

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

**L.P.A. No. 332 of 2021**

**with**

**I.A. No. 5411 of 2022**

**With**

**I.A. No. 5373 of 2022**

**With**

**I.A. No. 1669 of 2022**

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1. The State of Jharkhand, through Chief Secretary, Jharkhand, At Project Building, Dhurwa, PO & P.S. Dhurwa, District Ranchi.
2. The Secretary, School Education and Literacy Dept., Government of Jharkhand, At Project Building, Dhurwa, PO & P.S. Dhurwa, District Ranchi.
3. The Deputy Commissioner, Dhanbad.
4. District Superintendent of Education, Dhanbad.
5. The Jharkhand Academic Council, through its Chairman, Ranchi.
6. The Secretary, Jharkhand Academic Council, Ranchi

..... **Respondents/Appellants**

**Versus**

Premlal Hembrom, Son of Devilal Hembrom, resident of Village Mahadev Bathan, P.O. Lahathi & P.S. Mahagama, Dist-Godda, PIN-814147, Jharkhand.

..... **Writ Petitioner/Respondent**

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
HON'BLE MR. JUSTICE SUBHASH CHAND**

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For the Appellants : Mr. Sharad Kaushal, A.C to A.A.G-III

For the Respondent : Mr. Binod Singh, Advocate.

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**Order No. 07: Dated 20<sup>th</sup> December, 2022:**

**Per: Sujit Narayan Prasad, J.**

The instant intra-court appeal is preferred against the order/judgment dated 10.11.2020 passed by learned Single Judge in W.P. (S) No. 6704 of 2016, whereby and whereunder the learned Single Judge while allowing the writ petition has held the order of termination dated 07.10.2016 to be unsustainable in the eyes of law, accordingly quashed and set aside the termination order.

2. The brief facts of the case, which are required to be enumerated herein for proper adjudication of the *lis*, are as under:

The writ petitioner (respondent herein) was initially appointed on the post of Para Teacher on 01.04.2005 at Middle School Mahadeo Bathan, Mahagama, Godda and continued to work on the aforesaid post till his joining to the Post of Intermediate Trained Teacher in the district of Dhanbad. Thereafter, pursuant to advertisement being Advertisement No. 10/2015 inviting application for appointment to the post of Intermediate Trained Teacher, the petitioner applied for and after going through the selection process/counseling, he was declared successful, as such offer of appointment was issued from the office of appellant no. 4-District Superintendent of Education, Dhanbad vide Memo No. 4804 dated 14.12.2015. Accordingly, the writ petitioner-respondent submitted his joining report on 21.12.2015 before the Block Education Extension Officer, which was accepted vide Memo No. 73 dated 03.03.2016 and the writ petitioner was directed to join at Primary School, Kethardih where he started to discharging his duties.

But, all of a sudden, the writ petitioner-respondent was served with letter no. 3483 dated 27.09.2016 in the form of show cause asking as to why his services may not be terminated since he is not fulfilling the eligibility criteria of having minimum 45% marks in the Intermediate Examination.

In compliance thereto, the writ petitioner-respondent submitted reply on 06.10.2016 stating therein that minimum educational qualification for the Intermediate Trained Teacher is 45% marks in intermediate and there is relaxation of 5% marks for the reserved category candidate and since the writ petitioner-respondent who is a

permanent resident of Jharkhand, belonging to Scheduled Tribe category and has 40.22% marks in intermediate, as such he is fulfilling the required educational qualification, as per the statute and the advertisement. According to the writ petitioner-respondent, the appellants-authority without considering the aforesaid reply has passed the impugned order of termination vide order date 07.10.2016, which was assailed before the learned Single Judge by filing writ petition being W.P.(S) No. 6704 of 2016 and the learned Single Judge after giving a finding to the effect that the petitioner has demonstrated that he has secured more than 40% marks and as such he is having requisite eligibility criteria and accordingly, the order of termination was quashed and set aside, which is the subject matter of present intra-court appeal.

3. Mr. Sharad Kaushal, learned A.C to A.A.G-III appearing for the appellants-State by referring to the statutory provision, notified vide notification dated 05.09.2012 known as *Jharkhand Primary School Teachers Appointment Rules, 2012* (hereinafter referred to as Rules, 2012) has submitted that under Rule 21 (Ka) of the Rules, 2012 it has been stated that the total merit marks of the candidate will be addition of educational merit mark and mark obtained in Teacher Eligibility Test.

The total percentage of marks obtained in matriculation examination, Intermediate Examination and Teachers Eligibility Test divided by three would be educational merit marks. According to learned counsel for the appellants-State since the writ petitioner has got only 39.78% and as such he being under the category of Scheduled

Tribes, for which the minimum marks for intermediate examination is 40 %, he is not eligible to hold the post of Intermediate Trained Teacher and considering the aforesaid aspect of the matter, show cause notice was issued by the authority concerned to the writ petitioner, to which he replied, which was found unsatisfactory, hence the order of termination was passed. Therefore, submission has been made that in a public service, a person is entitled to hold the post subject to fulfillment of eligibility criteria and if any of the eligibility criteria is lacking such appointment is to be struck down immediately and taking into consideration the aforesaid aspect of the matter, the writ petitioner was terminated from services, but the learned Single Judge without appreciating the aforesaid aspect of the matter and without coming to the conclusive finding on the marks obtained by the writ petitioner has found him to have obtained 40% marks in intermediate examination and on this ground the order of termination has been quashed and set aside. Learned counsel, therefore, submits that there cannot be any confusion about the marks which is required by one or the other candidates as if marks is there it will be there, herein 40% marks is required and, therefore, the candidate if having no 40% marks there cannot be any confusion that he/she has got 40% marks.

Herein, according to learned counsel for the appellants, the writ petitioner has got 39.78% marks, therefore, he is having less than 40% marks and hence he is not eligible to hold the post.

Further submission has been made by putting reliance upon the decision of the Division Bench of this Court in *Sanjeev Kumar Dinker*

*Vs. The State of Jharkhand & Ors* reported in *2016 SCC On Line Jhar 2421*, wherein similar issue has been considered and by taking into consideration the statutory provision as contained under Rule 21 (Ka), the marks obtained in the additional subject has not been found proper to be considered for preparing the educational merit list but the learned Single Judge even without caring for the law laid down by the Division Bench has quashed and set aside the order of termination, which is not sustainable in the eyes of law, as such appeal may be allowed by quashing and setting aside the order passed by learned Single Judge holding the order of termination as proper.

It has been stated that the similar issue has been decided by a Coordinate Division Bench of this Court in *L.P.A. No.83 of 2019 (The State of Jharkhand & Ors. vs. Ravi Oraon)* vide order dated 03.08.2021 and as such the issue involved herein is exactly similar to that of the fact involved in this appeal, therefore, the instant appeal may also be allowed.

4. Per contra, Mr. Binod Singh, learned counsel for the writ petitioner-respondent has submitted that the writ petitioner has got 40.22% marks in Intermediate, which has been calculated after including the marks obtained by him in the vocational subject but without taking into consideration the aforesaid aspect of the matter the administrative authority has issued show cause, which was replied by him but without proper consideration of the reply, order of termination has been passed.

He further submits that even the show cause notice issued to the writ petitioner is improper as even though the writ petitioner belongs to

the reserved category for which 40% marks is required but referring to the requirement of 45 % marks the show cause notice has been issued and when it has been replied even then also a fresh show cause notice was not issued, therefore, it is nothing but non-application of mind by the authority in issuing incorrect show cause, basis upon which the order of termination has been passed.

He, therefore, submits that there is violation of principle of natural justice and as such the learned Single Judge after taking into consideration this aspect of the matter is correct in interfering with the order of termination which requires no interference by this Court. He further submits by taking the plea that the marks obtained in the vocational subject is required to be added for which he relied upon the Regulations, as mentioned in the back of the Intermediate Marks Statement, which has been submitted by learned counsel for the petitioner during course of hearing, wherein there is stipulation to the effect that the result of the candidate offering an additional subject shall be determined on the basis of marks obtained by him in all the compulsory and in the three out of the four optional and additional subjects taken together in which he/she has secured higher marks and, therefore, the aforesaid principle has also been applied while appointing the writ petitioner by adding the marks obtained by him in the vocational subject. Hence, there is no infirmity in the order passed by the learned Single Judge.

In support of his submission, he has relied upon the judgment rendered in *Sharif Ahmad & Ors Vs. Regional Transport Authority, Meerut & Ors [(1978)1SCC1]* and *Oryx Fisheries Private Limited Vs. Union of India & Ors [(2010)13 SCC 427]*.

5. We have heard learned counsel for the parties, perused the documents available on record as also the finding recorded by the learned Single Judge.

6. Admitted fact in this case is that the writ petitioner initially was working as Para Teacher since 01.04.2005. The Human Resource Development Department, Government of Jharkhand has come out with a Rule, namely, '*Jharkhand Primary Teacher Appointment Rules, 2012*' vide notification dated 05.09.2012 for conducting Teacher Eligibility Test and also for appointment of teachers in Primary Schools. Pursuant thereto, the Jharkhand Academic Council published an advertisement being advertisement no. 95 of 2012 dated 18.11.2012 inviting applications from eligible candidates to appear in Jharkhand Teacher Eligibility Test Examination, 2012. As per Clause 1 (Kha) (i)(a) of the advertisement, so far appointment of Intermediate Trained Teacher is concerned, the minimum educational qualification was intermediate pass with 45% marks and having the qualification of two years Teacher Training Diploma in Primary Education from the institution recognized by NCTE. However, as per Clause 1 (Kha) (ii) (kha), there was relaxation of 5 % marks to the candidates belonging to reserved category. The writ petitioner-respondent falling under reserved category

applied for the aforesaid examination and after going the examination process, he was declared successful.

Pursuant thereto, an advertisement, being advertisement no. 10/2015 was published from the office of District Superintendent of Education, Dhanbad (appellant no. 4 herein) inviting application for appointment to the post of Intermediate Trained Teacher. The writ petitioner applied for appointment on the post of Intermediate Trained Teacher and was called for appearing in counseling, wherein he appeared and was found successful, as such offer of appointment was issued from the office of District Superintendent of Education, Dhanbad vide memo no. 4804 dated 14.12.2015. Accordingly, he joined the Primary School, Kethardih on 03.03.2016.

In the meantime, candidature of the petitioner has been scrutinized by the authority and it was found that the petitioner secured only 39.78% marks in the intermediate examination, as such the matter was placed before the District Education Establishment Committee and as per the decision of the Committee a show cause notice vide order dated 27.09.2016 was served upon the petitioner, to which, the writ petitioner replied but the same was found unsatisfactory, hence the services of the writ petitioner was terminated.

The writ petitioner has taken the plea that marks obtained by him in the vocational course is required to be added and if it would have been added, he will have 40.22% marks in the intermediate examination.

While, on the other hand, the State-appellants has submitted by putting reliance upon the Rule 21 (Ka) of the Rules, 2012 that the marks



obtained in the additional subject will not be added for publication in the merit list and so far as the addition of marks obtained in vocational course is concerned, it cannot be taken into consideration for preparing merit list and, therefore, according to the State-appellants the appointment of the writ petitioner is wholly contrary to the provision of the statute as also the condition of the advertisement and it has correctly been decided by the authority concerned to terminate the services of the writ petitioner.

7. This Court has also perused the order passed by Co-ordinate Division Bench of this Court in ***L.P.A. No.83 of 2019 (The State of Jharkhand & Ors. vs. Ravi Oraon)*** and found therefrom that the issue involved in this appeal is exactly similar to that of the fact involved herein, as would appear from the relevant paragraphs of the said judgment, which reads hereunder as:

*“13. This Court after appreciating the arguments advanced on behalf of parties, deem it fit and proper to refer about statutory provision which is applicable in the case of recruitment, which is the subject matter of writ petition i.e. Jharkhand Primary School Teachers Appointment Rules, 2012. The aforesaid Rule has come into being by virtue of notification dated 05.09.2012, which contains four chapters. First chapter contains definition clauses; second chapter deals with ‘Teacher Eligibility Test’, the third chapter speaks about direct appointment of teachers in Primary School [Class 1 to 5 – Intermediate Trained Teacher and Class 6 to 8 – Graduate Trained Teacher] and the fourth chapter is miscellaneous clause. Herein, we are mainly concerned with chapter-3 of Rules, 2012, which deals with appointment of primary teachers.*

*In pursuance to the advertisement, the writ petitioner applied for appointment to the post of Intermediate Trained Teacher. The eligibility criteria for appointment to the post of Intermediate Trained*

*Teacher has been provided under the provision of Rule, 21 (ka) which reads hereunder as:*

21. रिक्त पदों पर शिक्षकों/अनुदेशकों की नियुक्ति हेतु निम्नलिखित प्रक्रिया के अनुसार जिला स्तर पर मेधा सूची तैयार की जायेगी—

(क) इन्टर प्रशिक्षित शिक्षकों की नियुक्ति हेतु मेधा सूची का निर्माण—

(I) इन्टर प्रशिक्षित शिक्षकों की नियुक्ति हेतु कोटिवार मेधा सूची अभ्यर्थी के कुल मेधा अंक के आधार पर जिला शिक्षा स्थापना समिति द्वारा तैयार की जायेगी।

(II) कुल मेधा अंक अभ्यर्थियों के शैक्षणिक मेधा अंक एवं शिक्षक पात्रता परीक्षा के मेधा अंक का योगफल होगा, जिसकी गणना निम्नवत् की जायेगी।

(अ) शैक्षणिक मेधा अंक के निर्धारण हेतु अभ्यर्थी के मैट्रिक परीक्षा, इन्टरमीडियट परीक्षा एवं शिक्षक प्रशिक्षण परीक्षा के प्राप्तांक के प्रतिषत को जोड़ने के उपरांत प्राप्त योगफल को तीन से भाग देने पर प्राप्त प्रतिषत अभ्यर्थी का शैक्षणिक मेधा अंक होगा। किन्तु, इस गणना में अतिरिक्त विषय के प्राप्तांक को नहीं सम्मिलित किया जायेगा।

(ब) शिक्षक पात्रता परीक्षा के प्राप्तांक के आधार पर अभ्यर्थी के शिक्षक पात्रता परीक्षा मेधा अंक का निर्धारण निम्नरूपेण किया जायेगा—

- i. 90% एवं इससे उपर— 10 अंक
- ii. 80% एवं इससे उपर किन्तु 90% से कम—06 अंक
- iii. 70% एवं इससे उपर किन्तु 80% से कम—04 अंक
- iv. 52% एवं इससे उपर किन्तु 70% से कम— 02 अंक

*It is relevant from perusal of Rule 21(ka) that for appointment on the post of Intermediate Trained Teacher merit list is to be prepared of the successful candidate on the basis of total marks secured in matriculation examination, intermediate examination and Teacher Eligibility Test divided by three. It has further specifically been mentioned that marks obtained in additional subject will not be included in preparation of merit list.*

*It is admitted case of the writ petitioner that he is not claiming for addition of marks secured in additional subjects rather for addition of marks obtained in vocational subject, for which, he has relied upon the marks-sheet of the Intermediate examination and Regulations mentioned on the back side of the Mark-sheet. Clause 4 of the said Regulations speaks that result of a candidate offering an additional subject shall be determined on the basis of marks obtained by him in all the compulsory and in the three out of the four optional*

*and additional subjects taken together in which he/she has secured higher marks. Clause 5 of the Regulations speaks that if a candidate is short of the minimum aggregate marks prescribed for 1<sup>st</sup> or 2<sup>nd</sup> Division by 5 marks or less, he/she shall be given the minimum marks required to make up the deficiency and shall be placed in higher division but the position in that higher division shall be determined on the basis of the original marks secured by him/her. Clause 6 of the Regulation speaks that the marks obtained by a candidate in vocational subjects over and above pass mark (theory and practical taken together) will be added in aggregate to improve his/her result and determines division. The advantage will be available only to such candidates who have appeared at the examination in both and theory and practical papers.*

**14.** *Learned counsel for the appellants-State has submitted that the marks of the vocational subjects cannot be included for preparing merit list and we are in agreement with such argument as for three reasons, firstly, the Regulation, as mentioned in the Mark-sheet does not govern the matter of recruitment rather it only governs the process of examination and nothing more. Secondly, when the rules have been framed in the year 2012 the recruitment process will go by the statutory provision as framed in the year 2012. Thirdly, the Regulation only speaks about addition of marks obtained in the vocational course for the preparation of result and nothing else.*

*Therefore, the sole argument of the learned counsel for the writ petitioner is based upon the condition stipulated in the Regulation, as we have stated herein above that Regulation does not govern the matter of recruitment rather the said Regulation only governs the process of examination, therefore, the writ petitioner has failed to make out a case for addition of vocational marks for the preparation of merit list basis upon which he is claiming that if the extra marks obtained in the vocational subject will be added he would have secured 42.55% marks meaning thereby if the extra marks of the vocational subject will not be added then as has been submitted by the appellants-State, the writ petitioner would have 38.56 % marks. In view thereof, the writ petitioner cannot be said to have secured 40% marks, being a Scheduled Tribe candidate for which 5 % marks have*

been relaxed in comparison to that of the unreserved category candidate, for which, 45 % marks are required.

15. Further, the provision of Rule 21 (Ka) has also been considered by the Coordinate Bench of this Court in the case of in **Sanjeev Kumar Dinker Vs. The State of Jharkhand & Ors** reported in **2016 SCC OnLine Jhar 2421**, wherein the provision of Rule 21 (Ka) has been considered elaborately holding therein that the marks obtained in the additional subject or the vocational subject will not be included for the purpose of preparation of merit list and in that view of the matter also, the judgment having been decided by the Coordinate Bench of this Court, the plea which is being taken by learned counsel for the writ petitioner for addition of marks obtained in the vocational subject is not fit to be considered.

For ready reference, the judgment passed in **Sanjeev Kumar Dinker (Supra)** is quoted hereunder as:

“Being aggrieved of the impugned judgment dated 07.07.2015 of the learned Single Judge in W.P.(S) No. 4935 of 2014 dismissing the writ petition, the appellant-writ petitioner (hereinafter to be referred as “petitioner”) has preferred the instant appeal which is at admission stage but, with the consent of the learned counsel for both the sides, we have taken it on board for its final consideration.

2. The petitioner is aggrieved by preparation of panel for appointment to the post of Inter Trained Teacher under the provisions of Jharkhand Primary School Teacher Appointment Rule, 2012. The case set-up by the petitioner before the Writ Court is that in his mark-sheet of Intermediate, the aggregate marks indicated is 440 whereas, only 393 marks obtained by him in compulsory and optional subjects i.e., RBH, English, Physics, Chemistry and Math were taken into account ignoring 82 marks obtained by him in Vocational subject, which plea was not accepted by the learned Writ Court on the ground that the marks obtained in the Vocational subject, in fact, was an additional subject and therefore, only 393 marks was obtained by the petitioner which were considered in terms of Rule 21 of 2012 Rules.

3. *The learned counsel for the petitioner has once again reiterated the same plea before this Court. However, we are not in agreement with the argument advanced by the learned counsel for the petitioner.*

4. *We have gone through Rule 21(Ka) of Jharkhand Primary School Teacher Appointment Rule, 2012 and the Intermediate mark-sheet of the petitioner. For the Vocational subject, he has obtained 82 marks out of which 35 marks have been deducted as pass marks and remaining 47 marks have been added to 393 marks making it 440 in total. The petitioner, in any case, was not aggrieved of the Intermediate mark-sheet prepared in this regard by deducting 35 marks out of 82 marks for his Vocational subject (ST). What appears to have us is that the marks obtained by the petitioner above 35 marks were added for the purposes of grading whereas, only compulsory subject marks were to be counted for the purposes of appointment in terms of Rule, 2012. The other argument advanced by learned counsel for the petitioner that the petitioner had never filled up in his Admit Card any additional subject is not acceptable to the Court. Vocational subject was to be taken by each candidate "compulsorily", which does not mean that such subject was to be taken by each subject for the purposes of counting its marks with other subjects. Being that the learned Writ Court calling for indulgence.*

5. *The appeal on hand thus, merits **dismissal. Ordered accordingly.***

16. *The learned counsel for the petitioner has further raised the issue that the content of the show cause notice has not been properly dealt with about the reason of explanation asking explanation for termination of service of the writ petitioner since according to him the writ petitioner who is under the reserved category is required to have 40% marks in intermediate examination but show cause has been asked to explain the reason as to why his services be not terminated since he has obtained less than 45 % marks as such the competent authority after acceptance of the reply wherein this issue has been raised ought to have come out with the fresh show cause before taking*

*decision of termination of service but we are not in agreement with such argument for the reason that the principle of natural justice is having no straight jacket formula and that there is no requirement to follow the principle of natural justice when the fact is not in dispute, otherwise it will lead to futile exercise and empty formality as has been held by Hon'ble Apex in **Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & others, [(2004) 4 SCC 281]** wherein Hon'ble the Apex Court has held at paragraph-64 as under:*

*“64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.”*

*Herein the writ petitioner has failed to establish his case on fact even before this Court with respect to the fact that the rule permits non addition of the marks obtained by one or the other candidates in the additional subject and no reference about the marks obtained in vocational subject and even addition of marks obtained in the vocational subject has been decided by the Co-ordinate Bench of this Court in **Sanjeev Kumar Dinker (Supra)**, which suggests that even if the fresh show cause notice would have been issued to the writ petitioner he would not have been in a position to rebut this fact so that factual aspect about requirement of addition of marks of vocational subject and, therefore according to our considered view when the factual aspect is not in dispute and there is no chance of*

*change in the factual aspect and even after issuance of fresh show cause notice the observance of principle of natural justice in such circumstances would be nothing but an empty formality and futile exercise and therefore, the judgment relied upon by the writ petitioner in **Sharif Ahmad (supra)** and **Oryx Fisheries Private Limited (supra)** wherein proposition has been propounded to follow the principle of natural justice, is not applicable in the facts and circumstances of the case. According to our considered view there is no doubt that before taking adverse decision principle of natural justice is to be observed but principle of natural justice is having no straight jacket formula as has been held Hon'ble Apex Court in **Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and others, [(2015) 8 SCC 519]** wherein their Lordships have held at paragraph-39 as under:*

*“39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principle of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principle of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason perhaps because the evidence against the individual is thought to be utterly compelling- it is felt that a fair hearing “would make no difference”- meaning that a hearing would not change the ultimate conclusion reached by the decision-maker.”*

*17. In view of the case laws cited above and the factual aspect of the case at hand, which is not in dispute, as discussed herein above, the judgment rendered by Hon'ble Apex Court in the cases of **Sharif Ahmad (supr)** and **Oryx Fisheries Private Limited (supra)** upon which, learned counsel for the petitioner relied upon, is not applicable.*

*18. We have gone across the judgment passed by learned Single Judge and found therefrom that the order of termination has been interfered with on the ground that the provision as contained under*

*Rule 21 (Ka) wherein procedure has been laid down for preparing merit list of the candidate which according to learned Single Judge has been imported from the provision as contained under Rule 4 and since under the provision of Rule 4, the writ petitioner was allowed to participate in Teacher Eligibility Test considering him to have obtained 40% marks then it will be treated to have 40% marks in the matter of appointment also. But the question is that when the Rule has been framed which contains the provision to participate in Teacher Eligibility Test under Chapter 2 and for recruitment the process has been made which is under Chapter 3 both are for the different fields because Chapter 2 deals with participation of the one or the other candidate in the Teacher Eligibility Test while chapter 3 deals with the process of recruitment as teacher. There is no dispute about the fact that the Teacher Eligibility Test is only an eligibility criteria for consideration of appointment to the post of the teacher and nothing else and if a candidate has been allowed to participate in Teacher Eligibility Test even not considering to have 40% marks as required under Rule 4 it does not mean that a right has been accrued to the writ petitioner also to claim his appointment even though he has not obtained 40% marks as required for a candidate under such category, merely because that qualifying in the Teacher Eligibility Test by virtue of which certificate of passing Teacher Eligibility Test.*

*Further even accepting that the writ petitioner has been allowed to participate in the Teacher Eligibility Test without considering the fact that he actually has not obtained minimum 40% marks in the intermediate examination, as required under Rule 4 it cannot derive a right upon the writ petitioner because the writ petitioner has been said to have allowed to participate in the Teacher Eligibility Test contrary to the statutory provision, and on that account it will be said that the consideration of the writ petitioner in the Teacher Eligibility Test being contrary to statutory provision does not confer any right upon the writ petitioner for being considered to be appointed as Assistant Teacher on the principle that if any illegality has been committed by the authority that does not confer any right upon a candidate to claim such illegality to be perpetuated.*

*Reference in this regard be made to the judgment rendered by Hon'ble Apex Court in **State of Orissa and Anr. vs. Mamata Mohanty, (2011) 3 SCC 436**, wherein the Hon'ble Apex Court has been pleased*



to hold that if any illegality has been committed, the same is to be rectified the moment it came to the notice of the authorities and if such exercise would not be resorted, it will amount to perpetuating the illegality. The Hon'ble Apex Court in the said judgment, at paragraphs 56 and 57 has been pleased to hold as under:-

*“56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh, Yogesh Kumar v. Govt. of NCT of Delhi, Anand Buttons Ltd. v. State of Haryana, K.K. Bhalla v. State of M.P., Krishan Bhatt v. State of J&K, Upendra Narayan Singh and Union of India v. Kartick Chandra Mondal.)*

*57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. observed as under: (SCC p. 551, para 12) “12. ... ‘2. ... To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter at p. 18: “a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors”.*

Likewise, the Hon'ble Apex Court in ***Union of India & Anr. v. Narendra Singh***, (2008) 2 SCC 750, at paragraph 32 held as under:

*“32. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following*

*due process of law. In ICAR v. T.K. Suryanarayan it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules."*

*Further, the Article 14 does not envisage negative equality which has already been rendered by the Hon'ble Apex Court in **State of Bihar & Ors. Vs. Kameshwar Prasad Singh & Anr., AIR 2000 Supreme Court 2306**, wherein at paragraph-30 it has been laid down hereunder as:-*

*"The concept of equality as envisaged under Art. 14 of the Constitution of India is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits."*

*Further, in the case of **Basawaraj & Anr. Vs. Special Land Acquisition Officer, (2013) 14 SCC 81**, wherein at paragraph 8, which reads hereunder as:*

*"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial*

*forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible."*

**19.** *The learned Single Judge has failed to appreciate these aspects of the matter and without appreciating the fact that the writ petitioner has not obtained minimum of 40% marks in the intermediate examination which is the main reason for terminating the writ petitioner from services and has quashed the order of termination, and therefore, according to our considered view the order passed by the learned Single Judge cannot be said to have laid down a correct law....."*

**8.** This Court taking into consideration the fact that similar issue has already been decided against the writ petitioner and on scrutiny of the facts of the given case, the issue involved herein is exactly similar to that of the issue involved in L.P.A. No.83 of 2019, therefore, the instant letters patent appeal deserves to be allowed.

**9.** Accordingly, the instant letters patent appeal stands allowed. In consequence thereof, the writ petition stands dismissed.

**10.** Consequently, pending interlocutory application(s), if any, also stands disposed of.

**(Sujit Narayan Prasad, J.)**

**(Subhash Chand, J.)**

Saket/ -

**A.F.R.**