selection to the post of Special Survey Assistant Settlement Officer that for each year of past experience, they are entitled to get 5 marks/points, subject to maximum 20 marks/points. When it was found that most of the candidates failed to upload the documents sought for, it was decided by the respondents that filing of at least one document would be held to be sufficient and all the candidates were allotted 20 marks/points. Therefore, there was no discrimination between the selected candidates. As the petitioners got marks lower than the last appointed candidate, there was no scope for any consideration.

50. At the risk of repetition, it is pertinent to mention that the advertisement for the post of Special Survey Assistant Settlement Officer and subsequent notifications issued by the department for selection stipulate that each candidate would get 5 marks/points for each year of past experience



subject to maximum 20 marks/points. The plain reading of the said notification reveals that if a candidate is having one year's past experience, he/she will get 5 marks/points and the candidates having 2, 3 or 4 years past experience will get 10, 15, 20 marks/points and the said marks/points would be added with their marks obtained in selection test. Thereafter, final merit list would be published.

51. Under such backdrop, decision taken by the respondents to allot 20 marks/points to each and every candidate without considering their past work experience is absolutely unjust and arbitrary because of the fact that a candidate having less than 4 years' experience cannot get 20 marks/points for work experience.

52. At the same time, I am not inclined to accept the submission made by the learned Senior Counsel on behalf of the petitioners that they are entitled to be selected because of the fact that the petitioners submitted all 6 documents which were asked to be uploaded. The purpose of submission of documents as called for, was not for numerical consideration of the documents, but for ascertaining the fact as to whether the candidates are entitled to get marks/points as their past experience for each year.



53. I am in agreement with the learned Senior Counsel for the petitioners that the decision of the respondents to allot 20 marks/points to all the selected candidates were unjust and unfair because the respondents failed to produce any document to show that the past experience of the selected candidates were actually considered and according to their past experience, they were allotted marks/points.

54. In my considered opinion, subsequent decision taken by the respondents to allot 20 marks/points to all the candidates is a classical example of changing the rule of the game. However, this Court is not in a position to accept the contention of the learned Senior Counsel for the petitioners that the subsequent direction of submission of at least one document had changed the rule of game. At the end of the assessment, fairness on the part of the selection process would be considered as to whether the candidates were given due weightage for their past experience or not.

55. It is submitted by the learned Advocate for the respondents that entire recruitment process on the basis of Advertisement No. 3 of 2019 has been concluded and the said cannot be reopened now.

56. The Constitutional Court has always the power



and the authority to examine any selection process to come to a finding as to whether principles of natural justice was adhered to or not. In course of the discussion made hereinabove, this Court has already held that the rule of game was changed during the process of selection when the respondents authority decided to grant 20 marks/points to all the candidates without considering their work experience. Said decision was not just and fair on the teeth of *N.T. Devin Katti (supra)*, *Tamil Nadu. Computer Science BED. Graduate Teachers Welfare Society (1) (supra)* and *Hemani Malhotra (supra)*.

57. Having due regard to the facts and circumstances and in view of what has been stated above, the Respondent No. 3 is directed to reconsider the final select list prepared for the post of Special Survey Assistant Settlement Officer and recast the aggregate on the basis of marks obtained by a candidate in the selection test and marks/points obtained by each candidate as per past work experience and then come to a finding as to whether the petitioners are entitled to be selected on the post of Special Survey Assistant Settlement Officer. If the petitioners are found to be eligible for selection and posting after reconsideration of their aggregate marks/points and they are entitled to get for each year's work experience, they would



be appointed for the post of Special Survey Assistant Settlement Officer from the future vacancy without disturbing the selection of the candidates who have already been appointed.

58. Such exercise shall be undertaken within 60 days from the date of communication/receipt of a copy of this order.

59. The instant writ petition is, accordingly, disposed of on contest.

60. However, there shall be no order as to costs.

**(Bibek Chaudhuri, J)**

uttam/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N/A        |
| Uploading Date    | 20.07.2024 |
| Transmission Date |            |

