

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 153 of 2021

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1. Gulab Chand Manjhi, S/o Sri Haradhan Manjhi, R/o village Khetko, P.O, Khetko, P.S. Petarwar, District Bokaro.
 2. Laleshwar Mahto, S/o Nemichand Mahto, R/o village Chugnu, P.O. Tirla, P.S. Mahuwatand, District-Bokaro.
 3. Mukesh Pandey, S/o Sri Jaynandan Pandey, R/o village Jarkunda, P.O. Konardand, P.S. Gomia, District- Bokaro.
 4. Manoj Kumar, S/o Late Jagdish Pandit, R/o village Palmaruwa, P.O. Chandori, P.S. Tishri, District-Giridih
 5. Poonam Kumari, D/o Gokul Prasad Mahto, At + P.O. Surhi, P.S Nawadih, District- Bokaro
 6. Kailash Kumar Kaushal, S/o Sri Rameshwar Prasad Yadav, R/o village Birhodih, P.O. Roshnatunda, P.S. Nimiyaghat, District- Giridih.
 7. Ashish Kumar Dubey, R/o Village Sinduari, P.O. Barishakhi, P.S. Gidhour, District-Chatra.

...Petitioner(s).

Versus

1. State of Jharkhand, through the Principal Secretary, Personnel Administrative Reforms and Rajyabhasha, Govt. of Jharkhand, having its office at Nepal House, P.O. Doranda, P.S. Doranda, District-Ranchi.
2. Principal Secretary, Department of School Education and Literacy, Government of Jharkhand, having its office at Project Bhawan, P.O. and P.S. Doranda, District-Ranchi.
3. Jharkhand Staff Selection Commission through its Secretary, having its office at Chaibagan, Kalinagar, P.O. & P.S. Namkom, District-Ranchi.
4. Controller of Examination, Jharkhand Staff Selection Commission, having its office at Chaibagan Kalinagar, P.O. & P.S. Namkom, District- Ranchi.

... Respondent(s).

CORAM : SRI ANANDA SEN, J.

For the Petitioner(s) : Mr. Rajeev Kumar, Advocate
: Mr. Niraj Kumar Singh, Advocate
For the Resp-State : Mr. Ayush Deb, AC to G.P.-VI
For the Resp.-JSSC : Mr. Sanjoy Piparwall, Advocate
Mr. Prince Kumar, Advocate
Mr. Rakesh Ranjan, Advocate
Mr. Jay Prakash, Advocate

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ORDER

Reserved on: 09.02.2026

Pronounced on: 17/02/2026

Heard, the learned counsel for the parties at length.

2. Though in this writ petition several prayers have been made by the petitioner but while arguing learned counsel for the petitioner submits that he is only confining this writ petition to prayer no. 1(v). He has specifically stated that he is giving up all the other prayers.

3. Prayer No. 1(v) reads as follows :

1(v) For a declaration that notification dated 29.08.2019 annexure-3 issued by Principal Secretary, School Education & Literacy Department, Jharkhand, Ranchi (Respondent No. 2) is ultra-virus of Rule 9(i) of Jharkhand Government Secondary School Teaching and Non-Teaching Staff Appointment and Service Condition Rule, 2015 as also against the spirit of Article 14 and 16 of Constitution of India.

4. The facts of this case in short is that the petitioners were appointed as Primary Teachers in different districts in the year 2015-16. The respondents issued Advertisement No.1/16 for recruitment of Trained Graduate Teachers through a combined competitive examination in terms of Jharkhand Government Secondary School Teaching and Non-Teaching Staff Appointment and Service Conditions Rule, 2015 (in short, the Recruitment Rules). Which was subsequently amended and published on 02.02.2017. As per the Recruitment Rules, 75% posts were meant for direct recruitment and 25% posts were reserved for eligible Primary Teachers (PRTs) who had completed five years of service. At the time of issuance of advertisement, the petitioners had not completed minimum five years of qualifying service in

Government Elementary School, so they were not eligible for the 25% PRT quota. Due to delays in the recruitment process, many vacancies under 25% PRT quota remained unfilled for several years. By a letter No.2264 dated 29.08.2019, the respondents decided to fill the unfilled 25% PRT quota posts directly from leftover candidates of the 75% direct recruitment list. It is case of the petitioners that now they completed minimum five years of qualifying service for 25% PRT quota posts. They have filed this writ petition to challenge the decision of respondents to fill up the remaining 25% PRT quota posts directly from leftover candidates of the 75% direct recruitment list.

5. Learned counsel for the petitioner during course of argument in support of this writ petition [limited to prayer no. 1(v)] submits that leftover direct-recruit candidates cannot be appointed against the 25% PRT quota, especially when they lack the required five years of teaching experience in Government Elementary School. He further submitted that this process violates Article 16 of the Constitution by denying them equal opportunity. He further submitted that respondents in utter violation of Rule 9(I) of the Recruitment Rules are filling up the vacant posts arising from 25% reserved vacancies without following the procedure. He further argues that the direction dated 29.09.2019 has, in fact, over-ridden the Rule 9(I) of the Recruitment Rules. He argued that the statutory Rule cannot be superseded by an executive instruction.

6. Learned counsel appearing on behalf of the State submitted that it is clearly mention in Rule 9 (I) of the Recruitment Rules that if suitable working teachers are not available, those reserved posts can be filled through direct

recruitment. He further submitted that due to delays in the recruitment process, many vacancies under 25% PRT quota remained unfilled. The Department of School, Education and Literacy, Government of Jharkhand issued a letter No. 2264 dated 29.08.2019 directing to fill up the remaining 25% PRT quota posts directly from the remaining candidates of the 75% direct recruitment list. Thus, direction as contained in the above letter does not violate or change the Rule 9(I) of the Recruitment Rules, only clarifies the said rules. He further submitted that the petitioners were appointed as Assistant Teachers in 2015-16 and when the vacancy advertisement was issued, they did not have minimum five years of qualifying service in Government Elementary School. Hence, they are not eligible for the claim they are making.

7. After hearing the parties, I have gone through the letter dated 29.08.2019 (Annexure-3) which according to the petitioner violates the provision of the Rules. Before discussing Annexure-3 it is important to highlight the relevant Rules. For the purpose of this decision Rule 9(I) is of importance. As per Rule 9(I), 25% quota is reserved for internal candidates and 75% by direct recruitment. As per the said Rules if no sufficient eligible candidates are found in the 25% reserved quota, then the balance would merged with the quota of direct recruits. This means unfilled up vacancies which is earmarked for 25% quota will be transferred to the direct recruits.

8. Further, the grievance of the petitioner is that the balance unfilled post in the reserved quota of 25% should have been separately advertised for open advertisement. This cannot be the procedure.

9. The relevant provisions of the Rule 9(I) of the Jharkhand Government Secondary School Teaching and Non-Teaching Staff Appointment and Service Condition Rule, 2015 is extracted as under:

“9. स्नातक प्रशिक्षित शिक्षक की अर्हताएँ एवं नियुक्ति की प्रक्रिया :-

(1) सरकारी माध्यमिक विद्यालयों में इस नियमावली के नियम ३ (ख) (i), 3(ग) (i), 3(घ) (i) एवं 3 (ङ) (i) में उल्लेखित रिक्त पदों के आरक्षण प्रावधान के अनुरूप कोटिवार रिक्तियों की सूचना निदेशक, माध्यमिक शिक्षा द्वारा जिलावार जिला शिक्षा पदाधिकारी से प्राप्त करते हुए कर्मचारी चयन आयोग अथवा राज्य सरकार द्वारा नियुक्त सक्षम प्राधिकार के रूप में प्राधिकृत प्राधिकार को भेजी जायेगी। चिहिनत रिक्तियों में से 25 प्रतिशत पद सरकारी प्रारम्भिक विद्यालयों के निर्धारित अर्हता प्राप्त पाँच वर्षों के अनुभव रखने वाले शिक्षकों द्वारा तथा 75 प्रतिशत पद सीधी नियुक्ति द्वारा भरे जायेंगे। **परन्तु यह कि प्रारम्भिक विद्यालयों के निर्धारित अर्हता प्राप्त शिक्षकों हेतु आरक्षित पदों पर योग्य शिक्षक पर्याप्त संख्या में नहीं पाये जाते हैं, तो वैसी स्थिति में इन आरक्षित पदों पर भी सीधी नियुक्ति हेतु कार्रवाई की जायेगी।** उदत्त सभी नियुक्तियाँ कर्मचारी चयन आयोग अथवा राज्य सरकार द्वारा सक्षम प्राधिकार के रूप में प्राधिकृत प्राधिकार द्वारा आयोजित एक जाँच परीक्षा के माध्यम से होगी।.....”

English Translation:

“9. Qualifications and Procedure for Appointment of Graduate Trained Teachers:-

(1) In Government Secondary Schools, information regarding category-wise vacancies, in accordance with the reservation provisions mentioned in Rule 3 (ख) (i), 3 (ग) (i), 3 (घ) (i), and 3 (ङ) (i) of these Rules, shall be collected district-wise by the Director, Secondary Education from the District Education Officers and forwarded to the Staff Selection Commission or to such authority as may be authorized by the State Government as the competent appointing authority. Out of the identified vacancies, 25 percent of the posts shall be filled by eligible teachers of Government Primary Schools who possess the prescribed qualifications and have a minimum of five years of teaching experience, and 75 percent of the posts shall be filled through direct recruitment. **Provided that, if a sufficient number of eligible teachers are not available against the posts reserved for qualified Primary School teachers, in such a situation, action will be taken to fill the reserved posts through direct recruitment.** All appointments shall be made through a competitive examination conducted by the Staff Selection Commission or by an authority authorized by the State Government as the competent authority....”

10. Rule 9(I) of the Recruitment Rules provides for qualifications and procedure for appointment of Graduate Trained Teachers in which 25% posts are reserved for teachers working in government primary schools who have the required qualification and at least 5 years of teaching experience and 75% posts are filled through direct recruitment (open to all eligible candidates). It has also been provided that if enough eligible primary school teachers are not available for the 25% reserved posts and is not filled, then those posts will also be filled through direct recruitment.

11. I have gone through letter No. 2264 dated 29.08.2019 (Annexure-3 of this writ petition) wherein at paragraph 3(iv) the Department of School, Education and Literacy, Government of Jharkhand directed that 75% of eligible candidates who could not be recommended earlier, be recommended immediately against 25% of the vacant posts, without disturbing the order of category wise, district wise and subject wise merit, as per clause 3(ii) and 3(iii). The direction given in the said letter is at paragraph-3 (iv), which is extracted as under:

(iv) 75 प्रतिशत के सुयोग्य अभ्यर्थी जिनकी अनुशंसा नहीं की जा सकी है, की अनुशंसा कोटिवार, जिलावार एवं विषयवार मेरिट के क्रम को भंग किए बिना 25 प्रतिशत के रिक्त पद पर विज्ञप्ति के रोस्टर के अनुरूप अविलंब अनुशंसा कंडिका 3 (ii) एव 3 (iii) में ही की जाय।

English Translation:

(iv) Recommendation of eligible candidates of 75% who could not be recommended, should be done immediately as per the roster of the advertisement on 25% vacant posts without disturbing the order of category wise, district wise and subject wise merit, as per clause 3(ii) and 3(iii).

12. From the aforesaid letter it is quite clear that the said letter has not deviated from the Rules rather it reiterates and follows the Rule 9(I) of the Recruitment Rules.

13. It is well-settled that order/circular/executive instructions /office memorandum/ can be issued only to supplement the statutory rules but not to supplant it. The Hon'ble Supreme Court in *Union of India v. Ashok Kumar Aggarwal*, reported in (2013) 16 SCC 147 in paragraph No.58 and 59 observed as under:

"58. A Constitution Bench of this Court while dealing with a similar issue in respect of executive instructions in Sant Ram Sharma v. State of Rajasthan, held: (AIR p. 1914, para 7)

"7. ... It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions....."

14. In view of the aforesaid facts and judgments of the Hon'ble Supreme Court, I am of the view that the direction dated 29.09.2019 only clarified the existing Rule 9(I) of the Recruitment Rules. It did not change or override the statutory recruitment rules, so it was not illegal or unconstitutional. The direction of respondents to merge the unfilled posts of 25% reserved quota of the advertisement with 75% direct recruitment quota, is valid. There is no necessity to come up with a separate advertisement for the balance's posts of 25% reserved quota.

15. As per the Rules the said vacancy has to be clubbed with the vacancy of 75% of the direct recruits, which has been done.

The aforesaid procedure has been followed in this case, thus, I find no merit in this writ petition and accordingly, this writ petition is **dismissed**.

16. Pending I.A.s, if any, stands disposed of.

(ANANDA SEN, J.)

High Court of Jharkhand, Ranchi

Dated: 17/02/2026

Tanuj/ Cp-02

Uploaded on 18.02.2026