

Abhay Kumar Patel & Ors.

v.

State of Bihar & Ors.

(Civil Appeal No. 54 of 2026)

06 January 2026

[J.K. Maheshwari* and Vijay Bishnoi, JJ.]

Issue for Consideration

Whether the Bihar Engineering Service Class-II Recruitment (Amendment) Rules, 2022 can be made applicable to the 2019 Advertisements after the written examination has been conducted and the provisional merit list has been published.

Headnotes[†]

Service Law – Appointment/Recruitment/Selection – Bihar Engineering Services Class - II Recruitment Rules, 2019 – The dispute in the present case is with respect to the retrospective application of an amendment to the Bihar Engineering Services Class – II Recruitment Rules, 2019, specifically the introduction of r.8(5), whereby weightage for prior contractual work experience was introduced after the selection process comprising the written examination had initiated and the provisional merit list had already been published – The appellants had preferred the writ petition challenging the retrospective application of the Bihar Engineering Service Class-II Recruitment (Amendment) Rules, 2022 – The High Court dismissed the writ petition – Correctness:

Held: In the present case, the “game” had not only commenced but was at its fag end – The written examinations were held in March 2022 – The results were declared in June/July 2022 – The candidates were called for document verification – At this stage, the selection process had proceeded significantly, and would have concluded with the filling up of vacancies – The issuance of the 2022 Amendment Rules, introducing r.8(5) with retrospective effect from 06.03.2019, attempts to rewrite the rules of the game which has already begun – By reducing the 25 weightage of the written examination to 75 marks and introducing 25 marks for

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contractual experience, the State has fundamentally altered the basis of selection and changed the ‘eligibility criteria for being placed in the merit list’ which is not permissible – While the State undoubtedly has the power to amend rules under the proviso to Art.309 of the Constitution of India, this power is not unbridled – The power of retrospective legislation cannot be exercised to take away vested rights or to arbitrarily disrupt a selection process that has already resulted in the identification of successful candidates by publication of a provisional merit list – The distinction drawn by the respondents regarding the “provisional” nature of the merit list is untenable – The list was provisional subject to verification of documents, not subject to a fundamental change in the criteria for placement in the merit list itself – The retrospective application of r.8(5) creates an anomaly where candidates who competed under one set of rules are now being judged by another, *ex post facto* – This directly impacts the appellants, who may be pushed down the merit list or ousted entirely by candidates who score lower in the written exam but gain the newly introduced additional marks for contractual service – The finding of the High Court that the amendment was merely a policy decision and could be applied retrospectively to the selection process in vogue is completely erroneous – The retrospective application of r.8(5) of the 2019 Rules, as introduced by the 2022 Amendment Rules, cannot be sustained insofar as the recruitment process initiated vide the 2019 Advertisements following the 2019 Rules prevalent at the said point of time – Impugned judgment and order of the High Court is set aside. [Paras 34-38, 41, 42, 44]

Case Law Cited

Tej Prakash and Others v. Rajasthan High Court and Others [2024] 12 SCR 28 : (2025) 2 SCC 1 – followed.

K. Manjusree v. State of Andhra Pradesh & Anr. [2008] 2 SCR 1025 : (2008) 3 SCC 512; *Partha Das v. State of Tripura*, 2025 SCC OnLine SC 1844; *Shankarsan Dash v. Union of India* [1991] 2 SCR 567 : (1991) 3 SCC 47 – referred to.

List of Acts

Constitution of India; Bihar Engineering Services Class-II Recruitment Rules, 2019; Bihar Engineering Service Class-II Recruitment (Amendment) Rules, 2022.

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List of Keywords

Retrospective effect; Rules of the game; Power to amend rules; Retrospective legislation; *Ex post facto*; Written examination; Provisional merit list; Prior contractual work experience; Selection process; Rewriting the rules of the game; Eligibility criteria; Alteration in the basis of selection; Additional marks for contractual service.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 54 of 2026

From the Judgment and Order dated 05.07.2023 of the High Court of Judicature at Patna in CWJC Nos. 18302 of 2022

With

Special Leave Petition (Civil) No. 8231 of 2025

Appearances for Parties

Advs. for the Appellant(s):

Vijay Kumar, Ms. Kaveeta Wadia, Sr. Advs., Manoj Kumar Srivastava, Vivek Jain, Manoj Kashyap, Shashank Tripathi, Ms. Chhavi Jain.

Advs. for the Respondent(s):

Anshul Narayan, Abhindra Maheshwari, Prem Prakash, Navin Prakash, Smarhar Singh, Ms. Shweta Kumari, Pankaj Prakash, Dhananjaya Kumar Tyagi, Mohd Asim, Manoj Kumar, Jai Krishna Singh.

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari, J.

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1. Leave granted.
2. Assailing the final judgment and order dated 05.07.2023 passed in CWJC No. 18302 of 2022 by the High Court of Judicature at Patna (hereinafter referred to as “**High Court**”), dismissing the writ petition filed by the appellants, the present appeal has been preferred.

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3. The dispute in the present case is with respect to the retrospective application of an amendment to the Bihar Engineering Services Class – II Recruitment Rules, 2019 (hereinafter referred to as “**2019 Rules**”), specifically the introduction of Rule 8(5), whereby weightage for prior contractual work experience was introduced after the selection process comprising the written examination had initiated and the provisional merit list had already been published.
4. The appellants had preferred the Writ Petition challenging the retrospective application of the Bihar Engineering Service Class-II Recruitment (Amendment) Rules, 2022 *vide* Notification No. Sec. 02/Estt.-Appointment-01-01/2019-5565(S) (hereinafter referred to as “**2022 Amendment Rules**”) dated 09.11.2022, issued by the Road Construction Department, Government of Bihar, which amended the 2019 Rules with retrospective date i.e., 06.03.2019.
5. The Division Bench of the High Court dismissed the writ petition, observing that the issuance of the 2022 Amendment Rules was a policy decision of the State to grant weightage to contractual employees and that the appellants had no indefeasible right to appointment merely because of inclusion of their names in the merit list, and as such, retrospective application of the said amendment would not be illegal. Hence, the present appeal.

FACTS IN BRIEF

6. Prequel to the present litigation, the Road Construction Department, Government of Bihar, notified the 2019 Rules *vide* Notification No. 02/Estt.-Appointment-01-01/2018-3042(S) dated 06.03.2019. These rules were promulgated by the State Government in exercise of powers conferred under Article 309 of the Constitution of India, to govern the recruitment to the post of Assistant Engineers in various departments. Rules 8, 9, 12 and 13 of the said Rules are relevant for the said purpose, and are reproduced as under:

“8. Candidate –

(1) shall be of such age as may be notified by the Governor,

(2) shall be of good conduct,

(3) shall be of good health and not of unsound mind,

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(4) (i) Shall be degree holder of Civil/Mechanical/Electrical Engineering from any Indian University/Institute (AICTE Approved), OR,

(ii) Only regular technical courses Degree obtained from any Deemed Universities duly recognized by University Grants Commission shall be valid and in technical courses degree conducted through distance education shall not be entertained

(iii) Must be an Associate Member of the Institution of Engineers or must have passed 'A' and 'AA' from any of the branches of the Institution of Engineers or must have passed A' and 'AA' from an Institution recognized by the Institution of Engineers India

Note -

(1) A person who is in Government service in a temporary or officiating capacity or on probation shall be eligible to apply for direct recruitment under the provisions of this rule

(2) Save the following persons, no person confirmed in Government service, shall be eligible

(a) Members of the Lower Engineering Services and

(b) Members of other services possessing the qualifications specified in clause (4) shall be eligible for appointment by promotion or transfer in accordance with the procedures laid down in Part III of these Rules.

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9. (a) *Every year, as appropriate, the Commission will declare vacancies to be filled by direct recruitment in this service on the basis of results of the competitive examination and will invite applications only from the candidates for appointment under Rule 5 and 6. The examination will be conducted according to the syllabus specified in the schedule appended to these rules, which will be changed from time to time by the Commission with the prior approval of the State Government.*

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Provided that the Commission shall limit the number of candidates qualified for admission to the examinations of a particular year may fix and if the number of candidates exceeds the fixed number, the Commission Will be able to make preliminary selection of the candidates and on the basis of preliminary examination (written) will be able to admit the candidates in the examination.....

xxx xxx xxx xxx xxx

12. *Provided that in determining the suitability of a candidate for appointment, the total marks obtained in the written examination and not the marks obtained in any particular subject or subjects will be considered.*

Provided also that the Commission may determine relaxation in minimum qualifications for Scheduled Caste and Scheduled Tribe candidates.

xxx xxx xxx xxx xxx

13. *On the basis of the marks obtained in the written examination, the names of the candidates along with their applications will be numbered by the Commission in the order of merit and merit. This list will be presented to them by the date as directed by the Governor.”*

7. The Bihar Public Service Commission (hereinafter referred to as “**BPSC**”) issued four advertisements inviting applications for the post of Assistant Engineer (Civil, Mechanical, and Electrical) in various departments as indicated in the table below (hereinafter collectively referred to as “**2019 Advertisements**”) –

Advertisement No.	Date of Advertisement	Nature of Post	No. of Posts	Department Concerned
01/2019	08.03.2019	Assistant Engineer (Civil)	31 83	PWD Minor Water Resources
02/2019	08.03.2019	Assistant Engineer (Electrical)	33	PWD

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03/2019	13.09.2019	Assistant Engineer (Civil)	18	Minor Water Resource
04/2019	13.09.2019	Assistant Engineer (Mechanical)	10	Minor Water Resource

8. As per Rule 13 of 2019 Rules, a written examination was to be conducted for the selection of the eligible candidates for appointment against the posts so notified. The final merit list had to be drawn on basis of scores obtained in the written examination.
9. The selection process commenced with the issuance of the 2019 Advertisements, and written examination was conducted on 12.03.2022. Based on the performance of the recruitment candidates in the written examination, the BPSC published provisional merit lists of successful candidates and such provisional selected candidates including the appellants herein were called for document verification on various dates as tabulated below:

Date of Publication of Provisional Merit List	Corresponding Date fixed for Document Verification	Corresponding Advertisements
15.06.2022	30.06.2022 01.07.2022 02.07.2022	01/2019
22.06.2022	06.07.2022	03/2019
22.06.2022	06.07.2022	04/2019
13.07.2022	20.07.2022	01/2019
19.07.2022	29.07.2022	02/2019
23.07.2022	27.07.2022	01/2019

10. In the meanwhile, and after the written examination pursuant to the 2019 Advertisements was conducted, CWJC 9797 of 2022 was filed by some people who were working on contractual basis in the State of Bihar, on 07.07.2022 challenging the 2019 Rules, contending *inter alia* that in the said rules, there is no provision for weightage of work experience or age relaxation on contract basis in terms of the Memorandum No. 3/MO-13/2018 S No. 12534/Patna-15 dated 17.09.2018 of the

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Department of General Administration of the Government of Bihar and the Memo No. 1003 dated 22.01.2021 of the General Administration Department of the Government of Bihar (hereinafter referred to as the “**2018 Memo**” and “**2021 Memo**” respectively). From record it is not clear that any directions were passed in the said Writ Petition, in fact, it was disposed of as infructuous on 23.03.2023 granting liberty to file a separate writ petition. It is not clear from the record as to whether any subsequent writ petition was filed or not.

11. After publication of the provisional merit lists and conclusion of document verification pursuant to the 2019 Advertisements, the State Government issued the 2022 Amendment Rules *vide* notification dated 09.11.2022 in exercise of powers under the proviso to Article 309 of the Constitution of India. This notification amended Rule 8 of the 2019 Rules, inserting a new sub-rule, Rule 8(5), which introduced a provision for grant of additional marks up to a maximum of 25 per 100 marks to candidates having work experience on a contractual basis in government offices and institutions under the State of Bihar on the post of Assistant Engineer (Civil/Mechanical/Electrical). The maximum weightage of marks obtained in the written examination conducted by the BPSC was fixed at 75 marks per 100 marks. The said amendment also contained a *note* that “to calculate the weightage of the marks in the examination the percentage marks obtained in the examination shall be multiplied by 0.75”. The 2022 Amendment Rules were made applicable retrospectively w.e.f. 06.03.2019 i.e., the date the original 2019 Rules came into existence. Additionally, Rule 8(5)(iii) provided for relaxation in the upper age limit for Assistant Engineers (Civil/Mechanical/Electric) employed on contractual basis for a period equivalent to the period worked on contract.
12. The said Rule 8(5) which was introduced by means of the 2022 Amendment Rules is relevant, and is therefore reproduced as under:

“8(5) Basis of Selection-

(i) The Selection for appointment to the posts of Assistant Engineers (Civil/Mechanical/Electrical) in the basic category of Assistant Engineers (Civil/Mechanical/electrical) cadre shall be made by the Commission after calculating the marks obtained in the competitive examination conducted by the Commission and the preference of work done on the contract basis. The work experience of all government/

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non-private (central government, panchayat, municipal bodies etc.) offices/institutions under the State of Bihar shall be valid for the preference of work done on contract basis. Candidates having experience of working on the post of Assistant Engineer (Civil/Mechanical/Electrical) on contract basis, who fulfil the essential qualifications for the recruitment in this cadre, shall be given preference in selection by giving additional marks according to sub-rule (ii) of this Rule.

(ii) The merit list of the candidates shall be prepared on the following basis:

	Full Marks
<i>(a) Weightage of mark obtained in the written examination conducted by the commission</i>	75 Marks
<i>(b) Maximum weightage for the working experience on contract basis - (The weightage of per working year shall be 5 marks subject to the maximum limit of 25 marks. For any fraction of year of working experience, the proportionate weightage, the marks shall be calculated by multiplying the number of working days by 5 and dividing it by 365)</i>	25 Marks
<i>Total -</i>	100 Marks

Note – To calculate the weightage of the marks in the examination, the percentage of marks obtained in the examination shall be multiplied by 0.75.

(iii) Assistant Engineers (Civil/Mechanical/Electrical) already employed on contract basis will be given relaxation in the upper age limit for a period equivalent to the period worked on contract. For above relaxation in upper age limit, work experience of all government/non-private (central government, panchayat, municipal bodies etc) officers/institutions under the State of Bihar shall be valid. The period of working on contract basis shall be decided on the basis of salary payment certificate issued by the controlling officer concerned. For this, the period up to the cut-off date mentioned in the advertisement published by the commission may be counted for work experience.”

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13. The appellants, who had already secured their place in the provisional merit list pursuant to the 2019 Advertisements, prepared in accordance with the 2019 Rules, filed CWJC No. 18302 of 2022 before the High Court praying as follows –

- i. *To issue an appropriate writ(s)/order(s)/direction(s) in the nature of certiorari for quashing part of the notification bearing memo no. 5565(S) dated 09.11.2022 issued under the signature of Additional Chief Secretary, Road Construction Department, Government of Bihar to the extent it directs implementation of the amendment to Rule 8(5) of the Bihar Engineering Service Class-II Recruitment Rules, 2019 introduced vide this Notification retrospectively from 06.03.2019 for grant of weightage and age relaxation from this date.*
- ii. *To issue an appropriate writ(s)/order(s)/direction(s) in the nature of mandamus commanding the respondents to not implement the notification bearing memo no. 5565(S) dated 09.11.2022 with retrospective effect from 06.03.2019.*
- iii. *To issue an appropriate writ(s)/order(s)/direction(s) in the nature of mandamus commanding the respondents not to interfere with the merit lists dated 15.06.2022 (against advertisement no. 01/2019), 22 06 2022 (against advertisement no. 03/2019 & 04/2019), 19.07.2022 (against advertisement no. 02/2019) published by the Bihar Public Service Commission on the basis of the Bihar Engineering Service Class-II Recruitment (Amended) Rules, 2022, introduced through the notification bearing no. memo no. 5565(S) dated 09.11.2022.*
- iv. *To issue an appropriate writ(s)/order(s)/direction(s) in the nature of mandamus commanding the respondents to proceed with the selection process against the merit list published on 15.06.2022, 22.06.2022 & 19.07.2022 by Bihar Public Service Commission against the post of Assistant Engineer under different departments of Government of Bihar.*

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- v. *To declare and hold that the notification bearing memo no. 5565(S) dated 09.11.2022 cannot have retrospective operation with effect from 06.03.2019, once the merit list has been published.*
 - vi. *To any other relief(s) that the petitioners are entitled to in the facts and circumstances of the case.*
14. The challenge presented by the appellants before the High Court was that after initiation of the recruitment process, the 2022 Amendment Rules could not have been made applicable to the ongoing recruitment process. The 2019 Rules, in pursuance of which the recruitment process was initiated, did not contain any provision for grant of weightage or age relaxation. As such, in the present appeal, we are not concerned with the validity of Rule 8(5) or the 2022 Amendment Rules and the scope of our examination is limited to its application to the ongoing recruitment process which had already commenced under the 2019 Advertisements.

FINDINGS OF THE HIGH COURT

15. The High Court, while dismissing the writ petition, found that the decision to grant weightage and age relaxation to contractual employees was a decision taken in line with a pre-existing 2018 policy for grant of such benefits. It was held that the appellants had merely participated in recruitment process and no rights had accrued in their favour at that stage. The Court observed that the power to legislate under the proviso to Article 309 of the Constitution of India includes the power to legislate retrospectively. Since the minimum requisite qualification has not been changed and the appellants have not been disqualified, no prejudice has been caused by retrospective application of Rule 8(5) inserted by the 2022 Amendment Rules.

ARGUMENTS ADVANCED BY THE APPELLANTS

16. Learned senior advocate Mr. Vijay Kumar, appearing for the appellants, vehemently argued that the selection process must be governed by the rules and stipulations as existing on the date of the advertisement. It is submitted that the 2019 Rules, as they stood when the 2019 Advertisements were issued, prescribed selection solely on the basis of the written examination, without any weightage or age relaxation for contractual experience.

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17. It is argued that the appellants participated in the process, qualified the written examination, appeared for document verification, and have thereby acquired a vested right to be considered for appointment as per the original criteria. The insertion of Rule 8(5) vide the 2022 Amendment Rules dated 09.11.2022 and applying the same retrospectively, essentially alters the merit list by introducing new marks requirement for a specific class of candidates i.e., candidates who have previously worked as contractual employees with the government, after the process had reached its fag end and document verification was already done.
18. Heavy reliance was placed on the principle of law that *the rules of the game cannot be changed once the game has begun*. Reference was made to the decisions of this Court in ***K. Manjusree v. State of Andhra Pradesh & Anr.***¹ and ***Tej Prakash and Others v. Rajasthan High Court and Others***² arguing that the introduction of new eligibility criteria for selection once the process has started is impermissible.
19. It was further urged that the retrospective application is arbitrary and violative of Articles 14 and 16 of the Constitution of India. By applying the amendment retrospectively from 06.03.2019, the State has sought to reopen a concluded selection process to the detriment of meritorious candidates who had already been selected after passing the written examination and in whose favour rights had accrued.

ARGUMENTS ADVANCED BY RESPONDENT

20. *Per contra*, learned Additional Standing Counsel for the State, Mr. Anshul Narayan submitted that the amendment was a policy decision taken to give due recognition to the services of contractual employees who had served in the State for long periods. It was argued that the amendment was in consonance with the General Administration 2021 Memo, which envisaged weightage for contractual employees in the process of appointment for regular employment.
21. It was contended that the merit list published during June-July 2022 was merely *provisional* and did not confer an indefeasible right to appointment. The government possesses the competence

1 (2008) 3 SCC 512.

2 (2025) 2 SCC 1.

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to frame and amend rules under Article 309 of the Constitution of India and the proviso thereto, and such power includes the power to amend rules retrospectively to rectify anomalies or implement policy decisions. It was further argued that no prejudice has been caused to the appellants as the recruitment process had not attained finality since appointment letters had not yet been issued. The amendment merely added a weightage component to ensure equity for contractual employees who had served the Government and did not disqualify the appellants.

ANALYSIS OF RULES AND REASONINGS

22. After hearing learned counsels at length and on perusal of the material on record, in our view, the short question that falls for our consideration is *whether the 2022 Amendment Rules can be made applicable to the 2019 Advertisements after the written examination has been conducted and the provisional merit list has been published?*
23. It is not in dispute that the instant recruitment processes in furtherance to the 2019 Advertisements were initiated, under the 2019 Rules governing the selection on the date of issuance of the advertisements.
24. Bare perusal of Rules 8, 9, 12 and 13 of the 2019 Rules, the scheme of the selection process becomes clear to all. Rule 8 is placed in Part-II of the 2019 Rules titled 'DIRECT RECRUITMENT'. It prescribes the eligibility of the candidates who can be considered for direct recruitment. It prescribes that the candidate should be of such age as may be notified by the Governor and shall be of good conduct, good health and not of unsound mind. It further prescribes that such a candidate must be a Civil/Mechanical/Electrical Engineering degree holder from any AICTE approved Indian university / institute and provides that only regular courses of such universities recognized by University Grant Commission and not distance education courses are valid for this purpose. The candidate must be an associate member of the Institution of Engineers and also must have passed 'A' and 'AA' from any branch of Institution of Engineers or an institution recognized by the Institution of Engineers. The *note* appended with the said rule clarifies that persons who are in government services in a temporary, officiating or probationary capacity, shall also be eligible for direct recruitment under 2019 Rules. The 2019 Advertisements reproduced the eligibility criteria as laid down in Rule 8 verbatim with no change.

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25. Rules 9, 12 and 13 are placed in Part-III of the 2019 Rules titled 'PROCEDURE FOR APPOINTMENT'. Rule 9 envisages that BPSC shall declare vacancies to be filled by direct recruitment on the basis of a competitive examination and will invite application from candidates strictly as per Rules 5 and 6 that provide for method of recruitment. It further mandates that the said examination will be conducted as per syllabus prescribed by BPSC with prior approval of State Government and if BPSC considers it necessary, a preliminary examination can also be conducted as a screening test.
26. Rule 12 prescribes that suitability of a candidate for purpose of the appointment has to be determined on basis of total marks obtained in the written examination and not the marks obtained in any particular subject or subjects. It also provides that BPSC may specify relaxation in minimum qualifications for Scheduled Caste and Scheduled Tribe candidates. Subsequently, as per Rule 13, the names of the candidates along with their applications will be numbered by BPSC on the basis of the marks obtained in the written examination in order of merit and such list will be presented as directed by the Governor.
27. Upon holistic analysis of the rules above, it is clear that the suitability of the candidates for the purpose of appointment as per the 2019 Rules has to be determined only as per marks obtained in the written examination. This means that essentially the selection process involves following three stages – (i) Application by the candidate; (ii) Written Examination (including preliminary examination, as the case may be); (iii) Preparation of the Merit List on basis of total marks obtained in written examination. In this background, the adverse effect of retrospective applicability of the amendment brought into 2019 Rules as per the 2022 Amendment Rules has to be adjudicated.
28. The 2022 Amendment Rules provide for age relaxation and preference in selection to persons working on contractual basis on the post of Assistant Engineer (Civil / Mechanical / Eletrical) in all government and non-private (central government, panchayat, municipal bodies) offices / institutions under State of Bihar. In the 'Short title, extent and commencement' of the 2022 Amendment Rules, it is stated that '*it shall come into force from the date of coming into force of the Bihar Engineering Services Class-II Recruitment Rules, 2019, i.e. 06.03.2019*'. As such, the 2022 Amendment Rules were made applicable from the date of inception of the 2019 Rules. It is relevant

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to observe that Rule 8(5) which is the subject matter of dispute, is titled 'Basis of selection' and it has been included in Section 8 – which lays down the eligibility criteria of candidates.

29. Upon a perusal of the unamended 2019 Rules and the 2019 Advertisements, it is luculent that the selection was to be based solely on the marks obtained in the written examination. There was no mention of weightage or age relaxation for contractual experience. The appellants were informed about and competed in the recruitment process on these terms, their selection as per the applicable 2019 Rules was going to be in terms of the marks obtained in the written examination alone which they wrote and found place in the provisional merit list. While things stood thus, the 2022 Amendment Rules were issued, introducing additional marks and age relaxation.
30. The law regarding the sanctity of the recruitment process and changes in the eligibility criteria and procedure after the initiation of the recruitment process, is well-settled. In **K. Manjusree** (Supra) this Court had held:

“27. The minimum marks were prescribed ... after the selection process was completed ... This is clearly impermissible. The rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.”

31. The Constitution Bench of this Court in **Tej Prakash Pathak** (Supra) gave a nod of approval to the principles as laid down in **K. Manjushree** (Supra) and held that even if the relevant rules permit the competent authority to set benchmarks at different stages of a recruitment process, the same must be done at any time before the relevant stage is reached.

“52. Thus, in our view, the appointing authority/recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment

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process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/interviewer is taken by surprise.

53. The decision in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list.”

32. The Constitution Bench in **Tej Prakash Pathak** (Supra) concluded and answered the reference as follows:

“Conclusions

65. We, therefore, answer the reference in the following terms:

65.1. Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

65.2. Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

65.3. The decision in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] lays down good law and is not in conflict with the decision in

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Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 : 1973 SCC (L&S) 488]. Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] deals with the right to be appointed from the select list whereas K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;

65.4. *Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;*

65.5. *Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;*

65.6. *Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list."*

33. The principles laid down by the Constitution Bench in **Tej Prakash Pathak** (Supra) were applied in the case of **Partha Das v. State of Tripura**,³ in a judgment where one of us, J.K. Maheshwari, J., while dealing with a challenge which was brought by the candidates to the decision of the Tripura Government to cancel an ongoing recruitment process after publication of the provisional merit list pursuant to an executive instruction of the State to do away with interviews in recruitment process of Class-IV posts held as follows:

"47. *The recruitment process under the two advertisements commenced on the date of their respective issuance. At the cost of repetition and as discussed above, much*

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water had flown after such commencement. The State had taken active and tangible steps such as constituting the Recruitment Board, setting up different State teams for recruitment rallies which were conducted all across India, candidates were tested physically, in a written exam and orally through an interview. A provisional merit list was purportedly prepared in pursuance of the recruitment process. After all this, Cancellation Memorandum was issued on 20.08.2018 which was general in nature, effectively setting the clock back and putting the entire process at nought.

48. *The reasoning behind the said cancellation, as suggested by the State of Tripura, is that it was decided by the Government that not only future recruitment, but also ongoing recruitment processes must invariably be governed by the NRP. In the context of the present case, the marked difference which would be brought about by the NRP is that interview cannot be conducted as a part of the procedure for recruitment given that the post of 'Enrolled Follower' is a Group-D post, even though the stage of taking interviews is already over in the present case.*

49. *This Court in Tej Prakash Pathak (Supra) has affirmed the decision in K. Manjusree v. State of A.P.⁹, and held that the recruitment authority can devise a procedure for selection only in absence of rules to the contrary, however, the same should be done prior to commencement of the recruitment process. It has been held that if benchmarks are to be laid down in different steps of the recruitment process, they cannot be laid down after the completion of that particular step, when the game has already been played. The relevant portion of the said judgment is reproduced below as thus:—*

“52. *Thus, in our view, the appointing authority/ recruiting authority/competent authority, in absence of rules to the contrary, can devise a procedure for selection of a candidate suitable to the post and while doing so it may also set benchmarks for different stages*

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of the recruitment process including written examination and interview. However, if any such benchmark is set, the same should be stipulated before the commencement of the recruitment process. But if the extant Rules or the advertisement inviting applications empower the competent authority to set benchmarks at different stages of the recruitment process, then such benchmarks may be set any time before that stage is reached so that neither the candidate nor the evaluator/examiner/ interviewer is taken by surprise.

53. *The decision in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] does not proscribe setting of benchmarks for various stages of the recruitment process but mandates that it should not be set after the stage is over, in other words after the game has already been played. This view is in consonance with the rule against arbitrariness enshrined in Article 14 of the Constitution and meets the legitimate expectation of the candidates as also the requirement of transparency in recruitment to public services and thereby obviates malpractices in preparation of select list.”*

50. *In the present case, not only benchmarks are being set after the game has been played, rather the State has decided that a portion of the game itself, the step of interview, should not have been played at all. As discussed above, in pursuance of Rule 24(e) of the TSR Rules, the DGP had approved interview as one of the tests required to be passed. Thereafter, candidates participated in interviews and were ranked accordingly. It can be said that the stage of interview was over much prior to the issuance of the Cancellation Memorandum.”*

34. In the present case, the “game” had not only commenced but was at its fag end. The written examinations were held in March 2022.

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The results were declared in June/July 2022. The candidates were called for document verification. At this stage, the selection process had proceeded significantly, and would have concluded with the filling up of vacancies.

35. The issuance of the 2022 Amendment Rules, introducing Rule 8(5) with retrospective effect from 06.03.2019, attempts to rewrite the rules of the game which has already begun. By reducing the weightage of the written examination to 75 marks and introducing 25 marks for contractual experience, the State has fundamentally altered the basis of selection and changed the 'eligibility criteria for being placed in the merit list' which is not permissible.
36. While the State undoubtedly has the power to amend rules under the proviso to Article 309 of the Constitution of India, this power is not unbridled. The power of retrospective legislation cannot be exercised to take away vested rights or to arbitrarily disrupt a selection process that has already resulted in the identification of successful candidates by publication of a provisional merit list.
37. The distinction drawn by the respondents regarding the "provisional" nature of the merit list is untenable. The list was provisional subject to verification of documents, not subject to a fundamental change in the criteria for placement in the merit list itself. Once a candidate has cleared the written examination and found a place in the merit list based on the announced criteria in line with the extant Rules and the advertisement, a legitimate expectation arises that the selection will be finalized based on the criteria which was advertised at the time of initiation of the recruitment process.
38. The retrospective application of Rule 8(5) creates an anomaly where candidates who competed under one set of rules are now being judged by another, *ex post facto*. This directly impacts the appellants, who may be pushed down the merit list or ousted entirely by candidates who score lower in the written exam but gain the newly introduced additional marks for contractual service.
39. We also note the argument regarding the General Administration Department's 2018 Memo and 2021 Memo. While these resolutions reflect a policy to grant weightage, they were executive instructions. The recruitment in question was governed by the statutory 2019 Rules, which did not incorporate these resolutions at the time of the

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2019 Advertisements. The State cannot rely on executive instructions to override statutory rules that were in force during the initiation of the recruitment process, especially to the detriment of candidates who had no notice of such weightage or age relaxation. Additionally, when the 2019 Advertisements were issued, there was no whisper about the applicability of the said resolutions; it was only when a challenge was made by the candidates that the State raised the defense, taking a pretext of the aforesaid resolutions, which is an afterthought and not tenable at all.

40. It is trite law that participation in a recruitment process or mere placement on the merit list does not create an indefeasible right to appointment, which was settled by this Court in ***Shankarsan Dash v. Union of India***⁴ and followed in a multitude of decisions. However, changing the eligibility criteria for placement in the merit list, after conclusion of the written examination for that purpose, contrary to the extant rules prevalent at the time of the advertisement, cannot be justified on this basis. In the present case, if the additional marks and age relaxation as envisaged under the 2022 Amendment Rules is permitted, it will result in recasting of the provisional merit list pursuant to the 2019 Advertisements. Such a decision to do away with the merit list must be reasonable and non-arbitrary. Learned counsel for the Respondent - State has contended that the decision to grant additional marks and age relaxation to the contractual Assistant Engineers is a decision taken in larger public interest, and in order to reward the experience of people serving the State in contractual posts. Be that as it may, while this may be a justification advanced by the State for introducing the 2022 Amendment Rules, it would not justify the application of the 2022 Amendment Rules to the 2019 Advertisements and the recruitment process pursuant thereto. After the examination has been conducted, no public purpose can be served by changing the criteria for selection at this stage.
41. Therefore, in the facts of this case, the finding of the High Court that the amendment was merely a policy decision and could be applied retrospectively to the selection process in vogue is completely erroneous. Even assuming that the 2022 Amendment Rules are policy decisions of the State, they cannot be implemented in a manner that

4 (1991) 3 SCC 47.

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violates the fundamental right to equality under Article 14 and 16 of the Constitution of India by changing the selection criteria after the selection process has already begun.

42. In view of the discussions made above, in our considered opinion, the retrospective application of Rule 8(5) of the 2019 Rules, as introduced by the 2022 Amendment Rules, cannot be sustained insofar as the recruitment process initiated vide the 2019 Advertisements following the 2019 Rules prevalent at the said point of time.
43. In view of the above, the irresistible conclusion that can be drawn in the facts of the present case is that the selection process pursuant the 2019 Advertisements must be finalized in accordance with the 2019 Rules as they existed on the date of the advertisements, i.e., without taking into account the 2022 Amendment Rules by which the weightage and age relaxation for contractual experience was introduced. As such, the final merit list shall be drawn and appointments shall be made, completing the process within 2 months' from the date of this judgment.
44. Consequently, the impugned judgment and order dated 05.07.2023 passed by the High Court of Judicature at Patna in CWJC No. 18302 of 2022 is set aside. The appeal is allowed. The respondents are directed to finalize the appointments based on the merit lists published in June/July 2022, strictly following the unamended 2019 Rules.
45. It has been informed that the State has made appointments pursuant to the impugned judgment of the High Court which stands set-aside, however, their services may be dispensed with, in accordance with law. We also make it clear that the directions as issued shall not have any adverse impact if the State of Bihar wishes to continue the services of the persons appointed as above, if they are deemed fit, on the vacancies available, if any, or by creating supernumerary posts without affecting the merit list as indicated above.
46. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

SPECIAL LEAVE PETITION (C) NO. 8231 OF 2025

1. The present Special Leave Petition has been filed assailing the interim order dated 13.02.2025 passed in CWJC No. 18429 of 2025 by the High Court of Judicature at Patna, wherein the writ petition filed by

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the petitioners herein was adjourned *sine die*. The relevant portion of the said order of High Court dated 13.02.2025 is reproduced for ready reference –

*“4. The issue was debated before this Court in SWJC No. 18302 of 2022, titled as **Abhay Kumar Patel & Ors. vs. The State of Bihar & Ors.**, wherein a Division Bench of this Court vide judgment date 05.07.2023 upheld the validity of the amendment as also the formulae evolved for bringing and collating the marks to the scale of 100. Such formulae was necessarily to be fixed for the reason that 25 marks in maximum was to be given as weightage which is to be calculated on the basis of five marks for one particular year of having served on temporary basis.*

5. The afore-noted judgment is under challenge before the Supreme Court vide S.L.P. No. 22323/2023.

6. The contention of the petitioners here is that not only the introduction of the principle of weightage is incorrect and is against the overwhelming number of decisions by different courts but even the formulae for calculating the marks on scale of 100 is unfortunately rendering anomolous (sic) results.

7. We are afraid, such objections cannot be raised at this stage when a judgment by the Division Bench of this Court has upheld not only the amendment in the Rules of 2019 but even the formulae developed for calculating the marks on scale of 100.

8. The issue raised cannot be decided now presently as the matter is pending consideration before the Supreme Court.

9. Let this case be listed after the disposal of the afore-noted S.L.P. No. 22323/2023.”

2. The Writ Petition was filed by the Petitioners challenging the validity of the 2022 Amendment Rules, particularly the insertion of Rule 8(5) thereof and the formulae for distribution of marks prescribed therein.
3. Since we have decided Civil Appeal arising out of SLP (Civil) No. 22323 of 2023 by a judgment pronounced today, where the scope of our examination is limited to the applicability of the 2022 Amendment

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Rules to the 2019 Advertisements, it would be appropriate to request the High Court to decide CWJC No. 18429 of 2025 on merits. While doing so, we make it clear that we have not examined the challenge to the *vires* of Rule 8(5) itself or the 2022 Amendment Rules in the Civil Appeal arising out of SLP (Civil) No. 22323 of 2023 and views expressed therein shall not prejudice the case of either parties and all contentions shall be kept open.

4. In light of the above, this special leave petition is disposed of with a direction that the High Court shall adjudicate CWJC No. 18429 of 2025.
5. Pending applications, if any, shall be disposed of.

Result of the case: Civil Appeal No. 54 of 2026 is allowed.
SLP(C) No. 8231 of 2025 is disposed of.

[†]Headnotes prepared by: Ankit Gyan