



AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WA No. 168 of 2024**

Shiv Kumar Singh, S/o Shri Bimal Singh, aged about 46 years, R/o Civil Lines, Khrivaigarh, District : Rajnandgaon, Chhattisgarh.

---- Appellant

**Versus**

1. State of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, Naya Raipur, District : Raipur, Chhattisgarh.
2. Engineer-In-Chief Public Works Department, Sirpur Bhawan, Civil Line, Akashwari Bhawan, Raipur, Chhattisgarh.
3. Ramakant Kashyap S/o A.C. Kashyap Aged About 38 Years R/o Q.No. H212, PWD Colony, Korba, District : Korba, Chhattisgarh.
4. Suraj Kumar Kashyap S/o Sharad Kumar Kashyap Aged About 41 Years R/o Near Radha Krishna Mandir, Ward No. 40, Torwa, Bilaspur, District : Bilaspur, Chhattisgarh.
5. Bhupendra Shrivastav S/o S. L. Shrivastav Aged About 35 Years R/o Near Degree Raigarh College, PWD Colony, Raigarh, District : Raigarh, Chhattisgarh.

---- Respondents

(Cause-title taken from Case Information System)

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For Appellant : Ms. Surya Kawalkar Dangi, Advocate.  
For Respondents/State : Mr. Yashwant Singh Thakur, Additional Advocate General.

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**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Smt. Rajani Dubey, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**10.04.2024**

1. Heard Ms. Surya Kawalkar Dangi, learned counsel for the appellant as well as Mr. Yashwant Singh Thakur, learned Additional Advocate

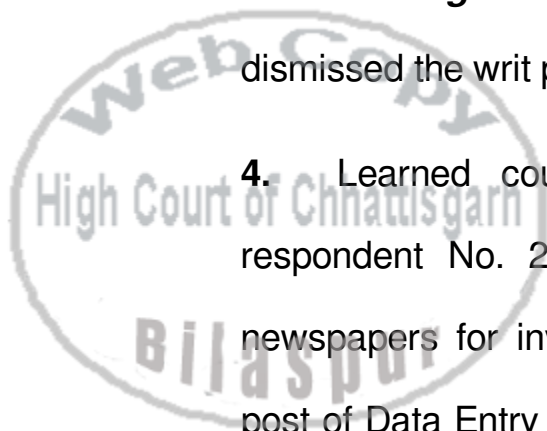


General, appearing for respondents No. 1 & 2/State on I.A. No. 2 of 2024, which is an application for condonation of delay.

2. After hearing the learned counsel for the parties and considering the reasons mentioned in the application, we are of the considered opinion that sufficient cause has been shown in the application and accordingly, I.A. No.2 of 2024 is **allowed** and delay of 119 days in filing the appeal is condoned.

3. The present intra Court appeal has been filed by the appellant/writ petitioner against the order dated **09.10.2023** passed by the learned Single Judge in **WPS No. 2209 of 2016 (*Shiv Kumar Singh & Others vs. State of Chhattisgarh & Another*)**, whereby the learned Single Judge has dismissed the writ petition filed by the appellant/writ petitioner.

4. Learned counsel for the appellant/writ petitioner submits that respondent No. 2 took a decision to issue an advertisement in the newspapers for inviting application for filling the sanctioned and regular post of Data Entry Operators, Assistant Grade - 3, Assistant Programmer, Stenographer and Steno-Typist (through direct appointment mode) and the advertisement was published on 10.07.2013. It is submitted that for the conduct of the said examination the State of Chhattisgarh was divided into 31 divisions and applications were called division wise, meaning thereby, that candidate residing in Raipur shall submit the application form in Raipur Division. Herein, it is pertinent to mention that the selection process was only one and was to be conducted for the entire State of Chhattisgarh and the said fact that one common selection process was carried out for all the divisions can be made crystal clear from the following clauses of advertisement dated 10.07.2013 (Annexure P/1 in the writ petition):





"(ब) प्रायोगिक परीक्षा (दक्षता/कौशल परीक्षा):-

(5) जिस कार्यालय के रिक्त के विरुद्ध आवेदन पत्र प्रस्तुत किया जा रहा है, उसी कार्यालय प्रमुख को वांछित प्रमाण पत्रों एवं सूचियों की सत्यापित प्रतियां सहित उस दिनांक 31.07.2013 तक पंजीकृत डाक/स्पीड पोस्ट द्वारा कार्यालयीन समय में अनिवार्य रूप से प्राप्त हो जाना चाहिए। विलंब से /सीधे प्राप्त हुए आवेदन पत्रों पर कोई विचार नहीं किया जावेगा तथा कोरियर सेवा से प्रेषित करने वाले आवेदन पत्रों को स्वीकार नहीं किया जावेगा ।

(6) आवेदन प्रस्तुत करते समय लिफाफे के ऊपरपर आवेदित पद का नाम, जाति संवर्ग एवं संबंधित जिले का नाम स्पष्ट रूप से अंकित होना चाहिए।

(7) आवेदकों को छततीसगढ़ का मूल निवासी ही होना अनिवार्य है।

(8) बस्तर एवं सरगुजा संभाग के अंतर्गत आने वाले जिलों के रिक्त पदों हेतु आवेदन करने वाले अभ्यर्थियों को उस जिले का स्थानीय निवासी होना अनिवार्य है।

(21) कौशल परीक्षा/ साक्षात्कार एक ही दिवस का होना है। अतः उम्मीदवार किसी एक ही कार्यालय पर आवेदन पत्र प्रस्तुत करें।

(22) यह नियुक्ति छततीसगढ़ राज्य के लिए है अतएव चयनित उम्मीदवार को रिक्तियों के आधार पर छततीसगढ़ राज्य के किसी भी जिले में पदस्थापना दी जावेगी।"

A bear perusal of the clause numbers 21 and 22 clearly provides that the selection process was common for the entire State of Chhattisgarh.



5. It is further submitted by the learned counsel for the appellant/writ petitioner that the appellant/writ petitioner having all the requisite qualifications applied for the vacant post of Data Entry Operator from Kheragarh division. As per the advertisement the results of the selection process were to be declared on 31.08.2013, but results of only Raipur division was declared. Here in, it is pertinent to mention that list of eligible candidates and interview call letter of the appellant was declared by the respondent authorities. She further submits that a controversy cropped up in the appointments which were granted for the Raipur division. In Raipur division appointments were granted to 67 persons in different post, on which 38 persons joined. Thereafter, vide order dated 10.03.2015, it was decided that since the advertisement was issued on the basis of rules which were not notified in gazetted and without carrying on the amendment (i.e. advertisement was issued on the basis of draft rules) the entire selection process was cancelled. Pursuant to the order dated 10.03.2015, termination orders were issued on 12.03.2015 to candidates of Raipur Division, who were granted appointment. It is pertinent to mention that the order dated 10.03.2015 has not been filed by the appellant/writ petitioner in WPS No. 2209 of 2016 nor the respondent has placed the said order on record, however, the termination order dated 12.03.2015 which has been passed on the basis of order dated 10.03.2015, quotes the said order. For ease of reference the termination order dated 12.03.2015 filed by respondent as Annexure R/1 (in the writ petition) is reproduced below:

“विभाग ने शीघ्रलेखक, स्टेनो टाइपिस्ट, सहायक ग्रेड 3 एवं डाटाएंट्री ऑपरेटर के पद की नियुक्ति के संबंध में इस कार्यालय द्वारा विज्ञापन क्रमांक 29021001/स्था/प्र.अ./13 दिनांक 02/07/2013 जारी किया गया था तथा इसी तारतम्य में इस



कार्यालय के आदेश क्रमांक 39021378/स्था/प्र.अ./13 दिनांक 28/08/2024 के द्वारा श्री ..... को शीघ्र लेखक के पद पर नियुक्ति आदेश प्रदान किया गया था।

शासन के आदेश क्रमांक एफ 3-13/2014/19/स्था73 दिनांक 10/03/2015 के द्वारा उक्त प्रकरण में सामान्य प्रशासन विभाग के परिपत्र क्रमांक एफ 9-1/2008/173 दिनांक 01/02/2013 में जारी निर्देशों का पालन नहीं किये जाने तथा बिना लोक निर्माण विभाग के अराजपत्रित सेवा भर्ती नियमों में संशोधन किये विज्ञापन जारी किए जाने के कारण विज्ञापन के आधार पर की गई समस्त कार्रवाईयों कोई शून्य निरूपित करते हुए की गई संपूर्ण भर्तियों को शून्य घोषित करने हेतु निर्देशित किया गया है। अतः उक्त विज्ञापन दिनांक 02/07/2013 एवं उसके आधार पर इस कार्यालय के आदेश क्रमांक 39021378/स्था/प्र.अ./13 दिनांक 28/08/2014 द्वारा दी गई नियुक्ति को एतद्वारा तत्काल प्रभाव से निरस्त किया जाता है।”

6. Learned counsel for the appellant/writ petitioner contented that the order dated 12.03.2015 clearly shows that the selection process was cancelled as the advertisement was based on the basis of draft rules which were not notified. The order dated 10.03.2015 and individual termination orders dated 12.03.2015 were challenged by the terminated employees before this Court by filing writ petitions bearing WPS No. 973 of 2015 and connected batch of writ petitions. The learned Single Judge vide order order dated 31.08.2015 upheld the validity of the termination orders. Thereafter, the order dated 31.08.2015 passed in WPS No. 973 of 2015 & batch was challenged in WA No. 484 of 2015 and other connected matters, wherein, the orders dated 10.03.2015, 12.03.2015 and 31.08.2015 passed in WPS No. 973 of 2015 & batch were set aside and the advertisement and



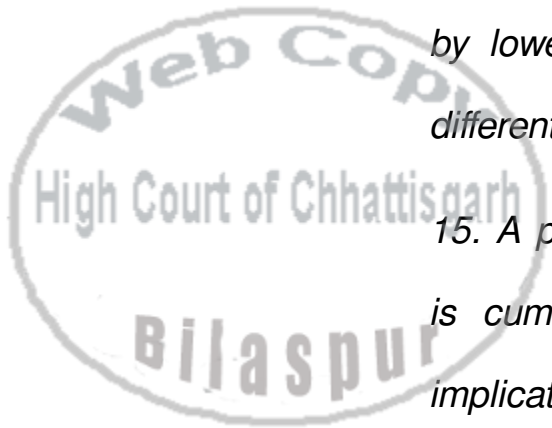


the selection process was held to be valid and legal and this Court in paragraphs 14, 15 & 16 further held that:

*“14. Manifestly, it is thus to be seen that there has been no change in the essential eligibility criteria for appointment. The only addition is with regard to testing proficiency of the eligible. It would only enable and facilitate the Government from choosing the most proficient and competent from amongst the eligible candidates. Had it been a case where the qualifications of eligibility to participate in the selection process were substantially changed in derogation to the existing rules by lowering them, matters would have been entirely different for consideration.*

*15. A process of public advertisement and recruitment is cumbersome, time consuming and has financial implications. If there are gross illegalities and blatant violation of law, the entire process will have to be set aside irrespective of all consequences. But if the irregularities alleged are trivial or do not really constitute an irregularity and the process of advertisement and selection does not stand vitiated completely, every infraction will not call for complete setting aside of the selection process. The draft rules have also been finally published on 17.6.2015 without any modifications.*

*16. We therefore are unable to sustain the order under appeal by holding that the entire selection process stands vitiated and has to be set at naught with*





*directions for proceeding afresh all over again. The orders of the State Government dated 10.03.2015 and individual orders of termination pursuant thereto alongwith the order under appeal are set aside. The Appellants are directed to be reinstated but without back- wages.”*

7. Learned counsel for the appellant/writ petitioner submits that Division Bench vide order dated 18.02.2016 passed in WA No. 484 of 2015 has categorically held that no illegality or any irregularity has been committed in the selection process which has been conducted vide advertisement dated 02.07.2013. Despite the selection process being held to be legal and valid, the results of other divisions were not declared, the appellant along with other candidates approached this Court by way of filing writ petition bearing WPS No. 2209 of 2016, for issuance of the results and to proceed further. She also submits that the reply was filed by the respondent authorities in the writ petition, wherein, the same stand has been taken which was taken for issuance of the termination orders of the appointed candidates *i.e.* ‘*without there being any amendment in the recruitment rules, the advertisement was issued on 02.07.2013 and therefore, the eligibility qualification existed on the said date was contrary to the recruitment rules, though the same contained in the advertisement.*’ The learned Single Judge dismissed the WPS No. 2209 of 2016 & batch vide order dated 09.10.2023.

8. It is further contented by the learned counsel for the appellant/writ petitioner that the essence of the cancellation dated 14.09.2016 is the decision taken by the respondent on 10.03.2015 and it is humbly submitted that the reasons assigned by the respondent State authorities, in their





return (in the writ petition) for cancelling the advertisement have already been dealt extensively by the Division Bench of this Court in WA No. 484 of 2015, and therefore, when a controversy on a particular subject matter has been set at naught by the Division Bench which has not been challenged further and attained finality, then the respondent/State was duty bound to abide by the same. She also contented that once the Division Bench in WA No. 484 of 2015 vide order dated 18.02.2016 has categorically stated in para No. 16 that “*We therefore, are unable to sustain the order under appeal by holding that the entire selection process stands vitiated and has to be set at naught directions for proceeding afresh all over again*”, and thereafter, setting aside the order dated 10.03.2015 and individual termination order, then the respondent/State cannot take the same stand and cancel the selection process. It is submitted that once a controversy pertaining to a subject matter has been set at naught by a competent Court and attained finality, then that judgment becomes judgment in rem as far as the said controversy is concerned. And this proposition is commonly known as ‘doctrine of stare decisis’ according to which when a competent Court has laid down principles of law as applicable to certain state of facts, it will adhere to that principle and apply to all future cases where the facts are substantially the same. Hence, the aforesaid impugned order dated 09.10.2023 is untenable in the eyes of law.

9. Learned counsel for the appellant/writ petitioner has referred the judgment of Hon’ble Supreme Court in the matter of ***Sakshi vs. Union of India***, reported in ***(2004) 5 SCC 518*** and would refer to paragraph 23 which reads as under:-

*“23. Stare decisis is a well-known doctrine in legal jurisprudence. The doctrine of stare decisis, meaning to*





*stand by decided cases, rests upon the principle that law by which men are governed should be fixed, definite and known, and that, when the law is declared by a court of competent jurisdiction authorized to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority. It requires that rules of law when clearly announced and established by a court of last resort should not be lightly disregarded and set aside but should be adhered to and followed. What it precludes is that where a principle of law has become established by a series of decisions, it is binding on the courts and should be followed in similar cases. It is a wholesome doctrine which gives certainty to law and guides the people to mould their affairs in future.”*

10. Learned counsel for the appellant/writ petitioner would further referred to the judgment in the case of **All Assam graduate Hindi Shikshan Parangat (Equivalent B.Ed.) Teachers Association vs. State of Assam & Others**, reported in **2014 SCC Online Gau 445** and **(2014) 5 Gau LR 520**, the Division Bench of Gauhati High Court has held as under:-

*“9. We do not agree to this submission. In our view, when the controversy in question was already subject-matter of the earlier litigation and attained finality, the same controversy could not be allowed to be racked up subsequently at the instance of other person. The earlier order in our opinion was binding on the parties*

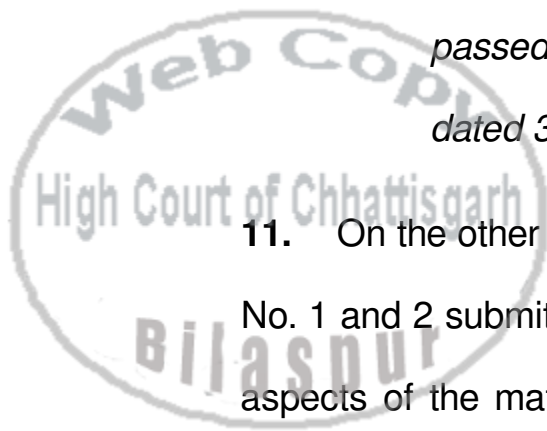


*while prosecuting the subsequent litigation on the same issue because the issue raised in certain litigations had a binding force and thus remained no longer res integra.*

*10. .... and lastly once the decision on any particular issue was rendered by the competent court then it had a binding force on subsequent litigation because it was in the facts of this case a judgment in rem unless upset by the higher court. It was not done because no appeal was filed in the Supreme Court by the writ petitioner against the order dated 27.6.2011 passed in writ petition and nor against the review order dated 30.6.2013 passed in review petition.”*

**11.** On the other hand, learned State counsel, appearing for respondents No. 1 and 2 submits that the learned Single Judge after considering all the aspects of the matter has rightly dismissed the writ petition, in which no interference is called for.

**12.** Learned State counsel had filed their return (in the writ petition) and have denied the submission made in the writ petition as well as writ appeal. It has been contended by the learned State counsel that since appointments was made on the basis of draft rules proposing changes in the existing rules. This is not permissible because the circular dated 01.02.2013 which provides new qualifications for the posts which has been advertised and the circular further provides that all the administrative departments wherein the posts mentioned in the said circular dated 01.02.2013 are included in their set-up, they should take steps for amending their respective recruitment rules to incorporate the amendment





suggested by the Department of General Administration. Thereafter, notification may be issued after getting approval from the Department of Law and then only steps for filling up the posts should be taken. However, without there being any amendment in the recruitment rules, the advertisement was issued on 10.07.2013, therefore, the eligibility qualification existed on the said date was contrary to the Recruitment Rules, through the draft rules were mentioned in the advertisement, but, these amendment is not incorporated in the rule, as such, issuance of advertisement is illegal. It is further contended that petition has never challenged cancellation of advertisement on 14.09.2016 in these petitions whereas the petitioners who have challenged their cancellation of appointment order have already been appointed and as such, the appellant cannot claim parity with the petitioners who have been granted relief by the Division Bench of this Court. To substantiate his submission, he has referred to the judgment passed in bunch of the writ petitions in WPS No.973 of 2015 wherein the learned Single Judge of this Court in para 1 has taken note of the fact which reads as under:-

*“1. The petitioners have called in question the legality and validity of the order dated 10.03.2015 passed by the State Government whereby, the State Government, after examining the complaints and receipt of enquiry report, has declared the recruitment process as void and has further directed to cancel the appointments of the petitioners on the post of Data Entry Operator, Stenographer, Steno-typist, Assistant Grade-III, Assistant Programmer, as the case may be. Pursuant to the said order, the Engineer-in-Chief (for short the ‘E-in-*



*C'), Public Works Department (for short WD') issued the order dated 12.03.2015, which has also been assailed in sure of the writ petitions, by which, the appointments have been cancelled.*

*In addition to the departmental Data Entry Operators, other candidates have also been granted weightage of experience, which is contrary to the E-in-C's decision dated 02.07.2013.*

*Certificate obtained by one candidate from Sikkim Manipal University has been accepted, but several candidates having same/similar certificates from the same institution have been declared ineligible.*

*There are overwriting /interpolation/ manipulation in the marks awarded to several candidate on the head of experience.*

*In several categories, meritorious candidates have not been selected and favoured candidates have been appointed.*

*Experience marks of several candidates have been reduced deliberately to favour other candidates.*

*Handicapped person has been selected by appointing her in the unreserved category.*

*One candidate namely; Pramod Shukla who appeared in Durg as well as in Raipur has been granted 7 marks for experience in Durg, whereas in Raipur he has been awarded 24 marks for experience. The same candidate*





*has been awarded different marks for experience for different posts.*

*Several candidates have been issued certificate of experience by AG II of the office of the E-in-C, PWD and not by any responsible officer.*

*The advertisement was not issued in accordance with the recruitment rules namely; Public Works Department (Non Gazetted) Service Recruitment Rules, 2007 (for short "the Rules, 2007).*

*More than the proportionate number i.e. 1:5 were permitted to appear in the skill test for the post of Data Entry Operator.*

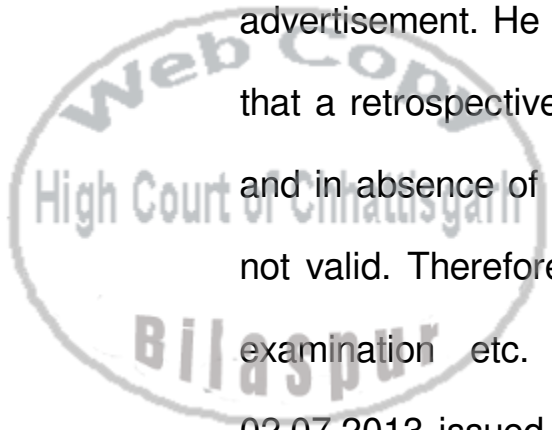
*A list of candidates eligible for skill test was issued in random manner without mentioning as to whether the same has been issued merit wise or alphabet wise or category wise.*

*Information received under the Right to Information Act, 2005 has revealed that the answer sheets of the candidates do not bear the signature of the Center Superintendent or Invigilator/Supervisor of the IT, where the examination was conducted, This fact proves that the answer sheets have been changed subsequently to select the favoured candidates."*

**13.** He would further submit that the draft rules framed by the Department of General Administration vide circular dated 01.02.2013 can be acted upon where there is no rule for its implementation, however, when the field



is already occupied by statutory rules framed, the draft rules cannot be acted upon, but ignoring the instructions issued by the Department of General Administration vide circular dated 01.02.2013, the advertisement dated 02.07.2013 was published without waiting for amendment in the recruitment rules and its notification in the Government gazette. He also submit that advertisement dated 02.07.2013 was published contrary to the circular dated 01.02.2013 is not valid and non-est in the eyes of law and therefore, there is no question to declaring the results of the examinations held in other divisions by the answering respondents. It is contended that the draft rules have now been notified incorporating the same in the statutory rules and it has not been given retrospective effect to save the advertisement. He would further submit that it is a settled position of law that a retrospective operation of rules have to be made in express terms and in absence of such expression, any act made contrary to the rules is not valid. Therefore, there was no occasion to declare the results of the examination etc. conducted pursuant to the advertisement dated 02.07.2013 issued contrary to the circular dated 01.02.2013. There is no illegality or infirmity on the part of the respondents. It is contended that after amendment in the recruitment rules and after obtaining permission from the State Government vide order dated 18.11.2015 wherein the State Government has accorded its permission for recruitment to Class III and Class IV posts only for Bastar and Surguja Divisions through examination conducted by the Chhattisgarh Professional Examination Board, Raipur. He would further submit that vide order dated 14.09.2016 and advertisement dated 02.07.2013 in pursuant of which the appellant applied for post has already been cancelled and a paper publication in this regard has already been issued.





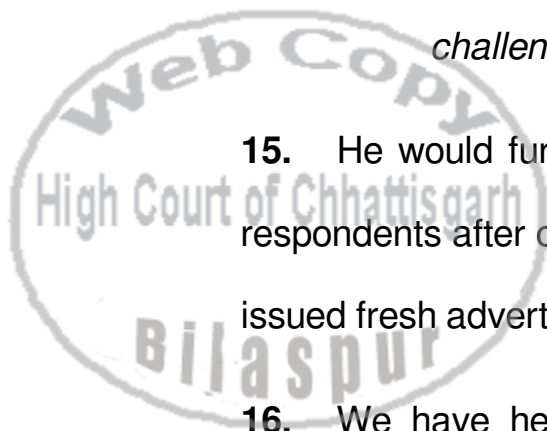
**14.** It is further submitted by the learned State counsel that the issuance of advertisement dated 25.09.2016 (Annexure P/1 in the writ petition) has been challenged in WPS No. 2585 of 2016 and the Co-ordinate Bench vide order dated 04.07.2016 has dismissed the writ petition by observing as under:-

*“in view of the above ground raised in the petition, it has no merit, particularly when the petitioners have not challenged the legality or validity of the Government Notification. If the petitioners have any grievances with the provisions of Notifications for eligibility on the basis of residence of district, they shall be at liberty to challenge the said notification”.*

**15.** He would further submit that there is no illegality on the part of the respondents after obtaining the permission from the State Government and issued fresh advertisement.

**16.** We have heard learned counsel for the parties and perused the impugned judgment and materials available on record.

**17.** From the records, it is quite vivid that appellant/writ petitioner has heavily relied upon the judgment of Division Bench passed in WA No. 484 of 2015 decided on 08.02.2016 wherein the Division Bench has quashed the order of canceling the appointment order, but the order dated 14.09.2016 by which the entire selection process has been cancelled by State of Chhattisgarh has not been challenged by the appellant/writ petitioner though the WPS No. 2209 of 2016 was filed on 15.06.2016. Even after filing of additional affidavit (in the writ petition) in compliance of the Court order dated 09.02.2017 filed by the respondents wherein cancellation







of appointment order dated 12.03.2015 (Annexure D/1 in the writ petition), advertisement dated 24.05.2016 (Annexure D/3 in the writ petition) and notice dated 14.09.2016 regarding cancellation of advertisement dated 02.07.2013 was filed (in the writ petition), which reads as under:-

“इस कार्यालय द्वारा केवल रायपुर जिले के लिए शीघ्रलेखक, स्टेनो टायपिस्ट, सहायक ग्रेड-3 एवं डाटा एन्ट्री ऑपरेटर के पद पर दिनांक 28.08.2014 को नियुक्ति आदेश जारी की गई थी, जिसे शासन के उक्त निर्देश दिनांक 10.03.2015 के परिपालन में कार्यालय प्रमुख अभियंता, लोक निर्माण विभाग रायपुर के आदेश दिनांक 12.03.2015 द्वारा निरस्त किया गया था।

छत्तीसगढ़ शासन, लोक निर्माण विभाग मंत्रालय महानदी भवन नया रायपुर के पत्र क्रमांक एफ 3-7/2015/19/स्था-3 दिनांक 18.11.2015 द्वारा संविधान के पांचवी अनुसूची के अंतर्गत बस्तर तथा सरगुजा संभाग के तृतीय एवं चतुर्थ श्रेणी के सीधी भरती के रिक्त पदों को छत्तीसगढ़ व्यावसायिक परीक्षा मण्डल रायपुर के माध्यम से चयन प्रक्रिया कर, भरने की कार्यवाही करने हेतु अनुमति प्रदान की गई। व्यापम के माध्यम से भरती की कार्यवाही प्रक्रियाधीन है।

अतः इस कार्यालय के पत्र क्र. 39021001/स्था/प्र.अ./13 दिनांक 02.07.13 द्वारा सहायक प्रोग्रामर, शीघ्रलेखक, स्टेनो टायपिस्ट, डाटा एन्ट्री ऑपरेटर एवं सहायक ग्रेड-3 के पदों हेतु पेश जिलों (बलौदाबाजार, महासमुंद, धमतरी, गरियाबंद, दुर्ग, बालोद, बेमेतरा, राजनांदगांव, कवर्धा, बिलासपुर, मुंगेली, चांपा, कोरबा, रायगढ़, सरगुजा, रामानुजगंज-बलरामपुर, सूरजपुर, कोरिया, जषपुर, बस्तर, सुकमा, दंतेवाड़ा, बीजापुर, कांकेर, कोंडागांव एवं नारायपुर) से संबंधित इस विभाग के कार्यालयों के लिए भरती हेतु जारी विज्ञापन को तत्काल प्रभाव से निरस्त किया जाता है।

प्रमुख अभियंता  
लोक निर्माण विभाग  
रायपुर (छत्तीसगढ़)“





18. Thereafter, the respondents/State have conducted the entire selection process through VYAPAM and filed the order dated 23.02.2017 by which the appointment for Bastar and Surguja division were conducted and appointment orders were issued. From the records, it is quite vivid that subsequently the respondents/State have cancelled the advertisement on 14.09.2016 which was not assailed by the appellant/writ petitioner despite knowing which has already been brought on record. In this peculiar situation, the judgment passed by the Division Bench is not applicable to the present facts and circumstances of the case as the subsequent cancellation of entire selection process was not subject matter of challenge before the Division Bench. The appellant/writ petitioner was aware about cancellation of advertisement dated 14.09.2016. It is too well-settled that judgments are not to be read as Euclid's theorems; they are not to be construed as statutes, and; specific cases are authorities only for that they actually decide. This theory of euclid's theorems has come up for consideration before the Hon'ble Supreme Court in the case of **Chintels India Ltd. vs. Bhayana Builders Pvt. Ltd.**, reported in **(2021) 4 SCC 602** wherein the Hon'ble Supreme Court has held as under:-

*“31. It is well settled that judgments are not to be construed like Euclid's theorems (see Amar Nath Om Prakash v. State of Punjab (1985) 1 SCC 345), but all observations made therein must relate to the context in which they were made. In that case, the Court put it thus*

*“10. There is one other significant sentence in Sreenivasa General Traders v. State of A.P. [(1983) 4 SCC 353] with which we must express our agreement,*



*it was said: (SCC p. 377, paras 26-27). ‘26-27.....“With utmost respect, these observations of the learned Judge are not to be read as Euclid's theorems, nor as provisions of a statute. These observations must be read in the context in which they appear”.*

*We consider it proper to say, as we have already said in other cases, that judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define.*

*Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737, 761] Lord MacDermott observed:*

*.....“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....*

*In Home Office v. Dorset Yacht Co. Ltd. [(1970) 2 All ER 294] Lord Reid said:*

*.....“Lord Atkin's speech [Donoghue v. Stevenson,*





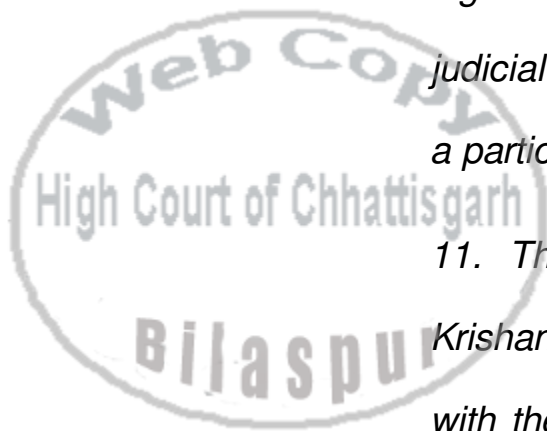
*1932 All ER Rep 1, 11] ... is not to be treated as if it was a statutory definition. It will require qualification in new circumstances.” Megarry, J. in (1971) 1 WLR 1062 observed:*

*“One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament.” And, in Herrington v. British Railways Board [1972 AC 877 (HL)] Lord Morris said:*

*“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.”*

*11. There are a few other observations in Kewal Krishan Puri case [(1980) 1 SCC 416] to which apply with the same force all that we have said above. It is needless to repeat the oft-quoted truism of Lord Halsbury that a case is only an authority for what it actually decides and not for what may seem to follow logically from it.”*

**19.** Even otherwise, the law is well settled that the selected candidates have no indefeasible right to appoint. The right of the employer to cancel the entire selection process has been considered before the Hon'ble Supreme Court in the case of **Sachin Kumar & Other vs. Delhi Subordinate Service Selection Board (DSSSB) & Others**, reported in **(2021) 4 SCC 631** wherein the Hon'ble Supreme Court has held in





paragraph 66 which are as under:-

*“66. Recruitment to public services must command public confidence. Persons who are recruited are intended to fulfil public functions associated with the functioning of the Government. Where the entire process is found to be flawed, its cancellation may undoubtedly cause hardship to a few who may not specifically be found to be involved in wrong-doing. But that is not sufficient to nullify the ultimate decision to cancel an examination where the nature of the wrong-doing cuts through the entire process so as to seriously impinge upon the legitimacy of the examinations which have been held for recruitment. Both the High Court and the Tribunal have, in our view, erred in laying exclusive focus on the report of the second Committee which was confined to the issue of impersonation. The report of the second Committee is only one facet of the matter. The Deputy Chief Minister was justified in going beyond it and ultimately recommending that the entire process should be cancelled on the basis of the findings which were arrived at in the report of the first Committee. Those findings do not stand obliterated nor has the Tribunal found any fault with those findings. In this view of the matter, both the judgments of the Tribunal and the High Court are unsustainable.”*

**20.** The respondents/State have taken specific stand that the advertisement consists of draft rules which have not been framed; as such,



issuance of advertisement on the basis of draft advertisement is illegal. This fact that the advertisement was issued on the basis of draft rule, is not disputed by the appellant/writ petitioner. It is well settled legal position of law that unless and until the rules are framed in exercise of power under Article 309 of the Constitution of India, it has no statutory value. The rules are made effective only when they fulfill the legal requirement of publication in the official gazette and on such publication shall have the effect as if enacted in the Act and once they cross these requirements they have force and sanctity of law. The Hon'ble Supreme Court in the case of **A.K. Bhatnagar & Others vs. Union of India & Others**, reported in (1991) 1 SCC 544, wherein the Hon'ble Supreme Court has held as under:-

*“13. On more than one occasion this Court has indicated to the Union and the State Governments that, once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the Government both at the center and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs.”*





**21.** Since the entire selection process has been cancelled and subsequent appointment for Bastar and Surguja division have already been done which was also not challenged by the appellant/writ petitioner. Even the selected candidates of this division have not been impleaded as party to the case. It is pertinent to mention here that cancellation of earlier advisement by the respondent No. 2 on 14.09.2016 is not challenged by the appellant/writ petitioner in the writ petition. Thus, we are of the considered opinion that the learned Single Judge has not committed any illegality, irregularity or jurisdictional error warranting interference by this Court.

**22.** Accordingly, the present writ appeal being devoid of merit is liable to be and is hereby **dismissed**.

Sd/-  
(Rajani Dubey)  
Judge

Sd/-  
(Ramesh Sinha)  
Chief Justice

