

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(S).No. 4079 of 2018**

(Santosh Kumar Yadav and another – V E R S U S - The State of Jharkhand and others)

**WITH**

**W.P.(S).No. 1907 of 2019**

(Tawarej Alam – V E R S U S - State of Jharkhand and others)

**WITH**

**W.P.(S).No. 4395 of 2018**

(Dinesh Kumar Yadav and others – V E R S U S - The State of Jharkhand and others)

**WITH**

**W.P.(S).No. 4707 of 2018**

(Manoj Kumar and Another – V E R S U S - The State of Jharkhand and others)

**WITH**

**W.P.(S).No. 4960 of 2018**

(Manish Kumar and Others – V E R S U S - The State of Jharkhand and others)

**WITH**

**W.P.(S).No. 2005 of 2019**

(Sanjay Kumar - VERSUS – The State of Jharkhand and others)

**WITH**

**W.P.(S).No. 6412 of 2018**

(Rajeev Mani Tripathi and others – V E R S U S – The State of Jharkhand and others)

**WITH**

**W.P.(S).No. 6309 of 2018**

(Ashok Kumar Dwivedi and others – V E R S U S – The State of Jharkhand and others)

**WITH**

**W.P.(S).No. 5487 of 2018**

(Lakshmi Kant Tiwari and others – V E R S U S – The State of Jharkhand and others)

**CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK**

For the Petitioners :

Mr. R.N. Sahay, Sr. Advocate  
 Mr. Indrajeet Sinha, Advocate  
 Mr. Rahul Kumar, Advocate  
 Mr. Ajay Kumar Shah, Advocate  
 Mr. Mokhtar Ahmed, Advocate  
 Ms. Khalida Haya Rashmi, Advocate.  
 Mr. Anshuman Kumar, Advocate  
 Mr. Yashvardhan, Advocate  
 Mr. Ritesh Singh, Advocate.  
 Mr. Navneet Sahay, Advocate.  
 Mr. Saurabh Narayan, Advocate.  
 Ms. Apurva Singh, Advocate.  
 Mr. Kirtivardhan, Advocate.

For the Interveners:	Mr. Rajiv Ranjan, Sr. Advocate Mr. Piyush Chitresh, Advocate. Mr. Amritansh Vatt, Advocate. Mr. Nagmani Tiwari, Advocate.
For the State:	Mr. H.K. Mehta, AAG Mr. L.C.N. Shahdeo, GA-VI Mr. Navin Kumar Singh, SC-VII Mr. J.F. Toppo, SC (L & C) Mr. Nipun Bakshi, SC (Mines) Mr. Prem Pujari Roy, AC to GA-VI
For the JSSC	Mr. Sanjoy Piprawall, Advocate Mr. Tejo Mistri, Advocate. Mr. Prince Kumar, Advocate.
For the UOI/UGC	Mr. Rajiv Sinha, ASGI

**12/20.09.2019** The issues involved in all the writ petitions as well as the Interlocutory Applications are same, similar or identical and as such all have been tagged and heard together and are being disposed of by this common order.

2. Heard learned counsel for the parties.
3. The writ petitioners herein are of two categories. In the first category of cases relating to Advertisement No. 10 of 2017 i.e. in **W.P.(S) Nos. 4079 of 2018, 4707 of 2018, 4395 of 2018, 1907 of 2019, 4960 of 2018, and 5487 of 2018**, petitioners are the applicants for the post of **Post Graduate Trained Teachers** in the subject History whereas in the Second category of writ petitions relating to Advertisement No. 21 of 2016 i.e. **W.P.(S) Nos. 6412 of 2018, 6309 of 2018 and 2005 of 2019**, petitioners are the applicants for the post of **Graduate Trained Teachers**.
4. In the first category of writ petitions relating to Advertisement No. 10 of 2017 i.e. in W.P.(S) Nos. 4079 of 2018, 4707 of 2018, 4395 of 2018, 1907 of 2019, 4960 of 2018 and 5487 of 2018, petitioners have prayed for quashing the Show Cause Notices which have been issued by the Jharkhand Staff Selection Commission (hereinafter referred as J.S.S.C in short) to the Petitioners by which it has been informed that petitioners do not have Post Graduation Degree in History as mentioned in Clause-4 of the Advertisement and as such they are not eligible for consideration in view of the fact that minimum eligibility criteria for appointment to

the post of Post Graduate Trained Teacher in the Subject History is Post Graduate Degree with minimum 50% marks (45% for S.T and S.C candidates) in the concerned subject i.e. Post-Graduation in Subject History and Petitioners are having Post-Graduation Degree in Medieval India/ Modern/Ancient History/ Ancient History (Archaeology and Culture) etc. which is not valid for appointment.

5. In the Second category of writ petitions i.e. W.P.(S) Nos. 6412 of 2018 and 6309 of 2018, petitioners are the applicants for the post of Graduate Trained Teachers.

In W.P.(S) No. 6412 of 2018, the petitioners have prayed for direction upon the respondents to consider their cases for appointment to the **post of Graduate Trained Teacher in pursuance to Advertisement No. 21/2016**. Further prayer has been made by the petitioners to hold and declare that the **Trained Graduate Teacher in Ancient History is equivalent to History and as such petitioners are entitled for issuance of appointment letters** and also to declare that respondents have no power and jurisdiction to deny the appointment to the petitioners merely on the ground that **they are having graduate degree in Ancient History**.

**In W.P.(S) No. 6309 of 2018**, petitioners have prayed for quashing the Show Cause Notices which have been issued by the Jharkhand Staff Selection Commission (hereinafter referred as J.S.S.C in short) to the Petitioners vide Annexure-4 by which it has been informed to the Petitioners that they have no Graduation Degree in History as mentioned in Clause 4 of the Advertisement No. 21 of 2016 and as such they are not eligible for consideration in view of the fact that minimum eligibility criteria for appointment as Graduate Trained Teacher for subject History/Civics is Bachelors' Degree with History and Political Science but having at least 45% marks (40% marks for candidates of S.C and S.T category) in one of the subjects alongwith B.Ed from a recognised Teachers' Training or equivalent.

**In W.P.(S) No. 2005 of 2019**, petitioner – Sanjay Kumar has claimed that he is working as a History Teacher since 29.09.2004 in Government Primary School, Dumaria Nala, Jamtara. He has prayed for setting aside Clause-6 of the Important

Information No. 6863, dated 05.12.2018, pertaining to the petitioner, issued by JSSC pursuant to Advertisement No. 21/2016 for Trained Graduate Teachers' Competitive Examination, whereby and whereunder his candidature has been rejected/ cancelled by respondent no. 5 despite having all basic requisites as published in the Advertisement No. 21/2016, without giving him any opportunity of hearing. Petitioner has also prayed for a direction upon the respondents to consider his candidature as he possess basic requisites as published in the Advertisement No. 21/2016.

6. **FACTS OF THE CASE** in first category of writ petitions i.e. in **W.P.(S) Nos. 4079 of 2018, 4707 of 2018, 4395 of 2018, 1907 of 2019, 4960 of 2018, and 5487 of 2018.**

(i) State of Jharkhand promulgated Jharkhand + 2 VIDYALAYA SHISHAK EVM SHIKSHAKETTAR KARAMCHARI NIYUKTI EVM SEVA SART NIYAMAVALI 2012 (hereinafter referred as Appointment Rules 2012).

(ii) The Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand vide its letter No. 8354(Anu) dated 24.07.2017 forwarded the requisition dated 17.07.2016 of the Department of School Education and literacy (Secondary Education Directorate) Govt. of Jharkhand to the J.S.S.C in terms of the Appointment Rules 2012 for starting the selection process for appointment of post Graduate Trained Teachers in the High School of the state of Jharkhand for different subject under different categories.

(iii) J.S.S.C after receiving the aforesaid requisition started the selection process for appointment to the post Graduate Trained Teachers in the state of Jharkhand in different subject i.e. Chemistry, Physics and History etc.. Accordingly **Advertisement No 10 /2017 was issued by which applications were invited from the eligible candidates for considering their candidature for appointment to the post of Post Graduate Trained Teachers.**

(iv) On the date of verification of the testimonials petitioners submitted Post Graduation Degree Certificate in Medieval History, Ancient History, Ancient History and Culture, Ancient

History Archaeology and Culture etc. from the different Universities and failed to submit Post Graduation degree in History in terms of the advertisement. Petitioners have Post Graduation Degree in different Branches of History in place of History and as such Show cause Notices were issued to them by JSSC. Being aggrieved, petitioners have knocked door of this Court.

- (v) Petitioners also submitted their online Application forms before the J.S.S.C for considering their candidature for their Appointment and they have mentioned their respective Educational qualifications in their Online Application Forms.
- (vi) On the basis of the declarations made by the Petitioners in their online application forms, they were allowed to appear in the examination and they were also declared successful on the basis of their performance in the examination.
- (vii) After publication of result, successful candidates were called for verification of their testimonials.

7. **FACTS OF THE CASE** in the Second category of writ petitions relating to Advertisement No. 21 of 2016 i.e. **W.P.(S) Nos. W.P.(S) Nos. 6412 of 2018, 6309 of 2018 and 2005 of 2019** are as under:-

- (i) Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand vide letter No.11/K.Cha.Aa.-2-08/2016 ka-8280 (Anu) dated 23.09.2016 and letter No. 9441/ANU dated 04.11.2016 and letter No. 1089 dated 02.02.2017 sent requisition before the J.S.S.C for starting selection process for Appointment to the post of Combined Graduate Trained Teachers in different subjects in different districts of the State.
- (ii) J.S.S.C., after receiving the aforesaid requisition, started selection process for appointment to the **post of Combined Graduate Trained Teachers Competitive Exam – 2016 and thereby Advertisement No. 21/2016** was published by which applications were invited from the eligible candidates for considering their candidature for appointment against the Advertised Post.

- (iii)** After publication of Advertisement, the same was amended and subsequently amended Advertisement No. 21/2016 was published. The Advertisement was issued for appointment of teachers to the post of Combined Graduate Trained Teacher in different subjects and districts.
- (iv)** Petitioners also submitted their online Application forms before the J.S.S.C for considering their candidature for Appointment to the post of Combined Graduate Trained Teacher for subject History and Civics and they have mentioned their Educational qualifications as Graduate in History and Political Science in their Online Application Forms.
- (v)** On the basis of the declaration made by the Petitioners in their online application form, Petitioners were allowed to appear in the examination and they were also declared successful on the basis of their performance in the examination.
- (vi)** After publication of the result, the successful candidates were called for verification of their testimonials from 18.09.2018 vide Annexure- 4 of Writ Petition i.e W.P.(S) 6412/2018.
- (vii)** On the date of verification of testimonials, petitioners submitted certificate of Graduation Degree in Ancient History, Ancient History Culture and Archaeology, Medieval History etc. from the different Universities which are at Annexure- 2 page- 39 of W.P.(S) No. 6412 of 2018; Annexure- 3 series at page- 31 of W.P.(S) No. 6309 of 2018 and Annexure-4, Page-23 in W.P.(S) No. 2005 of 2019, and failed to submit Graduation degree in History in terms of the advertisement.
- (viii)** Petitioners have Graduation Degree in different Branches of the subject History in place of History as a whole and as such Show cause Notices were issued to the Petitioners which is also under challenge in the writ applications.
8. Mr. Raj Nandan Sahay, learned Sr. Counsel and Mr. Indrajit Sinha, Mr. Rahul Kumar, Mr. Anshuman Kumar, Mr. Yashvardhan Sahay appears on behalf of petitioners.

Learned counsel submits that petitioners in W.P.(S) No. 6309 of 2018 holds the Certificates of University Grants Commission upon qualifying the National Eligibility Test declaring them fit to

teach History as a subject and fit to be appointed to the post of Assistant Professor and as such, when UGC being a Statutory Body created by virtue of Central Law passed by Act of Parliament has put its seal, the objection raised by the JSSC is not sustainable.

Learned Sr. Counsel submits that the Universities from which petitioners in all these cases have been conferred educational qualification, are all duly recognised by the UGC and now the UGC cannot alienate its duty to take upon the responsibilities, especially when UGC itself has certified the petitioners upon examination (NET) that they are eligible to teach History as a subject, being completely aware of the educational qualification held by the petitioners.

By assailing the opinion of the Committee constituted under the Chairmanship of Chairman, Jharkhand Academic Council, learned Sr. Counsel submits that none of the Members of the said Committee is expert in the field and subject History and, therefore, the opinion rendered by said Committee is refuted.

Learned counsel places reliance in the Judgment passed in the case of ***State of Tamil Nadu Vs. Adhiyaman Education & Research Institute*** reported in ***(1995) 4 SCC 104, at Page No. 135, Sub Clause-VI, Para-41*** which reads as under:

*“41. ... (VI) However, when the situations/ seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualification, as the case may be, although the applicant satisfies the standards or qualification, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central Law, they act unconstitutionally. ... ..”*

9. Mr. Indrajit Sinha, learned counsel appearing on behalf of the petitioners submits that experts from the Allahabad University and the Purvanchal University and Vinoba Bhave University have held qualification of the petitioners i.e. Post-Graduation in Ancient History, Medieval History or Modern History as the valid qualification for appointment and as such petitioners have good case and writ petitions are fit to be allowed.

Learned counsel further submits that 7<sup>th</sup> Schedule to the Constitution of India prescribes for List-I-Union List, List – II – State List and the List – III – Concurrent List. The Entry-25 in the

Concurrent List deals with the subject of Education including Technical Education, Medical Education and Universities which are subject to the provisions of Entries 63, 64, 65 and 66 of List – I. The Entry-66 deals with the coordination and determination of standard in institution for higher education or Research and Scientific and Technical Education. The scope of power under Entry-25 vis-à-vis Entry-66 of the Union List fell for consideration before the Hon'ble Supreme Court of India in the case of ***State of Tamilnadu & Another Vs. Adhiyaman Educational Research Institute*** reported in ***(1995) 4 SCC 104*** wherein the Hon'ble Supreme Court at paragraph-41, has held that ***if the applicant satisfies the standard laid down by the Central Law, the State cannot reject appointment on the ground that the applicant is not qualified.***

10. Mr. Rahul Kumar, learned counsel submits that petitioner – Sanjay Kumar in W.P.(S) No. 2005 of 2019 has a different case as he is working as a History Teacher since 29.09.2004 in Government Primary School, Dumaria Nala, Jamtara. Learned counsel submits that this petitioner has experience in teaching the subject History and as such Clause-6 of the Important Information No. 6863, dated 05.12.2018, pertaining to this petitioner, issued by JSSC pursuant to Advertisement No. 21/2016 for Trained Graduate Teachers' Competitive Examination, whereby and whereunder his candidature has been rejected/ cancelled by respondent no. 5 despite having all basic requisites as published in the Advertisement No. 21/2016, is illegal and arbitrary and fit to be quashed. Learned counsel submits that at least petitioner should have been given proper opportunity of hearing before rejecting his case by the respondents and respondents should have considered his candidature as he possess basic requisites as published in the Advertisement No. 21/2016. Merely because nomenclature of the subject is not History, his case ought not have been rejected ignoring the fact that respondents themselves had selected him for teaching the subject "History" long back in the year 2004 and by now he has good experience in teaching the subject 'History'. Learned counsel further submits that act of the respondents is arbitrary, unjust, unreasonable, without application



of mind, tainted with bias and malafide and is fit to be quashed and set aside.

11. Learned Sr. Counsel assisted by other counsels, appearing for the petitioners adopts same arguments for the second set of writ petitions also.
12. Ms. Khalida Haya Rashmi, learned counsel appearing for the petitioner in **W.P.(S) No. 1907 of 2019**, submits that petitioner in this writ petition has completed his **Masters of Arts in Ancient Hisotry, Culture & Archeology** from Allahabad University in the year 2007 and thereafter he has also completed **Master of Arts in History (Medieval & Modern)** from Veer Bahadur Singh Purvanchal University, Jaunpur, Uttar Pradesh in the year 2015 and has secured more than fifty percent marks. Learned counsel submits that petitioner is fully eligible and entitled for the relief prayed for as he fulfills required eligibility criteria. The main contention of arguments of learned counsel is that the subject History is divided into four parts namely (i)- Ancient (ii) Medieval (iii) Modern History (iv) World History. Learned counsel submits that there is no doubt that the candidates who possesses Graduate Degree in only one part of the subject History, for example Modern History, will be unable to teach subjects which pertains to other parts of history such as Medieval, Ancient and World History but this petitioner has completed all parts of History in two different Sessions and in fact he has gone into more depth in the subjects separately. Learned counsel submits that while clubbing the two different Degrees obtained by this petitioner, it would be evident that the same is virtually equal to the requirement of the JSSC and the Degree obtained in two different Sessions has the same value, force etc. and thus claim of the petitioner is genuine and his candidature should be considered. Learned counsel submits that result of 23 posts in unreserved category under direct recruitment is still vacant and case of the petitioner stands in a better footing than the other writ petitioners as he is having Masters' in History (Medieval & Modern) and Masters of Arts in Ancient History, Culture & Archeology, which goes to show that writ petitioner has done masters in History and more over specialisation in all the three Branches of History. Learned

counsel submits that this petitioner is in fact more competent than any of the candidates and he cannot be victimised for having specialisation in all the Branches of History.

Ms. Khalida Haya Rashmi further submits that para-25 of the counter affidavit filed by the respondents on 24.06.2019 in W.P.(S) No. 1907 of 2019 is not sustainable in view of the fact that while concluding that petitioner has done Masters in Ancient History, the respondents did not consider that petitioner is also having Masters in History (Medieval and Modern). Learned counsel submits that petitioner has quite different case and he fulfils requisite criteria and his case ought to have been considered by the respondents and as such appropriate direction may be passed for considering his case for appointment.

13. Mr. Rajiv Ranjan, learned Sr. Counsel assisted by Mr. Piyush Chitresh, Mr. Amritansh Vatt and Mr. Nagmani Tiwari, learned counsel appearing on behalf of interveners submits that the proposed interveners had appeared before respondent JSSC with all relevant documents including their Bachelor of Arts degree i.e. B.A. in History and Post-Graduation Degree or and other relevant documents as required by JSSC and to the satisfaction of respondent JSSC which was duly accepted by them. After completion of the above procedures, proposed interveners were shortlisted for appointment in the merit list so published by the respondent JSSC. The writ petitioners could not qualify in the document verification process as their B.A. was not as per requirement i.e. in the subject 'History' rather they had the specialization Degree of either Medieval History, Ancient History or Modern History respectively. They did not fulfill the specific terms and condition of the advertisement. The advertisement clearly stipulates that the candidates should have possessed the Degree in "HISTORY-Civics" subject and not in specialization/core of area for the reason that the syllabus of school where the candidates will be appointed includes all the parts of History i.e. Medieval History, Ancient History, Modern History etc.. Writ petitioners have themselves declared that they possess Graduate Degree in either Ancient, Modern or Medieval History

which is only a part of the subject History and as such they cannot be considered as a candidate Graduate in History subject as a whole.

Learned Sr. Counsel has further drawn attention of this Court towards **Annexure-6 to the I.A. No. 3982 of 2019** and submits that similar stand had been taken by the respondent JSSC in the examination conducted for selection of TGT Teachers for High Schools and had rejected candidatures of all those candidates who did not hold degree of History as a whole and after rejecting their candidature, the respondent JSSC had moved forward and appointed only those candidates who were having Degree in History as stipulated in the advertisement. Learned Sr. Counsel has further drawn attention of this Court towards **Annexure-8, to the I.A. No. 3982 of 2019** which is the Curriculum of History Honours Programme for Ranchi University which also includes all parts of History including Ancient, Medieval, Modern and World History.

Learned Sr. Counsel further submits that in similarly situated facts, the Bihar Public Service Commission, Patna, declared the eligibility criteria for the post of Asst. Professor, History for candidates possessing M.A degree in "HISTORY" and has rendered such candidates ineligible who possess the M.A in Ancient or Medieval History which is evident from perusal of **Annexure-9 Series to the I.A. No. 3982 of 2019**. Learned Sr. Counsel further submits that in the State of Uttar Pradesh appointment to the post of Asst. Professor has been segregated for the candidates having M.A in History and Candidates having M.A in Ancient History and further their posts have also been advertised separately which is evident from perusal of **Annexure-10 to the I.A. No. 3982 of 2019**.

In order to appreciation controversy in the present case regarding History course (Subject) and the Ancient History course (Subject), Learned Sr. Counsel has further brought into notice **Annexure-11 to the I.A. No. 3982 of 2019**, which is syllabus of the University Grants Commission and which clearly differentiate between the two subjects for Graduate as well as Post Graduate Degrees.

Learned Sr. Counsel submits that from perusal of syllabus of NCERT for Standard 9<sup>th</sup> and 10<sup>th</sup>, it would be evident that the

same includes the Chapters for World History and Modern History whereas petitioners in the present cases, being a Graduate in Medieval/ Ancient History, would be impaired to teach the same to the students. The said syllabus of NCERT has been brought on record vide **Annexure-7 to the I.A. No. 3982 of 2019.**

Learned Sr. Counsel has further drawn attention of this Court towards **Annexure-13, to the I.A. No. 3982 of 2019** and submits that in the erstwhile University of Allahabad now Prayagraj University (University of the writ petitioners), there were two different courses for *History* and *Ancient and Archeological History*. Learned Sr. Counsel further submits that Purvanchal University also provides two different courses for *History* and *Ancient and Archeological History*.

14. Mr. Sanjoy Piprawal, learned counsel appearing for the respondents – JSSC submits that petitioners are unnecessarily harping on the question of equivalence of Degrees. Learned counsel submits that nowhere it has been mentioned in the Advertisement that History or equivalent subjects of Post-Graduation level is also valid for consideration for appointment against the Advertised post and as such instant writ applications are not maintainable and thus same are fit to be dismissed by this Hon'ble Court. Learned counsel further submits that even from the Public Notice of the UGC, as produced by learned counsel for the Union of India, it is apparent that stand of the respondents – JSSC is justified and needs no interference by this Court.

Mr. Sanjoy Piprawal further draws attention of this Court towards Clause- 4 of the Advertisement and submits that the same delineate the Minimum Educational qualification for the posts advertised, wherein it has been specifically mentioned that the candidate must possess Post Graduate Degree with minimum 50% marks (45% marks for ST and SC candidates) in concerned subjects, in which recruitment is being done, from duly recognised by Institute of State Government, Central Government or University Grants Commission. For the post of Post Graduate Teacher, Biology, Post Graduate Degree in Zoology or Botany with minimum 50% marks (45 % marks for ST and SC Candidates) has been mandated to be the

minimum Educational Qualification. In addition to this, the candidate must have the degree of Bachelor of Education for being eligible for the post. Learned counsel further submits that in the Advertisement/Prospectus it is nowhere mentioned that other qualification i.e. Post-Graduation Degree in Ancient Indian History, Ancient Indian History and culture, Ancient History Archaeology and culture, Medieval and Modern History etc. are also valid for consideration of candidature for appointment to the post of Post Graduate Trained Teachers (History). In other words, it was nowhere mentioned in the Advertisement that a candidate who has passed M.A. History or equivalent subjects is also eligible for appointment. Learned counsel further gives emphasis on Clause-4 of the advertisement and further submits that it has clearly been mentioned in specific terms that the concerned candidates must possess Post Graduation Degree in the concerned subject in which recruitment is to be made and as such in terms of the Advertisement in these cases the minimum eligibility of a candidate for appointment as Post Graduate Trained Teacher in subject History is Post Graduation Degree in the subject History only.

Learned counsel submits that after issuance of Advertisement several candidates including Petitioners herein submitted their Online Application Forms before the J.S.S.C for consideration of their candidatures for appointment to the post of ***Post Graduate Trained Teacher for subject History and in their online application form they have mentioned they are Post Graduate in History.***

Learned counsel submits that on the basis of declarations made by the Petitioners in their respective Online Application Forms, they were allowed to appear in the examination and they were also declared successful on the basis of their performance in the examination. After publication of results, successful candidates were called for verification of their testimonials. Further, petitioners were also called for verification of their testimonials on 08.08.2018 vide Annexure-2 of the Writ Application i.e. W.P(S) No. 4079/2018. Since on the date of verification of the testimonials petitioners submitted Post Graduation degree Certificate of Post-Graduation in Medieval

History, Ancient History, Ancient History and Culture, Ancient History Archaeology and Culture etc. obtained from the different Universities and failed to submit Post Graduation Degree in History in terms of the Advertisement and as such their candidatures is rightly rejected. Learned counsel further submits that from facts stated above it is evident that petitioners have Post Graduation Degree in different Branches of History. Since Petitioners have Post Graduation Degree in different Branches of History in place of History as a whole and as such Show cause Notices were issued to the Petitioners which is under challenge in these writ applications. Petitioners are not at all eligible for appointment to the post of Post Graduate Trained Teacher in Subject History in terms of Advertisement.

It has further been pointed out by Mr. Sanjoy Piprawal that J.S.S.C vide their Letter No. 3763, dated 13.08.2018 and Letter No. 4781, dated 01.10.2018, sought necessary guidelines from the Department of School Education and Literacy, Government of Jharkhand with regard to validity of Post Graduation Degree in the Branches of the concerned subjects including the subject History as a whole in view of the terms and conditions of the Advertisement vide Annexure -C and Annexure C/1 of the Counter Affidavit. The Department of School Education and Literacy, Government of Jharkhand vide its Letter dated 12.04.2019, has provided the guidelines on the basis of recommendation of High Level Committee to the effect ***“that recommendation to be made for appointments of those candidates only who have having Post Graduation Degree in the concerned subject as Advertised and no recommendation be made for those candidates who are having Post Graduation Degree in ancillary subject”***. The said letter has been filed as Annexure-D to the Supplementary Counter Affidavit filed by JSSC in W.P.(S) No. 4078 of 2018.

Learned counsel submits that in the facts and circumstances, the instant writ applications are not maintainable and thus same are fit to be dismissed by this Hon'ble Court.

15. Mr. Sanjay Piprawal, learned counsel appearing for JSSC submits that he adopts the same arguments for the second set of

writ petitions also. Learned counsel further submits that the minimum educational qualification for considering the candidature of the candidates for appointment to the Advertised posts in these category of case have been mentioned in Clause-4 of the Advertisement/prospectus wherein it has been specifically mentioned that candidate must possess Bachelor degree with minimum 45% of marks (40% marks for candidates of Scheduled Caste and Scheduled Tribe ) in one of both the subjects along with B. Ed from a recognized Training Institute or Equivalent B. Ed Degree as recognized by the National Teachers' Educational Council. The required minimum educational qualification varies for different Graduate Trained Teachers based on the subjects opted by the candidates. **In these sets of cases petitioners had applied for Graduate Trained Teachers for subject History/Civics for which minimum educational qualification is Bachelor's Degree with History and Political Science but having at least 45% marks (40% marks for candidates of Schedule caste and Schedule Tribe) in one of the subjects along with B.Ed from recognized Teachers' Training Institution or equivalent.** Like the another set of writ petitions, the **petitioners herein also submitted their Online Application Forms before the J.S.S.C for considering their candidatures for Appointment to the post of Combined Graduate Trained Teachers for the subject History and Civics and petitioners have mentioned their Educational qualifications as Graduates in History or Political Science in their Online Application forms.** Learned counsel submits that it is not out of place to mention here that for subject History/Civics, it is nowhere mentioned in the Advertisement that equivalent degrees at graduation level will also be considered by the J.S.S.C. Learned counsel further reiterates that in Advertisement it has been mentioned in specific terms that for subject History/Civics the minimum educational qualification is Bachelor degree with History and/or Political Science. Learned counsel submits that after publication of result, successful candidates were called for verification of their testimonials from 18.09.2018 vide Annexure- 4 of Writ Petition i.e W.P.(S) 6412/2018. On the date of verification of

testimonials, petitioners submitted their certificates of Graduation Degree in Ancient History, Ancient History Culture and Archaeology, Medieval History etc. obtained from different Universities which are at Annexure- 2 page- 39 of W.P.(S) No. 6412 of 2018; Annexure- 3 series page- 31 of W.P.(S) No. 6309 of 2018 and Annexure-4, Page-23 of W.P.(S) No. 2005 of 2019 and failed to submit Graduation Degree in History in terms of the advertisement. Thus it is apparent that petitioners have Graduation Degree in different Branches of History and not History as a whole. Since Petitioners have Graduation Degree in different branches of History in place of History and as such Show cause Notices were issued to the Petitioners which is also under challenge in the writ applications.

Learned counsel submits that in view of facts and circumstances, Petitioners are not eligible for appointment to the post of Graduate Trained Teacher in Subject History/Civics in terms of Advertisement.

16. Learned counsel appearing for the respondents – State adopts the arguments advanced by counsel for the JSSC and submits that candidature of the candidates not fulfilling the requisite qualification as per advertisement has rightly been rejected. Learned counsel submits that Ancient History, Medieval History or Modern History is not the required qualification as per the Advertisement. The Ancient History, Medieval History or the Modern History are merely Branches of the subject History and not the requisite qualification. Learned counsel submits that in order to clarify the issue relating to “Equivalence” a Committee had been constituted comprising of Chairman, JAC; Regional Director, KDS; RDDE, South Chhotanagpur; Secretary, JAC; Deputy Director, Secondary Education; Additional Secretary, Secondary Education; DEO, Ranchi and Senior Advocate of the High Court and after various correspondences with various Universities in the State of Jharkhand the Committee has come to a concrete decision that Ancient History, Medieval History and Modern History are the Branches of the subject History and candidates having Degree is any of the Branch only, not



the subject History in its entirety, cannot be made eligible for selection in terms of the advertisement.

17. In order to take view of University Grants Commission, Mr. Rajiv Sinha, learned ASGI appearing for the Union of India was directed to come with stand of the UGC in this matter. Today when the case is taken up, Mr. Rajiv Sinha, learned ASGI appearing for the Union of India has also produced a Public Notice on equivalency of Degrees dated 19.07.2016 of the U.G.C in which it has been mentioned that

***“Equivalence of degrees, diploma, certificates etc. Are not determined by the U.G.C. in the case of higher education, equivalence is decided by the University concerned and in cases of employment, promotion etc, equivalence is decided by the employing organization.”***

18. This Court has all the praise to Mr. Rajiv Sinha, learned ASGI appearing for the Union of India who, within a short notice, was able to assist this Court by producing a Public Notice on equivalency of Degrees dated 19.07.2016 of the U.G.C.

19. While hearing the matter on 27.06.2019, this Court had framed the issues involved in all the writ petitions which are as follows:

- (I) ***As to whether History is equivalent to Ancient History, Medieval History and other Branches of History for the purposes of appointment to the post of Post Graduate Teachers and Trained Graduate Teachers?***
- (II) ***Whether any appointment has been made as per the terms and conditions of the advertisement?***
- (III) ***Whether the candidates, who did not possess the requisite qualifications as per the advertisement, can be treated at par with the candidates who has the requisite qualifications as per the advertisement, i.e. Ancient, Medieval and Modern History?***

20. From the arguments advanced by counsel for the parties and after perusing records of the case, it is necessary to go through

NCERT syllabus for class 9<sup>th</sup> and 10<sup>th</sup>. From perusal of the syllabus, it appears that the same includes subjects from World History and Modern Indian History. The History subject is divided into four parts namely **(i)- Ancient (ii) Medieval (iii) Modern History (iv) World History**. This is also evident from **Annexure-7 to the I.A. No. 3982 of 2019**. The candidates who possess Graduate Degree in only one of the branches of History, for example Modern History, would not be able to teach subjects which pertains to any other branch of History such as Medieval, Ancient and World History. The syllabus for History and Ancient History is also different in the Banaras Hindu University and both the subjects have different syllabus. On the one hand Ancient History covers the period between 620 BC to 1206 AD, while the History subject covers the History in entirety i.e Ancient, Medieval, Modern and World History.

21. From perusal of the Advertisement, it is clearly evident that minimum qualification for appointment in the concerned posts is to be **Graduate in the subject- History** whereas petitioners in the present cases are not Graduates in the subject-“History” rather they are Graduates either in “Ancient, Medieval or Modern History” which is only a part of History subject and not History subject as a whole.
22. It further appears that candidature of the candidates similar to the petitioners who do not hold the Degree in History in their Graduation, had been rejected by the respondent JSSC pursuant to the same advertisement as in the present case for the District of Deoghar which is apparent from **Annexure-6 to the I.A. No.3982 of 2019**.
23. There is no controversy to the fact that in similar case, the Bihar Public Service Commission, Patna fixed eligibility criteria for appointment to the post of Assistant Professor in History as Post Graduate in History and the Commission rendered candidature of candidates having M.A. in Ancient History/ Medieval History as ineligible.
24. As has been argued by counsel for the Interveners, it appears that the University of the petitioners conducts two different courses for *History and Ancient & Archeological History*, further the Purvanchal University, also conducts two different courses in *History*

*and Ancient & Archeological History*. This further put emphasis on the fact that Graduation in History and Graduation in Ancient History are two separate Degrees and both are different streams of subject and cannot be equated. The syllabus in both streams are entirely different and as such no equivalence can be drawn between the two.

25. It has already been held in a catena of decisions that qualification for a post is a recruitment policy and the State being employer, is only competent authority to prescribe a particular qualification as a condition of eligibility. It is no part of the role or function of a Judicial review to expand upon the ambit of the prescribed qualification. In its recent Judgment in the case of ***State of Tamil Nadu and others Vs. G. Hemalathaa and Another*** reported in **2019 SCC Online (SC) 1113**, Hon'ble Apex Court has been pleased to observe that *the Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance*. The Apex Court stated that *the High Court in exercise of powers under Article 226 of the Constitution cannot modify/ relax the Instructions issued by the Commission*. Further, the Hon'ble Apex Court said that

*"It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations."*

26. Similarly equivalence of qualification is not a matter which can be determined in exercise of the power of judicial review, whether a particular qualification should be or should not be regarded as equivalent is a matter for state and the recruiting authority, to determine. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the certain of job opportunities across the societal structure.

27. Having gone through the entire documents, arguments advanced by counsel for the parties, advertisement published by the

JSSC, opinion of the UGC, this Court is of the considered view that the selection process has to be completed strictly in terms of the advertisement. The essential qualification for appointment to the particular post is for the employer to decide according to nature and needs of work. The employer may prescribe the additional or desirable qualifications including any kind of preference. In the instant case the arguments advanced by learned counsel for the petitioners is not acceptable to this Court for the following reasons:

- (i) The Hon'ble Apex Court in the case of ***Maharashtra Public Service Commission through its Secretary Vs. Sandeep Shriram Warade and others*** and other analogous cases reported in **(2019) 6 SCC 362**, in Paragraph-9 has held as under:

*“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules of law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”*

- (ii) Nowhere in the Advertisement it has been mentioned that even equivalent Degree shall be considered. The word as used in the Advertisement, should be given literal meaning. Similar view has been taken in the case of ***Ritu Bhatia Vs. Ministry of Civil Supplies, Consumer Affairs and Public Distribution and others*** reported in **(2019) 3 SCC 422**. In Para-20 of the said Judgment, it has been held that *the word “as” used in the*

*advertisement should be given literal meaning. The respondent is the author of the advertisement and they are the best person to consider what they meant by using the word “as”.*

- (iii) The stipulation for qualification prescribed is the bare minimum requirement of the job emphasizes that it is an essential requirement, a threshold which cannot be dispensed with. The scope of judicial review in such cases is very limited and the same shall not be exercised by the court in a casual manner. State as an employer is entitled to prescribe qualification, as a condition of eligibility after taking into consideration nature of job, aptitude required for efficient discharge of duties, functionality of qualifications, course content leading up to acquisition of qualifications. In the judgments of the Hon’ble Supreme Court reported in **(2019) 2 Supreme Court Cases 404** it has been held as under:

*“The prescription of qualification for a post is a recruitment policy and the State as the employer is entitled to prescribe the qualification as a condition of eligibility. It is no part of the role or function of a Judicial review to expand upon the ambit of the prescribed qualification.*

*Similarly equivalence of qualification is not a matter which can be determined in exercise of the power of judicial review, whether a particular qualification should be or should not be regarded as equivalent is a matter for state and the recruiting authority, to determine.*

*The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the certain of job opportunities across the societal structure”*

- (iv) In the Judgment rendered in the case of **Bedanga Talukdar -Vs- Saifudaullah Khan & Ors.** reported in **2011(12) SCC 85 : Para 29 to Para 32**, it has been clearly held that the **Selection Process has to be completed strictly in terms of Advertisement.**
- (v) In the Judgment rendered in the case of **Prakash Chand Meena & Ors Vs State of Rajasthan** reported in **2015(8) SCC 484, Para 9** it has been held that:

*“the candidates who is aware of the Advertisement and did not have the qualification of CPED also had two option, either to apply only for PTI GR II if they had the necessary qualification for that post or to challenge the advertisement that it omitted to mention equivalent or higher qualification along with qualification of CPED for the post of PTIGR-III having not challenge the Advertisement and having applied for the other post, they could not have subsequently claimed or be granted eligibility on the basis of equivalence clarified or declared subsequently by the State Government. In the matter eligibility qualification the equivalent qualification must be recognized as such in the recruitment rules of Govt. Order existing on or before the initiation of recruitment process.”*

(vi) Further in the Judgment rendered in the case of **Zahoor Ahamed Rather & Ors -Vs- Sheikh Imitiyaz Ahmad & Ors** reported in **2019(1) JBCJ 35(SC)**, at **Para 22 to 26**, it has been held that *the prescription of qualification for a post is a matter of recruitment policy. The state as employer is entitled to prescribe the qualification as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly equivalence of a qualification is not a matter which can be determined in exercise of the power of the judicial review whether a particular qualification should or should not be regarded as equivalent is a matter for the state as the recruiting authority, to determine.*

(vii) In the Judgment rendered in the case of **Union of India Vs. S. Vinod Kumar & Ors.** reported in **2007(8) SCC 100**, in **Para-18** it has been held that:

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

(viii) In the case of **Director, A.I.I.M.S. and Ors Vs. Nikhil Tandon and Ors.** reported in **(1996) 7 SCC 741** it has been held in paragraph-12 that

**“12.** *We are of the opinion that the two years' training at Cambridge University undergone by Tandon while working for his Ph.D. cannot be treated as a qualification recognised as equivalent to D.M. Schedule-I to the A.I.I.M.S. Recruitment Rules speaks of D.M. qualification or a qualification recognised as equivalent thereto. It is*

not mere equivalence that is enough. It must also be recognised as equivalent. Recognised evidently means recognised by the Institute or at least by the Medical Council of India. Admittedly, neither has recognised the said research work/training for two years in the Cambridge University as equivalent to D.M. It is agreed before us that the degrees awarded by the Cambridge University are not recognised in India since 1978. This means that even if Tandon had obtained his Ph.D. qualification from Cambridge University on or before October 7, 1992, it could not have been recognised as a qualification equivalent to D.M. If so, it is understandable how the two years' research/training put in by Tandon while working for the said qualification can be counted as a qualification recognised as equivalent to D.M. It may be equivalent; it may be more. But the question is whether it is recognised – and admittedly it is not. We are not impressed by the argument of Sri Jaitley that the words "M.D. in Medicine with two years' special training in Endocrinology" in the Recommendations of Medical Council of India with respect to the post of Professor in Endocrinology means two years' special training in Endocrinology anywhere in the world. The said words have to be read and understood in the context of the A.I.I.M.S. Recruitment Rules and the First Schedule thereto. The submission based upon the contrast in the language used in describing the qualifications for Professor in endocrinology and Professor in the department of Physical Medicine and Rehabilitation is unacceptable. Sri Jaitely could not point out any such requirement against any other qualification in the said Recommendations. Based upon the use of the words, "in any approved Institution in India" in the qualifications mentioned for one among the several posts in the Recommendations, it is not possible to hold that the qualifications awarded by Institutions which are not recognised by the Medical Council of India or the training undergone in such Institutions has become recognised. The acceptance of this argument would mean that the qualifications not recognised by the Institute or Medical Council of India become recognised in this indirect manner. We cannot countenance such an argument."

- (ix) In the case of **Reshamlal Pradhan Vs. State of Chhattisgarh and others** in **W.P.(S) No. 3169 of 2015**, the High Court of Chhattisgarh at Bilaspur has held in para 31 of the said Judgment that **equivalence of two qualifications is a matter of executive policy and it has to be by a governmental order**. It has further been held therein that **even otherwise, equivalence must be recognized as in the**

**recruitment rules prior to initiation of recruitment process by specific order duly published.** In the said Judgment, the Court has further held in para-15, 16 and 17 as under, which is relevant to be mentioned hereunder:

**“15 .** Meaning of "relevant subject" for appointment on a post with reference to eligibility condition for recruitment came to be considered by Their Lordships of the Supreme Court in the matter of Ganapath Singh Gangaram Singh Rajput v. Gulbarga University represented by its Registrar and others MANU/SC/1149/2013 : (2014) 3 SCC 767 in which Their Lordships have answered the question holding that postgraduate degree in "relevant subject" in the context would mean post-graduate degree in which the candidate has applied for recruitment to teach a particular subject and observed in paragraphs 21 and 22 as under:--

**"21.** As is evident from the advertisement, applications were invited for filling up various posts in different subjects including the post of Lecturer in MCA. The advertisement requires post-graduate degree in the 'relevant subject'. The relevant subject would, therefore, in the context of appointment to the post of Lecturer, mean postgraduate degree in MCA. In our opinion, for appointment to the post of Lecturer, Masters degree in the Mathematics is not the relevant subject. The advertisement requires Masters degree in the 'relevant subject' and not 'appropriate subject'. In the present case, the Board of appointment has not stated that post-graduate degree in Mathematics is the relevant subject for MCA but in sum and substance it is equivalent to a post-graduate degree in MCA for the reason that Mathematics is one of the subjects taught in MCA. This, in our opinion, was beyond the power of the Board of appointment.

**22.** It shall not make any difference even if Mathematics is taught in the Masters of Computer Application course. The learned Single Judge, in our opinion, gravely erred in upholding the contention of Ganpat and the University that 'relevant subject' would mean 'such of those subjects as are offered in the MCA course'. If Mathematics is taught in a post-graduate course in Commerce, a Masters degree in Commerce would not be relevant for appointment in Mathematics or for that matter in MCA. There may be a situation in which Masters degree in MCA is differently christened and such a degree may be considered relevant but it would be too much to say that a candidate having postgraduate degree in any of the subjects taught in MCA would make the holders of



a Masters degree in those subjects as holder of Masters degree in Computer Application and, therefore, eligible for appointment."

**16.** In a very recent decision in the matter of ***Prakash Chand Meena and others v. State of Rajasthan and others MANU/SC/0318/2015 : (2015) 8 SCC 484***, a question of equivalence of two qualifications which may be treated as equivalent came up before the Supreme Court in which Their Lordships of the Supreme Court have held that in the matter of eligibility qualification, equivalent qualification must be recognized as such in existing recruitment rules or government order existing on or before the initiation of recruitment process and observed as under:--

"... In the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules or government order existing on or before the initiation of recruitment process..."

**17.** Similarly, in the matter of ***Guru Nanak Dev University v. Sanjay Kumar Katwal and another MANU/SC/8135/2008 : (2009) 1 SCC 610***, Their Lordships of the Supreme Court have held in no uncertain terms that equivalence is a technical academic matter and decision on question of equivalence must be by specific order or resolution duly published, by holding as under:--

"**15**....Equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. The first respondent has not been able to produce any document to show that the appellant University has recognised MA (English) (OUS) of Annamalai University through distance education as equivalent to MA of appellant University. Thus, it has to be held that the first respondent does not fulfil the eligibility criterion of the appellant University for admission to the three year law course."

(x) In the matter of ***University of Mysore v. C.D. Govinda Rao and another MANU/SC/0268/1963 : A.I.R. 1965 SC 491***, in Constitution Bench Judgment, Their Lordships of the Supreme Court have held that in the academic matters regarding equivalence of university degree the Courts will not express a definite opinion. Paragraph 12 of the report states as under:-

"12. Where one of the qualifications for the appointment to the post of a Reader in the University was that the applicant should possess a First or High Second Class Master's Degree of an Indian University or an equivalent

*qualification of a foreign University, the candidate should possess a First Class Master's Degree of an Indian University or High Second Class Master's degree of an Indian University or qualification of a foreign university which is equivalent to a First Class or a High Second Class Master's degree of an Indian University. Whether the foreign degree is equivalent to a High Second Class Master's degree of an Indian University is a question relating purely to an academic matter and courts would naturally hesitate to express a definite opinion, specially when the selection Board of experts considers a particular foreign university degree as so equivalent."*

28. It is well settled law that the question of equivalence of educational qualification is not within the domain and jurisdiction of the Court under Article 226 or 227 of the Constitution of India, it has to be done by a body of academicians or an expert body qualified for that job, as such, this Court cannot consider and hold one educational qualification to be equivalent to other qualifications. In this respect, in umpteen number of cases the Supreme Court has observed that it is not within the scope of judicial review to draw equivalence of qualification. Drawing of equivalence of qualification is essentially the job of experts of the field and it is not for the Court to enter into the arena of comparing two qualifications on certain parameters and then to declare equivalence.
29. I am in agreement with the submission on behalf of learned counsel appearing for JSSC as well as State Counsel that the nomenclature of the two courses being different there has to be difference in the nature of study and knowledge imparted in the two disciplines, course content, qualifications acquired etc. It is not open for the Court in academic matters to declare equivalence of courses as may have been advertised by the employer. Concludingly, equivalence of educational qualification is purely a technical academic matter and it has to be done by appropriate authority/expert that too by specific order duly published prior to initiation of recruitment process.
30. As a fallout and consequence of aforesaid discussions, I do not find any illegality or arbitrariness in action of the respondents in holding the petitioners ineligible for the concerned posts. I do not

find any interference is warranted in the writ petitions preferred by the petitioners. Accordingly, all the writ petitions stand dismissed.

31. It is however made clear that the candidates who have obtained Degree exclusively in the subject "**HISTORY**" as per the advertisement, are entitled for consideration for appointment to the aforesaid posts, subject to fulfilment of other criteria and requisite position in the merit list and if there is no other legal impediments.

32. As a sequel thereof, all the Interlocutory Applications also stand disposed of.

**(Dr. S.N. Pathak, J)**