

Hari Sharma and Ors Vs. Education

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Court : Jharkhand

Decided On : May-11-2017

Appellant : Hari Sharma and Ors

Respondent : Education

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No.1130 of 2017

1. Hari Sharma, Son of Sri Tejnarayan Sharma, Resident of Kalikapur, P.S. Pakur, P.S. Pakur, District Pakur

2. Shivanarayan Dinkar, Son of Sri Kishun Panika, Resident of Village + P.O. Dol, P.S. Chiniya, District Garhwa

3. Dileep Kumar, Son of Sri Loknath Mahto, Resident of Village Bedal, P.O. Masmano, P.S. Bhandra, District Lohardaga

4. Md. Parwej Alam, Son of Md. Neyamtullah, Resident of Tetrain, P.O. Tetrain, P.S. Panki, District Palamu

5. Gunjan Kumari, wife of Sri Vishal Kumar, Resident of 286, New A.G. Cooperative Colony, Kadru, P.O. Doranda, P.S. Argora, District Ranchi

6. Amarnath Dubey, Son of Sri Subodh Kumar Dubey, Resident of Rajapara, P.O. Pakur, P.S. Pakur, District Pakur

7. Md. Asilbul Rahman, Son of Md. Hasen Rahman, Resident of Village + P.O. Sita Pahari, P.S. Malpahari (O.P.), District Pakur
8. Meenu Tudu, Daughter of Sri Motilal Tudu, Resident of Katlibari, P.O. Hariari, P.S. Poraiyahat, District Godda
9. Md. Hakim Ansari, Son of Md. Siyab Ansari, Resident of Village Bhucham, P.O. Barmasia, P.S. Shikaripara, District Dumka
10. Kundan Thakur, Son of Sri Nageshwar Thakur, Resident of Shiv Pahar Chowk, P.O. Shivpahar, P.S. Dumka, District Dumka
11. Anamika Kumari, Wife of Sri Manish Kumar Pandey, Resident of Village Hatpara, P.O. & P.S. Pakur, District Pakur
12. Uttam Kumar Bhagat, Son of Yamuna Prasad Bhagat, Resident of Village + P.O. Mohanpur Library, P.S. Hiranpur, District Pakur
13. Sushant Kumar Dubey, Son of Sri Hargovind Dubey, Resident of At Rajapara P.O. + P.S. + District Pakur
14. Nishant Kumar, Son of Sri Nawal Kishor Ojha, Resident of At Rajapara, P.O. + P.S. + District Pakur. ... Petitioners Versus

1. State of Jharkhand

2. Principal Secretary, School Education and Literacy Department, Govt. of Jharkhand having its office at Project Building, P.O. & P.S. Dhurwa, District Ranchi

3. Director, Secondary Education, School Education and Literacy Department, Govt. of Jharkhand having its office at Project Building, P.O. & P.S. Dhurwa, District Ranchi

4. Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, having its office at Project Building, P.O. & P.S. Dhurwa, District Ranchi

5. Jharkhand Staff Selection Commission, having its office at Kali Nagar, Chay Bagan, P.O. & P.S. Namkum, District Ranchi

6. Chairman, Jharkhand Staff Selection Commission, having its office at Kali Nagar, Chay Bagan, P.O. & P.S. Namkum, District Ranchi Respondents 2 with W.P.(C) No. 1164 of 2017 Ashok Kumar Pathak, Son of Sri Raj Kumar Pathak, Resident of Village: Kulhi, POJoga, PSDaltonganj, DistrictPalamau Petitioner Versus

1. The State of Jharkhand represented through Principal Secretary, Personnel, Administrative Reforms & Raj Bhasha Department, having its office at Project Bhawan, PO & PSDhurwa, DistrictRanchi

2. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, having its office at Project Bhawan, Dhurwa, PO & PSDhurwa, DistrictRanchi

3. The Director, Secondary Education, Govt. of Jharkhand, having its Office at Telephone Bhawan, PODhurwa, PSJagarnathpur, District Ranchi

4. The Chairman, Jharkhand Staff Selection Commission, having its office at Kali Nagar, Chay Bagan, Namkom, PO and PSNamkom, DistrictRanchi

5. The Secretary, Staff Selection Commission, having its office at Kali Nagar, Chay Bagan, Namkom, PO and PSNamkom, DistrictRanchi

6. The Examination Controller, Staff Selection Commission, having its office at Kali Nagar, Chay Bagan, Namkom, PO and PS Namkom, DistrictRanchi . Respondents with W.P.(S) No. 1406 of 2017

1. Kriti Kumari, Daughter of Sri R.K. Gupta, Resident of Sale T.O.K. Compound, POGPO, PSKotwali, DistRanchi, Jharkhand

2. Sudhanshu Kumar, son of Sri Ramjeet Prasad, Resident of Court Road, Near Nadiya School, PO & PSLohardaga, DistLohardaga, Jharkhand

3. Suresh Kumar Nayak, son of Sri Parmeshwar Nayak, Resident of vill Baramasiya, POGanjori, PSJharidih, Dist.Bokaro, Jharkhand
4. Neelam Kumari, Daughter of Suraj Prasad, Resident of Pahartoli, Hehal, Itki Road, POHehal, PSSukhdeonagar, DistRanchi, Jharkhand
5. Pankaj Kumar Mahto, son of Sri Pran Krishna Mahto, Resident of villShukla, PORasik Nagar, PSBoram, Dist.East Singhbhum, Jharkhand
6. Anand Kumar Mahto, son of Jaychand Mahto, Resident of Paharpur, POSoro, PSIchagarh, DistSaraikellaKharsawan, Jharkhand
7. Kumar Anuj, Son of Late Indradeo Prasad Singh, Resident of At and POMokatma, PSChatra, DistChatra, Jharkhand
8. Amit Kumar Choubey, son of Arun Kumar Choubey, Resident of villagePalhekolan, POBhojpur, PSNagar Untari, DistGarhwa, 3 Jharkhand
9. Jyoti Kumari, Daughter of Bashist Mahto, Resident of vill & PO Ulilohar, PO & PS Tamar, DistRanchi, Jharkhand
10. Kiran Mahato, Daughter of Sri Padma Lothan Mahato, Resident of Gokul Nagar, Dimna Mango, PO & PS MGM Dimna Mango, Town Jamshedpur, Dist.Singhbhum East, Jamshedpur
11. Krishna Nandan Kumar, Son of Sadhu Graduate Charan Sah, Resident of Vill. & POTelgawan, Dist.Gumla, Jharkhand Petitioners Versus

1. The State of Jharkhand

2. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, having its office at Project Bhawan, Dhurwa, PO & PSDhurwa, DistrictRanchi

3. The Principal Secretary, Department of School Education and Literacy, Govt. of Jharkhand, having its office at Project Bhawan PO & PSDhurwa, DistrictRanchi

4. The Director, Secondary Education, Govt. of Jharkhand, having its Office at Telephone Bhawan, PODhurwa, PSJagarnathpur, District Ranchi
 5. The Chairman, Jharkhand Staff Selection Commission, having its office at Kali Nagar, Chay Bagan, Namkom, PO and PSNamkom, DistrictRanchi
 6. The Secretary, Staff Selection Commission, having its office at Kali Nagar, Chay Bagan, Namkom, PO and PSNamkom, DistrictRanchi
 7. The Examination Controller, Staff Selection Commission, having its office at Kali Nagar, Chay Bagan, Namkom, PO and PS Namkom, DistrictRanchi . Respondents With W.P.(C) No. 1699 of 2017 Prabhu Nath Prasad, son of Sri Kanhaiya Lal Tatwa, resident of House No.09, Ganesh Nagar, behind Baghbera Police Station, PO & PSBaghbera, Town Jamshedpur, DistrictEast Singhbhum (Jharkhand)
Petitioner Versus
1. The State of Jharkhand through Chief Secretary, having its office at Project Building, Dhurwa, PODhurwa, PSJagannathpur, District Ranchi
 2. The Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, PODhurwa, PSJagannathpur, DistrictRanchi
 3. The Principal Secretary, School Education and Literacy Department, Govt. of Jharkhand, PODhurwa, PSJagannathpur, 4 DistrictRanchi
 4. The Jharkhand Staff Selection Commission, having its office at Kali Nagar, Chaibagan, Namkom, PO and PSNamkom, District Ranchi
 5. The Examination Controller, Jharkhand Staff Selection Commission through its Chairman, having its office at Kali Nagar, Chaibagan, Namkom, PO and PSNamkom, DistrictRanchi Respondents CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioners : Mr. Sameer Saurabh, Advocate Mr. Sunil Mahto, Advocate Mr. Vishal Kumar, Advocate [in W.P.S No. 1130/17] Mr. Rajeev Ranjan Tiwary, Advocate [in WPC No. 1164/2017] Mr. Abhijeet Kumar Singh, Advocate [in W.P.(S) No. 1406/2017] Mr. Rajesh Kumar,

Advocate [in WPC No. 1699/2017] For the Respondent State : Mr. Ajit Kumar, A.A.G Mr. Rajesh Kumaer, G.P. V Mr. D. K. Dubey, Sr. S.C. I [in WPS No 1406/17] Mrs. Amrita Kumari, J.C. to Sr. S.C. [in WPS No 1406/17] 09/11.05.2017 A qualification of Graduation with combination of two subjects for appointment of Graduate Trained Teachers under Advertisement No. 21 of 2016 has become a subject for controversy.

2. Petitioners in this batch of writ petitions are Arts Graduates and Science Graduates. The applicants with History as a subject in Graduation are aggrieved of the required eligibility qualification of Graduation with History and Political Science, and the Science Graduates in Chemistry are aggrieved of the qualification combination of three subjects viz. Botany, Zoology and Chemistry at Graduation level. Their subject combination in Graduation is given in the chart below : ARTS GRADUATES: Writ Petition No. Petitioner No. Subject 1130 of 2017 1 History (Hons.) Sociology, 5 Labour and Social Welfare History (Hons.) 2 English, Sociology Anthropology (Hons.) 3 History, Economics History (Hons.) 4 Sociology, English History (Hons.) 5 Psychology, Philosophy History (Hons.) 6 Sociology, Labour and Social Welfare Political Science (Hons.) 7 Sociology, Bengali Political Science (Hons.) 8 Psychology, English History (Hons.) 9 Economics, English History (Hons.) 10 Economics, English History (Hons.) 11 Sociology, LSW History (Hons.) 12 English, Sociology History (Hons.) 13 Sociology, LSW14History (Hons.) History (Hons.) 1699 of 2017 1 English, Philosophy

3. Advertisement No. 21 of 2016 was issued by Jharkhand Staff Selection Commission inviting applications for Combined Graduate Trained Teacher Competitive Examination 2016 for appointment on the post of Graduate Trained Teacher in Government Secondary Schools. Total number of vacancies advertised was 17,972. This advertisement was subsequently amended on 04.02.2017, whereunder the requirement of securing 45% marks in combination of both subjects at Graduation level was changed to 45% marks in any one subject. Following are the minimum qualifications for appointment of teachers in different subjects under Advertisement No. 21 of 2016 :

6. InHindi: dze inuke osrueku U;qure 'kS{kf.kd ;ksX;rk la 1 fuEukafdr fo"k;ksa ds LUKkrd osru cSaM ih-ch- lacaf/kr fo"k; ftlesa fu;qfDr gksuh gS esa izfkf{kr fk{k d& fgUnh] III-:- 9300&34800 U;wure 45 izfrkr vadks ds lkFk Lukrd vaxzsth]mfM+;k] caxyk] Hkwxksy] xzsM osru & :- 4600 fMxzh rFkk ekU;rk izklr izfk{k.k laLFkku ls vFkZkkL=} x`g foKku] ch-,M- vFkok jk"Vh; v;/kid fk{k ifj"kn okf.kT;] uxiqfj;k] }kjk ch-,M- ds led{k ?kksf"kr fMxzhA iapijxfu;k] dqjkyh] vuqlwfr tkfr rFkk vuqlwfr eq.MkjhdqMq[k] [kfM+;k] gks] tutkfr ds vH;fFkZ;ksa ds fy, lacaf/kr fo"k; d`f"k laFkkyh] [kksjBk] ,oa ftlesa fu;qfDr gksuh gS esa U;wure 40 lekt foKku izfrkr vadks ds lkFk Lukrd fMxzh rFkk ekU;rk izklr izfk{k.k laLFkku ls ch-,M- vFkok jk"Vh; v;/kid fk{k ifj"kn }kjk ch-,M- ds led{k ?kksf"kr fMxzhA2laLd`r] mnwZ] Qkj]h] vjch osru cSaM ih-ch- laLd`r mnwZ] vjch ,oa Qkj]h fo"k; ds fy, III- :- 9300&34800 jkT; ljdkj ;k dsUnz ljdkj ;k xzsM osru & :- 4600 fofo|ky; vuqnku vk;ksx }kjk ekU;rk izklr laLFkku ls lacaf/kr fo"k;] ftlesa fu;qfDr gksuh gS] esa U;wure 45 izfrkr vadks ds lkFk Lukrd fMxzh fdUrq vuqlwfr tkfr ,oa vuqlwfr tutkfr ds vH;fFkZ;ksa gsrq U;wure 40 izfrkr vadks ds lkFk LUKkrd fMxzhA vFkok jkT; ljdkj ;k dsUnz ljdkj }kjk ekU;rk izklr fofo|k;y@ lfefr }kjk laLd`r fk{k d ds fy, vkpk;Z lkfgR; vFkok O;kdj.k] vjch] mnwZ] Qkj]h fk{k dksa ds fy, lacaf/kr fo"k; ftlesa fu;qfDr gksuh gS esa Qkfty dh fMxzh vFkok laLd`r] Qkj]h] mnwZ ,oa vjch Hkk"kk ftlesa fu;qfDr gksuh gS esa LUKkrdksRj dh fMxzh rFkk mDr fdlh ,d fMxzh ds lkFk ekU;rk izklr laLFkku ls ch-,M- dh fMxzhA3Xkf.kr@ HkkSfrd osru cSaM ih-ch- xf.kr ,oa HkkSfrdh fo"k;ksa ds lkFk Lukrd III- :- 9300&34800 fMxzh rFkk nksuksa esa ls fdlh ,d fo"k; esa xzsM osru & :- 4600 45 izfrkr vad izklr gks rFkk ekU;rk izkZlr izfk{k.k laLFkku ls ch-,M- vFkok jk"Vh; v;/kid fk{k ifj"kn }kjk ch-,M- ds led{k ?kksf"kr fMxzhA vuqlwfr tkfr rFkk vuqlwfr tutkfr ds vH;fFkZ;ksa ds fy, xf.kr ,oa HkSfrdh fo"k;ksa ds lkFk Lukrd fMxzh rFkk nksuksa esa ls fdlh ,d fo"k; esa 40 izfrkr 7 vad izklr gks rFkk ekU;rk izklr izfk{k.k laLFkku ls ch-,M- vFkok jk"Vh; v;/kid fk{k ifj"kn }kjk ch-,M- ds led{k ?kksf"kr fMxzhA4Tkho foKku@ jlk;.k 'kkL= osru cSaM ih-ch- lzkk.kh 'kkL=} ouLifr 'kkL= ,oa jlk;.k III- :- 9300&34800 'kkL= fo"k;ksa ds lkFk LUKkrd fdUrq rhuks xzsM osru & :- 4600 fo"k;ksa esa ls fdlh ,d fo"k; esa 45 izfrkr vad izklr gks rFkk ekU;rk izklr izfk{k.k laLFkku ls ch-,M- vFkok jk"Vh; v;/kid fk{k ifj"kn }kjk ch-,M- ds led{k ?kksf"kr fMxzhA vuqlwfr tkfr rFkk vuqlwfr tutkfr ds vH;fFkZ;ksa ds fy, izk.kh 'kkL=} ouLifr 'kkL= ,oa jlk;.k 'kkL= fo"k;ksa ds lkFk Lukrd fdUrq rhuks fo"k;ksa esa ls fdlh ,d fo"k; esa 40 izfrkr vad izklr gks rFkk ekU;rk izklr izfk{k.k laLFkku ls ch-,M-

vFkok jk"Vh; v/;kid fk{kk ifj"kn }kjk ch-,M- ds led{k ?kksf"kr fMxzhA5bfrgkl@ukxfjd 'kkL= osru cSaM ih-ch- bfrgkl ,oa jktuhfr 'kkL= fo"k;ksa ds lkFk III- :- 9300&34800 Lukrd fdUrq nksuksa fo"k;ksa esa ls fdlh ,d xzsM osru & :- 4600 fo"k; esa 45 izfrkr vad izklr gks rFkk ekU;rk izklr izfk{k.k laLFkku ls ch-,M- vFkok jk"Vh; v/;kid fk{kk ifj"kn }kjk ch-,M- ds led{k ?kksf"kr fMxzhA vuqlwfpr tkfr rFkk vuqlwfpr tutkfr ds vH;fFkZ;ksa ds fy, bfrgkl ,oa jktuhfr 'kkL= fo"k;ksa ds lkFk Lukrd fdUrq nksuksa fo"k;ksa esa ls fdlh ,d fo"k; esa 40 izfrkr vad izklr gks rFkk ekU;rk izklr izfk{k.k laLFkku ls ch-,M- vFkok jk"Vh; v/;kid fk{kk ifj"kn }kjk ch-,M- ds led{k ?kksf"kr fMxzhA6laxhr osru cSaM ih-ch- jkT; ljdkj vFkok dsUnz ljdkj }kjk III- :- 9300&34800 ekU;rk izklr fofo|ky; vFkok cks MZ ls xzsM osru & :- 4600 eSfVd ijh{kk mRrhZ.k ,oa jkT; ljdkj vFkok dsUnz ljdkj }kjk ekU;rk izklr fofo|ky; ls laxhr esa Lukrd fMxzh vFkok led{kA7'kjhfjd izfk{k.k osru cSaM ih-ch- jkT; ljdkj vFkok dsUnz ljdkj }kjk III- :- 9300&34800 ekU;rk izklr laLFkku ls dyk foKku vFkok xzsM osru & :- 4600 okf.kT; esa U;wure 45 izfrkr vadks ds lkFk Lukrd fMxzh rFkk ekU;rk izklr kkjhfd fk{kk esa fMxzhA vuqlwfpr tkfr rFkk vuqlwfpr tutkfr ds vH;fFkZ;ksa ds fy, jkT; ljdkj vFkok dsUnz ljdkj }kjk ekU;rk izklr laLFkku ls dyk foKku vFkok okf.kT; esa 8 U;wure 40 izfrkr vadks ds lkFk Lukrd fMxzh rFkk ekU;rk izklr kkjhfd fk{kk esa fMxzh

InEnglish: Sl. Nameofthepost Payscale Minimumeducationalqualification No. 1 2 3 4 1 Graduate Trained PayBandP.B.III, Bachelors degree with minimum Teacher of the Rs.930034800, 45% marks in the concerned following subjects Grade Pay subject(inwhichappointmentisto Hindi,English,Odiya, Rs.4600/ be made) and B.Ed. from a Bangla, Geography, recognized training institute or a Economic, Home degree equivalent to B.Ed. by Science, Commerce, National Council for Teacher Nagpuria, Education. Panchpargnia, For the candidates Kurmali, Mundari, belongingtoScheduledCasteand Kurukh, Kharia, Ho, ScheduledTribe,Bachelorsdegree Agriculture, Santhali, with minimum 40% marks in the Khorta and Social concerned subject (in which Science appointment is to be made) and B.Ed. from a recognized training instituteoradegreeequivalentto B.Ed. by National Council for TeacherEducation. 2 Sanskrit, Urdu, Farsi, PayBandP.B.III, For Sanskrit, Urdu, Farsi and Arabic Rs.930034800, Arabic subjects Bachelors degree Grade Pay with minimum 45% marks in the Rs.4600/ concerned subject, in which appointment is to be made, from an Institute recognized by the State Government or the Central Government or the University

Grants Commission but Bachelors degree with minimum 40% marks in case of the candidates belonging to Scheduled caste and 9 Scheduled Tribe. Or Acharya (Literature or Grammar) for Sanskrit Teachers and Fazil degree in the concerned subject (in which appointment is to be made) for Arabic, Urdu, Farsi, teachers from a University/Board recognized by the State Government or the Central Government. Or Post Graduate degree in Sanskrit, Farsi, Urdu and Arabic language (in which appointment is to be made) And B.Ed. degree from a recognized Institute along with one of the above degrees. 3 Mathematics/Physics Pay Band P.B.III, Bachelors degree in Mathematics Rs.930034800, and Physics with 45% marks in any Grade Pay one of the subjects out of the two Rs.4600/ and B.Ed. from a recognized training institute or a degree equivalent to B.Ed. by National Council for Teacher Education. For the candidates belonging to Scheduled Caste and Scheduled Tribe, Bachelors degree in Mathematics and Physics with 40% marks in any one of the subjects out of the two and B.Ed. from a recognized training institute or a degree equivalent to B.Ed. by National Council for Teacher Education. 4 Biology/Chemistry Pay Band P.B.III, Bachelors degree in Botany, Rs.930034800, Zoology and Chemistry with 45% 10 Grade Pay marks in any one of the subjects Rs.4600/ out of the three and B.Ed. from a recognized training institute or a degree equivalent to B.Ed. by National Council for Teacher Education. For the candidates belonging to Scheduled Caste and Scheduled Tribe, Bachelors degree in Botany, Zoology and Chemistry with 40% marks in any one of the subjects out of the three and B.Ed. from a recognized training institute or a degree equivalent to B.Ed. by National Council for Teacher Education. 5 History/Civics Pay Band P.B.III, Bachelors degree in History and Rs.930034800, Political Science with 45% marks Grade Pay in any one of the subjects out of Rs.4600/ the two and B.Ed. from a recognized training institute or a degree equivalent to B.Ed. by National Council for Teacher Education. For the candidates belonging to Scheduled Caste and Scheduled Tribe, Bachelors degree in History and Political Science with 40% marks in any one of the subjects out of the two and B.Ed. from a recognized training institute or a degree equivalent to B.Ed. by National Council for Teacher Education. 6 Music Pay Band P.B.III, Matriculation passed from a Board Rs.930034800, or University recognized by the Grade Pay State Government or the Central Rs.4600/

Government and Bachelors degree or equivalent in Music recognized 11 by the State Government or the Central Government. 7 Physical Training Pay Band P.B.III, Bachelors degree with minimum Rs.930034800, 45% marks in Arts, Science or Commerce from an Institute Rs.4600/ recognized by the State Government or Central Government and degree in the Physical education from recognized (Institute). For the candidates belonging to Scheduled Caste and Scheduled Tribe, Bachelors degree with minimum 40% marks in Arts, Science or Commerce from an Institute recognized by the State Government or the Central Government and degree in the Physical education from recognized (Institute). 4. Stand of the petitioners is, that required educational qualification in combination of subjects is contrary to the norms and standards prescribed by National Council For Teacher Education and Rule 9 of Jharkhand Government Secondary School Teacher and Non Teaching Staff Appointment and Service Condition Rules, 2015 (hereinafter referred to as Jharkhand Appointment Rules). 5. The National Council For Teacher Education has framed Regulations in exercise of powers conferred under clause d (i) of subsection 2 of Section 32 read with Section 12(d) of NCTE Act, 1993 laying down minimum qualifications for appointment of teachers in schools, which are called NCTE (Determination of minimum qualifications for recruitment of teachers in schools) Regulations, 2001. Under Regulation 2 it is provided that these Regulations shall be applicable for recruitment of teachers in all formal schools established, run or aided or recognised by Central or 12 State Government and other authorities for imparting education at Elementary (primary, upper primary/middle school), Secondary and Senior Secondary stages. First Schedule to the Regulations prescribes qualifications for recruitment of teachers for teaching school subjects whereas, Second Schedule prescribes qualifications for recruitment of teachers for Physical Education. Minimum academic and professional qualifications under NCTE Regulations, 2001 for teachers in Secondary School are; Graduation with Bachelor of Education (B.Ed) or its equivalent or four years integrated B.Sc, B.Ed or equivalent course. By an amendment dated 12.10.2011, Section 12A has been inserted after

Section 12 in NCTE Act, 1993. Section 2 of the principal Act was also amended. Substance of 2011 amendment is that, for the purpose of maintaining standards of education in schools the Council may by regulations determine the qualifications of persons for appointment as teachers.

6. The Government of Jharkhand, in exercise of powers under proviso to Article 309 of the Constitution of India, has framed Jharkhand Appointment Rules for appointment of teachers and non-teaching staff in Government Secondary Schools. Rule 9 provides qualifications and manner of appointment of Graduate Trained Teacher. Under Rule 9(I)(i) Graduation in the concerned subject (hereinafter referred to as the subject) with minimum 45% marks from an institution recognised by State Government or Central Government or University Grants Commission is the prescribed qualification. Rule 9(I)(ii) requires Teachers Training Certificate as defined under Rule 2(xix) and 2(xx). Qualifications for Physical Education Teacher and Music Teacher are different. Selection is based on written test in 2 papers; Paper I for general knowledge and Hindi and Paper II in the subject in which appointments shall be made. Paper I is qualifying and candidates securing 33% marks become eligible for evaluation of Paper II. Merit list shall be published on the basis of marks secured in Paper II, however, subject to minimum 50% marks. 13 7. A qualification higher than or in addition to what has been prescribed by the Council can be fixed by the Department, however, a qualification which is at variance with the minimum qualifications fixed by the Council cannot be provided for appointment of Graduate Trained Teachers. Requirement of 45% marks in the subject in Graduation may be a qualification contrary to the minimum norms and standards fixed by NCTE, however, this issue was not argued specifically, but it is really difficult to countenance combination of subjects under Humanities as a qualification only for appointment in History/Civics. The executive instructions may supplement the Rules in the areas which have been left open, however, an instruction which is contrary to the principal Act or Rules would be invalid. In fact, nothing has been brought on record to assert that the Government has issued executive instructions laying down the qualifications for appointment of Graduate Trained Teachers in History+Civics, which has been

notified in Advertisement No. 21 of 2016. All that has been produced on record is Resolution dated 23.03.2012 which gives description of subject wise distribution of teachers.

8. The petitioners have pleaded that clubbing of two subjects under Advertisement No. 21 of 2016 is a departure from past, but no reason for such a departure has been disclosed by the respondents. Previously, applications for appointment in History and Political Science were notified separately and appointments were made in both the subjects. History and Political Science are two different subjects and restricting the option for a Graduate with History or Political Science breaches the petitioners' rights under Articles 14 and 16 of the Constitution of India. They have produced prospectus of Ranchi University to demonstrate that for Arts Graduate there are 15 subjects out of which one can choose any two. They have produced advertisement issued by the Kendriya Vidyalaya Sangathan, Recruitment Notice of Education Department, 14 Chandigarh Administration and Guidelines issued by School and Mass Education Department for Conducting Odisha Secondary School Teacher Eligibility Test, to emphasize that two different subjects cannot be clubbed to make essential qualification for appointment as Graduate Trained Teacher in a particular subject out of several under the same category. Advertisement No. 21 of 2016 has been challenged by the petitioners as discriminatory, illegal, void and without jurisdiction. It is contended that the qualification fixed for appointment of History/Civics teacher is arbitrary.

9. The State has taken a stand that for History and Civics, it requires only one teacher. It has laid stress on Resolution contained in Memo dated 23.03.2012 to say that posts for only 11 teachers have been sanctioned for a Secondary School, and there is only one post of Assistant teacher for both History and Civics. To repeat, this is the only stand of the State to justify combination of two subjects as a qualification for appointment of a teacher for History+Civics. 10. The petitioners have taken a stand that, in past, one teacher each for History and Civics was appointed. They have produced Resolution dated 31.08.2002 to assert that out of 7009 posts, 440 posts for History teachers and 194 posts for Civics teachers were sanctioned. This Resolution has been issued by the order of the Governor.

What was the "staffing pattern" prior to 23.03.2012 has not been brought on record. Contrary to Resolution dated 23.03.2012, there is abundance of material on record which would show that appointment for History teacher and Civic teacher was made independently. The State has not asserted that Resolution dated 31.08.2002 was subsequently amended or modified. 11. Predecessor to 2015 Jharkhand Appointment Rules was notified vide Notification dated 05.11.2004. Rule 4(1)(iii) of 2004 Rules provided minimum educational qualification for Trained Graduate Teacher as a second class Graduation degree in Arts, Science or Commerce with 50% marks in the subject. 2004 Rules 15 were amended vide Notification dated 14.06.2008, where under requirement of 50% marks in the subject was reduced to 45%. Advertisement No. 12 of 2008 was issued for appointment of Graduate Trained Teachers with the aforesaid qualifications. Number of vacancies disclosed in Advertisement No. 12 of 2008 was subjectwise viz. History 248, Civics 36, Science Mathematics 259 and Biology 234. Qualified teachers pursuant to the aforesaid advertisement were appointed in different subjects including History and Civics. Another advertisement bearing no. 93 of 2011 was issued for appointment of Graduate Trained Teachers. In this advertisement also separate vacancies for each subject were notified and appointment of teachers for History and Civics/Political Science was made separately. 12. In Advertisement No. 21 of 2016, prescribed qualification in the subject under Jharkhand Appointment Rules has been substituted by combination of two subjects, however, no explanation is coming forth for not insisting on combination of subjects for Economics and Geography. In Humanities, there are four subjects viz. History, Civics, Geography and Economics. All four subjects are taught in Class IX and X. Humanities which is also called Social Sciences comprises of 100 marks in Class X; History 20 marks, Geography 18 marks, Civics 18 marks, Economics 16 marks, Disaster Management 8 marks and Internal Assessment 20 marks. Almost similar is the weightage for these subjects in Class IX. All four main subjects namely,

History, Geography, Civics and Economics are of equal marks, however, why combination of subjects as a qualification for appointment in Geography and Economics has not been prescribed, is shrouded in mystery. Stand of the respondent State that for History + Civics one post has been sanctioned is falsified from the vacancies notified in Advertisement No. 21 of 2016. Resolution contained in Memo dated 23.03.2012 would disclose that one additional post for Music/Commerce/Home Science teacher has been sanctioned. The vacancies advertised under the subject advertisement 16 would, however, disclose separate vacancies for Music teacher, Home Science teacher and Commerce teacher. To a pointed query of the Court, Mr. Rajesh Kumar, the learned State Counsel, on instructions, states that in some schools more than 11 teachers have been appointed. He has tried to justify appointment of additional teachers each in Home Science, Music and Commerce on the ground that in different schools requirements are different and vacancies have been advertised as per the requirement. The explanation offered by the State for appointing more than 11 teachers in different schools is contrary to the stand of the State that 2015 Jharkhand Appointment Rules present a composite scheme for appointment of Graduate Trained Teachers in all schools namely, Government Secondary Schools, High Schools under 1981 Rules, Upgraded Secondary Schools and Project Schools. Rule 2(i) defines Government Secondary School to mean all the above categories of schools. Just to remember, History and Political Science are two most preferred subjects in Graduation and Masters course.

13. The petitioners have brought on record information provided under Right to Information Act, 2005. The informations supplied by Directorate of Secondary Education, Jharkhand vide its letter dated 19.07.2010 for all 24 districts in the State of Jharkhand disclose total number of sanctioned posts for Post Graduate Trained Teachers. Secondary schools within the limit of Ranchi Municipal Corporation have 226 sanctioned posts for 15 schools. Chhotanagpur Girls High School has 29 sanctioned posts for Assistant Teacher,

Marwari High School has 27 posts and Bal Krishna High School has been given 23 posts. Some of the schools have got only 10 teachers and rest more than 11 Assistant teachers. The schools under Ranchi Rural Area Subdivision have also got more than 11 sanctioned posts of Assistant teacher. This is just one example, and it is not necessary to give details of all other districts, the point is that the stand of the State that only 11 posts for Secondary School have been sanctioned is not supported by its own documents. It further appears that on 17 instructions from the Department, details of vacancies in each district were sent. The requisition letter from Pakur district sent in the month of May, 2016, which is signed by District Education Officer, District Establishment Deputy Collector, Deputy Development Commissioner and Deputy Commissioner, Pakur, shows 4 vacant posts of Graduate Trained Teacher in History and 3 vacancies in Civics. The documents produced by the petitioners conclusively corroborate their stand that separate posts for History and Civics teachers like the teachers for Economics and Geography have been sanctioned and a different qualification for appointment of History teacher or Civics teacher was never provided by the Government. The respondents have filed as many as 4 affidavits and a late on 04.05.2017, but the stand of the petitioners has not been contradicted by them by producing materials contrary to the documents produced by the petitioners. A plea can be raised that more posts were sanctioned for certain category of schools and the vacancies reflected in various documents produced by the petitioners are of those schools. However, this plea also fails, for it is not the stand of the respondent State that the vacancies notified are only for newly established schools for which only 11 posts of teachers have been sanctioned. On the contrary, the stand taken by the petitioners, that Resolution dated 23.03.2012 relates to the Newly Upgraded High School only, has been seriously opposed by the respondents contending that 2015 Jharkhand Appointment Rules provide a complete code for all appointments in Secondary schools. 14. A qualification of Graduation with History and Civics compared to the qualification of Graduation in the subject is not a

higher qualification. It is also not an additional qualification, for it is not a qualification in addition to the qualification prescribed under the Rules. In fact, the respondents have not asserted that Graduation with History and Civics is a higher qualification or it is an additional qualification. There is no order in terms of Rule 16 of Jharkhand Appointment Rules which is removal of difficulty clause, by which qualification under Rule 9 has been explained. In fact, providing a qualification of Graduation with History and Civics cannot be in the nature of an explanation for which Rule 16 can be resorted to. It is pleaded that a different qualification has been prescribed under the changed circumstance. Here again, no order of the Government fixing a different qualification for History and Civics teacher has been produced. The State has pleaded that it has adopted CBSE pattern which provides combination of subjects as educational qualification for appointment of Trained Graduate Teacher. A bare look at the Recruitment Rules for the post of Trained Graduate Teacher of Kendriya Vidyalaya Sangathan, a copy of which has been filed vide Annexure F to the State's affidavit dated 04.05.2017 in support of the above stand would disclose that the educational qualification provided therein is completely different from the one, which has been provided under the present advertisement. Kendriya Vidyalaya Sangathan Recruitment Rules provide that for TGT (Social Studies) any two of the following; History, Geography, Economics and Political Science of which one must be either History or Geography at Graduation level would be the required qualification. By providing combination from these four subjects a wider participation of eligible candidates has been invited. Besides the above, this subject combination is for all the subjects in Humanities and it is not restricted to History/Civics, as has been done in the present advertisement. The subject combination as a qualification for History/Civics is absolutely arbitrary. 15.

Mr. Ajit Kumar, the learned Additional Advocate General contends that creation of posts is absolute discretion of the Government and fixation of qualification is an executive function. Dr. Ashok Kumar Singh, the learned counsel for the Commission has

pleaded that when the Government has taken a conscious decision to create one post of teacher for History and Civics and qualification for the said post has been prescribed, it would be really imprudent if the Court interferes with the decision of the Government.

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16.

There can be one, two or even three teachers for four subjects, but in the same group there cannot be different criteria for selection. From the facts pleaded by the parties, when it is found that there is no rationale for providing a different qualification for History and Civics and no basis for appointing one teacher for History and Civics both, but one teacher each for Geography and Economics, in particular, when all four subjects are of equal importance and carry similar weightage in the secondary school examination for Social Sciences, and when it is found that till recently teachers have been appointed each for History and Civics and, in fact, under the advertisement the number of vacancies notified would disclose that more than 11 teachers would be appointed in the schools, it cannot be said that the so-called policy of the Government, which, in fact, has not been produced, is beyond the reach of judicial review.

In

State of Rajasthan Vs. Lata Arun [(2002) 6 SCC 252], the Supreme Court has held thus;

17.

"In an appropriate case the court can examine whether the policy decision or the administrative order dealing with the matter is based on a fair, rational and reasonable ground; whether the decision has been taken on consideration of relevant aspects of the matter; whether the exercise of the power is obtained with malafide intention; whether the decision serves the purpose of giving proper training to the candidates admitted or it is based on irrelevant and irrational considerations or intended to benefit an individual or a group of candidates. 17. No doubt the State can decide the number of posts, but what is in controversy is, different qualifications for subjects in the same group. It is not in the realm of doubt that different qualifications can be prescribed for different posts, but, different qualifications for the same post would be arbitrary. A classification of teachers based on subject, of the same standard, and for the same post, creates a classification within the classification which, in the facts of the case, is arbitrary and discriminatory. The candidates with

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History or Political Science as a subject in the Graduation have been discriminated from the candidates with Economics or Geography as a subject at Graduation level. If by providing a different qualification for a Graduate with History or Civics, the object sought to be achieved is to appoint one teacher for History and Civics, but one teacher each for Economics and Geography from the same group of Humanities, least to say, it would frustrate the mandate under Article 16 of the Constitution of India. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in different offices. It has been held that, "In the case of public employment, it is necessary to introduce uniformity of standards and procedural fairness in recruitment". In *Federation of Railway Officers Association & Ors. Vs. Union of India* [(2003) 4 SCC 289], it has been held that where a policy is contrary to law or is in violation of the provision of Constitution or is arbitrary or irrational, the Courts must perform their constitutional duties by striking it down. By denying the applicants who possess Graduation with History or Civics/Political Science as a subject an equal opportunity, by providing a qualification of combination of subjects at Graduation level in contradistinction to the qualification of Graduation in the subject for others, those applicants have been discriminated from others and their fundamental rights enshrined in Articles 14 and 16 of the Constitution of India have been violated.

18. There is one more significant aspect which has emerged from the controversy involved in the present proceeding. Merit list for appointment of Graduate Trained Teacher is prepared on the basis of marks obtained in the subject concerned. By prescribing a qualification of History and Political Science if appointment has to be made in terms of Rule 9, how the merit list for teachers in History + Civics shall be made, is difficult to imagine. If a merit list has to be prepared on the basis of marks obtained in both History 21 and Political Science, it may undermine the merit principle in appointments, for a candidate may get very less marks in either History or Political Science. This problem is

confounded when a prescribed qualification of 45% marks in either History or Political Science is prescribed. A candidate may just secure 33% marks which is the pass marks in any of the two subjects at Graduation level and still, becomes eligible. This deficiency in selection process is removed if similar qualification combination is prescribed for all four subjects in Humanities or a similar qualification in the subject for History and Civics also. Appointment for combination of History + Civic only by providing a qualification combination leads to arbitrary results. This prescribed qualification in the advertisement is contrary to Jharkhand Appointment Rules. 19. The controversy revolving around the qualification in combination of subjects can be examined from a different angle also. The advertisement uses the expression History/Civics. If one goes by (/) slash used in the above expression it gives an impression that a combined but alternate qualification for appointment on the posts of both History teacher and Civic teacher has been prescribed in the advertisement. Slash, oblique or stroke used as a sign (/) is a punctuation which denotes alternative or or. Sometimes it is used as a synonym. It is used as verb and noun also, but in the advertisement it has been used as punctuation. Now, if History/Civics is read as History or Civics or History and Civics, by little change in phraseology it confirms to the qualification prescribed under the Jharkhand Appointment Rules. 20. To Summarise; exclusion of eligible Arts Graduates in History or Political Science by providing a different subject qualification only for them is arbitrary, discriminatory and illegal and applications of such Arts Graduates were illegally not accepted. The State has suppressed the sanctioned staffing pattern in vogue. Existence of separate posts for History and Political Science teacher, separate requisition for both the subjects and appointment of History 22 and Political Science teachers have not been denied by the State. The so-called adoption of C.B.S.E pattern to justify prescription of qualification in combination of subjects is not established, and the respondents have failed to produce a Government decision providing a different qualification for appointment of History + Civic teacher. 21.

SCIENCEGRADUATES: WritPetitionNo.	PetitionerNo.	Subject	Chemistry(Hons.)	1		
Maths,Physics	Chemistry(Hons.)	2	Maths,Physics	Chemistry(Hons.)	3	
Maths,Physics	Chemistry(Hons.)	4	Maths,Physics	Chemistry(Hons.)	5	
Maths,Physics	Chemistry(Hons.)	1406of2017	6	Maths,Physics	Chemistry(Hons.)	7
Maths,Physics	Chemistry(Hons.)	8	Maths,Physics	Chemistry(Hons.)	9	
Maths,Physics	Chemistry(Hons.)	10	Maths,Physics	Chemistry(Hons.)	11	
Maths,Physics	Chemistry(Hons.)	1164of2016	1	Physics,Geology	22.	

ScienceGraduates,however,standonadifferentfooting. It is common knowledge that there are 2 streams of subjects in Science;MathematicsandBiology. Thereare3mainsubjectsineach streamthough,theremaybeafewmoresubjectincoursesunder differentUniversitiesinbothMathematicsandBiology. Prospectusof RanchiCollege,RanchiwhichconductsmajorcoursesinBachelorof Art(Hons.), Bachelor of Science(Hons.), Bachelor of Education (B.Ed.) and other Masters courses, lists subjects for Honours and 23 Passcourse. A Science Graduate is required to opt two subsidiary subjects, however, in case of Zoology/Botany/Chemistry or Mathematics/ Physics/Chemistry, both the subsidiary subjects remaintheothertwoonly. AstudentunderBiologystreamhasto pursuethreesubjectsnamely,Botany,ZoologyandChemistry.Under Mathematics stream, the subjects are Mathematics, Physics and Chemistry. Biology includes Botany and Zoology and subject combination for Bachelor of Science in Botany, or Zoology, or Chemistryremainssthesame. ThesubjectcombinationforBachelor ofScienceinMathematics,orPhysics,orChemistryalsoremainsthe same. Forexample,inPasscourse,Botany,ChemistryandZoology allthreearethereascompulsoryandoptionalsubjects.ForHonours course in any one of these three subjects, other two are optional/subsidiarysubjects. Subject combination of Mathematics, Physics and Chemistry for B.Sc.(Pass) and B.Sc.(Hons.) in Mathematics/Physics/Chemistryremainsthesame. ABachelorof ScienceinMathematics;PasscourseorHonourscourse,hasnoother optionbuttostudyPhysicsandChemistryassubsidiarysubjects.For BachelorofScienceinPhysicsorChemistry,remainingtwosubjects wouldbethesubsidiarysubjects.BiologyandMathematicsaretwo distinctstreams.ByclubbingMathematicsandPhysicstogether,the

intention is to resource candidates from Mathematics stream. Similar would be the case when Biology is clubbed with Chemistry. Intention of the State to recruit teachers separately for Mathematics and Biology is apparent from Resolution dated 31.08.2002 whereby 7,009 posts were created. In this Resolution, there are separate posts for Biology and Science Mathematics. RTI information through letter dated 19.07.2010 would also disclose vacancies for Mathematics Physics and Biology Chemistry. Previous requisitions, advertisements and appointments made, all reflect appointments under Mathematics Physics and Biology Chemistry categories. Confusion has arisen on account of reckless use of words and punctuations. The qualification of Mathematics and Physics at Graduation level for 24 appointment of Mathematics Teacher does not suffer from vice of arbitrariness. Similar is the case with Graduate Trained Teacher for Biology. Qualification of subject combination in Graduation for Biology/Chemistry is also correct and justified. A Bachelor of Science with Chemistry as a subject, if has pursued his Graduation course either with Mathematics and Physics as subsidiary subjects or Botany and Zoology as subsidiary subjects, is eligible for either of the two posts. In the aforesaid facts, the classification of posts made on the basis of subject combination in Mathematics and Biology is held not arbitrary or discriminatory. 23. The advertisement presents a strange situation, where the respondents instead of admitting and rectifying the apparent mistakes in using words and punctuations unnecessarily which created considerable confusion, the Court has to clarify that slash (/) used for Mathematics/Physics and Biology/Chemistry has been used in a sense different from when it is used for History/Civics. In law, it is a well accepted proposition that even when the same word is used at different places in the same clause of the same section it may not bear the same meaning at each place having regard to the context of its use (refer G.P. Singh: Principles of Statutory Interpretation, 8th edition, chapter V at page 28687).

24. Crying foul the petitioners have pleaded that their candidature has been slashed by use of slash (/). Advertisement No.21of2016is poorlydraftedthatleavesoneexasperated.It reflectspoorlyonthe functioningoftheJharkhandStaffSelection Commission. In its affidavit the Commission calls negligence inadvertence. While explaining occurrence of Social Science as a subjectintheadvertisement,inparagraphno.15ofitsaffidavitthe CommissionassertsthatinadvertentlythesubjectofSocialScience wasnotremoved. Perhaps,ithasalsonotcaredtoverifywhether thereisanyGovernmentdecisionfixinga combinationofsubjectsas required qualification for appointment of a teacher for History+Civics.Ithasalsonotcaredtoverifythepreviousstaffing 25 pattern, atleast before filing an affidavitinopposition to the writ petitions. AdvertisementNo.21of2016issovagueandconfusing

thatitcanbequashedonthatcountalone. 25. The foregoing discussions conclude by the following observationsanddirections:

(i)Combinationofsubjectsasqualificationforappointment ispermissibleprovided,itisnohitbyArticles14and16of ConstitutionofIndia. (ii) The State may provide option for combination of subjects as qualification, but applicable to all four major subjectsinHumanities. (iii) QualificationforappointmentonthepostofGraduate

TrainedTeacherforHistory/CivicsinAdvertisementNo.21 of 2016, in the present set of circumstances, is arbitrary, discriminatory, and illegal and it is contrary to Jharkhand AppointmentRules. (iv) Qualification for appointment of Mathematics and Biologyteachersisvalid. (v) On account of serious inconsistencies, mistakes and drafting errors, Advertisement No. 21 of 2016 has been renderedunworkableand,itisquashed.

(vi)TheCommissionshallissueafreshadvertisementinthe light of the above observations and in tune with 2015 JharkhandAppointmentRules.

(vii)Irrespectiveofthecutoffdate,thosewhohavealready appliedforappointmentunderAdvertisementNo.21of2016 andthosewhocouldnotapplyonaccountofqualification prescribedunderAdvertisementNo.21of2016shallalsobe

eligible for making applications. 26. The writ petitions meet their fate, in the light of above findings. (Shree Chandrashekhar, J.) Amit/R.K/SI/Tanuj

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