

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

**W.P.(S) No. 5753 of 2022**

1. Manisha Rani Toppo, aged about 37 years, D/o Mahimati Toppo, R/O House No. 91, Zone No.2, Birsanagar, Near Eden English High School, PO & PS-Birsanagar, Jamshedpur, District-East Singhbhum, Jharkhand (831004)
2. Kamlesh Kishore, Aged about 34 years, S/o Mohan Ram, Jagran Maidan, Lowadih, PO & PS-Namkum, District-Ranchi, Jharkhand (843010)  
... ... Petitioners

**Versus**

1. The State of Jharkhand
2. The Secretary, Higher & Technical Education Department, Government of Jharkhand, Nepal House, PO & PS-Doranda, District-Ranchi, Jharkhand
3. Additional Chief Secretary, Higher & Technical Education Department, Government of Jharkhand, Nepal House, PO & PS-Doranda, District-Ranchi, Jharkhand
4. Joint Secretary, Higher & Technical Education Department, Government of Jharkhand, Nepal House, PO & PS-Doranda, District-Ranchi
5. Under Secretary, Higher & Technical Education Department, Government of Jharkhand, Nepal House, PO & PS-Doranda, District-Ranchi, Jharkhand
6. Jharkhand Public Service Commission through its Chairman, Jharkhand Public Service Commission, Circular Road, PO-GPO, PS-Lalpur, District-Ranchi, Jharkhand (834001)
7. The Chairman, Jharkhand Public Service Commission, Circular Road, PO-GPO, PS-Lalpur, District-Ranchi, Jharkhand (834001)
8. The Controller of Examination, Jharkhand Public Service Commission, Circular Road, PO-GPO, PS-Lalpur, District-Ranchi, Jharkhand (834001).  
... ... Respondents

**With**

**W.P.(S) No. 5646 of 2022**

1. Anju Kachhap, aged about 35 years, d/o Shri Lala Kachhap, resident at-Satranji, PO-Hulhundu, PS-Dhurwa, District-Ranchi, Jharkhand
2. Manisha Rani Toppo, aged about 37 years, d/o late Nemhas Toppo, resident at-H.No. 91, Zone No.02, PO & PS-Birsanagar, District-East Singhbhum (Jamshedpur), Jharkhand
3. Sohan Lal Hembram, aged about 32 years, s/o Shri Shantu Ram Hembram, resident of Village-Dardaha, PO-MOKO, PS-Baliapur, District-Dhanbad, Jharkhand

4. Neeharika Bakhla, aged about 36 years, d/o Shri Jiren Bakhla, resident of Bisco Nagar Road No.03, Singh More, Hatia Hesag, PO-Hatia, PS-Dhurwa, District-Ranchi

... ... Petitioners

**Versus**

1. The State of Jharkhand
2. The Principal Secretary, Higher, Technical Education and Skill Development Department, Government of Jharkhand, officiating at Nepal House, PO & PS-Doranda, District-Ranchi
3. The Secretary, Higher, Technical Education and Skill Development Department, Government of Jharkhand, officiating at Nepal House, PO & PS-Doranda, District-Ranchi
4. The Chairman, Jharkhand Public Service Commission, having its office at Circular Road, PO-Ranchi, PS-Kotwali, District-Ranchi
5. The Jharkhand Public Service Commission through its Secretary, having its office at Circular Road, PO-Ranchi, PS-Kotwali, District-Ranchi

... ... Respondents

**With**

**W.P.(S) No. 143 of 2023**

1. Poonam Lakra, aged about 34 years, D/O Shri Ram Kishor Bhagat, resident at-Tunki Toli, Kokar, PO-Bariatu, PS-Sadar, District-Ranchi, Jharkhand

2. Jaguttam Oraon, aged about 36 years, s/o Jateya Oraon, resident at - Boreya, PO-Boreya, PS-Kanke, District-Ranchi, Jharkhand

... ... Petitioners

**Versus**

1. The State of Jharkhand
2. The Principal Secretary, Higher, Technical Education and Skill Development Department, Government of Jharkhand, officiating at Nepal House, PO & PS-Doranda, District-Ranchi
3. The Secretary, Higher, Technical Education and Skill Development Department, Government of Jharkhand, officiating at Nepal House, PO & PS-Doranda, District-Ranchi
4. The Chairman Jharkhand Public Service Commission, having its office at Circular Road, PO-Ranchi, PS-Kotwali, District-Ranchi
5. The Jharkhand Public Service Commission, through its Secretary, having its office at Circular Road, PO-Ranchi, PS-Kotwali, District-Ranchi

... ... Respondents

**CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioners

: Mrs. Ritu Kumar, Advocate  
[in W.P.(S) No. 5753 of 2022]

Mr. Mohan Kumar Dubey, Advocate  
[in W.P.(S) Nos. 5646 of 2022 and W.P.(S) No. 143 of 2023]

For the Respondent-State

: Mr. Manoj Kumar, GA-III  
Mr. Aditya Raman, AC to GA-III

For the Respondent-JPSC

[in W.P.(S) No. 5753 of 2022 and W.P.(S) No. 5646 of 2022]

Mr. Jai Prakash, AAG-IA

Mrs. Chaitali C. Sinha, AC to AAG-IA

[in W.P.(S) No. 143 of 2023]

: Mr. Sanjoy Piprawall, Advocate

Mr. Prince Kumar, Advocate

[in W.P.(S) No. 5753 of 2022 and W.P.(S) No. 5646 of 2022]

Mr. Pravin Kumar Pandey, Advocate

Mr. Amit Kumar, Advocate

[in W.P.(S) No. 143 of 2023]

**JUDGMENT**

**CAV on 29/08/2024**

**Pronounced on 04/10/2024**

Since all these writ applications are having similar issue involved; accordingly, with the consent of parties all were heard together and being disposed of by this common judgment.

**2.** WP(S) No. 5753 of 2022 is with respect to the Advertisement No. 05 of 2017; whereby online application had been invited for appointment (backlog) to the vacant post of Assistant Professor in BIT Sindri controlled by the Department of Higher, Technical Education and Skill Development, Government of Jharkhand in the Pay-Scale of Rs.15,600-39000 + Grade-Pay with AGP- Rs.6000/-, whereas; WP(S) No. 143 of 2023 and WP(S) No. 5646 of 2022 are in connection with Advertisement No. 13 of 2017 for the post of Assistant Professor in BIT Sindri for different branches

**3.** The petitioners in WP(S) No. 143 of 2023 applied in ST category; whereas in WP(S) No. 5646 of 2022 petitioner no.1 applied for the post of Chemical Engineering in ST category, petitioner no.2 applied for the post of Electronic & Telecommunication in ST category, petitioner no.3 applied for the post of Electrical Engineering in ST category and petitioner no.4 applied for the post of Electronic & Telecommunication in ST category.

**4.** The grievance of the petitioners is that the Jharkhand Public Service Commission (in short, JPSC) has issued interview/e-call letters to the petitioners and petitioners in all these writ applications have appeared

for the interview and their results have been published on the website and subsequently name of the respective petitioners were also recommended for the respective post to the Department of Higher and Technical Education.

Later on, the concerned Department fixed the date for verification of certificates etc. and ultimately the name of the petitioners was recommended for appointment. However, none of the petitioners have been issued letter of appointment.

**5.** Mrs. Ritu Kumar, Advocate assisted by Mr. Mohan Kumar Dubey, representing the petitioners submits that though the petitioners fulfill all the requisite qualification as per the advertisement and their names were also recommended by the JPSC which is evident from Annexure-8 to WP(S) No. 5753 of 2022 but on the basis of wrong interpretation of the terms and conditions of the advertisement, letter of appointment was not issued to the respective petitioners by the respondent-State of Jharkhand.

It has been contended that as per the advertisement, it is crystal clear that valid GATE score card was not the condition precedent. As such clause 6 in the advertisement which deals with the eligibility criteria has been misinterpreted. Learned counsels for the respective petitioner reiterated that since the GATE score card was not the condition precedent, as such the respondent-State of Jharkhand be directed to issue offer of appointment strictly in accordance with the recommendation made by the JPSC.

**6.** *Per contra*, Mr. Jai Prakash, learned AAG-IA appearing for the respondent-State of Jharkhand submits that valid GATE score card was condition precedent and the same has been clarified in the later portion of the same column. Ld. Sr. Counsel further submits that the recommendation of JPSC is not binding on the State-authority if JPSC has not recommended the names.

He contended that it is a settled proposition of law that

recommendation of the Commission cannot be treated as binding on the State Government and it is also a settled proposition of law that the relaxation in the essential eligibility qualification could not be made post the last date fixed on receipt of application of the candidates and in all these writ applications the petitioners have not fulfilled the requisite qualification and they have not obtained the cut-off marks as per the advertisement. Therefore, their candidature has been cancelled.

Learned AAG-IA further submits that it is true that the Commission has recommended the name of the petitioners along with other candidates for appointment in their respective branches, however, they have requested the Department that appointment must be given only after proper verification of documents and eligibility of each recommended candidates. He reiterated that as per the advertisement they were not having the cut-off marks and accordingly their case has not been considered.

**7.** Mr. Sanjoy Piprawall, learned counsel for the respondent-JPSC submits that the JPSC after receiving online application form from the candidates in terms of criteria mentioned in clause 4 of the advertisement invited the subject experts from the list of experts provided by the Higher and Technical Education Department, Government of Jharkhand for assessment of 80 marks as mentioned in clause 6 and on the basis of opinion of the subject experts, it published the list of short-listed candidates for verification of their testimonials.

It is true that the petitioners were also short-listed and after verification of testimonials of the candidates, the JPSC published the list of eligible candidates for their appearance in the interview and the petitioners were also found eligible for interview. As such interview letters were issued to all the petitioners and finally the JPSC published the result of successful candidates on the basis of the marks secured by them.

**8.** In reply to the aforesaid submission of learned counsel for the JPSC, learned counsel for the petitioners reiterated that GATE score card

was not the condition precedent and there was no error in the JPSC recommendation and by not admitting/accepting the recommendation of the JPSC, the State Government has practically changed the rule in course of appointment process. They could have easily issued a corrigendum by clarifying the aforesaid clause that GATE score was also mandatory.

**9.** Having heard learned counsel for the parties and after going through the documents available on record, the crux of the entire dispute lies in the eligibility criteria mentioned in the advertisement against which all the petitioners have applied for their respective posts. Annexure-1 to *WP(S) 5753 of 2022* is the advertisement; wherein at clause 6 the eligibility criteria for the post of Assistant Professor in Engineering College has been mentioned. The same eligibility criteria are applicable in the other advertisement also. For brevity relevant portion of the same is quoted herein below:

Post	Academic Record & Research Performance (Total 30 marks)	Evaluation of Domain Knowledge (Total 50 marks)
<b>Assistant Professor in Engineering Colleges</b>	<p>a) BE/BTech/ MA/M.Sc. in relevant branch/subject 10% of percentage marks obtained</p> <p>b) ME/M Tech/MPhil in relevant branch/subject 05% of percentage marks obtained</p> <p>c) Ph.D in relevant branch/subject – 05</p> <p>d) Research Publication/Seminar Presentation – 5 marks (Maximum)</p> <p>* Referred Journals-1 marks</p> <p>Per Publication,</p> <p>*Non-referred but recognized and reputable journals and periodicals with ISBN/ISSN Number- 0.75 marks/Publication,</p>	<p><b>For Engineering Subject</b> B.E/B.Tech. and M.E/M.Tech in relevant branch with First Class or Equivalent either in B.E/B.Tech. or M.E/M.Tech with valid GATE score card. The marks/Score may be converted to 50 marks.</p> <p><b>For Humanities and Science Subjects</b></p> <p>(1) Good academic record as defined by the concerned university with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.</p> <p>(2) Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test</p>

	<p>*Seminar/Conference proceeding as full papers etc.</p> <p>(Abstracts not to be included)</p> <p>International: 1/Publication, National: 0.75/Publication)</p> <p>e) Work Experience Max 05 (Teaching/Industrial Experience on a post whose entry level qualification is BE/ME/MA/MSc-01 point per year maximum up to 05 points)</p>	<p>(NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET</p> <p>(3) Notwithstanding anything contained in sub clauses (1) and (2), candidates, who are Ph.D. or have been awarded a Ph.D degree in accordance with the University Grants Commission (Minimum Standard and Procedure for award of Ph.D Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET.</p> <p><b><u>Written test to be conducted by Commission:</u></b></p> <p>In case, if Commission does not receive sufficient numbers (3 times the vacancies) of application forms who have valid GATE/NET/SLET/SET (as applicable) scores, then commission will conduct a written examination for the candidates who have applied for the posts. The syllabus for written test will be that of prevailing GATE syllabus for that year for engineering subjects and for subjects which are not covered in GATE, the syllabus of CSIR-UGC for NET examination for the prevailing year. The Test to be conducted will be of objective type having 100 questions. The duration of test will be two hours and evaluation will be done in 50 marks which will be indicative of marks of Evaluation of Domain knowledge.</p>
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**10.** As a matter of fact, the key word “*or*” which is bone of contention is to be analyzed. The criteria stipulate that “*BE/B.Tech and ME/M.Tech in relevant branch with First Class or equivalent either in*

*BE/B.Tech or M.E/M.Tech with valid GATE score card.”* The contention of the petitioners is that the word **or** distinguishes the first portion of the complete sentence and the criteria was simple that BE/B.Tech and ME/M.Tech in relevant branch with First Class or equivalent either in BE and B.Tech. and all the petitioners were having required qualification. The connecting words **with valid GATE score card** was not applicable to these petitioners and the same was attached with the candidates having Master’s degree and the grounds taken by the Department of Higher, Technical Education and Development is *nonest* in the eye of law.

**11.** However, if this Court proceeds to scrutinize with the said eligibility criteria-Clause-6, it is specifically mentioned that in case if Commission does not receive sufficient numbers (3 times the vacancies) of application forms who have valid GATE/NET/SLATE/SET (as applicable) scores; then Commission will conduct a written examination for the candidates who have applied for the post.

This subsequent stipulation which has been given under the heading written test to be conducted by Commission clearly goes to show that GATE marks was the condition precedent and the same was clarified in later portion of the same column. Hence, it is held that the contention of the petitioners is misconceived and without any substance, inasmuch as, the words **with valid GATE score card** appears at the last of the sentence; which clearly goes to show that GATE Marks was condition precedent for eligibility.

**12.** From record it also appears that in the supplementary counter affidavit filed by the State-Respondents in *WP(S) No. 143 of 2023* at paragraph nos. 7 and 8 it has been clearly stated as under:

*“7. That it is humbly stated and submitted that the file was also placed before the Department of Personnel, Administrative Reforms and Rajbhasha for its opinion wherein it has been opined by the Department that the selection procedure is being conducted in terms of Jharkhand Technical Education Service Rules, 2013 which is issued after the approval of Cabinet. The Provisions of the Jharkhand Technical Education Service Rules, 2013 cannot be abrogated or changed by JPSC.*

*8. That it is further stated and submitted that J.P.S.C in its letter dated*

*27.12.2021 stated that a decision has been taken in the meeting of the Commission to abrogate the provision for conducting written examination whereas the decision that has been taken in the meeting is to make the GATE Score basis for selection and evaluation of Domain Knowledge. It has been decided in the meeting that the provision for conducting written examination for evaluation of domain knowledge is deleted and evaluation of Domain Knowledge shall be done on the basis of valid GATE Score only.*

*It is pertinent to mention herein that both the petitioners did not possess GATE Score card and they have been marked 0 (Zero) in domain knowledge. Therefore, as per the decision taken by the Commission in its meeting, the petitioners name ought not to have recommended by JPSC as they did not possess valid GATE score card.*

*It is also pertinent to mention herein that Clause 6 of the advertisement under the heading of 'Evaluation of Domain Knowledge' for Engineering subject reads as "BD/B.Tech and ME/M.Tech in relevant branch with First Class or equivalent either in BE/B.Tech or ME/M.Tech with valid GATE Score Card. The marks/Score may be converted to 50 marks." As per this clause of the advertisement also, the petitioners were not eligible as they did not possess valid GATE Score card and their evaluation of domain knowledge could not be done."*

**13.** In view of the aforesaid facts and circumstances of the case and the stand of the State referred to hereinabove, coupled with the stipulation made in the eligibility criteria; this Court is having no hesitation in holding that GATE score was compulsory and accordingly the respondent-State has rightly not accepted the recommendation of the Commission. In this regard, it is profitable to refer the judgment passed in the case of "***State of U.P. v. Ashok Kumar Srivastava***" reported in **(2014) 14 SCC 720** wherein at paragraph no. 13 it has been held that the recommendation of Commission cannot be treated to be binding on the State Government. It is also a settled proposition of law that any relaxation in the essential eligibility qualification could not be made post the last date fixed on receipt of application of the candidate. In this regard, a reference may be made to the case of "***Ankita Thakur and Others v. H.P. Staff Selection Commission and Others***" reported in **2023 SCC OnLine SC 1472** wherein at paragraph nos.45, 50 and 52 the Hon'ble Apex Court has held as under:

*"45. In the instant case, it is not shown that the advertisement reserved the power to relax the essential eligibility qualifications specified in the advertisement at any later stage. Rather, the advertisement is specific that eligibility criteria must be fulfilled by an aspiring candidate by the last date fixed for receipt of the application. It is not demonstrated that after the decision*

*to relax the eligibility criteria was taken, the same was widely publicised, and the last date to apply under the advertisement was extended to enable persons benefited by such relaxation to apply and compete. In these circumstances, in our view, the power to relax the eligibility criteria, even if it existed, was not exercised in consonance with the settled legal principles and it violated the constitutional mandate enshrined in Articles 14 and 16 of the Constitution. Issue No. (i) is decided in the terms above.*

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*50. In our view, if there existed a statutory procedure for granting recognition, an Institution cannot be considered recognized dehors that procedure. No doubt, as held by a Constitution Bench of this Court in *Mohammad Shujat Ali v. Union of India*<sup>27</sup>, issue of equivalence is a technical issue and where the decision of the Government is based on the recommendation of an expert body, the Court should not lightly disturb its decision unless it is based on extraneous or irrelevant considerations or actuated by mala fides or is irrational and perverse or manifestly wrong. But this is not a case of mere treating degrees or certificates obtained from a recognized Institution/University as equivalent to the one specified, rather it is of granting recognition to certain courses conducted by private institutes, whether recognized or not as per the extant statutory regime. This, in our view, amounts to changing the eligibility criteria midway because the extant Rules and the advertisement both stipulated that the diploma/specification course had to be from a recognized Institution/University. Even assuming that there had been no statutory procedure prescribed to accord recognition, such relaxation in the eligibility qualification ought to have been widely publicized, and opportunity should have been afforded to those who were left out, so that they could apply and compete, as held by this Court in *Bank of India v. Aarya K. Babu*<sup>28</sup>.*

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*52. In this view of the matter, even if we assume that the State had power to relax the eligibility criteria, the same could not have been done mid-stream without giving wide publicity of such change, and opportunity to similarly situated candidates to apply and compete with others.”*

**14.** Having regard to the aforesaid discussion, the petitioners of the respective writ applications have failed to point out any illegality in the action of the respondent-State of Jharkhand and thereby no interference is required with the impugned action of the respondents in not offering appointment letter to the respective petitioners.

**15.** As a result, all these writ applications stand dismissed, however, there is no order as to cost. Pending I.As, if any, stands disposed of.

**(Deepak Roshan, J.)**

Jharkhand High Court, Ranchi  
Dated: 04/ 10 /2024  
Amit

AFR/