

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A No. 447 of 2011
Kiran Manjhi Vs. State of Jharkhand & Ors.
With
L.P.A No. 328 of 2011
State of Jharkhand & Ors. Vs. Sur Singh Hasda
With
L.P.A No. 439 of 2011
Bir Singh Sundi Vs. State of Jharkhand & Ors.
With
L.P.A No. 15 of 2012
State of Jharkhand & Ors. Vs. Sita Pareya
With
L.P.A No. 16 of 2012
State of Jharkhand & Ors. Vs. Paikarae Tubid
With
L.P.A No. 17 of 2012
State of Jharkhand & Ors. Vs. Baldeo Hembrom
With
L.P.A No. 18 of 2012
State of Jharkhand & Ors. Vs. Bhubaneshwar Jarika
With
L.P.A No. 19 of 2012
State of Jharkhand & Ors. Vs. Bagrai Birua
With
L.P.A No. 20 of 2012
State of Jharkhand & Ors. Vs. Abhay Chandra Birua
With
L.P.A No. 21 of 2012
State of Jharkhand & Ors. Vs. Madho Sawaiyan
With
L.P.A No. 22 of 2012
State of Jharkhand & Ors. Vs. Gurucharan Jarika
With
L.P.A No. 23 of 2012
State of Jharkhand & Ors. Vs. Ghanpati Birua
With
L.P.A No. 24 of 2012
State of Jharkhand & Ors. Vs. Kameshwar Purty
With
L.P.A No. 25 of 2012
State of Jharkhand & Ors. Vs. Ishwar Chandra Sinku
With
L.P.A No. 26 of 2012
State of Jharkhand & Ors. Vs. Shankar Sinku
With
L.P.A No. 27 of 2012
State of Jharkhand & Ors. Vs. Sumitra Birua
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L.P.A No. 28 of 2012
State of Jharkhand & Ors. Vs. Bamiya Tubid
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L.P.A No. 29 of 2012
State of Jharkhand & Ors. Vs. Nageshwari Tubid
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L.P.A No. 32 of 2012
State of Jharkhand & Ors. Vs. Chandra Mohan Sinku

With
L.P.A No. 33 of 2012
State of Jharkhand & Ors. Vs. Sona Mani Diggi
With
L.P.A No. 34 of 2012
State of Jharkhand & Ors. Vs. Anju Kumari Jonko
With
L.P.A No. 35 of 2012
State of Jharkhand & Ors. Vs. Ram Sahay Jarika
With
L.P.A No. 36 of 2012
State of Jharkhand & Ors. Vs. Majhee Bodra
With
L.P.A No. 37 of 2012
State of Jharkhand & Ors. Vs. Motay Purty
With
L.P.A No. 39 of 2012
State of Jharkhand & Ors. Vs. Gumi Banra
With
L.P.A No. 40 of 2012
State of Jharkhand & Ors. Vs. Diku Haiburu
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L.P.A No. 41 of 2012
State of Jharkhand & Ors. Vs. Krishna Sinku
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L.P.A No. 44 of 2012
State of Jharkhand & Ors. Vs. Jagdish Chandra Birua
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L.P.A No. 45 of 2012
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L.P.A No. 46 of 2012
State of Jharkhand & Ors. Vs. Gomeya Bodra
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L.P.A No. 47 of 2012
State of Jharkhand & Ors. Vs. Sita Ram Banra
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L.P.A No. 48 of 2012
State of Jharkhand & Ors. Vs. Makru Soy
With
L.P.A No. 49 of 2012
State of Jharkhand & Ors. Vs. Sudarshan Jerai
With
L.P.A No. 50 of 2012
State of Jharkhand & Ors. Vs. Somnath Tubid
With
L.P.A No. 51 of 2012
State of Jharkhand & Ors. Vs. Sadhu Charan Birua
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L.P.A No. 72 of 2012
State of Jharkhand & Ors. Vs. Naresh Jojo

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L.P.A No. 73 of 2012
State of Jharkhand & Ors. Vs. Samu Purty
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L.P.A No. 74 of 2012
State of Jharkhand & Ors. Vs. Mohan Singh Kuntia
With
L.P.A No. 75 of 2012
State of Jharkhand & Ors. Vs. Budhadeo Gagrai
With
L.P.A No. 76 of 2012
State of Jharkhand & Ors. Vs. Baidya Nath Bodra
With
L.P.A No. 77 of 2012
State of Jharkhand & Ors. Vs. Jyoti Kumari Birua
With
L.P.A No. 78 of 2012
State of Jharkhand & Ors. Vs. Dula Diggi
With
L.P.A No. 79 of 2012
State of Jharkhand & Ors. Vs. Prakash Tubid
With
L.P.A No. 80 of 2012
State of Jharkhand & Ors. Vs. Jay Ram Besra
With
L.P.A No. 81 of 2012
State of Jharkhand & Ors. Vs. Ganga Ram Kerai
With
L.P.A No. 82 of 2012
State of Jharkhand & Ors. Vs. Shankar Singh Melgandi
With
L.P.A No. 83 of 2012
State of Jharkhand & Ors. Vs. Jawahar Lal Purty
With
L.P.A No. 84 of 2012
State of Jharkhand & Ors. Vs. Nixon Jamuda
With
L.P.A No. 85 of 2012
State of Jharkhand & Ors. Vs. Kumari Neelam Jonko
With
L.P.A No. 86 of 2012
State of Jharkhand & Ors. Vs. Jug Singh BalMuchu
With
L.P.A No. 87 of 2012
State of Jharkhand & Ors. Vs. Kamal Kishore Bobonga
With
L.P.A No. 88 of 2012
State of Jharkhand & Ors. Vs. Subhash Chandra Jamuda
With
L.P.A No. 89 of 2012
State of Jharkhand & Ors. Vs. Madhuri Bobonga
With
L.P.A No. 90 of 2012
State of Jharkhand & Ors. Vs. Narayan Karowa
With
L.P.A No. 91 of 2012
State of Jharkhand & Ors. Vs. Selay Purty

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L.P.A No. 92 of 2012
State of Jharkhand & Ors. Vs. Shankar Laguri
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L.P.A No. 93 of 2012
State of Jharkhand & Ors. Vs. Dushru Pareya
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L.P.A No. 94 of 2012
State of Jharkhand & Ors. Vs. Chandra Bhushan Pingua
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L.P.A No. 95 of 2012
State of Jharkhand & Ors. Vs. Man Singh Honhaga
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L.P.A No. 96 of 2012
State of Jharkhand & Ors. Vs. Prem Prakash Korah
With
L.P.A No. 97 of 2012
State of Jharkhand & Ors. Vs. Bagun Jarika
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L.P.A No. 98 of 2012
State of Jharkhand & Ors. Vs. Raj Kumar Hembrom
With
L.P.A No. 99 of 2012
State of Jharkhand & Ors. Vs. Bikram Boipai
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L.P.A No. 143 of 2012
Bimal Kumar Majhi Vs. State of Jharkhand & Ors.
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L.P.A No. 144 of 2012
Kirtan Majhi Vs. State of Jharkhand & Ors.
With
L.P.A No. 145 of 2012
Hopna Majhi Vs. State of Jharkhand & Ors.
With
L.P.A No. 146 of 2012
Lobin Manjhi @ Lobin Majhi Vs. State of Jharkhand & Ors.
With
L.P.A No. 147 of 2012
Brihaspati Hansda Vs. State of Jharkhand & Ors.
With
L.P.A No. 148 of 2012
Sukram Majhi Vs. State of Jharkhand & Ors.
With
L.P.A No. 149 of 2012
Kartik Manjhi Vs. State of Jharkhand & Ors.
With
L.P.A No. 150 of 2012
Ajit Kumar Manjhi @ Ajit Kumar Majhi Vs. State of Jharkhand & Ors.
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L.P.A No. 151 of 2012
Dasrath Majhi Vs. State of Jharkhand & Ors.
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L.P.A No. 152 of 2012
Bihari Lal Majhi Vs. State of Jharkhand & Ors.
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L.P.A No. 153 of 2012
Ishwar Murmu Vs. State of Jharkhand & Ors.

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L.P.A No. 154 of 2012
Lalit Manjhi Vs. State of Jharkhand & Ors.
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L.P.A No. 155 of 2012
Ranjit Manjhi Vs. State of Jharkhand & Ors.
With
L.P.A No. 156 of 2012
Somra Soren Vs. State of Jharkhand & Ors.
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L.P.A No. 157 of 2012
Chanu Singh Majhi Vs. State of Jharkhand & Ors.
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Surendra Majhi @ Surendra Manjhi Vs. State of Jharkhand & Ors.
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With
L.P.A No. 445 of 2011
Amrit Majhi & Others Vs. State of Jharkhand & Ors.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE APARESH KUMAR SINGH**

For the Appellants : M/s. K.M. Verma, Sr. Advocate,
(Pvt. Parties) M.M.Sharma & Lakhan Sharma, Advocates.
For the Respondents: M/s. R.R. Mishra, G.P.II, R.N. Roy, G.P.III,
Ram Prakash Singh, J.C. to G.P.II. &
Deepak Prasad, J.C. to G.P.III.

Reportable

Order No. 07

Dated 18th April, 2012

Heard learned counsel for the parties.

2. These Letters Patent Appeals are decided by this common order because of the reason that common questions of fact and law are involved as well as in view of the fact that two sets of judgements running contrary to each other are under challenge in these matters.

3. An advertisement was issued on 28th August, 2002 for selection and offering appointment on the post of Primary School Teacher and total number of posts offered were 9223. All the petitioners are some of the aspirant for the

job, applied for the post and they were permitted to appear in the written examination and thereafter a select list was prepared wherein names of all the petitioners are finding place. However, even after publishing of select list in the year 2003, the petitioners were not given appointment, and, therefore, petitioners approached this Court by filing various writ petitions. Three sets of writ petitions were decided by three different orders but of the same date i.e., 14.07.2011 which were decided by common judgement delivered in W.P.(S) No. 2102 of 2008 in the case of Sur Singh Hasda Vs. State of Jharkhand & others along with connected writ petitions. Another bunch of writ petitions were decided along with W.P.(S) No. 4322 of 2010 in the case of Kunti Birua Vs. State of Jharkhand & Others and third set of writ petitions were decided by another Single Judge of this Court in W.P.(S) No. 5090 of 2008 and connected writ petitions having title Majhi Jonko Vs. State of Jharkhand & others. These three sets of judgements were passed for the candidates who claimed that they have been selected in due process of selection as teacher for 'Ho' language. The number of these candidates were 187 who have not been offered appointment even after selection.

4. Before learned Single Judge it has been argued that the petitioners have been denied appointment on the ground that they did not possess the training in 'Ho' subject by duly recognized institution namely National

Council for Teachers' Education (in short NCTE). The State's contention was that the petitioners lack basic requirement i.e., training from Government institution, therefore, petitioners are not entitled to appointment.

5. Learned Single Judge held that at the time when the advertisement was made and the petitioners were permitted to appear in the selection process, there was no requirement of obtaining certificate of training from an institute recognized by the NCTE as the NCTE Circular came into existence only vide G.O. No. 2192 dated 13.11.2003, G.O. No. 404 dated 16.02.2004 and G.O. No. 746 dated 27.03.2004 which were much after the issuance of the advertisement and, therefore, the petitioners could not have been denied appointment on this ground of not having certificate from any institute recognized by NCTE. Learned Single Judge also held that the decision of the NCTE was not retrospective in operation nor it is the case of the State that the said decision was operative retrospectively. On facts, learned Single Judge observed that the language 'Ho' is one of the subjects prescribed in Standard 1 to 4 in the District West Singhbhum where the Government school is offering this subject. The State of Jharkhand is also publishing text books in the said language but there is no teacher to teach the 'Ho' language subject. Then learned Single Judge observed that though the stand has been taken by the State Government that training in 'Ho' language is essential from a Government

institute, obviously, if not, then from Government recognized institute. But, it is admitted position that in the entire country, there is no institution teaching and imparting training in 'Ho' language. Then learned Single Judge observed that directive principle enshrined in Article 41 to be read with fundamental duties as stated in Article 51A of the Constitution of India and the obligation is upon the State Government to retain its rich heritage and culture and, therefore, 'Ho' language, being a rich heritage and culture of this State, ought to be taught properly to the students atleast at primary level. Then learned Single Judge also observed that though the State is offering one of the subjects as 'Ho' language, there is not a single teacher of 'Ho' language in the State of Jharkhand.

6. In view of this fact situation, direction was given to the State Government to offer appointment to those candidates who have been selected in 'Ho' subject and whose names have been recommended by the J.P.S.C. This first judgment delivered in the case of Sur Singh Hasda(Supra) was followed in subsequent judgements referred above of the same date and which are impugned in L.P.As preferred by the State.

7. Except the difference in language i.e., in those matters language under consideration was 'Ho' and in subsequently delivered judgement (W.P.(S) No. 4607 of 2011) deciding several connected writ petitions, subject is

'Santhali' there is no difference as under same advertisement and under same rules, the candidates who were students of 'Santhali' language, approached this Court to seek same relief which has been granted to the candidates of 'Ho' language by three judgements dated 14.07.2011 in a bunch of writ petitions in three sets. Some of these petitioners who were students of 'Ho' language, also preferred writ petitions which were also dismissed by the learned Single Judge along with W.P.(S) No. 4607 of 2011 titled as Kiran Manjhi Vs. State of Jharkhand & Others vide said common judgement dated 14.11.2011. Before the learned Single Judge, the earlier three judgements were also placed but learned Single Judge observed that above judgements are based on mistake of facts and took just contrary view to the view taken by the learned Single Judges in earlier writ petitions. Therefore, the State is aggrieved against the earlier orders dated 14.07.2011 referred above whereas the private parties are aggrieved against the subsequent judgement dated 14.11.2011 hence, these two sets of appeals challenging the orders dated 14.07.2011 and order dated 14.11.2011 passed by different Benches taking different views, which are deciding by the common order.

8. Learned counsel for the appellants-private parties and aspirants for appointment vehemently submitted that the learned Single Judge committed serious error in law by taking a different view than the view taken in three

different judgments/ orders by two different Coordinate Benches of the same High Court as the judgement rendered by the Coordinate bench was binding upon the subsequent Coordinate Bench seized with the matter. It is also submitted that if the learned Single Judge was not in agreement with the view expressed by the learned Single Judge in earlier writ petitions, then only option left with the learned Single Judge was to refer the matter to the larger Bench.

9. So far as this proposition is concerned, we are in full agreement with the learned counsel for the private parties, so far as this question of law is concerned. However, how for this proposition will apply to present matters is required to be examined which we are examining.

10. The learned Single Judge, in subsequent order dated 14.11.2011 dismissing the writ petitions, held that the earlier judgements proceeded on mistake of facts. Obviously, if the judgement is rendered ignoring material facts which are relevant and if those facts would have been brought to the knowledge of the same Court, the Court may not have taken the same view which has been taken then judgment is no judgment and can be declared *per incuriam*. When very foundational fact of judgement itself is a cause for a decision and that fact is found to be wrong, then that judgement can be declared *per incuriam* even by the Coordinate Bench. If the judgement runs just contrary

to the statutory provisions of law, then also that judgement can be declared *per incuriam* even by the Coordinate Bench but before holding so the fact and law must be clear and should be apparent so as to reach to that conclusion of mistake of fact or mistake of law by not doing roving or deep enquiry and this mistake must be apparent from the face of the order as well as by mere reading of the law. Therefore, we have to examine the issue in the light of the reasons given in the two different sets of impugned judgement/orders.

11. We may recapitulate again that advertisement was issued by the State Government under the rules known as Jharkhand Primary School Appointment Rules, 2002 framed by exercising power vested in the State Government under Article 309 of the Constitution of India. The petitioners applied in response to the advertisement dated 28th August, 2002 issued for appointment of 9223 primary teachers. The candidates were required to apply as provided under Rule 4 which prescribes the eligibility for the candidates and Rule 4 says that the candidates should be (Ka) citizen of India, (Kha) who has passed the matric or equivalent examination and (Ga) who is qualified under Rule 2(Kha). So far as required training is concerned, Rule 2(Kha) explained what is meant by 'training' and says that training shall mean and include those persons who have obtained (i) two years teacher training certificate or (ii) B.Ed./Diploma in Education/Diploma in Teaching (iii) C.P.

Ed./Diploma in Physical Education. There is a proviso under Rule 4 which allows the State Government to give appointment on the post of teachers in special circumstances by relaxing requirement of having the requisite training, however, with condition that the candidates who are not possessing requisite training and succeeded in the examination under this proviso, then the State Government shall impart training to these candidates. It is not in dispute that State did not take any decision to invoke the proviso under Rule 4 and, therefore, process of selection which was started under the Rule of 2002, processed according to the Rules and it was made clear by the advertisement dated 28th August, 2002 itself. In the advertisement also the same conditions have been prescribed which are required for one to be eligible for seeking appointment on the post of teachers in primary education as has been given in the Rules of 2002. It is clear from the Rules of 2002 as well as from the advertisement issued under the Rules of 2002 dated 28th August, 2002, there was no provision for offering appointment according to subject-wise posts.

12. Further it is clear from the Rule 8, which prescribes the marks and the subject for which one has to take test and it says that the preliminary subject will be General Knowledge up-to the standard of matric and equivalent to the matric and that paper shall have 100 marks. Rule 8 (Kha) provides for main examination with question paper of

100 marks which will be divided in the manner that for language paper there will be 30 marks and the language paper shall include the mother tongue(language) and standard will be up-to the secondary examination level. For Mathematics 35 marks and for History and Civics 35 marks. There is no provision for offering teacher of a particular language may it be 'Ho', 'Santhali', 'Hindi' or 'Sanskrit' or any other languages which are more in numbers, which are prevailing in the State of Jharkhand, what to say of 'Ho' language or 'Santhali' language. Factually it may be true that in the State of Jharkhand, there are several regional and local languages and it is not in dispute that the 'Ho' and 'Santhali' languages are very important languages prevailing in the District of Chaibasa in West Singhbhum area or Saraikela as well as in East Sighbhum area, respectively. But so far as Rules are concerned, these languages have not been given any preference, priority or advantage and for appointment on the post of primary teachers. Further more, all candidates are required to pass language paper of subject recognized for Middle School Examination. And all persons having any language as mother tongue in Middle School Examination are placed at par and there is no separate class for 'Ho' or 'Snathali' language teachers in examination which can claim preference or reservation of post. In view of the above, the petitioners who may be having mother tongue 'Ho' or 'Santhali' may have been eligible to take part in the

process of selection if those are recognized mother tongue language in Middle School Examination but subject to condition that they should have obtained the requisite teacher training certificate from a recognized institution. There is no requirement that such training certificate must be in 'Ho' or 'Santhali' language. It appears that these Rules as well as even the advertisement were not brought to the knowledge of the learned Single Judges who decided the matters by different orders dated 14.07.2011 in three sets of cases and, therefore, in the first judgment delivered by the learned Single Judge, the learned Single Judges proceeded on assumption that the petitioners have been selected as teachers to impart education in 'Ho' language and therefore, observed that 'Ho' language is prescribed in primary education and there is no teacher of 'Ho' language in the entire State of Jharkhand and not only this but even no training institute is there which is imparting training in 'Ho' language. Therefore, there was mistake of fact that the advertisement was for the post of teachers of 'Ho' language and that itself was sufficient to vitiate the judgments delivered by the learned Single Judges dated 14.07.2011.

13. At this juncture, it appears that as presented before the learned Single Judge in earlier writ petitions, only it was brought to the notice of the learned Single Judge that requirement of obtaining certificate is from the institute recognized by NCTE and, therefore, learned Single Judge considered the Circular issued by NCTE vide G.O. No.

2192 dated 13.11.2003, G.O. No. 404 dated 16.02.2004 and G.O. No. 746 dated 27.03.2004 and held that these circulars came in existence subsequent to the issuance of advertisement. Factually it is correct but it cannot help the petitioner as the Rules of 2002 itself require training certificate from the recognized institute obviously, recognized by the State and does not say that it should be recognized from the NCTE. Therefore, even if circular of NCTE has no application to these appointments, then also, claim of the petitioner is in contravention to Rules of 2002.

14. This very issue has been considered by the Hon'ble Supreme Court in the case of ***Seema Kumari and Others Vs. State of Jharkhand and Others*** reported in **(2006) 12 SCC 215**. The Hon'ble Supreme Court considered the same Rules of 2002 and also Rule 4(Ga) and thereafter, observed that requirement of training is essential and observed in that case, which may apply to present cases, that the candidates understood it as such. As in the case of Seema Kumari, no special circumstances have been pleaded for the purpose of taking on untrained candidates. The Hon'ble Supreme Court further held that besides the requirement is to hold a separate examination for untrained candidates, no such examination has been held. Had such examination been determined to be held pursuant to an advertisement duly published, there might have been further candidates who might have participated in the proceedings. The exactly identical situation is here in

this case as we have already noticed that in the advertisement there was no mention that this is a process of selection of candidates for offering appointment on the post of teacher who may not have certificate of training from recognized institute or the offer is for 'Ho' or 'Santhal' language teachers. If it would have been intention of the State, then it could have been done by the State by invoking the proviso under Rule 4(Ga) and it would have given opportunity to all the candidates who had no requisite training certificate and, therefore, in the present case also, the petitioners cannot be said to be the persons who have been selected in a fair competition even for the post of 'Ho' teachers (The post of 'Ho' or 'Santhali' teachers are not in existence till today). Therefore, on this count of fact that the judgement of the Hon'ble Supreme Court delivered in the case of ***Seema Kumari & others (Supra)*** was not brought to the knowledge of the learned Single Judges and the judgement delivered on 14.07.2011 runs contrary to the ratio of the decision given by the Hon'ble Supreme Court in the case of ***Seema Kumari & Others (Supra)***, therefore, on this count also, the judgements rendered on 14.07.2011 allowing the writ petitions of the candidates is *per incuriam*.

15. Learned counsel for the private parties drew our attention to certain communications as well as the process undertaken by the State Government and its officers in support of his contention that the State had intention to

offer appointment to the candidates who were having the knowledge of 'Ho' and 'Santhali' language and for that purpose even a letter was issued on 18.06.2002 reference of which is there in the letter dated 01.09.2010 wherein there is specific mention that there is need of regional language teachers and how much teachers are required to be appointed. Not only this, but even the select list was duly forwarded to the concerned District Education Committee for issuing the appointment orders to the selected candidates and, therefore, the process was for offering appointment to the teachers who can teach the 'Ho' and 'Santhali' languages.

16. The argument of the learned counsel for the private candidates is devoid of any merit. The intention, if is laudable, it cannot take shape of action unless and until it is in consonance with the statutory rules. Therefore, even if officers of the State Government have calculated the vacancies, the fact of which is not very clear, but we presume in view of the fact mentioned in some of the communication that 187 candidates were selected who have shown their willingness for getting appointment on the post of 'Ho' teachers and few numbers of candidates shown their willingness to accept the appointment on the post of 'Santhali' teachers may be a communication and those officers not only did not look into the advertisement but also did not look to the rules.

17. In view of the above, we are of the considered opinion that the earlier judgements dated 14.07.2011 have been rendered by mistaken belief of fact and because of the fact that rules were not brought to the notice of the learned Single Judges and further, because of the reason that earlier judgement of Hon'ble Supreme Court, on the same subject, was not brought to the notice of the learned Single Judges and all these mistakes were because of the poor assistance provided to the Benches who delivered the judgements dated 14.07.2011.

18. As we have already observed that in a case where earlier judgements are *per incuriam*, the Coordinate Bench can take a different view instead of referring the matter to a larger Bench. In this case, the learned Single Judge clearly recorded the finding that the earlier Single Judges proceeded on wrong facts and we are also of that view and that mistake is due to the poor assistance to the learned Single Judges and even if in so many words, in subsequent judgements dated 14.11.2011 it has not been mentioned that earlier judgements are *per incuriam* and only it has been mentioned that earlier judgements proceeded on wrong facts then that clearly indicate that earlier judgements were found to be *per incuriam* by the learned Single Judge and then the learned Single Judge proceeded to decide the matter.

19. In view of the above reasons, we are of the view that

the petitioners were not eligible to be appointed as they were lacking the basic eligibility under Rules of 2002 as well as under the advertisement dated 28th August, 2002 and, therefore, the L.P.As. preferred by the State deserve to be allowed and the L.P.As. preferred by the private parties deserve to be dismissed.

20. Before parting with, we would like to reiterate what has been held by the learned Single Judge in the order dated 14.07.2011 delivered in W.P.(S) No. 2102 of 2008 (Sur Singh Hasda Vs. State of Jharkhand & Others) that directive principles enshrined in Article 41 read with Article 46 of the Constitution of India providing for promotion of education and economic interest of Scheduled Caste and Scheduled Tribe and other weaker sections with fundamental duties as prescribed under Article 51A are required to be obeyed by the State of Jharkhand in view of very special reason that Jharkhand being the State of the members of Scheduled Castes and Scheduled Tribes and Other Backward Classes and also weaker sections of the public of all caste and the Jharkhand State has been created for improvement of these people primarily. The Jharkhand is known by its different languages which are used by the local persons to a great extent and it may be true that even some of such persons may not be knowing even other languages. Not only these languages i.e. 'Ho' and 'Santhali' but other languages are also rich languages and their text books are also being published by the State

Government. Then in that situation, not making provision for providing teachers to educate these subjects and that too after almost 12 years of creation of the State of Jharkhand is a very serious matter which requires serious consideration by the State Government. The State should have learnt lessons from the various judgements of the Hon'ble Supreme Court which has emphasized for only trained teachers and not for untrained teachers. Several phased schemes were provided so that no untrained teachers should even continue in service, if appointed. The teachers can be given appointment without training but they should take the training after obtaining the appointment and in the Rules of 2002 also, there is specific provision under proviso of Rule 4. The fact, as we have already noticed, that there is not a single institute of teachers' training for 'Ho' and 'Santhali' languages and if, such institute is not in the State of Jharkhand, there cannot be any reason for it being in any of the other State. At this juncture, it would be relevant to mention here that we are dealing with the subject covering the children and that too, to the level of primary education. An Act was enacted i.e. The Right of Children to Free and Compulsory Education, 2009 and Section 8 has cast duty upon the State Government to provide free and compulsory elementary education to every child and it is the duty of the State Government under Section 8(B) to provide infrastructure including school building, teaching staff and learning

equipments and Clause J under Section 8 further provides the duty of the State Government to impart training to the teachers by providing full facility to such teachers. So far as these two languages are concerned, we may observe here that this task can be undertaken only by the State Government because of the reason that for these regional languages, new business in education trend will not attract new business persons who are doing business in the field of education as it will not be lucrative for them to their interest.

21. We are of the considered opinion that yet there is mandatory obligation of the State Government under of Section 29 (2) (f) of the Act of 2009 which clearly provides that "*medium of instructions shall, as far as practicable, be in child's mother tongue;*".

22. It is very strange that in spite of making laws, administration has not looked into the aspects of these matters then what for these laws have been framed when the legislature itself at its own wisdom has held that the medium of instruction for child should be in mother tongue of the child, why this duty is not being discharged is a serious question. We hope that the State Government will now proceed to evolve a mechanism so that the above statutory provision may be given life instead of keeping them as dead letters statute rules. The Act of 2009 also has defined "child belonging to disadvantaged group." The

definition is as under:

Section 2 (d): *“Child belonging to disadvantaged group” means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;*

23. We need not to say and bring to the notice of the State Government that when we are dealing with the teachers of the primary standard, we are essentially dealing with “child belonging to disadvantage group” and this fact is in the knowledge of the State Government, therefore, we expect that even before start of next session, the State Government can proceed to handle this issue according to its administrative ability and may start discharging its Constitutional obligations as well as statutory obligations. Article 21 A is most needed provision for the State like at least Jharkhand under which it has been mandated by the Constitution that “the State shall provide free and compulsory education to all the children of the age of 06 to 14 years in such manner as the State may, by law, determine”. The Act of 2009 has been enacted by taking help of the Article 21A. Therefore we are just reminding the State Government to now proceed to handle the situation effectively and efficiently so that they may

discharge constitutional and statutory obligation.

24. The L.P.A. preferred by the State i.e., L.P.A. Nos. 328/2011, 15/2012, 16/2012, 17/2012, 18/2012, 19/2012, 20/2012, 21/2012, 22/2012, 23/2012, 24/2012, 25/2012, 26/2012, 27/2012, 28/2012, 29/2012, 32/2012, 33/2012, 34/2012, 35/2012, 36/2012, 37/2012, 39/2012, 40/2012, 41/2012, 42/2012, 43/2012, 44/2012, 45/2012, 46/2012, 47/2012, 48/2012, 49/2012, 50/2012, 51/2012, 72/2012, 73/2012, 74/2012, 75/2012, 76/2012, 77/2012, 78/2012, 79/2012, 80/2012, 81/2012, 82/2012, 83/2012, 84/2012, 85/2012, 86/2012, 87/2012, 88/2012, 89/2012, 90/2012, 91/2012, 92/2012, 93/2012, 94/2012, 95/2012, 96/2012, 97/2012, 98/2012 and 99/2012 are allowed and L.P.As preferred by the private parties i.e., L.P.A. Nos. 447/2011, 439/2011, 143/2012, 144/2012, 145/2012, 146/2012, 147/2012, 148/2012, 149/2012, 150/2012, 151/2012, 152/2012, 153/2012, 154/2012, 155/2012, 156/2012, 157/2012, 158/2012, 162/2012 and 445/2011 are dismissed. Consequently all the writ petitions preferred by the petitioners are dismissed.

(Prakash Tatia, C.J.)

(Aparesh Kumar Singh, J.)