

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1373 of 2025**

1. Rajeev Ranjan S/o Shatrudhan Prasad, Resident of Village- Baldha, P.O.- Damodarpur, Baldha, P.S.- Naganausa, District- Nalanda, Bihar- 801305.
2. Indrajeet Kumar S/o Kameshwar Pal, Resident of Village- Barorah, P.O.- Tineri, P.S- Guraru, District- Gaya, Bihar-824118.
3. Amit Kumar Pandey S/o Narayan Pandey, Resident of Village- Piro, P.O.- Piro, P.S.- Piro, District- Bhojpur, Bihar- 802207.
4. Asgar Ali S/o Shamsuzzama, Resident of Village- Marar, P.O.- Marar, P.S- Morkahi, District- Khagaria, Bihar- 851205.
5. Durgesh Kumar S/o Virendra Prasad, Resident of Village- Barorah, P.O.- Tineri, P.S- Guraru, District- Gaya, Bihar- 824118.
6. Upendra Kumar S/o Vijay Yadav, Resident of Village- Miragpur, P.O.- Kadhariya, P.S- Wazirganj, District- Gaya, Bihar- 823003.
7. Suman Saurav S/o Ramnandan Prasad, Resident of Village- Gurua, P.O.- Gurua, P.S- Gurua, District- Gaya, Bihar- 824205.
8. Amit Kumar s/o Arvind Kumar, Resident of Village- Rusulpur Korigawn, P.O- Rusulpur Korigawn, P.S- Goraul, District- Vaishali, Bihar- 844114.
9. Raj Kumar Sharma S/o Basudeo Sharma, Resident of Village- Sekhpura, P.O- Ghoshi, P.S- Ghoshi, District- Jehanabad, Bihar- 804406.
10. Pravesh Kumar S/o Keshar Yadav, Resident of Village- Marha Tola Tarwan, P.O- Amarut, P.S- Dobhi, District- Gaya, Bihar- 824220.
11. Manish Kumar S/o Kameshwar Das, Resident of Village- Kumbhi, P.O- Tilaiya, P.S- Bankey Bazar, District- Gaya, Bihar- 824217.
12. Ranjan Kumar S/o Parmeshwar Singh, Resident of Village- Anant Kamtaul, P.O- Anant Kamtaul, P.S- Kurhani, District- Muzaffarpur, Bihar- 844120.
13. Chandramani Kumar S/o Surendra Prasad, Resident of Village- Balchand Bigha, P.O- Hemara, P.S- Khizar Sarai, District- Gaya, Bihar- 824233.
14. Rakesh Kumar S/o Kameshwar Yadav, Resident of Village- Chaturi Bigha, P.O- Tarari, P.S- Konch, District- Gaya, Bihar- 824207.
15. Atiqur Rahman S/o Motiour Rahman, Resident of Village- Mahawat Toli, P.O- Bettiah, P.S.- Bettiah, District- West Champaran, Bihar- 845438.
16. Rupesh Ranjan Kumar S/o Rajendra Singh, Resident of Village- Khutahadih, P.O- Khutahadih, P.S.- Barahiya, District- Lakhisarai, Bihar- 811302.
17. Sunil Kumar Paswan S/o Surendra Paswan, Resident of Village- Madhuwan Dariyapur, P.O- Parsando, P.S- Haveli Kharagpur, District- Munger, Bihar- 811213.
18. Gautam Kumar s/o Ishwar Prasad, Resident of Village- Sarsaulla Khurd, P.O- Sheohar, P.S- Sheohar, District- Sheohar, Bihar- 843329.
19. Vijay Kumar S/o Jamun Sah, Resident of Village- Chandpipar, P.O- Chandpipar, P.S- Bhaptiyahi, District- Supaul, Bihar-852105.
20. Krishan Kumar S/o Devendra Ray, Resident of Village- Narepur West, P.O- Bachhwara, P.S- Bachhwara, District- Begusarai, Bihar- 851111.



- 21. Ajay Kumar Ram S/o Tukar Ram, Resident of Village- Shekhpurwa, P.O- Mahual Mahal, P.S- M.H. Nagar Hasanpura, District- Siwan, Bihar- 841240.
- 22. Md. Shamsheer Alam S/o Md. Sami Alam, Resident of Village- Gogri, P.O- Gogri, P.S- Gogri, District- Khagaria, Bihar- 851202.
- 23. Shashi Kumar S/o Brijnandan Saw, Resident of Village- Ambari, P.O.- Ambari, P.S- Shekhopur Sarai, District- Shekhpura, Bihar- 811103.
- 24. Satnam Singh S/o Sukath, Resident of Village- Raghunathpur Tola Bilarua, P.O- Rudalpur, P.S- Bhore, District- Gopalganj, Bihar- 841426.
- 25. Ankit Kumar S/o Brij Kishor Singh, Resident of Village- Rahimpur, P.O- Parsa Bazar, P.S- Parsa Bazar, District- Patna, Bihar- 804453.
- 26. Dheeraj Kumar Mehta S/o Bechan Mehta, Resident of Village- Rampur Dehru, P.O- Rahua, P.S- Bihariganj, District- Madhepura, Bihar- 852116.
- 27. Munna Kumar S/o Suraj Prasad Singh, Resident of Village- Hajipur, P.O- Itadhiya, P.S- Dhansoj, District- Buxar, Bihar- 802117.
- 28. Pintu Kumar S/o Rameshwar Prasad, Resident of Village- Mataurha, P.O- Nadaul P.S- Masaurhi, District- Patna, Bihar- 804454.
- 29. Rajesh Kumar S/o Jago Paswan, Resident of Village- Bagrasthansingh, P.O- Bagras, P.S- Bakhri, District- Begusarai, Bihar-848201.
- 30. Dhiranjan Pal S/o Gurucharan Pal, Resident of Village- Ekariya, P.O- Utren, P.S- Konch, District- Gaya, Bihar- 824207.
- 31. Danveer Kumar S/o Anandi Mandal, Resident of Village- Athagama, P.O- Ghogha, P.S- Khalgaon, District- Bhagalpur, Bihar- 813205.
- 32. Tulsi Mandal S/o Bihari Mandal, Resident of Village- Dhouni, P.O- Morama, P.S- Rajaun, District- Banka, Bihar- 813107.
- 33. Ajay Kumar Yadav S/o Kailash Yadav, Resident of Village- Budhauli, P.O- Budhauli, P.S- Pakri Barawan, District- Nawada, Bihar- 805124.
- 34. Shubham Kumar Singh S/o Kumod Prasad Singh, Resident of Village- Jagdishpur, P.O- Subhai, P.S- Rajapakar, District- Vaishali, Bihar- 844102.
- 35. Pappu Kumar S/o Harendra Yadav, Resident of Village- Mahadev Bigha, P.O- Jamanganj, P.S- Makhdumpur, District- Jehanabad, Bihar- 804405.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Main Secretariat, Patna, Bihar- 800015.
- 2. The Principal Secretary, General Administration Department, 1st Floor, Old Secretariat Building, Rajbansi Nagar, Patna, Bihar- 800015.
- 3. Bihar Technical Services Commission, through its Chairman, 19, Harding Road, Patna, Bihar- 800001.
- 4. Secretary-in-Charge, Bihar Technical Services Commission, 19, Harding Road, Patna, Bihar- 800001.

... .. Respondent/s

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with

**Civil Writ Jurisdiction Case No. 877 of 2025**

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1. Somnath Patel S/o Sri Birendra Prasad, Resident of Village- Katrubigha, P.O.-Bishai Bigha, P.S.- Parwalpur, District- Nalanda. PIN-801301.
  2. Jyoti Prakash S/o Late Paltu Yadav Resident of Village- Chigri, P.O.- Chigri, P.S.- Kusheshwar Asthan, District- Darbhanga, PIN-848213.
  3. Ashok Kumar S/o Sri Satya Narayan Singh Resident of At- Narsingha, Post- Rajur Rambhadrapur, Shivaji Nagar, P.S.- Hathauri, District- Samastipur. PIN-848117.
  4. Birendra Kumar S/o Late Ram Pukar Mandal Resident of Village- Ghiwahi, P.O.- Parsa, P.S.- Hathauri at present Shivajinagar, District- Samastipur, PIN. 847105.
  5. Sandeep Kumar Saxena S/o Sri Rameshwar Sahni Resident of Village- Malahi Tola, P.O.- Ramgarhwa, P.S.- Ramgarhwa, District- East Champaran, PIN-845433.
  6. Rahul Kumar S/o Sri Satyendra Sharma Resident of Village- Kauri, P.O.- Dahiya, P.S.- Khirimore, Anchal- Paliganj, District- Patna, PIN-801110.
  7. Prince Kumar Singh S/o Sri Srikant Singh Resident of Village- Sultanpokhar Kalimander, Ward No. 02, P.O.- Forbesganj, P.S. and Anchal- Forbesganj,, District- Araria, PIN-854318.
  8. Avinash Kumar Singh S/o Sri Binod Kumar Singh Resident of Village and Post- Dindayalpur, P.S.- G.B. Nagar, District- Siwan, PIN-841506.
  9. Ram Pravesh Singh S/o Sri Lakshmi Singh Resident of Village Post- Madarna @ Gopinathpur, P.S.- Vaishali, District- Vaishali, PIN-844113.
  10. Mahtab Alam S/o Sri Fasi Ahmad Resident of Village and Post- Mohammadpur Koari, Ward No. 08, P.S. Waini, Anchal Pusa, District- Samastipur, PIN- 848131.
  11. Mayank Shrivastava S/o Sri Manoj Kumar Resident of Village Mahamadpur Badan, Post- Repura Mahadeo, P.S. and Anchal Paroo, District- Muzaffarpur, PIN-843107.
  12. Manoj Kumar S/o Sri Ambika Prasad Resident of Village- Badahra, Post and P.S.- Gopalpur, District- Gopalganj, PIN-841503.
  13. Amrendra Kumar S/o Sri Tribhuwan Yadav Resident of Village- Aura, Post- Shankarpur, P.S.- Rosera, District- Samastipur, PIN-848117.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Building Construction Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Additional Chief Secretary, Planning and Development Department, Govt. of Bihar, Patna.
4. The Additional Chief Secretary, Urban Development and Housing



Department, Govt. of Bihar, Patna.

- 5. The Additional Chief Secretary, Public Health and Engineering Department, Govt. of Bihar, Patna.
- 6. The Additional Chief Secretary, Water Resources Department, Govt. of Bihar, Patna.
- 7. The Additional Chief Secretary, Road Construction Department, Govt. of Bihar, Patna.
- 8. The Additional Chief Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
- 9. The Chairman, Bihar Technical Service Commission, 19, Harding Road, Patna.
- 10. The Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondent/s

with  
**Civil Writ Jurisdiction Case No. 4360 of 2025**

- 1. Satpal Kumar Sahu Son of Ram Briksha Sahu, Resident of Village and P.O- Tirhuta, P.S- Babubarhi, District- Madhubani,
- 2. Raju Kumar Son of Ramparvesh Prasad, resident of Village and P.O and P.S- Asthawan, District-Nalanda
- 3. Rakesh Ranjan Sinha S/O Rajendra Prasad Sinha, R/O Village - Kutwanchak, Jamanganj, PS- Vishnuganj, District - Jehanabad
- 4. Ajeet Kumar S/O Umesh Prasad, R/O Village - Ahiyasa, PO - Mohiuddinpur, PS-Ghosi, District - Jehanabad
- 5. Jyoti Prabhakar Raman @ Raman S/O Shivnandan Prasad, R/O Village - Asiya, PO - Kedli Patti, PS-Nauhatta, District - Saharsa

... .. Petitioner/s

Versus

- 1. The State of Bihar through Additional Chief Secretary, General Administration Department, Government of Bihar, Patna
- 2. The State of Bihar through its Additional Chief Secretary, Planning and Development Department, Government of Bihar, Patna
- 3. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna
- 4. The Additional Chief Secretary, Rural Works Department, Government of Bihar, Patna
- 5. The Additional Chief Secretary, Public Health and Engineering Department, Government of Bihar, Patna
- 6. The Additional Chief Secretary, Building Construction Department, Government of Bihar, Patna



- 7. The Additional Chief Secretary, Water Resource Department, Government of Bihar, Patna
- 8. The Additional Chief Secretary, Road Construction Department Government of Bihar, Patna
- 9. The Additional Chief Secretary, Minor Water Resource Department, Government of Bihar, Patna
- 10. The Chairman, Bihar Technical Service Commission, 19 Harding Road, Patna
- 11. The Secretary, Bihar Technical Service Commission, 19 Harding Road Patna,

... .. Respondent/s

with  
**Civil Writ Jurisdiction Case No. 5463 of 2025**

Arvind Kumar Yadav S/o Sri Tribhuwan Yadav, Resident of Village-Aura, P.O.-Shankarpur, Block-Shivaji Nagar, P.S.-Rosera, District-Samastipur, PIN-848117.

... .. Petitioner/s

Versus

- 1. The State of Bihar through Additional Chief Secretary, Building Construction Department, Govt. of Bihar, Patna.
- 2. The Additional Chief Secretary, Water Resources Department, Govt. of Bihar, Patna.
- 3. The Additional Chief Secretary, Road Construction Department, Govt. of Bihar, Patna.
- 4. The Chairman, Bihar Technical Service Commission, 19, Harding Road, Patna.
- 5. The Secretary, Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondent/s

with  
**Civil Writ Jurisdiction Case No. 11177 of 2025**

- 1. Sugriw Ray Son of Pahawari Ray, Resident of Village- Motipur Mauawan, P.S.- Kateya, District- Gopalganj.
- 2. Murli Kumar, Son of Ashok Kumar, Resident of Village- Nawada, P.S.-,District- Gopalganj.
- 3. Manish Bhardwaj, Son of Bharat Chandra Mishra, Resident of Village- Sirisiya, P.S.- Kuchayot, District- Gopalganj.

... .. Petitioner/s

Versus



1. The State of Bihar through its Additional Chief Secretary, Building Construction Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Additional Chief Secretary, Planning and Development Department, Govt. of Bihar, Patna.
4. The Additional Chief Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
5. The Additional Chief Secretary, Public Health and Engineering Department, Govt. of Bihar, Patna.
6. The Additional Chief Secretary, Water Resource Department, Govt. of Bihar, Patna.
7. The Additional Chief Secretary, Road Construction Department, Govt. of Bihar, Patna.
8. The Additional Chief Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
9. The Chairman, Bihar Technical Service Commission, 19, Harding Road, Patna.

... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No. 1373 of 2025)

For the Petitioner/s : Ms. Nivedita Nirvikar,  
Sr. Advocate  
Mr. Shashank Shekhar, Advocate  
Mr. Arya Achint, Advocate  
For the State : Mr. Pratik Kumar Sinha, AC to GA-5  
For the BTSC : Mr. Nikesh Kumar, Advocate  
Mr. Praveen Tiwari, Advocate

(In Civil Writ Jurisdiction Case No. 877 of 2025)

For the Petitioner/s : Mr. Alok Kumar, Advocate  
Mr. Pranav Kumar, Advocate  
Mr. Rishabh Kumar Maurya, Advocate  
For the State : Mr. Anwar Karim, AC to GP-10  
For the BTSC : Mr. Nikesh Kumar, Advocate  
Mr. Praveen Tiwari, Advocate

(In Civil Writ Jurisdiction Case No. 4360 of 2025)

For the Petitioner/s : Mr. Krishna Kant Pandey, Advocate  
Mr. Vikash Kukmar Shukla, Advocate  
For the State : Mr. Sarvesh Kumar Singh, AAG-13  
Mr. Abhinav Alak, AC to AAG-13  
For the BTSC : Mr. Nikesh Kumar, Advocate  
Mr. Praveen Tiwari, Advocate

(In Civil Writ Jurisdiction Case No. 5463 of 2025)

For the Petitioner/s : Mr. Alok Kumar, Advocate  
Mr. Pranav Kumar, Advocate



Mr. Rishabh Kumar Maurya, Advocate  
For the State : Mr. Vikash Kumar, SC-11  
For the BTSC : Mr. Nikesh Kumar, Advocate  
Mr. Praveen Tiwari, Advocate  
(In Civil Writ Jurisdiction Case No. 11177 of 2025)  
For the Petitioner/s : Mr. Shashi Ranjan Kumar  
For the Respondent/s : Mr. Standing Counsel (04)  
For the BTSC : Mr. Nikesh Kumar, Advocate  
Mr. Praveen Tiwari, Advocate

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**CAV JUDGMENT**  
**Date: 06-02-2026**

1. All the above writ petitions raise the same and identical issue in the matter of selection to the post of Junior Engineer, so far as it relates to filling up of vacancies by way of horizontal reservation for handicapped candidates and relaxation in fitness criteria if sufficient number of candidates from this category are not available.

2. This Court proposes refer to the facts of C.W.J.C. No. 1373 of 2025 taking it as a leading case and the same fact is declared to be applicable in respect of the remaining writ petitions under consideration.

3. In C.W.J.C. No. 1373 of 2025, the writ petitioners are 35 in number. Similarly, there are 13 petitioners in C.W.J.C. No. 877 of 2025. In C.W.J.C. No. 4360 of 2025, there are 5 writ petitioners. C.W.J.C. No. 5463 of 2025 is filed by only one writ petitioner. And there are 3 writ petitioners in C.W.J.C. No. 11177 of 2025.





4. C.W.J.C. No. 1373 of 2025 is filed by the petitioners, praying for the following reliefs: -

*i. For appropriate order/orders or direction/directions in the nature of writ of certiorari for quashing the Final Merit List published on 20.12.2024 by the Bihar Technical Services Commission in as much as it is in violation of the principles and provisions of Rights of Persons with Disabilities Act and as such same is discriminatory, illegal, irrational and arbitrary;*

*ii. For appropriate order/orders or direction/directions in the nature of writ of mandamus for an absolute reservation of 4% of total posts in favour of persons with disabilities and all sub-categories that are covered within its ambit and not allow for arbitrary carry forward of posts to unreserved category for subsequent recruitment;*

*iii. For appropriate order/orders or*





*direction/directions in the nature of writ of mandamus for consideration of all petitioners for the posts advertised vide Advertisement No. 01/19 under the category of Persons with Disabilities;*

*IV. pass any other order/orders as deemed fit and appropriate by this Court.*

5. In the other writ petitions, the relief prayed for are almost similar and identical, though construction of the same are little different for which the main purpose of filing of the writ petitions has not been altered or changed.

6. With the introduction, let me describe the fact of C.W.J.C. No. 1373 of 2025 and other writ petitions.

7. In all the writ petitions, the petitioners are Diploma holders in Civil Engineering from different institutions, recognized by All India Council for Technical Education (hereinafter referred to as “AICTE” for short). As per the provisions contained in Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as “2016 Act” for short), more particularly following the provisions contained in Section 34 of the 2016 Act, the General Administration Department issued Resolution No. 13062, dated 12<sup>th</sup> of



October, 2017, stipulating reservation for persons with disabilities in appointment to Government Services to allow 4 per cent horizontal reservation for persons with disabilities in all posts and services of the State Government. The aforesaid resolution dated 12<sup>th</sup> of October, 2017 states as follows: -

*(ix) Where in any recruitment year a vacancy against a post under section 34 of the Rights of Persons with Disabilities Act, 2016 cannot be filled due to non-availability of a person with disability as aforesaid or for any other sufficient reason, it may be filled by interchange between the four categories in the same transaction and only if no person with disability is available for the post in that year, the employer shall fill the vacancy by appointing a person other than a person with disability, hereinafter referred to as the vacancy shall not be carried forward to the next year.*

*(xvii) Horizontal reservation for handicapped candidates: The proposed 4% reservation (1% for each*



*category) for handicapped candidates is horizontal reservation and the selected handicapped candidates will be adjusted in the corresponding category to which they belong (Reserved / Non-reserved). Adjustment of the selected handicapped candidate will be done against the last roster point used in that transaction.*

*If no vacancy is available for the selected handicapped candidate in that transaction, then such candidate will be adjusted against the vacancy that will be available in future. (xviii) Relaxation in fitness criteria: For persons with disabilities, if sufficient number of candidates from this category are not available on the basis of general criteria to fill all the reserved vacancies, then candidates from this category should be selected by relaxing the criteria to fill the remaining vacancies reserved for them, provided they are not unsuitable for such post or posts.*



8. It is further stated by the petitioners that there are four categories of persons with disabilities; they are Orthopedically Handicapped (OH), Visually Handicapped (VH), Hearing Handicapped (HH) and Mentally Handicapped (MH). The provisions for 4 per cent horizontal reservation is applicable to entire categories of persons with disabilities wherein each sub-category has been given the benefit of 1 per cent reservation. The resolution, dated 12<sup>th</sup> of October, 2017 further states that in case a particular category within the entire umbrella of reservation for the persons with disabilities goes unfilled, then the candidates from other categories of persons with disabilities may be selected for the same. On the basis of resolution, dated 12<sup>th</sup> of October, 2017, the Bihar Technical Service Commission (hereinafter referred to as “BTSC” for short) invited applications for regular appointment to 6379 post of Junior Engineers (Civil / Mechanical / Electrical) in different departments of the Government of Bihar, vide Advertisement No. 1 of 2019, dated 8<sup>th</sup> of March, 2019. There were no specific provisions in the advertisement with regard to allotment of posts to persons with disabilities (PwD) category. Subsequently, in course of continuation of the process of recruitment under Advertisement No. 01 of 2019, the General



Administration Department issued Resolution No. 962, dated 22<sup>nd</sup> of January, 2021, regarding inclusion of multiple disabilities in appointment to State Services. The subject matter of the resolution, dated 22<sup>nd</sup> of January, 2021 is as follows: -

विषय:— दिव्यांगजन अधिकार अधिनियम, 2016 के अन्तर्गत राज्याधीन सेवाओं की नियुक्ति एवं उच्च शैक्षणिक संस्थानों के नामांकन में बहु-दिव्यांगता को सम्मिलित करने तथा दिव्यांगजन अधिकार अधिनियम, 2016 के प्रावधानों को केन्द्रीय दिव्यांगजन अधिकार अधिनियम, 2016 के अनुरूप करने के संबंध में।

*Subject:- Regarding inclusion of multiple disabilities in appointment to State services and admission to higher educational institutions under the Rights of Persons with Disabilities Act, 2016 and to make the provisions of the Rights of Persons with Disabilities Act, 2016 consistent with the Central Rights of Persons with Disabilities Act, 2016.*

9. Clause – 9 of the said resolution states as



follows: -

(9) दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 34 (2) के आलोक में जहां कोई रिक्ति किसी भर्ती वर्ष में उपयुक्त संदर्भित दिव्यांगजन की गैर-उपलब्धता के कारण या कोई अन्य पर्याप्त कारण से भरी नहीं जा सकेगी ऐसी रिक्ति गैर आरक्षित वर्ग में कणांकित करते हुए पञ्चात्वर्ती भर्ती वर्ष में अग्रणित होगी और पञ्चात्वर्ती भर्ती वर्ष में भी उपयुक्त संदर्भित दिव्यांगजन उपलब्ध नहीं होता है, तो पहले यह पांच प्रवर्गों में से अदला-बदली द्वारा हो सकेगी और केवल जब उक्त वर्ष में भी पद के लिए दिव्यांगजन उपलब्ध नहीं होता है, तो नियोक्ता किसी दिव्यांगजन से भिन्न किसी व्यक्ति की नियुक्ति द्वारा रिक्ति को भर सकेगा: *Meaning thereby, that in light of section 34 (2) of the Rights of Persons with Disabilities Act, 2016, where a vacancy cannot be filled in any recruitment year due to non-availability of a person with disability of the above mentioned category or for any other sufficient reason, such vacancy shall be carried forward to the subsequent recruitment year by being marked in the non-reserved category and if a person with disability of the above mentioned category is not available in the subsequent recruitment year also, then it may be done by interchange among the five categories and only when a person with disability is not available for the post in the said year also, the employer may fill the vacancy by appointing a person other than a person with disability: Provided that if the nature of*



*vacancies in an establishment is such that persons belonging to the given categories cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.*

**10.** In accordance with the provisions of Section 34(2) of the Right of Persons with Disabilities Act, 2016, if any vacancy cannot be filled in any recruitment year due to non-availability of a person with disability referred to above or for any other sufficient reason, such vacancy shall be carried forward to the subsequent recruitment year by being designated in the non-reserved category and if in the subsequent recruitment year also a person with disability, referred to above, is not available, then it may be done by interchange among the five categories first, and only if in the said year also a person with disability is not available for the post, then the employer may fill the vacancy by appointing a person other than a person with disability, subject to the provision that if the nature vacancies in an establishment is such that persons belonging to the given categories cannot be employed, the vacancies may be interchanged between the five categories with the prior approval of the appropriate Government.





11. It is contended by the petitioners that the above provisions introduced vide Resolution No. 962, dated 22<sup>nd</sup> of January, 2021 were entirely contrary to the provisions given in the earlier resolution, dated 12<sup>th</sup> of October, 2017. The new resolution completely changed the procedure of allotment of posts within the category of PwD by allowing the unfilled vacancy from a particular sub-category to be transferred to the unreserved category without considering other candidates within the different identified sub-categories.

12. The grievance of the petitioners is that the BTSC published the merit-list on 2<sup>nd</sup> of April, 2022. In the said merit-list, it was observed that there was a total 218 posts reserved for the PwD category. Each sub-category had been given a certain number of posts, depending on the requirement of different departments. However, unfilled or left-over seats of visually handicapped, hearing handicapped and mentally handicapped categories which had fewer selections than the allotted seats had been transferred to the orthopedically handicapped (OH category). As per the following table:-

| Sub-Category<br>under PwD<br>Category | Total<br>Vacancies | Number of<br>selected<br>candidates |
|---------------------------------------|--------------------|-------------------------------------|
| Orthopedically<br>Handicapped         | 55                 | 140                                 |
| Visually                              | 56                 | 36                                  |



|                         |     |     |
|-------------------------|-----|-----|
| Handicapped<br>Hearing  | 55  | 38  |
| Handicapped<br>Mentally | 52  | 04  |
| Handicapped<br>Total    | 218 | 218 |

13. It is alleged by the petitioners that the posts have not been allotted in the above merit-list on the basis of the resolution dated 12<sup>th</sup> of October, 2017, which was in operation on the date of advertisement. In the absence of any provision with respect to the allotment of posts in various sub-categories of PwD in the advertisement, the provision of the resolution which had been published in the official gazette would be applicable to the candidates applying for the various posts of Junior Engineers under the said category. This manner of allotment ensure that total 218 posts being 4 per cent of the vacancies, horizontal reservation for persons with disabilities was not reduced or watered down in any way and remained within the category by adjusting within the sub-categories. BTSC published the final select list on 19<sup>th</sup> of April, 2022. However, the resolution was not published in view of an order of stay passed by this Court in C.W.J.C. No. 7761 of 2022 on 1<sup>st</sup> of December, 2022.

14. The petitioners also contends that the subsequent decision of the respondent to scrap the entire



advertisement and ensuing process, some of the candidates moved the Hon'ble Supreme Court and by its order, dated 4<sup>th</sup> of October, 2024 in the case of ***Shashi Bhushan Prasad Singh v. State of Bihar & Ors. (Civil Appeal No. 11030 of 2024)***, arising out of ***S.L.P. (Civil) No. 7257 of 2013***, the Hon'ble Supreme Court held that the scrapping of entire selection process is not permissible, specially in the light of the prolonged pendency of the issue and the ensuing rising vacancies in the State affecting its functioning. The Hon'ble Supreme Court was pleased to direct the Respondents to proceed with the fresh select list submitted in compliance with the order, dated 19<sup>th</sup> of April, 2022 in C.W.J.C. No. 7312 of 2021, which has attained finality taking into consideration, as far as possible, the interest of the candidates who were found successful.

**15.** It is further contended that as directed by the Hon'ble Supreme Court, the respondents published a final merit-list on 20<sup>th</sup> of December, 2024, on perusal of which it is found that the BTSC had given the resolution dated 12<sup>th</sup> of October, 2017, a complete go-bye and unlawfully applied the resolution, dated 22<sup>nd</sup> of January, 2021. The effect of applying the resolution, dated 22<sup>nd</sup> of January, 2021 was that the



vacancies within the category of PwD remaining unfilled in a particular category were not filled up by adjusting from within the sub-categories. In fact, the unfilled vacancies had been carried forward to the unreserved category to be filled in the subsequent year. The candidates in PwD category have further been split into 60 per cent and 40 per cent of those belonging to the open category and Bihar Government Polytechnic Category, respectively. This has been done under the orders of this Court. A total 130 posts out of 218 posts have been kept aside for the open category within the 60 per cent classification, only 92, out of the 130 posts have been filled. One seat has been kept reserve as per the orders of this Hon'ble Court and rest 37 posts have been unlawfully carried forward to the next year under unreserved category. In the 40 per cent category, only 23 out of 88 posts have been filled and remaining 65 seats have again been carried forward to the next year in the unreserved category.

**16.** The petitioners further alleged that by applying 2021 resolution, the respondents have purposefully changed the rule of the game during ongoing recruitment process. Resolution No. 13062 of 2017 cannot be replaced by a subsequent resolution of 2021 when the process of recruitment



had already been started in the year 2019.

**17.** The petitioners in C.W.J.C. No. 1373 of 2025 are candidates belonging to the orthopedically handicapped category who are eligible under the provisions of the Resolution No. 13062 of 2017 to be considered against the unfilled vacancies of the other sub-categories of persons with disabilities.

**18.** Being aggrieved against the decision of the respondents and the final select list, they had filed the instant writ petition for reliefs stated above.

**19.** Respondent Nos. 3 and 4 BTSC and the Secretary, Incharge of the BTSC filed a counter affidavit against the writ petition, denying all the allegations made out in the instant writ petition.

**20.** It is contended on behalf of the BTSC that in view of the provisions contained in Bihar Technical Service Commission Selection Procedure Rule, 2018, the Commission is obliged under law to follow directions and instructions of the State Government as well as the requisitionists department while conducting any selection process in Technical Service in the State of Bihar. The State Government nominated the Water Resources Department as Nodal Department for recruitment of



the Junior Engineers and the present recruitment process was initiated under Bihar Water Resources Department Sub-ordinate Engineering (Civil) Cadre Recruitment Rules, 2015, which was later amended by Ordinance No. 3950, dated 07.01.2017 in the name of Bihar Water Resources Department Sub-ordinate Engineering (Civil) Cadre Recruitment (Amended) Rules, 2017.

**21.** It is further submitted by the answering respondents that the Advertisement No. 1 of 2019 for the post of Junior Engineers was published in consonance with the Rules framed by the State Government by virtue of its power under Article 309 of the Constitution of India after being vetted by the Water Resources Department.

**22.** In their counter affidavit, the respondents also state that the final result was published by the Commission on 20<sup>th</sup> of December, 2024/24<sup>th</sup> of December, 2024 in compliance with the direction passed by the Hon'ble Supreme Court in SLP (Civil) No. 7257 of 2023.

**23.** The respondents further state that by following the resolution dated 22<sup>nd</sup> of January, 2021 regarding the procedure for recruitment and horizontal reservation of PwD candidates, the BTSC did not change the rule of game as



alleged by the petitioners. Clause 2(ix) of the resolution dated 12<sup>th</sup> of October, 2017 states that the appointments of physically handicapped persons have to be made in accordance with Section 34 of the 2016 Act. The resolution, dated 22<sup>nd</sup> of January, 2021 only elaborates the procedure, contained in Section 34 of the 2016 Act for the purpose of selection. Therefore, the 2021 resolution is in the nature of supplementary resolution of 2017 explaining the process of recruitment of PwD candidates following Section 34 of the Act.

**24.** Respondent No. 2, being the Principal Secretary, General Administration Department, Government of Bihar has also filed a counter affidavit through the Under Secretary, General Administration Department, narrating the same fact as contended by BTSC.

**25.** This is all about pleadings in C.W.J.C. No. 1373 of 2025.

**26.** The petitioners of C.W.J.C. No. 1373 of 2025 comes under Orthopedically Handicapped category (OH).

**27.** The petitioners of C.W.J.C. No. 877 of 2025 also belong to Orthopedically Handicapped category (OH).

**28.** The petitioners of C.W.J.C. No. 4360 of





2025 are also in Orthopedically Handicapped category (OH).

**29.** The petitioner of C.W.J.C. No. 5463 of 2025 comes under Hearing Handicapped Category (HH).

**30.** The petitioners of C.W.J.C. No. 11177 of 2025 comes under Orthopedically Handicapped category (OH).

**31.** This Court has given its anxious consideration to the rival submissions advanced on behalf of the parties, perused the pleadings, counter affidavits, rejoinders, interlocutory applications, supplementary affidavits, and the documents annexed thereto, as also the statutory provisions and executive resolutions, governing the field.

**32.** Upon hearing learned counsel for the parties and upon perusal of the pleadings and materials available on record, the following issues arise for consideration in the present batch of writ petitions:

- (i) *Whether Resolution No. 13062, dated 12.10.2017, issued by the State Government and the recruitment process undertaken, pursuant thereto, are in conformity with the statutory scheme, contained in Section 34(2) of the Rights of Persons with Disabilities Act, 2016?*
- (ii) *If the answer to*



*the aforesaid issue is in the negative, whether any enforceable legal right survives in favour of the petitioners so as to warrant issuance of a writ of mandamus in exercise of jurisdiction under Article 226 of the Constitution of India?*

**33.** The right of persons with benchmark disabilities in matters of public employment is governed by the provisions of the Rights of Persons with Disabilities Act, 2016, which is a Central legislation enacted by Parliament. Section 34 of the Act of 2016 provides for reservation in employment for persons with benchmark disabilities and prescribes the statutory framework within which such reservation is to be implemented.

**34.** Sub-section (2) of Section 34 lays down the manner in which vacancies reserved for persons with benchmark disabilities are to be dealt with in the course of recruitment. The said provision forms part of the statutory mandate and constitutes the governing norm in relation to reservation for persons with disabilities in public employment. Sub-section (3) of Section 34 empowers the appropriate Government to issue notification providing for relaxation in



upper age limit and other concessions in favour of persons with benchmark disabilities, as it may consider appropriate.

**35.** Section 2(b) of the Act defines “appropriate Government”. In relation to establishments under the “State Government”, the “State Government” is the appropriate Government for the purposes of issuing notifications under the Act of 2016. Thus, while the State Government is empowered to grant relaxation in age and other permissible concessions, it does not possess authority to alter or modify the manner of recruitment prescribed under Section 34(2) of the Act of 2016.

**36.** In this background, the Court has examined Resolution No. 13062, dated 12.10.2017, which forms the basis of the recruitment process under consideration. The moot question is whether the manner of recruitment notified under the said Resolution conforms to the statutory mandate, contained in Section 34(2) of the Act of 2016.

**37.** On a plain reading of the Resolution, dated 12.10.2017 and upon comparison with the statutory scheme under Section 34(2), it appears that the said Resolution does not strictly adhere to the manner of recruitment contemplated under the Act of 2016. The Resolution introduces a recruitment methodology which does not fully align with the statutory



framework enacted by Parliament. Since the statute occupies the field, any executive instruction or resolution must conform strictly to the statutory provisions and cannot operate in deviation thereof.

38. The limits of delegated legislation are well settled. In *Rajnarain Singh v. Chairman, Patna Administration Committee*, reported in *AIR 1954 SC 569*, the Hon'ble Supreme Court held that although delegation of legislative power is permissible, the delegatee cannot alter the essential policy or features of the parent statute and any modification affecting the statutory scheme would be *ultra vires*. Executive instructions or resolutions must, therefore, operate strictly within the statutory framework and cannot travel beyond it.

39. It is well settled that executive instructions cannot override statutory provisions and must yield to the parent enactment. The Hon'ble Supreme Court in *Sant Ram Sharma v. State of Rajasthan*, reported in *AIR 1967 SC 1910*, has held that the Government cannot amend or supersede statutory rules by administrative instructions.

40. Similarly, in *State of Tamil Nadu v. P. Krishnamurthy*, reported in *(2006) 4 SCC 517*, it has been



held that delegated or executive instructions are liable to be invalidated if they run contrary to the parent statute.

41. The subsequent Resolution issued in the year 2021 has been described by the respondents as clarificatory or supplementary in nature. However, once the foundational resolution itself is found not to be in strict conformity with the statutory mandate under Section 34(2), the entire recruitment process undertaken on the basis of such framework becomes legally vulnerable.

42. The Court is conscious of the fact that the recruitment process in question has undergone several stages and that select lists have been prepared from time to time. However, if the very basis of recruitment is not in consonance with the governing Statute, the Court cannot undertake the exercise of restructuring or reconstructing the selection process. In exercise of jurisdiction under Article 226 of the Constitution of India, this Court is not expected to assume the role of a recruiting authority or to redesign the selection mechanism.

43. The Hon'ble Supreme Court in *State of U.P. v. Rajkumar Sharma*, reported in (2006) 3 SCC 330, has held that if the selection process is vitiated, the entire selection has



to go and it is not for the Court to undertake the exercise of preparing a fresh select list or rearranging the merit. It is equally well settled that even a successful candidate does not acquire an indefeasible right of appointment.

**44.** In *Shankarsan Dash v. Union of India*, reported in (1991) 3 SCC 47, the Hon'ble Supreme Court has held that a candidate included in a select list does not acquire any indefeasible right of appointment and no mandamus can be issued in absence of a subsisting legal right.

**45.** It is, thus, evident that where the statutory foundation of the recruitment process itself is found to be inconsistent with the governing law, no enforceable right accrues in favour of any candidate seeking appointment pursuant to such process. In such a situation, this Court cannot direct continuation or modification of a recruitment process, which is not strictly in conformity with the statutory mandate.

**46.** In view of the discussions made hereinabove, this Court is of the considered opinion that Resolution No. 13062, dated 12.10.2017, forming the basis of the recruitment in question, does not strictly conform to the statutory scheme contained in Section 34 (2) of the Rights of Persons with Disabilities Act, 2016. Consequently, the



recruitment process undertaken pursuant thereto cannot be sustained in its present form.

47. Once the foundational framework of recruitment is found to be legally inconsistent with the governing Statute, the selection process becomes suspect. In these batch of writ petitions, the writ petitioners have claimed for appropriate order/orders, direction/directions in the nature of writ of certiorari for quashing the final merit-list published on 20<sup>th</sup> of December, 2023 by the Bihar Technical Service Commission inasmuch as it is in violation of the principles and provisions of Rights of Persons with Disabilities Act. The Clauses 2 (viii) and (ix) of the 2017 Resolution lays down the process of recruitment of person with disabilities in reservation. The above-mentioned provisions are quoted below: -

(viii) तत्कालीन कार्मिक एवं प्रशासनिक सुधार विभाग सम्प्रति सामान्य प्रशासन विभाग, बिहार, पटना द्वारा प्रावधानित आदर्श रोस्टर के आलोक में उक्त दिव्यांगों को निम्नांकित श्रृंखला के अन्तर्गत आरक्षण देय होगा:-

- (क) दृष्टि दिव्यांगता - रोस्टर बिन्दु-01 से 25 तक = 01 पद
- (ख) मूक बधिर दिव्यांगता - रोस्टर बिन्दु-26 से 50 तक = 01 पद
- (ग) चलन दिव्यांगता - रोस्टर बिन्दु-51 से 75 तक = 01 पद।
- (घ) मनोविकार दिव्यांगता - रोस्टर बिन्दु-76 से 100 तक = 01 पद





यदि किसी समव्यवहार में रोस्टर बिन्दु-13 तक व्यवहृत हो रहा हो तथा उसके विरुद्ध आरक्षण के आधार पर दृष्टि दिव्यांगता से ग्रसित एक उम्मीदवार चयनित हो जाता है, तो अगले रोस्टर बिन्दु-25 तक किसी अन्य दृष्टि दिव्यांग उम्मीदवार हेतु आरक्षण देय नहीं होगा। इसी क्रम में रोस्टर बिन्दु-38, 63 एवं 88 तक क्रमशः मूक बधिर दिव्यांग, चलन दिव्यांग एवं मनोविकार दिव्यांग उम्मीदवार चयनित हो जाते हैं, तो क्रमशः रोस्टर बिन्दु-50, 75 एवं 100 तक अन्य दिव्यांग उम्मीदवार हेतु आरक्षण देय नहीं होगा।

परन्तु यदि किसी स्थापना में रिक्तियों की प्रकृति ऐसी हो कि किसी निश्चित प्रवर्ग के उम्मीदवार को नियोजित नहीं किया जा सकता है, तो रिक्तियों सरकार के पूर्व अनुमोदन से चारों प्रवर्गों के बीच परस्पर परिवर्तित की जा सकेंगी।

किसी सेवा संवर्ग में की गई नियुक्ति प्रोन्नति के तुरंत बाद अलग रोस्टर पंजी में उसकी प्रविष्टि की जायेगी और दिव्यांगता से ग्रस्त उपर्युक्त चारों श्रेणियों के जिस व्यक्ति की नियुक्ति / प्रोन्नति जिस रोस्टर बिन्दु के विरुद्ध की गई है, वहां उनकी प्रविष्टि की जाय और अम्युक्ति कॉलम में स्पष्ट रूप से उल्लेख किया जायेगा कि इनकी नियुक्ति / प्रोन्नति दिव्यांग कोटि के अन्तर्गत की गई है (दिव्यांगता से ग्रसित अभ्यर्थियों के लिए आरक्षण रोस्टर प्रपत्र सलग्न)।

(ix) जहाँ किसी भर्ती वर्ष में दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 34 के अधीन किसी रिक्ति के विरुद्ध उपर्युक्त दिव्यांग व्यक्ति की अनुपलब्धता के कारण या किन्हीं अन्य पर्याप्त कारण से भरा नहीं जा सकता है, तो इसे उसी समव्यवहार में चारों प्रवर्गों के बीच परस्पर परिवर्तन



द्वारा भरा जा सकेगा और केवल तभी जब उस वर्ष में पद के लिए कोई दिव्यांग व्यक्ति उपलब्ध नहीं है, नियोजक दिव्यांग व्यक्ति से भिन्न किसी अन्य व्यक्ति की नियुक्ति करके रिक्ति को भरेगा, वहां ऐसी रिक्ति अगले वर्ष में अग्रणीत नहीं की जायेगी।"

**48.** The plain reading of the aforesaid provision states that if candidates with particular disability as stated in Clause-(viii) is not available, the said vacancy can be filled up with the prior permission of the Government by interchanging the successful categories belonging to the persons with disability.

**49.** It further states in Clause-(ix) that where in any recruitment year, a vacancy cannot be filled up under Section 34 of the Rights of Persons with Disabilities Act, 2016 due to non-availability of the person with disability mentioned above or for any other sufficient reason, it may be filled up by interchange between the four categories in the same transaction and only if no person with disability is available for the post in that year, the employer shall fill up the vacancy by appointing a person other than a person with disability, where such vacancy shall not be carried forward to the next year.

**50.** Section 34 (2) of the Rights of Persons with Disabilities Act, 2016 runs thus: -

*"34. (2) Where in any recruitment year*



*any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:*

*Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.”*

**51.** If the provisions contained in 2017 Rules are examined *qua* Section 34 (2) of 2016 Act, it is found that the Clauses-2 (viii) and (ix) were not in conformity with the provisions of the Statute. Therefore, the General Administration Department was compelled to pass notification in the year 2021 in conformity with the manner of recruitment



to fill up the vacancies reserved for the persons with disabilities.

**52.** I have already discussed with supporting judgments of the Hon'ble Supreme Court that any recruitment notification *de hors* the Statute is *ultra vires* to the Statute. The petitioners are claiming recruitment following 2017 Rules, which is not in conformity with the declaration of reservation of vacancies in establishments meant for persons with disabilities and the manner of recruitment to fill up such vacancies. This is the principal reason followed by the BTSC to fill up the vacancies reserved for persons with disabilities in the manner provided in Section 34 of the 2016 Act.

**53.** The petitioners cannot claim their right of recruitment following 2017 Rules, when the Rule is *ultra vires* to the Statute.

**54.** It is needless to say that 2016 Act is the source of the right of persons with disabilities to get the reservation in jobs in government establishments. If a Rule is framed by the Government by a process of delegated legislation and it is found that the Rule is not in conformity with the statutory provisions, the executive authority is always empowered to publish subsequent rule in conformity with the



Act. This Act on the part of the executive authority cannot be challenged on the ground of altering the rule of the game after the game is started because the rule of the game also derives its authority from the Statute. If statutory indictment is corrected by a subsequent notification after initiation of selection process, the same cannot be called into question on the ground that executive authority has been trying to change the rule of the game.

55. For the reasons stated above I do not find any merit in these batch of writ petitions.

56. Therefore, the writ petitions, bearing C.W.J.C. Nos. 1373 of 2025, 877 of 2025, 4360 of 2025, 5463 of 2025 and 11177 of 2025, are hereby dismissed.

57. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | 27.01.2026 |
| Uploading Date    | 06.02.2026 |
| Transmission Date | N/A        |

