

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR****S.B. Civil Writ Petition No. 10947/2024**

1. Nitisha Choudhary D/o Shri Pratap Singh, Aged About 21 Years, Village Norangpura, Tehsil Khetri, District Neem Ka Thana (Raj.).
2. Saroj Dudi D/o Shri Ramkaran Dudi, Aged About 21 Years, Dudiyo Ka Bara, Village Ratkuriya, Tehsil Bhopalgarh, District Jodhpur (Raj.).

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Secretary, Ayurved And Indian Medicine Department, Government Of Rajasthan, Secretariat, Jaipur.
2. Deputy Secretary, Ayurved, Yoga And Naturopathy Medicine, Unani, Siddha And Homeopathy (Ayush) Department, Secretariat, Jaipur.
3. The Director, Ayurved Department, Ashok Marg, Loghal Road, Savitri College Circle, Ajmer.
4. Dr. Sarvepali Radhakrishnan Rajasthan Ayurved University, Through Its Registrar, Karwar, Nagaur Road, Jodhpur (Raj.).

----Respondents

Connected With**S.B. Civil Writ Petition No. 10949/2024**

1. Sunita Kumari D/o Suresh Kumar, Aged About 31 Years, R/o Plot No. 397, Fci Godan, Daijar, District Jodhpur.
2. Sangeeta W/o Rampalsingh, Aged About 30 Years, R/o Tadamal, Berawal, Tadas, District Nagaur.
3. Alok Singh S/o Randheer Singh, Aged About 34 Years, R/o Village Post - Dhormui, Tehsil And District Bharatpur.
4. Suresh S/o Karna Ram, Aged About 31 Years, R/o Village Post Dayasagar Khara, Tehsil Phalodi, District Jodhpur.

----Petitioners

Versus





1. The State Of Rajasthan, Principal Secretary, Ayush (Ayurved, Homeopathy And Unani) Department Government Of Rajasthan, Jaipur.
2. The Deputy Secretary To The Government, Ayush Department, Jaipur.
3. The Director, Ayurved Department, Ajmer.
4. The Director, Homeopathy Medicine Department, Jaipur.
5. The Registrar, Rajasthan Ayurved University, Jodhpur.

-----Respondents

S.B. Civil Writ Petition No. 10995/2024

Geeta D/o Bhagirath Ram, Aged About 23 Years, R/o Village Post - Newa Kanasar, Tehsil Bap, District Phalodi, Rajasthan.

-----Petitioner

Versus

1. The State Of Rajasthan, Principal Secretary, Ayush (Ayurved, Homeopathy And Unani) Department Government Of Rajasthan, Jaipur.
2. The Deputy Secretary To The Government, Ayush Department, Jaipur
3. The Director, Ayurved Department, Ajmer.
4. The Director, Homeopathy Medicine Department, Jaipur
5. The Registrar, Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur.

-----Respondents

S.B. Civil Writ Petition No. 11022/2024

1. Hari Singh Meena S/o Shri Banshidhar Meena, Aged About 30 Years, Village Todpura, Tehsil Navalgarh, District Jhunjhunu (Raj.).
2. Ravina Meena D/o Shri Rohitashwa Meena, Aged About 28 Years, Village Todpura, Tehsil Navalgarh, District Jhunjhunu (Raj.).
3. Sunil Kumar S/o Shri Manni Ram, Aged About 29 Years, Village Todpura, Tehsil Navalgarh, District Jhunjhunu (Raj.).
4. Suman Kumari Jatav D/o Shri Jokh Ram Jathav, W/o



Shri Rajesh Kumar, Aged About 38 Years, Ward No. 50, Behind New Rpsc, Bandiyagram, Ajmer (Raj.).

5. Radhika Pareek D/o Shri Brajnandan Pareek, Aged About 30 Years, 58, Fatehram Ka Tiba, Brahmpuri, Jaipur (Raj.).
6. Purshottam Nagar S/o Shri Ashok Nagar, Aged About 30 Years, Village Gotan, Tehsil Merta City, District Nagaur (Raj.).
7. Rakesh Kumar Mina S/o Shri Foru Lal Mina, Aged About 24 Years, Village Mandir Ka Jhupada, Bei, Tehsil Jahazpur, District Bhilwara (Raj.).
8. Pratibha Naruka D/o Shri Satyapal Singh Naruka, Aged About 26 Years, 106, Jharkhand Mahadev Mandir, Quveens Road, Premtura, Vaishali Nagar, Jaipur (Raj.).
9. Gunjan Sharma D/o Shri Dulichand Sharma, Aged About 28 Years, Ward No. 55, Premtura, Vaishali Nagar, Jaipur (Raj.).

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Secretary, Ayurved And Indian Medicine Department, Government Of Rajasthan, Secretariat, Jaipur.
2. Deputy Secretary, Ayurved, Yoga And Naturopathy Medicine, Unani, Siddha And Homeopathy (Ayush) Department, Secretariat, Jaipur.
3. The Director, Ayurved Department, Ashok Marg, Lohagal Road, Savitri College Circle, Ajmer.
4. Dr. Sarvepali Radhakrishnan Rajasthan Ayurved University, Through Its Registrar, Karwar, Nagaur Road, Jodhpur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 11091/2024

1. Pooja Sharma D/o Shri Gajanand Sharma W/o Shri Ashok Kumar Pareek, Aged About 39 Years, Resident Of Village Alipur, Tehsil Chirawa, District Jhunjhunu (Raj.).
2. Surendra Pareek S/o Shri Ramdeo Pareek, Aged About 40 Years, Resident Of Behind Dalmai Boys School,



Chirawa, Tehsil Chirawa, District Jhunjhunu (Raj.).

3. Priyanka D/o Shri Virendra Singh, Aged About 23 Years, Resident Of Village Kalera Ka Bas, Jaitpura, Tehsil And District Jhunjhunu (Raj.).
4. Ankit Sharma S/o Shri Om Prakash Sharma, Aged About 28 Years, Resident Of Shiv Colony, Near Shiv Mandir, Ward No. 32, Churu (Raj.).

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Secretary, Ayurved And Indian Medicine Department, Government Of Rajasthan, Secretariat, Jaipur.
2. Deputy Secretary, Ayurved, Yoga And Naturopathy Medicine, Unani, Siddha And Homeopathy (Ayush) Department, Secretariat, Jaipur.
3. The Director, Ayurved Department, Ashok Marg, Lohagal Road, Savitri College Circle, Ajmer.
4. The Director, Homeopathic Medicine Department, Ayush Bhawan, Sector-26, Pratapnagar, Jaipur.
5. Dr. Sarvepali Radhakrishna Rajasthan Ayurved University, Through Its Registrar, Karwar, Nagaur Road, Jodhpur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 11643/2024

1. Atul Kumar Dadheech S/o Pradeep Kumar Dadheech, Aged About 24 Years, R/o Magrapunjla, Gokul Ji Ki Piyao, Near Cbi Office, Jodhpur, Raj.
2. Kusum Kanwar D/o Lal Singh Mertiya, Aged About 31 Years, R/o Plot No. 95, Khasra No. 26/107, Dhapi Marble, Banar Road, Jodhpur.
3. Priyanka D/o Mohan Lal, Aged About 21 Years, R/o Ridmal Nagar Bhojkor, Tehsil Dechu, Phalodi.
4. Monika Kumari D/o Bhagat Singh, Aged About 21 Years, R/o Relya Ki Dhani, Gudha Gorji, Jhunjhunu.
5. Manisha Kumari D/o Omprakash Dhabhai, Aged About 23 Years, R/o Ward No. 03, Sanganeriya Kuaa,



Nawalgarh, Jhunjhunu.

6. Rashisa Kumari Manth D/o Mahesh Kumar, Aged About 27 Years, R/o Dhayalon Ka Bass, Kari, Jhunjhunun.
7. Rajesh Gurjar S/o Rupa Ram, Aged About 30 Years, R/o Ward No. 24, Chunachok, Nawalgarh, Jhunjhunun, Raj.
8. Priyanka Kumari D/o Anil Kumar Mahan, Aged About 28 Years, R/o Balwantpura, Balwantpura, Jhunjhunun.

----Petitioners

Versus

1. The State Of Rajasthan, Principal Secretary, Ayush (Ayurved, Homeopathy And Unani) Department Government Of Rajasthan, Jaipur.
2. The Deputy Secretary To The Government, Ayush Department, Jaipur.
3. The Director, Ayurved Department, Ajmer.
4. The Director, Homeopathy Medicine Department, Jaipur.
5. The Registrar, Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur.

----Respondents

S.B. Civil Writ Petition No. 11647/2024

1. Dheeraj Khator D/o Nemichand, Aged About 24 Years, R/o Plot No. 58, Khasara No. 107, Ramdev Nagar, Banar Road, Nandri, District Jodhpur.
2. Manohar Lal Prajapat S/o Ashuram, Aged About 25 Years, R/o Kumharo Ki Dhani Magasar, Chadi, Phalodi, District Phalodi.
3. Manohar Singh S/o Kishore Singh, Aged About 31 Years, R/o Village Post Basni Hari Singh, Tehsil Bhopalgarh, District Jodhpur.
4. Shshee Kant Swami S/o Ashwini Kumar, Aged About 24 Years, R/o Ward No. 13, Village Post Babai, Tehsil Khetri, Jhunjhunu.
5. Mohit Kumar Sharma S/o Dalip Kumar Sharma, Aged About 27 Years, R/o Village Post Pandreu Tibba, Tehsil Taranagar, District Churu.

----Petitioners



Versus

सत्यमेव जयते

1. The State Of Rajasthan, Principal Secretary, Ayush (Ayurved, Homeopathy And Unani) Department Government Of Rajasthan, Jaipur.
2. The Deputy Secretary To The Government, Ayush Department, Jaipur.
3. The Director, Ayurved Department, Ajmer.
4. The Director, Homeopathy Medicine Department, Jaipur.
5. The Registrar, Rajasthan Ayurved University, Jodhpur.

----Respondents

S.B. Civil Writ Petition No. 11836/2024

1. Swati Maheria D/o Khem Chand, Aged About 24 Years, C/o Suresh R/o Paharganj-Ii, White House, Post Mandore, Jodhpur
2. Geeta Kumari D/o Khem Chand, Aged About 40 Years, Village Bhojnagar, Tehsil Navalgarh, District Jhunjhunu, Rajasthan.
3. Pooja Kumari D/o Ram Prasad, Aged About 31 Years, Village Shivsinghpura, District Sikar, Rajasthan.
4. Poonam Kumari D/o Ranveer, Aged About 31 Years, Village Jakhal, Tehsil Navalgarh, District Jhunjhunu, Rajasthan.
5. Kumari Asha D/o Rajesh Kumar Khedar, Aged About 22 Years, Village Jakhal, Tehsil Navalgarh, District Jhunjhunu, Rajasthan.
6. Mansi D/o Ranjeet Kumar, Aged About 24 Years, Nawalri, Jhunjhunu.
7. Bulkesh Kumari D/o Shrikishan Kharinta, Aged About 26 Years, Ward No.8, Sonthali, Post Titanwar, Tehsil Nawalgarh, District Jhunjhunu

----Petitioners

Versus

1. The State Of Rajasthan, Principal Secretary, Ayush (Ayurved, Homeopathy And Unani) Department Government Of Rajasthan, Jaipur.
2. The Deputy Secretary To The Government, Ayush





Department, Jaipur

3. The Director, Ayurved Department, Ajmer.
4. The Director, Homeopathy Medicine Department, Jaipur
5. The Registrar, Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur.

----Respondents

S.B. Civil Writ Petition No. 12267/2024

Himanshu Sharma S/o Vishnu Kumar Sharma, Aged About 28 Years, R/o Near Ayurvedic Hospital, Undu, District Barmer, Rajasthan.

----Petitioner

Versus

1. The State Of Rajasthan, Principal Secretary, Ayush (Ayurved, Homeopathy And Unani) Department Government Of Rajasthan, Jaipur.
2. The Deputy Secretary To The Government, Ayush Department, Jaipur
3. The Director, Ayurved Department, Ajmer.
4. The Director, Homeopathy Medicine Department, Jaipur
5. The Registrar, Dr. Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur.

----Respondents

S.B. Civil Writ Petition No. 15436/2024

1. Ravi Kumar S/o Gordhan Singh, Aged About 24 Years, Village Talchhera, Tehsil Nadbai, District Bharatpur (Raj.).
2. Sarika Kumari D/o Ajay Kumar, Aged About 23 Years, Village/ Post Jharkai, Tehsil Nadbai, District Bharatpur (Raj.).

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Secretary, Ayurved And Indian Medicine Department, Government Of Rajasthan, Secretariat, Jaipur.
2. Deputy Secretary, Ayurved, Yoga And Naturopathy



Medicine, Unani, Siddha And Homeopathy (Ayush)
Department, Secretariat, Jaipur.

3. The Director, Ayurved Department, Ashok Marg, Lohagal Road, Savitri College Circle, Ajmer.
4. The Director, Homeopathic Medicine Department, Ayush Bhawan, Sector-26, Pratap Nagar, Jaipur.
5. Dr. Sarvepaliradhakrishnan Rajasthan Ayurved University, Through Its Registrar, Karwar, Nagaur Road, Jodhpur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 16612/2024

Brijendra Panwar S/o Shri Ramavtar Gurjar, Aged About 30 Years, Resident Of Village - Kalarang Ka Pura, Post Kheda Jamalpur, Tehsil Hindon City, District Karauli (Raj.).

----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary, Ayurved And Indian Medicine Department, Government Of Rajasthan, Secretariat, Jaipur (Raj.).
2. Deputy Secretary, Ayurved, Yoga And Naturopathy Medicine, Unani, Siddha And Homeopathy (Ayush) Department, Secretariat, Jaipur, (Raj.).
3. The Director, Ayurved Department, Ashok Marg, Lohagal Road, Savitri College, Ajmer (Raj.).
4. Registrar, Dr. Sarvepali Radhakrishnan Rajasthan Ayurved University, Karwar Nagaur Road, Jodhpur (Raj.).

----Respondents

For Petitioner(s) : Mr. Yashpal Khileree with Nitin Gehlot and Vinita
Mr. M.S. Godara
Ms. Varsha Bissa
Mr. Varda Ram Choudhary

For Respondent(s) : Mr. Narendra Singh Rajpurohit, AAG with Mr. Sher Singh Rathore
Mr. Suniel Purohit
Ms. Rakhi Choudhary, Dy.GC

For Applicant(s) : Ms. Tanya

**HON'BLE MR. JUSTICE FARJAND ALI****Order****ORDER RESERVED ON ::: 08/10/2024****ORDER PRONOUNCED ON ::: 16/10/2024****REPORTABLE****BY THE COURT: -**

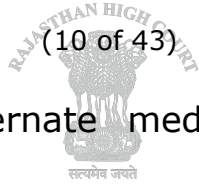
1. The instant writ petitions under Article 226 of the Constitution of India have been preferred by the petitioners being aggrieved by the action of respondents department for not granting fair chance of consideration to the petitioners in the ongoing selection process of Ayurveda Compounder/Nurse Junior Grade and for quashing of the impugned order dated 28.06.2024 (Annexure 4 of S.B. Civil Writ Petition No. 10949/2024) passed by the Rajasthan Government's Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH Department) whereby the seats have been added to the post of Compounder/Nurse Junior Grade in advertisement No. 1/2023 dated 03.10.2023 (05.10.2023) (Annexure 1 of S.B. Civil Writ Petition No. 10949/2024).

2. The issue involved in all these matters is similar and therefore with the consent of the parties, all the matters have been heard together and being decided by the instant common order. For the purpose of convenience, the facts reflected in this order would be of **S.B. Civil Writ Petition No. 10949/2024.**

3. Briefly stating the facts of the case are that the Central Government and State Government for the promotion and



[2024:RJ-JD:37111]



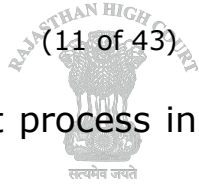
[CW-10947/2024]

advancement of the alternate medicine system have made Department of AYUSH (hereinafter referred as "Respondent Department") which manages and regulates all these alternate departments including Ayurveda, Homeopathy and Unani. For this reason, respondent department decided to recruit/appoint people and for the same purpose recruitment process has been made. The respondent department issued an advertisement for appointment on the post of Nurse/Compounder Junior Grade in the State vide advertisement No. 1/2023 dated 03.10.2023 (Annexure 1) and this is governed by Rajasthan Ayurvedic, Unani, Homeopathy and Naturopathy Subordinate Service Rules, 1966 (hereinafter referred as "The Rules of 1966"). The applications were called accordingly and the notifications & other terms and conditions were also annexed with the said advertisement. The prescribed qualification for all three sets viz., Ayurvedic, Homoeopathy and Unani for the post of Compounder/ Nurse Junior Grade has been mentioned in the advertisement itself, which is three years diploma or four years B.Sc. in Ayurveda Nursing from any University of India which is established in accordance with law. The condition precedent for the candidates was that they have to obtain their educational qualification before the last date of filling of the form i.e., 05.11.2023 and proof of which would have to be submitted by them at the time of document verification. Further, it is mentioned that the qualification stated in the advertisement were also in consonance to the Rules of 1966. Some of the petitioners





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applied for the recruitment process in their respective categories for which the bifurcation has been mentioned in the advertisement for filling up the total 947 posts of Compounder/Nurse Junior Grade for direct recruitment on the regular post. Out of total 947 posts, 495 posts are for Ayurveda Department (Non-TSP = 456 + TSP = 39); 288 posts for Homeopathy Department (Non-TSP = 265 + TSP = 23) and 164 posts for Unani Department (Non-TSP = 160 + TSP = 4). As per Rule 9 of the Rules of 1966, the actual number of vacancies occurring during the financial year shall be determined by the Appointing Authority on 1st of April every year. These writ petitions consists two categories of participants/candidates i.e., the candidates who could not even fill the application forms as they were not having their degrees at the relevant time because of the prolongment in receiving their degrees as they were in COVID batch and government stretched their academic courses time to time and owing to the above they could not obtained their degrees before the cut-off date. (As mentioned in S.B. Civil Writ Petition No. 10947/2024). The another category was the candidates who though applied for the post in Ayurveda Department for which the copy of application form has been annexed as Annexure 2 but were not called for document verification as they were not holding requisite qualification for falling in the consideration zone as they only had marksheets of their qualification but had not received their degrees till the last date of submission of forms and were also lacking in work



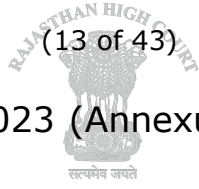


experience so no bonus marks were granted to them. Some of the petitioners were already doing services in Government Institutions in Dr. Sarvepalli Radhakrishnan Rajasthan Ayurveda University (As mentioned in S.B. Civil Writ Petition No.10949/2024) but the period of service was not in accordance with the want of the advertisement.

4. After completion of process for filling of forms and document verification, the respondent department decided to enhance/add the number of seats in the said selection process vide order dated 28.06.2024 (Annexure 4) whereby 247 posts in Ayurveda and 68 posts in Homeopathy Department were further added, as per which, the total posts for Ayurveda comes to 742 out of which 683 posts were for the Non-TSP area and 59 posts for TSP area and in Homeopathy the total number of posts comes to 356 out of which 328 posts were for the Non-TSP area and 28 posts for TSP. A copy of the revised notification of enhanced posts is annexed with the writ petition (Annexure 9). Petitioners submitted their representation to the Government raising concern to the effect that since they were not at all responsible for not getting the desired qualification before the cut-off date and the same had happened due to force majeure due to which their degrees were delayed, therefore they should be allowed for the increased posts (Annexure 11) however no response from the respondent department was received. These enhanced/added seats were only for those candidates who were eligible till 05.11.2023, which was the last date as per the advertisement



[2024:RJ-JD:37111]



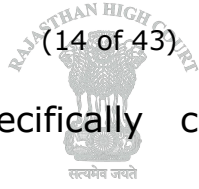
[CW-10947/2024]

No. 1/2023 dated 03.10.2023 (Annexure 1). The petitioners who are eligible to participate in the examination process on the date of issuance of order of enhancement of seats i.e., 28.06.2024 (Annexure 4) have not been given opportunity, therefore, by way of filing instant writ petitions, a prayer has been sought for issuance of a direction to the respondent department to not include the increased/added vacancies in the Ayurveda and Homeopathy and to quash the order dated 28.06.2024 (Annexure 4) whereby the directions have been passed regarding increasing of seats. A prayer has been made to declare issuance of the advertisement No. 1/2023 dated 03.10.2023 (Annexure 1) and the order dated 28.06.2024 (Annexure 4) illegal, arbitrary and contrary to law. A further prayer has been made for passing necessary directions to the respondent department for issuance of fresh advertisement for the subsequently determined posts for the Compounder/Nurse Junior Grade Examination.

5. A reply of the writ petition has been filed by the respondent department refuting the allegations made in the writ petition and it is contended that no arbitrariness was adopted rather the respondent department passed the order in accordance with the legal provisions and therefore the writ petition is not maintainable. It is contended that as per Rule 16 of The Rules of 1966, the respondent authorities are authorized and empowered to increase/enhance the seats in the already advertised seats up to 50% of the total advertised seats if the vacancies are accrued due to promotion etc. subsequent to issuance of the



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advertisement. It is specifically contented that since the petitioners were not eligible to participate in the examination as per the conditions mentioned in the advertisement No. 1/2023 dated 03.10.2023 (Annexure 1) therefore they have no right either to participate in the ongoing examination or to challenge the subsequent order of addition of seats. The department has a legal right to add the seats in the vacancy and therefore the petitioners cannot challenge the order which is passed in accordance with the legal provision. It is empathetically and repeatedly contented in the reply that as per the advertisement issued by the respondent department only those persons can be selected on the post of Compounder/Nurse Junior Grade who were eligible till the last date of filing of the application forms. A specific legal plea has been raised since the order has been passed in accordance with the Rules of 1966, therefore unless a challenge is made to the rule itself, a writ petition challenging a legal order cannot be maintained. By averring all those grounds including the others it was prayed that the writ petition be dismissed since the same lacks merit.

6. After completion of the pleadings learned counsel for both the parties canvassed their oral submissions.

7. Learned counsel for the petitioners submits that the actions of respondent department for not granting fair chance to the petitioners is illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution of India. Some of the petitioners applied for the post of Nurse/Compounder Junior Grade as per the



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advertisement No. 1/2023 dated 03.10.2023 (Annexure 1) and filled application forms accordingly (Annexure 2) but were not called for document verification as they were not holding enough marks and qualification required. It was further argued that there has been an enhancement in posts of Ayurveda Nurse/Compounder vide order dated 28.06.2024 (Annexure 4) for which the last date has been kept the same as it was when the initial advertisement was issued by the respondent department i.e., 05.11.2023 and the same is never published for perusal of the public at large. The another list of candidates for document verification was immediately issued. The counsel for the petitioners further submit that the State Government due to various reasons has been revising posts in various recruitment process but for such revision or enhancement the State Government reopens the consideration zone for those candidates who may have now become eligible for any reasons. It is submitted that in many appointments such as on the post of medical officer in Ayurveda Department in one instance in the matter of post of Medical Officer (Dental) when enhancement in the seats was done, the date of filing up the forms has been extended by the department or online application forms were re-opened and revised notification was issued respectively as annexed in the writ petition (Annexure 7 and Annexure 8). The petitioners emphasised on the point that the enhancement/addition which took place is of large number but the respondent department have not re-opened the consideration





zone. It was further pointed out by the counsel that Clause 9 of the advertisement No. 01/2023 dated 03.10.2023 (Annexure 1) states that the experience will be calculated till the last date of applying online application forms for the recruitment of these posts. If the consideration zone gets re-opened then the application forms can also be filled again and the last date of education/professional qualification will also extend resulting in which the petitioners who were otherwise not eligible shall now become eligible and in that event. The experience gained by the candidates will be considered till now and they will be eligible for bonus marks and will become eligible for the recruitment process. The respondent department is also a part of State Government and the said inaction by them is a violation of fundamental rights. The representation has also been submitted by the petitioners but nothing has been done by the respondent department. The petitioners approached this Court with the prayer that the order dated 28.06.2024 (Annexure 4) for enhancing the seats passed by the respondent department be quashed and set aside and the entire recruitment process may be quashed accordingly. Further, it was prayed that the respondent department may be directed to re-open the application forms in pursuance to the enhancement of seats vide order dated 28.06.2024 (Annexure 4) and respondent department may be restrained from proceeding with the said recruitment process for subsequently added posts. To substantiate their submission,





learned counsel for the petitioners have placed reliance on the following judgments :-

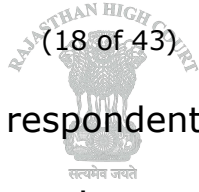
- a) **Rakhi Ray and Ors. Vs. The High Court of Delhi and Ors.** reported in **AIR 2010 SC 932.**
- b) **Arup Das and Ors. Vs. State of Assam and Ors.** reported in **(2012) 5 SCC 559.**
- c) **K. Lakshmi Vs. State of Kerala** reported in **(2012) 4 SCC 115.**
- d) **High Court of Kerala Vs. Reshma A. and Ors.** reported in **(2021) 3 SCC 755.**
- e) **Mohd. Rashid Vs. The Director, Local Bodies, New Secretariat and Ors.** reported in **AIR 2020 SC 1075.**
- f) **Shankarsan Dash Vs. Union of India (UOI)** reported in **AIR 1991 SC 1612.**
- g) **Sugar Singh Meena S/O Shri Ratti Ram Vs. Union of India [D.B. Civil Writ Petition No. 7256/2022]** decided on **25.05.2022.**

8. Per contra, learned counsel for the respondent department vehemently opposed the submissions made by the counsel for the petitioners. He submits that the total posts can be increased or reduced according to the Rules of 1966 and so the seats have been added before selection as per the advertisement No. 1/2023 dated 03.10.2023 (Annexure 1) and it is as per Rule 16 of the Rules of 1966. The Rule 16 of Rules of 1966 provides for addition and reduction in posts, if intimation of additional requirement is received before selection process is completed. He





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further argued that the respondent department received an intimation of additional requirement during the recruitment process as certain posts have become vacant due to promotions. With this view, the respondent department increased the posts in pursuance of Rule 16 of the Rules 1966 and in accordance with the note provided in advertisement No. 1/2023 dated 03.10.2023 (Annexure 1) and the rule specifies that the added seats should not exceed 50% of the total vacancies. He contended that Rule 9 of the Rules of 1966 which states determination of vacancies starts with "subject to the provisions of Rules" so the vacancies are determined every year subject to the provisions of Rules of 1966 and Rule 16 of the Rules of 1966 provides that if intimation of the additional requirement is received before selection process is completed then the same can be added. The proviso to Rule 16 is in consonance with law as the same has increased opportunities for the persons who have already become part of the recruitment process after filling the application form as they were eligible at that time but the petitioners were not eligible on that day, so equity lies in favour of the persons who filled the application forms to get advantage of increase posts before selection process comes to an end. He further submitted that the 50% rule has been made with a view that the persons who were eligible at the initial stage of the process can be given opportunity for the added seats and the advantage of add on seats can be given to the candidates who filled the form at initial date of advertisement. The 50% addition or enhancement in





seats is in accordance with law and is rational and quashing of additional posts as prayed by the petitioners would show that petitioners would take part in the recruitment for which they were not eligible and therefore prayed for dismissing the writ petition. Learned counsel for the respondent department further argued that since the addition of seats has been made in accordance with the express rule therefore unless a prayer for declaration of particular rule to be ultra-vires is not made; the instant petition would not be maintainable before this Court. Learned counsels in support of their contention have placed reliance the following judgments rendered by Hon'ble the Supreme Court:-

- a) **Alok Kumar Singh Vs. State of Uttar Pradesh & Ors.** reported in **(2019) 14 SCC 692.**
- b) **All India SC and ST Employees Association & Anr. Vs. A. Arthur Jeen & Ors.** reported in **(2001) 6 SCC 380.**
- c) **Anupal Singh & Ors. Vs. State of U.P. & Ors.** reported in **(2020) 2 SCC 173.**

9. I have heard learned counsel for the petitioners as well as the learned counsel for the respondents and perused the material placed on record. After anxious consideration of the submissions and material available with the petition, following is the observation of this Court.

10. Indisputably, some of the petitioners applied for the appointment on the post of Nurse/Compounder Junior Grade and did not qualify for the same on the last date mentioned in the



advertisement. After sometime, the respondent department increased/enhanced/added seats to the existing post debarring the candidates / applicants / incumbents / aspirants from applying for the added on seats as the last date of filling up the application form is still the same as it was notified i.e., 05.11.2023. While looking into the facts of the case, it is felt that there would be three types of categories which will be restricted/excluded from affording opportunity by the order impugned and the same would be discriminatory for them. The three categories are as follows:-

- i. The candidates who did not receive their degrees till the time forms were open i.e., 05.11.2023 but now they have received their degrees and have become eligible for the add on posts/seats but they shall be deprived from competing in examination for the seats which are added now.
- ii. In COVID times, because of the lockdown government stretched the courses repeatedly and due to which the petitioners who took admission in three years course of Diploma in AYUSH Nursing and Pharmacy (DAN & P) at respondent university in the month of March 2020 was completed in the month of April 2024 instead of April 2023 and the degrees for the same were issued in the year 2024 to the candidates and this happened for no fault on the



part of the petitioners. Government was responsible for the delay to complete the course and to provide degrees and as a consequence of which; till the initial date of recruitment they did not receive their degrees. Now, at the present date, they have their degrees in hand but shall be precluded from the process if the opportunity of filling the forms will not be given for the posts which are being enhanced through the order under assail.

- iii. Candidates who were not interested at the time of the initial advertisement maybe they were working somewhere else or they were not interested in the post that time but now they are desirous to participate, and such aspirants cannot be prohibited from applying for the Government post as they are also the citizens of this country and have fundamental rights and are eligible now when huge vacancy has been increased in current process.

The bare perusal of the above categories clearly shows the discrimination and a case of not giving a fair chance to the petitioners or to the candidates who wants to contest for the same but virtually the opportunity to them have been denied which is a violation of their fundamental rights. Further, it has been observed that the petitioners also approached the





respondent department through representation with a plea that the candidates who passed in the batch of 2020 i.e., during COVID period are not included for the appointment by the department though the delay had not occasioned due to their fault but they have been deprived of getting a job and the respondent department snubbed their plea and did not pay any heed to their representation. It has also been noticed that the communication of additional requirement of 420 seats due to DPC was issued by the concerned authority on 22.01.2024 (Annexure 9 of S.B. Civil Writ No. 11836/2024) but the additional seats which were added/enhanced were 247 posts for Ayurveda department which is almost fifty percent of what has been advertised initially in the advertisement. Further, it has been observed that the accrual date of the vacancies occurred and number of seats enhanced does not match and the order for inclusion of seats was issued after almost 8 months of initial advertisement.

11. Now moving on to the eligibility criteria and qualification of the candidates. It is clear from the facts that when the advertisement No. 1/2023 dated 3.10.2023 (Annexure 1) was issued, some of the petitioners were not eligible as their marks were not reaching the consideration zone as they did not receive their degrees being a COVID batch and also no bonus marks were granted to them as they did not have the requisite experience. Meanwhile, the petitioners did not stop their services under the government institutions on which they were working



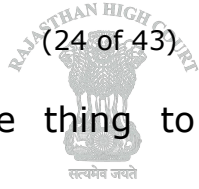
previously and in some months the enhancement of the seats notification dated 28.06.2024 (Annexure 4) was issued. Now, they have gained the experience required and have also completed their Diploma courses in AYUSH Nursing and Pharmacy (DAN & P) so, presently they are eligible for the post.

It is the case of the petitioners that due to outbreak of Pandemic COVID-19, the examination calendar of the diploma course in (DAN & P) was extended repeatedly and due to which, the three years course of diploma was completed in the month of April, 2024 instead of April, 2023 for no fault of the petitioners and as a necessary consequence of which, the petitioners who obtained the requisite diploma certificate in the month of April, 2024 instead of April, 2023, abstained from participating in the competitive examination as advertised in advertisement No. 1/2023 dated 03.10.2023 (Annexure 1) since the last date of filling the form for the same was 05.11.2023. The respondent department did not issue a different advertisement rather they enhanced the seats in the initial recruitment and the seats enhanced were 247 in Ayurveda Department and 68 in Homeopathy which is a large number as now the candidates who thought of not applying previously but now upon enhancement of seats wanted to apply but deprived of by the order under challenge. It is their right to participate in the examination which will be done now for increased seats but not giving them opportunity to fill the form or debarring them from doing so will violate their fundamental right. This Court is of the view that this





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is the most unreasonable thing to keep the same date of submission of application forms for those who were eligible at the initial date when the advertisement was first issued as it was almost 8 months from the date of notification of add on seats.

The candidates eligible to compete the exam on the date of increase of 200 and more seats are kept away from the opportunity.

12. During the course of the arguments, upon query made by the Court; learned counsel for the parties supplied to this Court a copy of a letter dated 04.03.2024 showing the intimation of the vacancies based on which a decision for adding on 247 more seats (Annexure 4) in already advertised seats was taken. The authenticity and genuineness of letter dated 04.03.2024 is not under dispute and both the learned counsel for the parties did not dispute to its existence and therefore upon consensus of learned Additional Advocate General and Counsel for the petitioners, the letter dated 04.03.2024 has been made part of the record and thus the same has been taken on record. For ready reference the letter dated 04.03.2024 is being reproduced as under:-

राजस्थान-सरकार
निदेशालय आयुर्वेद विभाग, राजस्थान-अजमेर
अशोक मार्ग, सावित्री चौराहा, अजमेर (राजस्थान) 305001
क्रमांक प.1/प्रति-3/नर्स-कम्पा. नियुक्ति/2023/1955 दिनांक: 4/3/2024

उप शासन सचिव,
आयुष विभाग,
जयपुर

विषय:- कनिष्ठ नर्स-कम्पाउण्डर के पदों पर नियुक्ति हेतु जारी विज्ञप्ति संख्या 1/2023 में पदों की वृद्धि की जाने बाबत।



महोदय,

उपरोक्त विषयान्तर्गत निवेदन है कि वर्तमान में राजस्थान आयुर्वेदिक, यूनानी, होम्योपैथिक एवं प्राकृतिक चिकित्सा सेवा नियम, 1966 के तहत 495 रिक्त पदों की पूर्ति हेतु विज्ञापन संख्या 1/2023 दिनांक 05.10.2023 को जारी किया गया था, जिसके क्रम में नियुक्ति संबंधी कार्यवाही प्रक्रियाधीन है।

वर्तमान में विभागान्तर्गत नर्स-कम्पाउण्डर के रिक्त पदों की स्थिति निम्नानुसार है:-

1. नर्सिंग अधीक्षक ग्रेड-I	8 पद
2. नर्सिंग अधीक्षक ग्रेड-II	29 पद
3. वरिष्ठ कम्पाउण्डर-नर्स-	325 पद
4. कनिष्ठ कम्पाउण्डर-नर्स-	989 पद
5. कनिष्ठ कम्पाउण्डर-नर्स (ग्रामीण सेवा नियम 2008 के तहत)	367 पद
कुल	1718 पद

राजस्थान आयुर्वेदिक, यूनानी, होम्योपैथिक एवं प्राकृतिक चिकित्सा सेवा नियम 1966 के तहत वर्तमान में कनिष्ठ नर्स-कम्पाउण्डर के कुल 989 पद रिक्त हैं जिनमें से 495 पदों हेतु विज्ञापन जारी किया हुआ है तथा 125 पद विज्ञापन संख्या 1/2021 व 2/2021 के तहत माननीय न्यायालय द्वारा होल्ड किये हुये होने से नियुक्ति हेतु 369 पद रिक्त रहते हैं।

अतः राजस्थान आयुर्वेदिक, यूनानी, होम्योपैथिक एवं प्राकृतिक चिकित्सा सेवा नियम 1966 के नियम 16 के अनुसार विज्ञापित पदों में 50 प्रतिशत तक की वृद्धि किये जाने का प्रावधान होने के फलस्वरूप विज्ञापन संख्या 1/2023 (जिसकी भर्ती संबंधी कार्यवाही प्रक्रियाधीन है) में 247 पदों की वृद्धि किये जाने की स्वीकृति प्रदान करावे ताकि विभागीय औषधालय/चिकित्सालयों के रिक्त पदों को भरा जाकर विभागीय औषधालय/चिकित्सालयों का सुचारु रूप से संचालन किया जा सके।

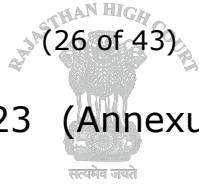
भवदीया

(मेघना चौधरी)
अतिरिक्त निदेशक
(प्रशासन)

It is the kind of intimation, reference of which is made in Rule 16 regarding accrual of vacancies during selection process. The letter dated 04.03.2024 states increase of posts in circular no. 1/2023 issued for recruitment to the posts of Compounder/Nurse Junior Grade and further it is mentioned in the letter that at present 1718 posts in total are vacant including all the categories and out of which the total seats for the post of Nurse/Compounder Junior Grade post is 989 posts out of which 495 posts were already advertised in the advertisement No.



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01/2023 dated 03.10.2023 (Annexure 1) and 125 seats of advertisement No. 1/2021 and 2/2021 were put on hold by the Court in an another litigation and the matter is sub-judice. The posts which are still vacant were 369 and out of which only 247 were added in already advertised posts (Annexure 4).

13. After minutely observing, a glaring aspect as is observed that the respondent department enhanced the seats according to the Rule 16 of the Rules of 1966 which enables the department to add on additional posts if required provided it should not exceed 50% of the advertised vacancies if received by them before selection. For ready reference, the Rule 16 of the Rule, 1966 has been reproduced herein below:-

"16. Inviting of Application. Applications for direct recruitment to post in the Service shall be invited by the **"Appointing Authority"**, by advertising the vacancies to be filled in the official Gazette @ "or" in such other manner as may be deemed fit.

% "The advertisement shall contain a clause that a candidate who accepts the assignment on the post being offered to him/her shall be paid monthly fixed remuneration at the rate fixed by the State Government from time to time during the period of probation and the scale of pay of the post as shown else-where in the Advertisement shall be allowed only from the date of successful completion of the period of probation mentioned in the respective Recruitment Rules:"

Provided that while selecting candidates for the vacancies so advertised the **"Appointing Authority"**, may, if intimation of additional requirement not exceeding 50% of the advertised vacancies, is received by them before selection, also select suitable persons to meet such additional requirement."



A perusal of Rule 16 of the Rules of 1966 makes it abundantly clear that the rule framers intended to make a provision enabling the authority to include more seats in the same recruitment process if during the process some additional requirements are intimated to them which is not more than half of the total vacancy advertised but when the intimated additional requirement is more than half of the advertised posts then a new process has to be started. It is clear from the above provision that Appointing Authority upon receipt of an additional requirement, may include additional requirement but the same should not exceed 50% of the advertised vacancies which was received by them before selection. Here, the respondent department unduly take advantage of the rule; by splitting the total posts which were vacated due to DPC and for that they added on more posts to the already advertised vacancy. The rule does not envisage splitting of the intimation of additional requirement, rather the intent is to give a discretion to the Authority to include all additional requirements in the selection process which accrued subsequent to issuance of the advertisement and for which they were intimated. Now the issue pondered upon by this Court would be that the enhanced number of seats are so high that many aspirants/participants are getting debarred from applying for the post as the last date has not been extended by the department. As going by the rule it cannot go beyond 50% of the initial advertised seats but the initial posts were already a large number so if the respondent department





wanted to increase the number of seats, they may issue a whole new advertisement as the number of seats are too large. Nothing is mentioned in the rule about splitting/dividing the posts/seats in parts. Upon asking Shri Narendra Rajpurohit, learned Additional Advocate General made an inquiry from the respondent office and it is apprised to this Court that the very first time during the establishment post enforcement of the Constitution of India and the relevant laws; the total number of vacancy were 240 and after that in span of 10 years between 1956 to 1966, total of 211 were recruited, so this shows the circumstances and facts before the rule framers as to why the Rule 16 of the Rules of 1966 was made. The rule when made back then, the purpose must be that the vacancies may occur in a year due to employees promotions, death, retirement, leaving a position, so there should be a provision to add/enhance the number of seats in an already advertised posts and in earlier times there used to be less number of posts which were vacated due to DPC, death of an employee, retirement, leaving a position. The 50% rule made for the above purpose may have suitably served in that period but in recent times when the vacancy is in hundreds and its half will also be in hundreds will deprive thousands of candidates from competing for a post advertised. This Court is of the view that if there are more number of seats then a new advertisement can be issued to protect the fundamental rights of the candidates / applicants / incumbents / aspirants. It was further discerned by the Court that the Rules





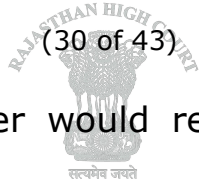
were made in 1966 and at that time the situations were different regarding population and employment and limited number of seats vacated at that time. Now the time has changed and in 2024 the scenario is altogether distinct from the year 1966, so while considering the facts, the change in circumstances should also be taken into consideration.

Otherwise also, the language used in this rule does not make it mandatory upon the authority to include additional requirement in the selection process rather a discretion has been conferred upon the authority that he may include the additional requirement also in the current selection process. Since there is no compulsion upon the authority to add on more posts then authority is expected to exercise the discretion justifiably looking to number of posts and time elapsed between advertisement and inclusion of additional seats.

14. A bare perusal of letter dated 04.03.2024 sent by the Additional Director to Deputy Secretary of AAYUSH Department revealing that total vacancy was of 989 seats for the post of Nurse/Compounder Junior Grade and out of which 495 posts were already advertised in the advertisement No. 1/2023 dated 03.10.2023 (Annexure 1). Other 125 posts of advertisement No. 1/2021 and 2/2021 were on hold by the order of the Court as the matter is still sub-judice and the rest 369 posts were still vacant. The letter reads further that as per Rule 16 of the Rules 1966, the vacancies not exceeding 50% of the total seats can be increased/enhanced however only 247 posts were enhanced. A



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close scrutiny of the letter would reveal that the actual total vacancy was of 369 posts and for that further vacancy was to be advertised but a short cut method has been adopted by the respondent department by taking resort of Rule 16 of the Rules of 1966 by arbitrarily and unreasonably exercising the discretion given under the Rule. Had it been the case that the total accrued vacancy intimated after issuance of the advertisement was below 50% of already advertised post then there was no bar rather the authority may be well within their power to add on all subsequently intimated posts to the already advertised posts but here the situation is different. Here in this case subsequent to the advertisement No. 1/2023 dated 03.10.2023 (Annexure 1), the department intimated for the accrued posts of 369 which was out of the ambit/scope of Rule 16 of the Rules 1966 being more than 50%. The rule does not prescribe splitting/dividing the newly accrued/subsequently intimated posts just to make a short cut so that some of the posts can be added subsequently in the already issued advertisement. If the situation would have arisen within a month or two before the last date of filing of submission of application forms, then the situation would have been different but after almost 8 months when several like the petitioners have entered under the eligibility criteria then exercise of the discretion by authority would be like debarring/depriving them to participate in the ongoing selection process. This Court is of the firm view that Rule 16 of the Rules of 1966 enables the authorities to add on all additional requirement if the same is





below 50% of the originally advertised posts. The rule does not intend to give discretion to the authorities to split/divide the entire vacancy into two parts as per their suiting by taking the help of Rule 16 of the Rules of 1966. The interpretation of statute/rules should be done from the words as it is existing in the rule and should be read as it is written and any kind of alteration/modification/addition by distortion cannot be allowed to the authorities. If the rule framers had an intent to split the subsequently accrued vacancies, then the same could have been mentioned in the rule itself in clear terms. In absence of any express and specific legal provision regarding splitting of vacancies, the issuance of order dated 28.06.2024 (Annexure 4) cannot be approved. Here if the total intimated vacancies were of 247 or less and have been advertised as an additional vacancy in an advertisement then it would have been as per the spirit of the Rule. The authorities cannot be permitted to divide the additional requirement by undue exercise of discretion which is not expressly provided in the Rules.

15. There are plethora of judgments which relates to the issue of re-opening of the application forms or issuing a new advertisement for the different kinds of posts as no citizens should be deprived of their fundamental rights of opportunity in getting desired job or at least be given a chance to compete for the same. The petitioners placed reliance on nimiety of judgments relating to the same issue and issue related to vested right of candidates of select list. The perusal of the case laws as



provided by the petitioners clearly states that the recruitment should not be discriminative in nature and no one should be deprived of competing for a desired job as candidates who become eligible for the succeeding year should be given a chance to fill the forms and they should also be given a chance to participate or compete in the examination. The application forms date should not be kept of a back date as it will deny the candidates who become eligible this year. It is further discussed that there is no vested right of candidates who are in the select list as the whole process has been conducted by the respondent departments only for a particular number of seats and not for the enhanced seats. State authorities can either start the process afresh by including total vacancies accrued till now by giving opportunity to fill forms by new aspirants also and in that event the candidates who had already filled the forms can also be included and can participate afresh. For the perusal, the relevant parts of the judgments relied on by the petitioners is being reproduced herein below:-

- a) **Rakhi Ray and Ors. Vs. The High Court of Delhi and Ors.**
reported in **AIR 2010 SC 932.**

"9. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and





only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law.

(Vide Union of India and Ors. v. Ishwar Singh Khatri and Ors. (1992) Supp 3 SCC 84; Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors. (1994) Supp 2 SCC 591; State of Bihar and Ors. v. The Secretariat Assistant S.E. Union 1986 and Ors. AIR 1994 SC 736:(1994 SCW 573); Prem Singh and Ors. v. Haryana State Electricity Board and Ors. (1996) 4 SCC 319; and Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board and Ors. AIR 1996 SC 976): (1996 AIR SCW 420).

10. In Surinder Singh and Ors. v. State of Punjab and Ors. AIR 1998 SC 18: (1997 AIR SCW 3961) this Court held as under:

"A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointment, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.... Exercise of such power has to be tested on the touch- stone of reasonableness.... It is not a matter of course that the authority can fill up more posts than advertised."

(Emphasis added)





11. Similar view has been re-iterated in *Madan Lal v. State of J & K and Ors.* AIR 1995 SC 1088: (1995 AIR SCW 1109); *Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and Ors.* AIR 1998 SC 1021: (1998 AIR SCW 793); *Sri Kant Tripathi v. State of U.P. and Ors.* (2001) 10 SCC 237: (2001 AIR SCW 3468); *State of J & K v. Sanjeev Kumar and Ors.* (2005) 4 SCC 148; *State of U.P. v. Raj Kumar Sharma and Ors.* (2006) 3 SCC 330: (2006 AIR SCW 1985); and *Ram Avtar Patwari and Ors. v. State of Haryana and Ors.* AIR 2007 SC 3242: (2007 AIR SCW 6130).

12. In *State of Punjab v. Raghbir Chand Sharma and Ors.* AIR 2001 SC 2900:(2001 AIR SCW 4337), this Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that post can be filled up offering the appointment to the next candidate in the select list observing as under:-

"With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select list prepared, the panel ceased to exist and has outlived its utility and at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

13. In *Mukul Saikia and Ors. v. State of Assam and Ors.* AIR 2009 SC 747: (2008 AIR SCW 7971), this Court dealt with a similar issue and held that "if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised". The Select List "got exhausted when all the 27 posts were filled". Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The "currency of Select List had expired as soon as the number of posts advertised are filled up, therefore, the appointments beyond the number of posts advertised would amount to filling up future vacancies" and said course is impermissible in law.

14. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, in executable and unenforceable in law. In case the vacancies notified stand filled up, process of selection comes to an end. Waiting list etc. cannot be used as a





reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service anymore."

b) **K. Lakshmi v. State of Kerala** reported in **(2012) 4 SCC 115.**

"25. The legal position regarding the power of the Government to fill up vacancies that are not notified is settled by several decisions of this Court. Mr. Rao relied upon some of those decisions to which we shall briefly refer.

26. In *Rakhi Ray v. High Court of Delhi* this Court declared that the vacancies could not be filled up over and above the number of vacancies advertised as recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates being violative of Articles 14 and 16(1) of the Constitution of India. This Court observed: (SCC p. 641 para 7)

It is settled law that vacancies cannot be filled up over and above the number of vacancies advertised as recruitment of the candidates in excess of the notified vacancies is a denial being violative of Articles 14 and 16 (1) of the Constitution of India.

27. In *Hoshiar Singh v. State of Haryana* 1993 Supp 4 SCC 377, also this Court held that appointment to an additional post would deprive candidates, who were not eligible for appointment to the post on the last date for submission of the applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for such appointment. This Court observed: (SCC p. 384, para 10)

"10.....The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts...."

c) **High Court of Kerala vs. Reshma A. and Ors.** reported in **(2021) 3 SCC 755.**



"54. The fourth difficulty in accepting the line of approach of the High Court rests on constitutional principles. Undoubtedly, the validity of Rule 7(2) was not in question before the High Court. Counsel for the Respondents argued that it does not lie in the province of the Appellant to raise a doubt about the validity of its own rules, more particularly Rule 7(2). It is necessary to note that Mr. V. Giri, learned Senior Counsel appearing on behalf of the Appellant did not suggest or argue that Rule 7(2) should be held to be invalid. The submission of learned Senior Counsel is that the expression "probable" denotes an addition/deduction which has to be made due to the imponderables of service such as death, resignation and promotion. The submission of the Appellant is that a literal interpretation of Rule 7(2), without reference to the constitutional requirement of not operating a select list beyond the notified vacancies, would render the Rule violative of Articles 14 and 16 and such an interpretation should be avoided. In other words, his submission was that a constitutional interdict cannot be overcome in the manner it has been suggested by the Respondents and a harmonious interpretation of the judicial service Rules in the light of the directions in Malik Mazhar Sultan (3) should have been resorted to by the High Court. We are in agreement with this line of submissions, based as it is on the precedent of this Court. It is a settled principle of service jurisprudence that when vacancies are notified for conducting a selection for appointments to public posts, the number of appointments cannot exceed the vacancies which are notified. The answer to this submission, which has been proffered by the Respondents is that Under Rule 7(1) a probable number of vacancies is required to be notified and since an exact number is not notified, there is no constitutional bar in exceeding the 37 probable vacancies that were notified in 2019. The difficulty in accepting the submission is simply this: it attributes to the expression "probable number of vacancies" a meaning which is inconsistent with basic principles of service jurisprudence, the requirement of observing the mandate of equality of opportunity in public employment Under Articles 14 and 16 and is contrary to the ordinary meaning of the expression. Black's Law Dictionary [11th Edition (Thomsan Reuters West, 2019)].

The definition of 'Probable' in the 4th edition, Revision 6 (1971) of the Black's Law Dictionary was: "Having the appearance of truth; having the character of probability; appearing to be founded in reason or experience...; having more evidence for than against; supported by evidence





which inclines the mind to believe, but leaves some room for doubt; Apparently true yet possibly false."] defines the expression 'probable' as:

"Probable': likely to exist, be true, or happen"

'Probable number of vacancies', as we have seen, is based on computing the existing vacancies and the vacancies anticipated to occur during the year. It also accounts for the possibility of inclusion of some of the candidates that are in the wait-list. However, the expression 'probable' cannot be interpreted as a vague assessment of vacancies that isn't founded in reason and can be altered without a statutorily prescribed cause. To allow the concept of probable number of vacancies in Rule 7(1) to trench upon future vacancies which will arise in a succeeding year would lead to a serious constitutional infraction. Candidates who become eligible for applying for recruitment during a succeeding year of recruitment would have a real constitutional grievance that vacancies which have arisen during a subsequent year during which they have become eligible have been allocated to an earlier recruitment year. If the directions of the High Court are followed, this would seriously affect the fairness of the process which has been followed by glossing over the fact that vacancies which have arisen during 2020 will be allocated for candidates in the select list for the year 2019. Such a course of action would constitute a serious infraction of Articles 14 and 16 and must be avoided. To reiterate, the submission of the Appellant which we are inclined to accept is not that Rule 7(2) is invalid but that a harmonious interpretation of Rules 7(1) and (2) must be adopted that is consistent with the Article 142 directions in Malik Mazhar Sultan (3) to bring the Rules in accord with the governing principles of constitutional jurisprudence in matters of public employment."

A perusal of the above cited judgments clearly shows that the appointment on additional posts would deprive the candidates who were not eligible at the time of last date of submission of application forms but are eligible on the date of enhancement of seats and also if this kind of process will be followed and the previous year wait list candidates would be





given a chance in the succeeding year then the same would be in violation of Article 14 and 16 of Constitution of India. The interpretation of rules must be done as it is written with keeping a fact in mind that what would have been the purpose of making such type of Rule at the time when it was made and accordingly it should be interpreted. The interpretation of law/statute/rules should always be in coherence with the rights of citizens as provided under Constitution of India. Here in this case, the date for applying has not been changed for an add on seats and the seats which accrued are huge in number. In guise of Rule 16 of the Rules 1966 the additional posts accrued have been dissected/divided/splitted in two fractions which is contrary to law and in violation of the fundamental rights provided to the citizens of this country. The adjudication should be done with congruity to Constitution of India and keeping in mind the most crucial Articles i.e. 14, 15, 16, 19 and 21 of Constitution of India as the Courts cannot forgo the fundamental rights provided by these articles.

16. As it has been discussed above, this Court is of the firm view that Rule 16 of the Rules of 1966 does not authorise the State authorities to split the total subsequently accrued vacancy just to add on certain more vacancies in already advertised seats rather a plain meaning of Rule 16 is to enable the authorities to add on certain more numbers not exceeding 50% of the initially advertised posts if the total number of subsequent vacancy is below 50% of the already advertised posts. The plain





interpretation of Rule 16 of the Rules of 1966 should be taken as the total subsequent vacancy should be below 50% of the advertised posts.

17. Now when viewing the issue from another angle, it would come to fore that even after adding on certain more numbers of vacancy in the advertised posts; lots of vacancy is still existing and for fulfilment of which, the respondent department would have to initiate another process of recruitment. In simple words, it can be said that even after adding on 247 seats in the existing process, 122 number of seats are lying vacant and in near, the respondent department would further be obligated to commence a fresh process for that purpose. If it is so, then why the authorities should not complete the process of advertisement No. 01/2023 dated 03.10.2023 (Annexure 1) for the vacancies advertised only and why a fresh advertisement may not be issued for the subsequently accrued whole/entire seats that is around 369 seats. It is notable that the candidates have applied for the advertised posts only, so there would be no question of not doing justice for them however, contrary to this the candidates who are now eligible to participate in the process are being deprived from participating in the recruitment process for 247 seats which is being added now. It is done simply because they were not able to fill up the forms 7 months ago. They abstained from filling up the form before 05.11.2023 because of the circumstances beyond their control.





18. Permitting the respondent department for adding on 247 seats in existing selection process would be against the concept of equal opportunity guaranteed by the Constitution of India which ensures all interested individuals having the same ability to access chance of receiving particular resource such as employment without discrimination based on irrelevant factors. Article 16 of the Constitution of India guarantees equal opportunities to all citizens in matters related to employment in the public sector or any office under the State. This constitutional provision serves as the bedrock for fair and non-discriminatory practices in matters of public employment. All the citizens should have been given equal chance of being employed or appointed to a State office prohibiting discrimination based on any unreasonable and improper factor. No rule of law would like to see benefiting a class of citizen and closing the opportunity for the others. Rules are made for its use for betterment of the societal interest but, for sure, not made for being misused by the authorities. Taking resort of a provision, the State authorities can't be allowed to snatch reasonable opportunities from the others for which they are otherwise eligible. I am of the firm opinion that division of vacancy cannot be permitted to benefit some and causing loss to the others. If the total subsequently accrued vacancy i.e., 369 posts would have fallen within the ambit of Rule 16 of the Rules 1966, then it would be a different thing. In my considered opinion, Rule 16 has been framed for the above purpose only and therefore it cannot be allowed to be





misused. Adding on half of the vacancy after almost 8 months of the commencement of the process that too by dividing/splitting the vacancy is not only beyond the purview of Rule 16 but also the same is illegal and unreasonable. After anxious consideration of the legal and factual aspect of the matter, this Court is of the view that the reasonability and propriety would be to allow the State authorities to complete the selection process for the advertised vacancies only without adding on additional vacancy and a new selection process should be commenced for whatever vacancies has arisen till now so that every individual can be given opportunities to contest. In the new process, all the aspirants who are eligible till now shall be eligible to participate. It won't be justifiable or reasonable to permit increase opportunities to those candidates only who applied till 05.11.2023 by enhancement of more seats after almost 8 months and lessening the opportunity to the others who are eligible at the time of adding on of the seats. If the opportunity is not given for the vacancies which are being added now to the candidates who are eligible from all aspects as on date; then, in my considered view the same would be very unfortunate and against the spirit of law and justice and would be in conflict with the constitutional guarantee.

Thus, viewing from all aspects, this Court is of the view that exercise of discretionary power by the authorities in ordering for enhancement of 247 more seats for the post of Compounder/Nurse Junior Grade in AAYUSH (Ayurveda,





Homeopathy, Unani) Department in the selection process is improper, unjust and against the mandate of law and the same does not come under the ambit of Rule 16 of the Rules of 1966 and therefore the impugned order dated 28.06.2024 (Annexure 4) regarding enhancement of the seats is liable to be quashed and set aside. The petitions deserves to be allowed.

19. Accordingly, in view of the discussion made herein above, the writ petitions are allowed in the following terms: -

- A. The impugned order dated 28.06.2024 (Annexure 4) enhancing the seats in the already advertised posts in advertisement No. 01/2023 dated 03.10.2023 (Annexure 1) is hereby quashed and set aside with immediate effect to the extent it relates to enhancement of posts of Ayurveda Compounder/Nurse Junior Grade wherein 247 posts were enhanced being unjust & violative of the fundamental rights; against propriety & legislative intent and the underlying principles of law.
- B. The respondent department is directed to complete the process of advertisement No. 01/2023 dated 03.10.2023 (Annexure 1), advertised for the post of Compounder/Nurse Junior Grade in AAYUSH (Ayurveda, Homeopathy, Unani) Department Government of Rajasthan, Jaipur, only for the vacancies advertised vide 03.10.2023 (Annexure 1). the process shall be completed expeditiously.



C. The respondent department shall make sincere endeavour for issuance of fresh advertisement with an immediate effect for the subsequently intimated number of additional requirement that are around 369 seats [or more, if any accrued in the meantime] for the post of Compounder/Nurse Junior Grade in AAYUSH (Ayurveda, Homeopathy, Unani) Department for enabling all the candidates / aspirants / participants / incumbents to compete the public employment examination process.

20. No order as to cost.

21. All the stay petitions and pending applications, if any, are disposed of accordingly.

(FARJAND ALI), J

Mamta/-

