



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 1160/2024

Shobha D/o Shri Babu Ram, Aged About 20 Years, Resident Of Village / Post Jati Bhandu, Tehsil Shergarh, District Jodhpur (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through Its Principal Secretary, Medical And Health Services, Secretariat, Jaipur.
2. The Director (Non-Gazetted), Medical And Health Services, Health Bhawan, Jaipur.
3. Principal Secretary, Department Of Personnel, Secretariat, Jaipur.
4. The Rajasthan Subordinate And Ministerial Services Selection Board, Through Its Chairman, State Institute Of Agriculture Management Premises, Durgapura, Jaipur (Raj.).

----Respondents

Connected With

D.B. Civil Writ Petition No. 10905/2023

Priyanka D/o Sukha Ram, Aged About 21 Years, Resident Of Vpo Tanwra, Deh, Tehsil Jayal, District Nagaur.

----Petitioner

Versus

1. State Of Rajasthan, Department Of Personnel, Through Its Secretary, Jaipur.
2. The State Of Rajasthan, Department Of Personnel, Through Its Joint Secretary, Jaipur.
3. The Rajasthan Staff Selection Board, Through The Chairman Of The Board, Jaipur.
4. The Secretary Of The Rajasthan Staff Selection Board, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 10948/2023

1. Mamta D/o Shri Madan Lal, Aged About 20 Years, R/o





Bhambhuo Ki Dhani, Nokhda Batiyan, District Jodhpur (Raj.).

2. Lalita D/o Hapuram, Aged About 20 Years, R/o Raiko Ki Dhani, Sirvibas Bhavi Bilada, District Jodhpur (Raj.)
3. Lalita Jat D/o Laxman Ram, Aged About 20 Years, R/o Banjakudi Baloonda, District Pali (Raj.)

----Petitioners

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Medical And Health Services, Govt Of Rajasthan, Jaipur.
2. Deputy Secretary, Department Of Personnel, (A-Gr-II), Government Of Rajasthan, Secretariat, Jaipur.
3. Mission Director, Medical Health And Family Welfare Department Rajasthan, Jaipur.
4. Chairman, Rajasthan Subordinate And Ministerial Service Selection Board, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 11200/2023

1. Divya Choudhary D/o Shri Raju Ram, Aged About 20 Years, Near Ramdev Ji Temple, Phardod, Tarnau, Tehsil Jayal, District Nagaur (Raj.).
2. Sunita D/o Shri Bishnaram, Aged About 20 Years, Dhundhwalo Ki Dhani, Alay, District Nagaur (Raj.).
3. Priyanka Sinwar D/o Shri Deva Ram, Aged About 20 Years, Badi Khatu, District Nagaur (Raj.).
4. Suman Khoja D/o Shri Ram Swaroop Khoja, Aged About 20 Years, Khojo Ka Bas, Ratkuriya, Tehsil Bhopalgarh, District Jodhpur (Raj.).
5. Muli Lakhara D/o Shri Raju Ram Lakhara, Aged About 20 Years, Jogalsar, Tehsil Sujangarh, District Churu (Raj.).
6. Suman Mahiya D/o Shri Parema Ram, Aged About 19 Years, Village Mahiyasar, Chui, Tehsil Degana, District Nagaur (Raj.).
7. Revanti Prajapat D/o Shri Shiva Ram Prajapat, Aged About 20 Years, Nabbasar, Jogalsar, Tehsil Sujangarh,





District Churu (Raj.).

8. Bhagwati Godara D/o Shri Birbal Ram, Aged About 20 Years, Village Jogalsar, Bidasar, Tehsil Sujangarh, District Churu (Raj.).
9. Manisha Gugarwal D/o Shri Hadman Ram Gugarwal, Aged About 19 Years, Balaji Nagar, Ubasi, District Nagaur (Raj.).
10. Seema D/o Shri Uma Ram Saran, Aged About 20 Years, Gorera, Rohini, District Nagaur (Raj.).
11. Pooja Choudhary D/o Shri Nema Ram, Aged About 20 Years, Kutiyasani Khurd, Tehsil Degana, District Nagaur (Raj.).
12. Pooja Dewasi D/o Shri Jiwan Ram, Aged About 20 Years, Raiko Ki Dhani, Bhawasiya, District Nagaur (Raj.).
13. Vidhya D/o Shri Kesha Ram, Aged About 20 Years, Ward No.6, Panchu, Tehsil Nokha, District Bikaner (Raj.).
14. Nisha Prajapat D/o Shri Sohan Lal Prajapat, Aged About 20 Years, Kumharo Ka Mohalla, Behind Roadways Depot, Nagaur (Raj.).
15. Ramkanwari Royal D/o Shri Jagdish Royal, Aged About 20 Years, Royal Bass, Amanda, Karlu, District Nagaur (Raj.).
16. Sarita D/o Shri Jagdish Saran, Aged About 20 Years, Chawali, Gugaryali, Tehsil Jayal, District Nagaur (Raj.).
17. Suman Kanwar D/o Shri Gajraj Singh, Aged About 20 Years, Rajiyasar Khara, Tehsil Sujangarh, District Churu (Raj.).
18. Aasha D/o Shri Rewat Ram, Aged About 20 Years, Isar Navada, Kurchi, Tehsil Mundwa, District Nagaur (Raj.)..

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, Medical And Health Services, Secretariat, Jaipur.
2. The Director (Non-Gazetted), Medical And Health Services, Health Bhawan, Jaipur.
3. Principal Secretary, Department Of Personnel, Secretariat, Jaipur.





4. The Rajasthan Subordinate And Ministerial Services Selection Board, Through Its Chairman, State Institute Of Agriculture Management Premises, Durgapura, Jaipur (Raj.).

----Respondents



D.B. Civil Writ Petition No. 11346/2023

1. Seema D/o Shri Kishan Ram, Aged About 20 Years, R/o 11, Bhakari Meghwalo Ka Bas, Bhopalgarh, District Jodhpur (Raj.).
2. Sumitra D/o Shri Ram Sukh, Aged About 20 Years, R/o Dhatarwalo Ki Dhaniya, Bhakrasani, Tehsil Luni, District Jodhpur (Raj.).
3. Leela Bishnoi D/o Shri Sona Ram, Aged About 20 Years, R/o Budh Nagar, District Jodhpur (Raj.).
4. Guddi Gurjar D/o Shri Shyam Lal, Aged About 20 Years, R/o Shiv Nath Nagar, Village / Post Rajlani, Tehsil Bhopalgarh, District Jodhpur (Raj.).
5. Pooja Babal D/o Shri Sohan Lal, Aged About 19 Years, R/o Vishnupura, Birami, Tehsil Bilara, District Jodhpur (Raj.).
6. Saroj Dhaka D/o Shri Rupa Ram, Aged About 19 Years, R/o Jaato Ka Bas, Bamna Khurd, District Nagaur (Raj.).

----Petitioners

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, Medical And Health Services, Secretariat, Jaipur.
2. The Director (Non-Gazetted), Medical And Health Services, Health Bhawan, Jaipur.
3. Principal Secretary, Department Of Personnel, Secretariat, Jaipur.
4. The Rajasthan Subordinate And Ministerial Services Selection Board, Through Its Chairman, State Institute Of Agriculture Management Premises, Durgapura, Jaipur (Raj.).

----Respondents



D.B. Civil Writ Petition No. 11597/2023

1. Pooja Kumari D/o Parmeshwar Lal, Aged About 21 Years, Resident Of Ward No. 2, Vpo Dheerwas Chhota, Tehsil Taranagar, District Churu.
2. Bindu Devi D/o Shyam Lal, Aged About 20 Years, Resident Of Nayko Ka Baas, Antroli Khurd, Tehsil Degana, District Nagaur.
3. Madeena D/o Muneer Khan, Aged About 20 Years, Resident Of Barnel Road, Jayal, Tehsil Jayal, District Nagaur.

----Petitioners

Versus

1. The State Of Rajasthan, Department Of Personnel, Through Its Secretary, Jaipur.
2. The State Of Rajasthan, Department Of Medical And Health Service, Through Its Secretary, Jaipur.
3. The Director (Non Gazetted), Medical And Health Service, Health Building, Jaipur.
4. The Rajasthan Staff Selection Board, Through The Chairman Of The Board, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 11668/2023

Rohini D/o Shri Ram Niwas, Aged About 20 Years, R/o Jato Ka Bass, Ward No. 3 Asarlai District Pali (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Department Of Medical And Health Services, Govt Of Rajasthan, Jaipur.
2. Deputy Secretary, Department Of Personnel, (A-Gr.-Ii), Government Of Rajasthan, Secretariat, Jaipur.
3. Mission Director, Medical Health And Family Welfare Department Rajasthan, Jaipur.
4. Chairman, Rajasthan Subordinate And Ministerial Service Selection Board, Jaipur.





----Respondents

D.B. Civil Writ Petition No. 12782/2023

Pooja D/o Shri Pappu Ram, Aged About 20 Years, Vishnoiyo Ka Vas, Kosana, Jodhpur.

----Petitioner

Versus

1. The State Of Rajasthan, Through Its Principal Secretary, Medical And Health Services, Secretariat, Jaipur.
2. The Director (No-Gazetted), Medical And Health Services, Health Bhawan, Jaipur.
3. Principal Secretary, Department Of Personnel, Secretariat, Jaipur.
4. The Rajasthan Subordinate And Ministerial Services Selection Board, Through Its Chairman, State Institute Agriculture Management Premises, Durgapura, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 13474/2023

Samriddhi D/o Devendra Goswami, Aged About 20 Years, Resident Of 298, Shiv Mandir Ke Saamne, Ratanada, Jodhpur, Rajasthan 342001.

----Petitioner

Versus

1. The State Of Rajasthan, Department Of Personnel, Through Its Secretary, Jaipur.
2. The State Of Rajasthan, Department Of Personnel, Through Its Joint Secretary, Jaipur.
3. The Rajasthan Staff Selection Board, Through Its Chairman Of The Board, Jaipur.
4. The Secretary Of The Rajasthan Staff Selection Board, Jaipur.
5. The Director (Non-Gazetted), Medical And Health Services, Health Bhawan, Jaipur.

----Respondents





For Petitioner(s) : Mr. Yashpal Khileree
 Mr. Hapu Ram
 Mr. Mahaveer Bhanwariya
 Mr. Jayant Mahecha

For Respondent(s) : Mr. Rajesh Panwar, AAG with
 Mr. Ayush Gehlot
 Mr. N.S. Rajpurohit, AAG with
 Ms. Aditi Sharma
 Mr. Manish Patel



HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE ANUROOP SINGHI

Date of conclusion of arguments:	12/11/2025
Date on which judgement was reserved:	12/11/2025
Whether the full judgement or only the operative part is pronounced:	Full judgment
Date of pronouncement:	08/01/2026

Reportable

Per: Hon'ble Mr. Justice Anurop Singh

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A. The *lis*

1. The present writ petitions have been filed laying challenge to Rule 6 of the Rajasthan Contractual Hiring to Civil Posts Rules,



2022 (hereinafter referred to as "**Rules of 2022**") which prescribes a minimum age of 21 years for hiring persons on contract basis in the State Government and has been invoked for making contractual appointment on the post of Auxiliary Nurse Midwife/Health Worker (Female) (hereinafter referred to as "**A.N.M./Health Worker (Female)**"), more particularly, considering the fact that Rajasthan Medical Health and Subordinate Service Rules, 1965 (hereinafter referred to as "**Rules of 1965**") stipulates a minimum age of 18 years for making regular appointment on the same very post. Thus, it is this distinction made by the State Government (hereinafter referred to as "**respondent – State**") in prescribing the minimum age for making appointment on the same post, which has resulted into filing of the present writ petitions.

B. Facts

2. The rival versions portraying the relevant facts, having regard to the identicalness in the challenges, are being recited from the pleadings of D.B. Civil Writ Petition No.1160/2024 titled as Shobha Vs. State of Rajasthan and Ors.

3. The prayers made in the said writ petition reads as under:

"It is, therefore, most humbly and respectfully prayed that the record of the case may kindly be called for and this petition for writ may kindly be allowed and by an appropriate writ, order and directions: -

a) The rule 6 of the Rajasthan Contractual Hiring to Civil Posts Rules, 2022 (Annex.7) with respect to fixing the minimum age 21 year in place of 18 year may kindly be declared ultra vires to the Constitution of India;





b) the fixing the minimum age of 21 year in place of 18 year for appointment on the post of Auxiliary Nurse Midwife / Health Worker (Female) under the notification dated 11.01.2022 ie. Rajasthan Contractual Hiring to Civil Posts Rules, 2022 Annex.7 be declared illegal and unconstitutional and accordingly respondent State may kindly be directed to substitute the age of 18 year in place of 21 year in the notification dated 11.01.2022 Annex.7 as well as the advertisement dated 06.07.2023 (Annex.5)/corrigendum advertisement dated 12.01.2024 (Annex.6) forthwith;

c) The petitioner be declared qualified and eligible to participate in the selection process for the post of Auxiliary Nurse Midwife / Health Worker (Female) pursuant to advertisement dated advertisement 06.07.2023 (Annex.5) and corrigendum dated 12.01.2024 (Annex.6);

d) the respondents may kindly be directed to accept the application form of the petitioner on hard copy/ off-line against the post of Auxiliary Nurse Midwife /Health Worker (Female) notify vide advertisement (Annex.5) dated and dated 06.07.2023 corrigendum 12.01.2024 advertisement (Annex.6) and consider her candidature for appointment on the post of ANM as per merit with all consequential benefits;

e) Without prejudice to above prayers, the respondents may kindly be directed to issue new advertisement for newly created/ sanctioned posts of Health Worker (Female)/ ANM vide corrigendum advertisement. dated 12.01.2024 (Annex.6) and invite afresh application form from the eligible candidates;

f) any other writ, order, directions as this Hon'ble Court deems just, fit and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner; AND

g) cost of this writ petition be awarded in favour of the petitioner."

4. The respondent – Department of Medical, Health and Family Welfare, State of Rajasthan (hereinafter referred to as "**respondent – Department**") issued an Advertisement dated



19.05.2023 (Annexure-4) for inviting applications from eligible candidates for making substantive/regular appointments to the post of A.N.M./Health Worker (Female) under the Rules of 1965. The prescribed qualifications required passing Xth Standard with Auxiliary Nurse Midwifery Training/Health Worker (Female) Course and registration in the Rajasthan Nursing Council as a B-Grade Nurse. The said advertisement, while referring to Rule 10 of the Rules of 1965, stipulated a minimum age of 18 years and a maximum age of 40 years to be computed as on 01.01.2024. It is pertinent to note here that under this criteria, the petitioner(s) were eligible to apply for the said post. Relevant essential qualifications mentioned in the Advertisement dated 19.05.2023 reads as under:

क) 1-महिला स्वास्थ्य कार्यकर्ता पद हेतु न्यूनतम शैक्षणिक योग्यता

Xth Standard with Auxilary Nurse Midwifery Training/Health Worker Female course passed and registered in Rajasthan Nursing Council as B Grade Nurse.

अधिमान्य योग्यता-देवनागरी लिपि में हिन्दी भाषा का ज्ञान एवं राजस्थान की संस्कृति का ज्ञान।

नोट:-शैक्षणिक योग्यता माध्यमिक शिक्षा बोर्ड, राजस्थान के अनुसार समकक्ष होनी चाहिए। राजस्थान

नर्सिंग कौसिल, जयपुर द्वारा जारी पंजीयन क्रमांक लिखना अनिवार्य है। पंजीयन के अभाव में पंजीयन संबंधी अन्य कोई दस्तावेज मात्र नहीं होगा। अभ्यर्थी का ऑनलाईन आवेदन की अन्तिम तिथि तक राजस्थान नर्सिंग कौसिल में पंजीयन होना अनिवार्य है। उक्त के अतिरिक्त अभ्यर्थी के लिये राजस्थान चिकित्सा एवं स्वास्थ्य अधीनस्थ सेवा नियम 1965 (यथा संशोधित) में यथा विहित समस्त अन्य योग्यताएं पूर्ण करना अनिवार्य है। वह आवेदित पद के लिये इन नियमों के तहत नियुक्ति हेतु अयोग्य नहीं होना चाहिये।

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ग) आयु सीमा

आयु के संबंध में राजस्थान चिकित्सा एवं स्वास्थ्य अधीनस्थ सेवा नियम 1965 (यथा संशोधित) के नियम 10 के प्रावधान लागू होंगे:-

1. आयु की गणना 01.01.2024 को आधार मानकर की जायेगी।
2. आवेदक जन्मतिथि हेतु सैकेण्डरी की अंकतालिका की प्रति एवं अंकतालिका में जन्मतिथि अंकित न होने पर सैकेण्डरी परीक्षा उत्तीर्ण करने का प्रमाण पत्र (Certificate), जिससे जन्मतिथि प्रमाणित होती हो, अपलोड करें।
3. **दिनांक 01.01.2024 को न्यूनतम आयु 18 वर्ष एवं अधिकतम 40 वर्ष होनी चाहिये।**
4. कार्मिक विभाग की अधिसूचना दिनांक 23.9.2022 "The person who was *within the age limit on 31.12.2020 shall be deemed to be within the age limit upto 31.12.2024*" के अनुसार अधिकतम आयु सीमा में छूट देय होगी।
5. Thereafter, the Rajasthan Subordinate and Ministerial Services Selection Board (hereinafter referred to as "**respondent – Board**") issued an Advertisement dated 06.07.2023 (Annexure-5) under the Rules of 2022, promulgated vide notification dated 11.01.2022, for inviting applications from eligible candidates for making contractual appointments on the same post of A.N.M./Health Worker (Female). The educational qualifications under the second advertisement being made for contractual appointment remained identical to those prescribed for making regular appointment under the first Advertisement dated 19.05.2023. However, Clause 8 of the second advertisement introduced a revised minimum age requirement, mandating that the applicant must have attained 21 years of age as on 01.01.2024.
6. The only substantive change in these two advertisements *qua* the eligibility of the applicants was thus, the enhancement of the minimum age from 18 years to 21 years. Owing to this





change, the petitioner(s) became ineligible to apply under the second advertisement. Relevant qualifications as mentioned in the second Advertisement dated 06.07.2023 reads as under:

"6. पात्रता एवं शैक्षणिक योग्यता :-

Essential Qualification-

1. Xth Standard with Auxiliary Nurse Midwifery Training/ Health Worker Female course passed.

and

2. Registered in Rajasthan Nursing Council As B Grade Nurse.

नोट:- शैक्षणिक योग्यता आवेदन की अंतिम तिथि से पूर्व तक अर्जित करना अनिवार्य है। आवेदन की अंतिम तिथि के पश्चात अर्जित योग्यता मान्य नहीं होगी, ऐसे अभ्यर्थी अपात्र होंगे।

अन्य शर्तें:-

1. सभी महिला स्वास्थ्य कार्यकर्ता (ए.एन.एम.) (संविदा) अभ्यर्थियों को आवेदन के समय राजस्थान नर्सिंग कांसिल में पंजीकृत डोना अनिवार्य है अथवा आवेदन करते समय राजस्थान नर्सिंग कांसिल में पंजीकरण हेतु आवेदन किया हुआ होना अनिवार्य है। परन्तु चयनित अभ्यर्थियों द्वारा महिला स्वास्थ्य कार्यकर्ता (ए.एन.एम.) (संविदा) के पदस्थापन से पहले प्रमाण पत्रों के सत्यापन के समय राजस्थान नर्सिंग कांसिल का पंजीयन प्रमाण पत्र प्रस्तुत करना अनिवार्य है, अन्यथा अभ्यर्थी का चयन निरस्त कर दिया जागा।

2. महिला स्वास्थ्य कार्यकर्ता (ए.एन.एम.) (संविदा) का पद पूर्ण रूप से संविदा आधारित पद है तथा राज्य सरकार के निर्देशों के अनुसार यह पद केवल एक वर्ष या बढ़ी हुई अवधि या परियोजना अवधि तक होगा। संविदा के आधार पर नियुक्ति संविदा अवधि समाप्त होते ही स्वतः ही समाप्त हो जायेगी। इसके लिए अलग से कोई आदेश जारी करने की कोई आवश्यकता नहीं होगी।

3. सक्षम प्राधिकारी के पास महिला स्वास्थ्य कार्यकर्ता (ए.एम.एम.) (संविदा) के पदों को बढ़ाना, घटाना या निरस्त करना/प्रत्याहारित करने का अधिकार होगा और इन पदों के नियम एवं शर्तों को संशोधन करने का अधिकार होगा।

4. सक्षम प्राधिकारी के पास इस विज्ञापन को बिना कारण बताये एवं बिना पूर्व सूचना के निरस्त करने का अधिकार होगा।

5. अभ्यर्थी किसी भी राजकीय सेवा के लिए अयोग्य घोषित किया हुआ नहीं होना चाहिए या उसे राजकीय सेवा से अनुशासनात्मक आधार पर सेवा से पृथक किया हुआ नहीं होना चाहिए।

6. ऐसे अभ्यार्थी इस भर्ती के लिए पात्र नहीं होगे जिन्हें अनैतिक आचरण के किसी भी मामले में दोष सिद्ध पाया गया हो।





7. विज्ञापन में दर्शायी गयी शर्तें और कार्य का विवरण प्रतिकात्मक है और सक्षम प्राधिकारी को कार्यक्रम के हित में इस में परिवर्तन/संशोधन करने का अधिकार होगा।

8. इस विज्ञापन या इसमें वर्णित शर्तों में कोई परिवर्तन या अद्यतन करने की सूचना बोर्ड की वेबसाइट के माध्यम से दी जायेगी।

अन्य योग्यताएँ :-

(1) स्वास्थ्य:- उक्त पद पर भर्ती के लिए उम्मीदवार अच्छे मानसिक और शारीरिक स्वास्थ्य का होना चाहिए और वह ऐसे किसी मानसिक या शारीरिक दोष से मुक्त होना चाहिए जो कि उक्त पद के रूप में उसके कर्तव्यों के कुशल पालन में बाधा डाल सके और यदि यह चयनित कर लिया जाता है तो उसे इसके लिये अपना आरोग्यता प्रमाण पत्र उस जिले के मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी या मेडीकल ज्यूरिस्ट द्वारा हस्ताक्षरित प्रस्तुत करना होगा जिस जिले में सामान्यतः यह निवास करता है।

(2) चरित्र:- सेवा में सीधी भर्ती के लिए आवेदक का चरित्र ऐसा होना चाहिये जित्तसे कि वह उक्त पद पर नियुक्ति के लिये योग्य हो सके। उसे सदचरित्र का प्रमाण पत्र ऐसे विश्वविद्यालय, स्कूल या कॉलेज जहां उसने अंतिम शिक्षा प्राप्त की हो, के प्रद्यानाधार्य / शिक्षा अधिकारी के द्वारा प्रदत्त, प्रस्तुत करना होगा और दो ऐसे उत्तरदायी व्यक्तियों के प्रमाण पत्र भी प्रस्तुत करने होंगे जो आवेदन-पत्र की दिनांक से 6 महीने पहले के न हो और अभ्यर्थी के रिश्तेदार द्वारा दिये हुये नहीं हों।

...

8. आयु:- आवेदक 1, जनवरी 2024 को 21 वर्ष की आयु प्राप्त कर चुका हो तथा 40 वर्ष का नहीं हुआ हो।

उच्चतम आयु सीमा में अन्य विशेष श्रेणियों में छूट निम्न प्रकार देय होगी-

1. अधिकतम आयु सीमा में -

(क) सामान्य वर्ग की महिला अभ्यर्थियों के मामले में 5 वर्ष की छूट दी जायेगी।

(ख) अनुसूचित जाति/अनुसूचित जनजाति/अन्य पिछड़ा वर्ग/अति पिछड़ा वर्ग/आर्थिक रूप से कमज़ोर वर्ग की महिला अभ्यर्थियों को जो राजस्थान की मूल निवासी है, के मामले में 10 वर्ष की छूट दी जायेगी।

2. भूतपूर्व सैनिकों के मामले में अधिकतम आयु सीमा 50 वर्ष होगी परन्तु कास/वीर चक या कोई अन्य उच्च विशेष योग्यता धारकों की दशा में उच्च आयु सीमा 02 वर्ष तक शिथिल करने योग्य होगी। भूतपूर्व सैनिकों के लिये आयु में रियायत के प्रावधान कार्मिक विभाग की अधिसूचना क्रमांक एफ.5 (18) कार्मिक/क-2/84 पार्ट/॥ दिनांक 17.4.2018 एवं दिनांक 22.12.2020 के अनुसार भी लागू होंगे।

3. विधवाओं और विच्छिन्न विवाह महिलाओं के मामलों में कोई आयु सीमा नहीं होगी किन्तु राज्य सरकार द्वारा निश्चित की गई सेवानिवृत्ति आयु से उसकी आयु कम होनी चाहिये।

स्पष्टीकरण:- विधवा महिला के मामले में उसे सक्षम प्राधिकारी से अपने पति की मृत्यु का प्रमाण पत्र प्रस्तुत करना होगा तथा विच्छिन्न विवाह महिला के मामले में सक्षम न्यायालय द्वारा पारित डिकी/आदेश प्रस्तुत करना होगा।

4. राजस्थान दिव्यांगजन अधिकार (संशोधित) नियम-2021, के नियम 6(A) में किए गए प्रावधान के अनुसार संबंधित सेवा नियमों में निर्धारित अधिकतम आयु सीमा में





दिव्यांगजनों को 05 वर्ष की आयु सीमा में छूट दी जाएगी। विभिन्न श्रेणियों के दिव्यांगजनों को आयु सीमा में छूट सेवा नियमों में निर्धारित आयु सीमा में छूट के अतिरिक्त होगी।

नोट-

(क) आयु संबंधी छूट की अधिक जानकारी के लिये राजस्थान संविदा भर्ती नियम 2022 यथा संशोधित एवं समय-समय पर राज्य सरकार द्वारा जारी संशोधन, निर्देश, परिपत्र एवं अधिसूचना का अध्ययन करें।

(ख) उपरोक्त बिन्दु 8 की क.सं. 1 से 4 पर वर्णित आयु सीमा में छूट के प्रावधान "Non Cumulative" है अर्थात् अभ्यर्थियों को उपरोक्त क.सं. 1 से 4 में वर्णित किसी भी एक प्रावधान का अधिकतम आयु सीमा में छूट का लाभ दिया जायेगा। एक से अधिक प्रावधानों को जोड़ कर छूट का लाभ नहीं दिया जायेगा।"

7. The last date for submitting applications under the second Advertisement dated 06.07.2023 was 08.08.2023. After closure of the application window as provided in the second Advertisement dated 06.07.2023, vide corrigendum dated 12.01.2024 (Annexure-6), the respondent – Board added 1000 additional newly created contractual posts to the existing vacancies already notified under the second Advertisement dated 06.07.2023. The corrigendum increased the number of posts without inviting fresh applications.

8. In the interregnum, the date of written examination initially fixed in the second Advertisement dated 06.07.2023 as 24.09.2023 was rescheduled and the revised date of examination was notified as 03.02.2024.

C. Challenge made

9. As the Advertisement dated 06.07.2023 read with the corrigendum dated 12.01.2024 invited applications for appointment on the contractual basis and in terms of the impugned Rule 6 of the Rules of 2022, it mandated attainment of 21 years of age on the 1st January following the last date for





receipt of the applications, it is this increased age eligibility in the impugned rule which has been challenged by the petitioners herein.

Thus, it is this prescription of minimum age of 21 years in the Rules of 2022 as against the minimum age of 18 years prescribed in the Rules of 1965, which has resulted in an anomalous situation on account of which an applicant, who though is eligible for regular recruitment under the first Advertisement dated 19.05.2023, yet at the same time is ineligible for contractual recruitment on the same post having same qualifications with the same department under the second Advertisement dated 06.07.2023.

10. Therefore, it is the issuance of this second Advertisement dated 06.07.2023 for contractual appointment read with corrigendum dated 12.01.2024, which has compelled the present petitioner(s) to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

D. Submissions on behalf of the Petitioner(s):

11. Learned counsel Mr. Hapu Ram, Mr. Mahaveer Bhanwariya, Mr. Yashpal Khileree and Mr. Jayant Mahecha appearing for the petitioners submit that the action of the respondents in prescribing a minimum age of 21 years for contractual appointment under the Rules of 2022 is grossly arbitrary, discriminatory and violative of Articles 14, 16 and 19(1)(g) of the Constitution of India. It is submitted that the minimum age for regular recruitment to general services in various departments of the State Government is 18 years, and therefore, prescribing the





minimum age of 21 years under Rule 6 of the Rules of 2022 for contractual appointment lacks any basis and fails to satisfy the test of reasonable classification. Relying upon the judgment of the Hon'ble Supreme Court in the case of **State of West Bengal Vs. Anwar Ali Sarkar** reported in **(1952) 1 SCC 1**, counsel submits that the discrimination made by the respondents fails to pass the test of *intelligible differentia* as no permissible classification can be made between the applicants applying under these two advertisements and thus, Rule 6 of the Rules of 2022, which forms the basis of such classification is manifestly arbitrary.

12. Learned counsel for the petitioner submits that the age differentia bears no rational nexus with the object sought to be achieved and hence, the impugned Rule 6 of the Rules of 2022 deserves to be struck down. Placing reliance on the judgment of the Hon'ble Supreme Court in **Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538**, it is urged that Article 14 forbids arbitrariness in State action and permits classification only if it is reasonable, non-arbitrary and founded upon an *intelligible differentia* having a rational nexus to the object sought to be achieved. It is argued that the distinction created between candidates aged 18 years and 21 years, who are otherwise fully qualified and eligible for regular recruitment, is wholly arbitrary, artificial and evasive, and therefore offends the principle of equal protection of laws. Reliance is also placed upon the recent judgment of the Hon'ble Supreme Court in the case of **Sukanya Shantha Vs. Union of India & Ors.** reported in **(2024) 15 SCC 535**, wherein the constitutional standards laid down under Article





14 of the Constitution of India were summarized and thus, it was argued that as the distinction in age made by Rule 6 of Rules of 2022 fails to meet any of the said standards, the same deserves to be declared as ultra vires.

13. Learned counsel for the petitioner submits that the post of A.N.M./Health Worker (Female) in regular recruitment and on contractual basis is the same in all material respects including educational qualifications, eligibility criterias, duties and responsibilities to be performed, yet, the minimum age for regular appointment is 18 years, while for contractual appointment it is fixed at 21 years. This distinction is devoid of any rational justification and discriminates within a class of qualified candidates without any intelligible basis.

14. Learned counsel further submits that Rule 10 of the Rules of 1965 prescribes the minimum age of 18 years and maximum age of 40 years for regular recruitment. Similarly, under Rule 8A of the Rajasthan Service Rules, 1951, the minimum and maximum age for entry into Government service is 16 and 25 years respectively. It is contended that the prescription of a higher minimum age under Rule 6 of the Rules of 2022 is inconsistent with the existing statutory service framework, and therefore arbitrary and unjustified.

15. Learned counsel further submits that the objective of creating uniform rules for contractual hiring cannot be a justification for imposing an arbitrary age eligibility criteria. The uniform application of an unreasonable rule does not make it valid. The rule-making authority must apply its mind to the





specific requirements of each post, which has not been done in the present case. As a matter of fact the eligibility *qua* the age of the candidates has to be consistent and uniform for a post, both for regular appointment as well as contractual appointment.

16. Learned counsel further submits that under Section 11 of the Indian Contract Act, 1872, a person who has attained the age of majority, i.e., 18 years, is competent to contract. Since contractual engagement under the Rules of 2022 is in the nature of an employment contract with the State, there is no legal impediment for the consideration of candidates aged 18 years and above. The impugned prescription of a minimum age of 21 years, therefore lacks legal foundation.

17. Learned counsel also submits that the arbitrary exclusion of otherwise eligible major candidates solely on the ground of enhanced age has resulted in denial of equal opportunity in public employment in violation of Article 16 of the Constitution of India. Thus, Rule 6 of the Rules of 2022, by fixing the minimum age at 21 years instead of 18 years, operates discriminately against the petitioners and violates their fundamental right to equality in matters of public employment.

18. Learned Counsel further submits that the justification of the respondent – State that a higher age would ensure maturity, is wholly untenable as the State's own rules being Rules of 1965 for making regular appointments on the post of A.N.M./Health Worker (Female) considers age of 18 years to be sufficient and justified. Thus, it is illogical to suggest that a higher level of maturity is required for a contractual position.





19. Learned counsel for the petitioners further assails the Corrigendum dated 12.01.2024 (Annexure-6), whereby 1000 additional posts were inserted into the already notified vacancies under the second Advertisement dated 06.07.2023, after the closure of the application window on 08.08.2023. It is contended that increasing the number of posts without inviting fresh applications is arbitrary, illegal, and contrary to settled principles of recruitment, as it deprives a large pool of eligible candidates including the petitioners from submitting their applications.

20. Learned counsel also submits that fixing 21 years as the minimum age threshold frustrates the right to practice a profession under Article 19(1)(g) of the Constitution, as candidates who have completed the Auxiliary Nurse Midwifery course, whose minimum age of entry is 17 years and duration for the course is 1.5 to 2 years, generally becomes qualified by the age of 19 years. Denying such qualified candidates the opportunity to participate in the recruitment process is against fair play and equity.

It is also argued that by excluding the petitioners from participating in the recruitment process, the respondents have acted contrary to the principles of natural justice, procedural fairness, equity and good conscience. No reasons have been assigned for imposing a higher age requirement for contractual appointment nor has any opportunity been afforded to the petitioners, even though their rights to be considered for public employment stand adversely affected.



21. Finally, the learned counsel submits that the impugned action of the respondents is discriminatory and arbitrary, causing grave prejudice as the petitioners will be deprived of consideration for appointment for the next several years solely on account of an unjustified classification.

Accordingly, it was prayed that Rule 6 of the Rules of 2022, insofar as it prescribes 21 years as the minimum age for appointment on the post of A.N.M./Health Worker (Female) on contractual basis deserves to be declared as unconstitutional and ultra vires and consequently, the second Advertisement dated 06.07.2023, so also the corrigendum dated 12.01.2024, to the extent it prescribes the minimum age for eligibility as 21 years be declared as bad in law and the respondents be directed to assess the eligibility of the petitioners by considering minimum eligible age as 18 years.

E. Submissions on behalf of the Respondents:

22. *E-converso*, Mr. Rajesh Panwar, learned Additional Advocate General with learned counsel Mr. Ayush Gehlot, Mr. N.S. Rajpurohit, learned Additional Advocate General with Learned counsel Ms. Aditi Sharma and Mr. Manish Patel appearing on behalf of the respondents submit that every piece of legislation or rule enjoys a presumption of constitutionality and the petitioners have failed to discharge the burden of demonstrating any arbitrariness, discrimination, lack of legislative competence, or violation of fundamental rights in Rule 6 of the Rules of 2022. To substantiate the said submission, reliance is placed on the





Constitution Bench judgment of the Hon'ble Supreme Court in
A.C. Aggarwal, Sub-Divisional Magistrate v. Ram Kali, AIR 1968 SC 1, wherein it was held that:-

"5. ... the presumption is always in favor of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, and its laws are directed to problems made manifest by experience and its discriminations are based on the adequate grounds."

It is, thus, submitted that unless the provision is shown to be manifestly arbitrary, its validity deserves to be upheld.

23. Proceeding further, learned counsel submits that fixation of minimum and maximum age limits lies exclusively within the policy domain of the rule-making authority, and judicial interference is permissible only where such prescriptions are manifestly arbitrary. In this regard, reliance is placed on judgment of the Hon'ble Supreme Court in the case of **Dr. Ami Lal Bhat v. State of Rajasthan, (1997) 6 SCC 614**, wherein the Hon'ble Supreme Court held:-

"5. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-





off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, *per se*, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. ..."

Further reliance is placed upon the case of **Hirandra Kumar Vs. High Court of Allahabad, (2020) 17 SCC 401**, wherein the Hon'ble Supreme Court held:-

"28. We do not find any merit in the grievance of discrimination. For the purpose of determining whether a member of the Bar has fulfilled the requirement of seven years' practice, the cutoff date is the last date for the submission of the applications. For the fulfillment of the age criterion, the cutoff date which is prescribed is the first day of January following the year in which a notice inviting applications is being published. Both the above cut off dates are with reference to distinct requirements. The several year practice requirement is referable to the provisions of Article 223(2) of the constitution. The prescription of an age limit of 45 years, or as the case may be of 48 years for reserved category candidates is in pursuance of the discretion vested in the appointing authority to prescribe an age criterion for recruitment to the JHS.

29. For the same reason, no case of discrimination or arbitrariness can be made out on the basis of a facial





comparison of the higher Judicial service Rules, with the Rules governing Nyayik Sewa. Both sets of rules cater to different cadres. A case of discrimination cannot be made out on the basis of a comparison of two sets of rules which govern different cadres.

30. For the above reasons, we hold that there is no merit in the challenge to the constitutional validity of Rules 8 and 12. We concur with the reasoning of the high Court in upholding Rules 8 and 12 in the judgment noted earlier."

These pronouncements, according to the learned counsel for the respondents, squarely covers the issue at hand and in light of the same, the writ petitions deserves to be dismissed.

24. Learned counsel further submits that the similar issue has already been considered by this Court in ***S.B. Civil Writ Petition No. 4383/2023***, wherein learned Single Judge vide its order dated 16.03.2023 has dismissed the challenge laid to a clause of advertisement providing the aforesaid age criterion. Hence, the present challenge deserves to meet the same fate of dismissal.

25. Learned Counsel submits that the Rules of 1965 and the Rules of 2022 operates in separate spheres and therefore, cannot be equated. While the Rules of 1965 provides for a substantive appointment, Rules of 2022 merely provides for hiring on contractual basis, which by itself is a sufficient distinction and enables the State to prescribe different age eligibility and thus, there is no anomaly or discrimination, so as to make a rule unconstitutional. The age limit prescribed under Rules of 2022 is





uniform for all contractual hirings and thus, there is no discrimination whatsoever.

26. Learned counsel submits that the object and scope of the Rules of 2022 is to utilize the services of experts and knowledgeable persons of the field who are to perform skilled work on contractual basis. The contractual hiring under these Rules is for implementation of departmental schemes, projects and centrally sponsored schemes, and hence the criterion cannot be equated with regular recruitment. The difference of 2-3 years in regular recruitment and contractual hiring is rational and hence, deserves to be maintained.

27. Learned counsel for the respondents, while referring to the provisions of Right of Children to Free and Compulsory Education Act, 2009, submitted that considering the age criteria of a child provided under the said Act, an applicant would normally clear class 12 examination around the age of 19 years and pursuing a diploma course thereafter would make a candidate arrive at the age of 20-21 years and thus, the plea to reduce the minimum age from 21 years to 18 years is contrary to the educational trajectory and is misconceived.

28. Learned counsel further argued that the argument based on attaining the age of majority for entering into contracts is untenable and it deserves to be nipped in the bud for the reason that the rationale of one legislation cannot be invoked to challenge another and the requirements of Rule 6 were envisaged by subject-matter experts, with discretion resting solely with the rule-making authority, not with interested persons.





29. Learned counsel also submits that the Rules were framed after due consideration by the competent authorities and are uniformly applied across all the departments and cannot be termed arbitrary for a single recruitment. Learned counsel further submits that no segregation for the post of A.N.M./Health Worker (Female) can be made under the rules where specialized services of skilled persons are taken on contractual basis. Allowing such a challenge would have a catastrophic impact on all other recruitments already conducted under these Rules. It is further submitted that no statutory or fundamental right of the petitioners has been infringed, as eligibility to apply for government service is not a fundamental right. The petitioners have not shown any nexus between the impugned Rule and arbitrariness, nor have they demonstrated any legal injury sufficient to confer *locus standi*. It has been further submitted that in present case, petitioners are virtually asking for rewriting of a validly passed legislation and the same cannot be allowed under any circumstances and therefore, the present writ petition deserves to be rejected on this ground alone.

30. Learned counsel additionally submits that Article 14 and Article 16 do not restrict the power of the Government to provide for a valid classification for posts and different age criteria has been prescribed considering the specific rules and the petitioners have not shown how the impugned Rule 6 of the Rules of 2022 lacks nexus with the object of the said rules. The rules are being uniformly applied to all departments across all posts.



31. Learned Counsel further submits that every condition or guideline may advantage some and disadvantage others, but such grounds cannot be used to seek legislation through writ jurisdiction. The petitioners merely seek substitution of the minimum age of 21 years with 18 years without demonstrating how fixation of minimum age criteria is a matter of right or how any discrimination is caused. The petition is thus, based on surmises and conjectures and no legal injury or breach of statutory duty has been established to confer *locus standi*. A writ under Article 226 lies only for enforcing statutory or legal rights, and a 'person aggrieved' is one who is wrongfully deprived of a legal entitlement, not one facing personal inconvenience. Therefore, the writ petition is neither maintainable nor sustainable and thus, no ground exists to assail the validity of Rule 6 of the Rules of 2022, and the present writ petition(s) deserves to be dismissed.

32. Heard learned counsel for the parties and perused the record.

F. Issues For Consideration:

33. On a careful perusal of the facts enumerated, arguments advanced and material on record, the issues for consideration before this Court are as to:-

(i) Whether the State Government by way of two different rules can prescribe two different age eligibility criteria for appointment to be made on the same post of A.N.M./Health Worker (female), requiring same qualifications for performing the similar nature of work,



merely on the basis of different mode of appointment, one being contractual and another being regular?

(ii) Whether prescribing the minimum eligibility of 21 years for making contractual appointment as against the minimum eligibility of 18 years for regular appointment constitutes an *intelligible differentia* and is not arbitrary, discriminatory and violative of Article 14 and Article 16 of the Constitution of India?

G. Relevant Articles/Rules

34. Following are the relevant Articles/Rules, consideration of which would be imperative for the adjudication in hand:-

a) The Constitution of India

i) Article 14

14. Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

ii) Article 16

16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State,

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.





(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which in the opinion of State are not adequately represented in the services under the State.

b) Preamble of the Rajasthan Contractual Hiring to Civil Posts Rules, 2022

Whereas the State Government in public interest undertakes departmental Schemes/Projects/Central Sponsored Schemes/Projects for social and economic development as a welfare State. For implementation of most of these projects/schemes requires the subject matter specialists, experts and manpower and posts for which do not exists in any other Service Rules in the government for regulating appointments and conditions of service of such posts. By their very nature the development schemes/projects undertaken by the Government are usually required for short term or medium term. Therefore, State



Government needs to allow such posts to be filled in by way of hiring persons on contract basis in the State Government.

Now, therefore, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Rajasthan hereby makes the following rules, regulating the hiring of subject matter specialists, experts and manpower on contract, and the conditions of the services of persons hired to the Rajasthan Contractual Hiring to Civil Posts Rules, 2022, namely:-

c) Rule 6 of the Rajasthan Contractual Hiring to Civil Posts Rules, 2022

Rule 6. Age. - *A candidate for hiring on contract under these rules must have attained the age of 21 years on the 1st day of January next following the last date fixed for receipt of applications. The upper age limit for the appointment under these rules shall be 40 years:*

Provided that the upper age limit mentioned above shall be relaxed by:-

(i) 5 years in case of male candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes, More Backward Classes and Economically Weaker Sections.

(ii) 5 years in case of women candidates belonging to General category; and

(iii) 10 years in case of woman candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes, More Backward Classes and Economically Weaker Sections.





d) Rule 10 of the Rajasthan Medical Health and Subordinate Service Rules, 1965

10. Age. - *A candidate for direct recruitment to the service specified in the Scheduled must have attained the age of 18 years and must not have attained the age of 40 years on the first day of January following the last date fixed for the receipt of applications:*

Provided that-

- (i) that the upper age limit mentioned above may be relaxed by Government by fifteen years during first ten years;*
- (ii) the upper age limit mentioned above shall be relaxed by,-*
 - (a) 5 years in the case of male candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and More Backward Classes and Economically Weaker Sections; (b) 5 years in the case of woman candidates belonging to General category and;*
 - (c) 10 years in the case of woman candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward classes and More Backward Classes and Economically Weaker Sections;*

H. Discussion and Analysis

35. The bedrock of the challenge made to the validity of the Rule 6 of the Rules of 2022 is founded on Article 14 of the Constitution of India which guarantees to any person equality before law. It is very well established that while Article 14 prohibits arbitrary discrimination and forbids class legislation, it permits reasonable classification for the purposes of legislation. Thus, the impugned





Rule 6 of the Rules of 2022 has to be tested on the touchstone of reasonable classification which have developed and evolved several decades ago and continues to be a dominant test permeating our constitutional discourse.

36. The Hon'ble Supreme Court in the case of **Sukanya** (supra) had the occasion to discuss the contours of Article 14. Para 32 and 33 of the said judgment reads as under:-

"32. Article 14 guarantees that the "State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Equality is a crucial aspect of the constitutional vision. Immediately after the adoption of the Constitution, this Court laid down the standard to test the validity of laws against Article 14. In a Constitution Bench decision in Charanjit Lal Chowdhury v. Union of India [Charanjit Lal Chowdhury v. Union of India, 1950 SCC 833 : (1951) 21 Comp Cas 33 : 1950 SCR 869] , B.K. Mukherjea, J. articulated that a classification under Article 14 "should never be arbitrary". It was held that such classification must always "rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made". If a classification is "made without any substantial basis", it should be "regarded as invalid". The principle of classification was reiterated in a subsequent Constitution Bench decision in State of Bombay v. F.N. Balsara [State of Bombay v. F.N. Balsara, 1951 SCC 860 : 1951 SCR 682]

33. Later, a seven-Judge Bench decision in State of W.B. v. Anwar Ali Sarkar [State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1] solidified the requirement of the twin test under Article 14. Speaking for the Court, S.R. Das, J. held: (SCC p. 62, para 85)





"85. ... In order to pass the test, two conditions must be fulfilled, namely: (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia, which is the basis of the classification, and the object of the Act are distinct things, and what is necessary is that there must be a nexus between them. In short, while the article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained."

After referring to various other celebrated judgments delivered by the Hon'ble Supreme Court, the constitutional standards laid down by the Hon'ble Supreme Court under Article 14 were summarized as under:

"42. The constitutional standards laid down by the Court under Article 14 can be summarised as follows. First, the Constitution permits classification if there is intelligible differentia and reasonable nexus with the object sought. Second, the classification test cannot be merely applied as a mathematical formula to reach a conclusion. A challenge under Article 14 has to take into account the substantive content of equality which mandates fair treatment of an individual. Third, in undertaking classification, a legislation or subordinate legislation cannot be manifestly arbitrary i.e. courts must adjudicate whether the legislature or executive acted capriciously, irrationally and/or without adequate





determining principle, or did something which is excessive and disproportionate. In applying this constitutional standard, courts must identify the "real purpose" of the statute rather than the "ostensible purpose" presented by the State, as summarised in ADR [Assn. for Democratic Reforms (Electoral Bond Scheme) v. Union of India, (2024) 5 SCC 1 : (2024) 243 Comp Cas 115] . Fourth, a provision can be found manifestly arbitrary even if it does not make a classification. Fifth, different constitutional standards have to be applied when testing the validity of legislation as compared to subordinate legislation."

37. Also, in the case of ***State of Andhra Pradesh and Ors. Vs. Dr. Rao, V.B.J. Chelikani and Ors.***, reported in **2024 SCConline SC 3432**, while referring to various judgments delivered by the Hon'ble Supreme Court which has led to evolution of law on Article 14, it was held that unless a law meets the criterias of substantive equality, it would violate Article 14 of the Constitution of India. Para 48, 49, 52 and 53 of it reads as under:-

"48. *The test of reasonable classification, developed several decades ago, continues to be a dominant test permeating our constitutional discourse. It consists of two prongs:*

- (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group; and*
- (ii) the differentia must have a rational relation with the object sought to be achieved by the statute/policy in question.*

49. Referring to the two-fold classification test, a Constitution Bench of this Court in *Subramanian Swamy v. Director, Central Bureau of Investigation, [(2014) 8 SCC 682]* emphasised that there must be a nexus between the basis of the



classification and the object of the legislation/policy under consideration. The Court also referred to its earlier Constitution Bench decision in *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, (AIR 1958 SC 538) which observes that the legislature is free to recognise varying degrees of harm and may confine its restrictions on classification to those cases where the need is most evident. However, the courts can interfere when there is nothing on the face of law or the surrounding circumstances which reasonably support the classification. In such cases, the presumption of constitutionality does not extend to suggesting that there are always undisclosed reasons for subjecting certain individuals or entities to discriminatory legislation. The rationale for classification may be specified in the statute, policy etc., or inferred from the surrounding circumstances known or brought to the notice of the court.

...

52. The basis of classification, and object of the legislation are distinct things. Article 14 postulates the need for a rational nexus. Therefore, mere designation of a classification based on an identified objective does not lead to an automatic satisfaction of Article 14. Such an approach can devolve into legal formalism, which risks disregarding the substantive implications of the constitutional guarantee of equality. This Court, to avoid such formalism, has transitioned from an exclusive reliance on the test of classification to a concurrent application of the doctrine of arbitrariness when actions are not grounded in valid reasons. Article 14 of the Constitution prohibits class discrimination by conferring privileges or imposing liabilities on individuals arbitrarily selected from a larger group in similar circumstances concerning the privileges sought or the liabilities imposed. The classification must never be arbitrary, artificial or evasive.

53. The foundations of arbitrariness in the context of the classification test were laid by Bose J. in *State of West Bengal v. Anwar Ali Sarkar* [(1952) 1 SCC 1] and subsequently in *Kathi Raning Rawat v. State of Saurashtra* [(1952) 1 SCC 215]. Bose





J. has questioned the *propriety* of the classification test by propounding that mere classification by itself is not enough, for the simple reason that anything can be classified and every discriminatory action must of necessity fall in some category of classification. Classification is nothing more than dividing of one group of things from another, and unless some difference or distinction is made in a given case, no question under Article 14 can arise. Mere classification is only a means of attaining the desired result. Therefore, the ends cannot be entirely ignored and consequently, the Court in a limited way is not precluded from examining the legitimacy of the legislative object."

38. Thus, the two fundamental test of reasonable classification are:-

- (i) the classification must be founded on an *intelligible differentia* which distinguishes persons or things that are grouped together from others that are left out of the group; and
- (ii) the differentia must have a rational nexus with the object sought to be achieved by the statute/policy in question.

Applying these tests on the issues under consideration, it is to be examined as to whether there exists any *intelligible differentia* so as to prescribe a minimum eligibility age of 21 years for making contractual appointments as against the minimum eligibility age of 18 years for making regular appointments on the same post of A.N.M./Health Worker (Female). Keeping in view the undisputed facts that the appointments are to be made on the same post requiring same educational qualification for performing similar nature of work, we have no hesitation in arriving at the conclusion that prescribing the minimum eligibility age of 21 years for making contractual appointment on the post of A.N.M./Health





Worker (Female) is manifestly arbitrary, discriminatory and violative of Article 14 and Article 16 of the Constitution of India.

39. There exists no *intelligible differentia* which distinguishes the candidates who are grouped together by applying Rules of 1965 from those who have been grouped separately by applying Rules of 2022 so as to prescribe a different minimum age eligibility. It goes without saying that mere classification itself is not enough, for the simple reason that anything can be classified and every discriminatory action must of necessity fall in some category of classification. Therefore, classification has to be demonstrably based upon substantive differences and should achieve relevant objects that have constitutional validity. The classification must be just and fair, which necessitates that the Court scrutinizes the underlying purpose of law.

The respondents have miserably failed to meet any of the above tests and thus, under no circumstances fixing an eligibility age of 21 years for making contractual appointments by applying Rule 6 of the Rules of 2022 can be held to be valid.

40. Further, on a conjoint reading of the preamble of the Rules of 2022 which provides that the said rules have been framed with the object to enable the State Government to hire subject matter specialists and experts, alongwith the educational qualification prescribed in the second Advertisement dated 06.07.2023 issued by invoking the Rules of 2022, with the educational qualification prescribed in the first Advertisement dated 19.05.2023 issued by invoking the Rules of 1965, it is manifest and evident that the required educational qualification under both the advertisements





is identical and verbatim i.e. Xth Standard with Auxiliary Nurse Midwifery Training/Health Worker (Female) Course and registration in the Rajasthan Nursing Council as a B-Grade Nurse.

Thus, the so called object of hiring any specialist or expert, beyond the expertise as prescribed in the Rules of 1965, is absolutely missing and by no stretch of imagination the respondents could establish any rational nexus with the object of prescribing a minimum eligibility age of 21 years.

41. Further also the justification sought to be advanced by the respondents that prescribing a minimum age of 21 years would enable engagement of a candidate with greater experience is wholly bereft of any rational basis. The said rationale falls short of the constitutional requirement of *intelligible differentia* having a rational nexus with the object sought to be achieved. Once the respondents themselves permit a regular appointment to the very same post at the age of 18 years under the service Rules of 1965, the said justification cannot be accorded judicial imprimatur.

It is also not in dispute that even the nature of duties and responsibilities attached to both posts are also identical, hence, the justification urged by the respondents that a minimum age of 21 years would ensure engagement of a more experienced candidate is unsustainable.

Thus, candidates eligible for regular appointment under the Rules of 1965 and those eligible for contractual appointment under the Rules of 2022, despite being similarly situated on various counts are being classified into different categories for the purpose of their appointment by prescribing





different minimum age eligibility, which is grossly discriminatory, unjust, illogical and manifestly arbitrary.

42. It is in these circumstances of absence of any differentiation in duties, responsibilities, educational qualifications or nature of work attached to the post, that the prescription of a higher minimum age for contractual recruitment is untenable, as neither it discloses a reasonable classification nor does it bear any rational nexus to the stated object. On the contrary, it results in hostile discrimination, rendering eligible candidates for regular appointment ineligible for contractual engagement for the same post.

43. While it is an established principle of law that interference by way of judicial review with a policy or rule is normally to be eschewed, it is also settled that if a policy or rule is found to be manifestly arbitrary or unconstitutional, the Court would step in. The present case is a perfect illustration of gross discrimination being made by the State without any *intelligible differentia* and thus, the discrimination made by prescribing different minimum age eligibility in two different advertisements i.e., dated 19.05.2023, which was issued by invoking Rule 10 of the Rules of 1965 and dated 06.07.2023, which was issued by invoking Rule 6 of the Rules of 2022, cannot sustain.

44. Further, the reliance upon order passed by this Court in **S.B.**

Civil Writ Petition No. 4383/2023 titled as **Tanmay Kumar Jaiman Vs. State of Rajasthan** dated 16.03.2023 renders no support to the respondents as admittedly the Rules of 2022 were not under challenge therein and the said petition came to be





dismissed by relying upon the rules itself. Undisputedly, in the present case Rule 6 of the Rules of 2022 itself is under challenge and thus, the facts are very much distinguishable.

45. The submissions of the respondents that the Rules of 2022 are being applied by the State uniformly for making all the contractual appointments also fails to make the Rule 6 of the Rules of 2022 constitutional, as once the Rules of 1965 provides a minimum eligibility age of 18 years for making regular appointments on the post of A.N.M./Health Worker (Female), the eligibility under the Rules of 2022 has to be consistent and uniform with the Rules of 1965 for the said very post.

46. As a matter of fact, it is obnoxious for the respondent – State to argue that despite 18 years being the minimum eligibility age for making regular appointments on the post of A.N.M./Health Worker (Female), the minimum eligibility age of 21 years for making contractual appointment on the very same post is justified.

47. There is no quarrel to the proposition that every piece of legislation or rule enjoys a presumption of constitutionality, however, if the law under challenge is arbitrary, violates fundamental rights or falls foul of Article 14, Article 16 and other fundamental rights, the Courts cannot shut their eyes and it would be failing in its duties if it does not strike down such law. Once this Court has arrived at a definite finding that Rule 6 of the Rules of 2022, so far as it prescribes minimum eligibility age of 21 years for making contractual appointments on the post of A.N.M./Health Worker (Female), is manifestly arbitrary, the said rule deserves to





be struck down to the said extent so as to bring the same at par with the minimum eligibility age of 18 years prescribed in Rule 10 of the Rules of 1965 for making regular appointments on the same very post.

48. In the case of ***Subramanian Swamy Vs. Director, CBI and Anr.***, reported in **(2014) 8 SCC 682**, a Constitution Bench of the Hon'ble Supreme Court has held as under:-

"45. The constitutionality of the Special Courts Bill, 1978 came up for consideration in Special Courts Bill, 1978, *In re [(1979) 1 SCC 380]* as the President of India made a reference to this Court under Article 143(1) of the Constitution for consideration of the question whether the "Special Courts Bill" or any of its provisions, if enacted would be constitutionally invalid. The seven-Judge Constitution Bench dealt with the scope of Article 14 of the Constitution. Noticing the earlier decisions of this Court in *Budhan Choudhry* [*Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191 : 1955 Cri LJ 374 : (1955) 1 SCR 1045], *Ram Krishna Dalmia* [*Ram Krishna Dalmia v. S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279], *C.I. Emden* [*C.I. Emden v. State of U.P.*, AIR 1960 SC 548 : 1960 Cri LJ 729 : (1960) 2 SCR 592], *Kangshari Haldar* [*Kangshari Haldar v. State of W.B.*, AIR 1960 SC 457 : 1960 Cri LJ 654 : (1960) 2 SCR 646], *Jyoti Pershad* [*Jyoti Pershad v. UT of Delhi*, AIR 1961 SC 1602 : (1962) 2 SCR 125] and *Shri Ambica Mills Ltd.* [*State of Gujarat v. Shri Ambica Mills Ltd.*, (1974) 4 SCC 656 : 1974 SCC (L&S) 381 : (1974) 3 SCR 760], in the majority judgment the then Chief Justice Y.V. Chandrachud, *inter alia*, expounded the following propositions relating to Article 14: (Special Courts Bill, 1978, *In re [(1979) 1 SCC 380]*, SCC pp. 424-26, para 72)

"(1)***

(2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory





to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.





(6) *The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.*

(7) *The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.*

(8) *The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.*

(9) *If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If*



the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(10) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(12) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(13) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the



same procedural rights for relief and for defence with like protection and without discrimination."

46. *In Nergesh Meerza [Air India v. Nergesh Meerza, (1981) 4 SCC 335 : 1981 SCC (L&S) 599] , the three-Judge Bench of this Court while dealing with the constitutional validity of Regulation 46(i)(c) of the Air India Employees' Service Regulations (referred to as "the AI Regulations") held that certain conditions mentioned in the Regulations may not be violative of Article 14 on the ground of discrimination but if it is proved that the conditions laid down are entirely unreasonable and absolutely arbitrary, then the provisions will have to be struck down. With regard to due process clause in the American Constitution and Article 14 of our Constitution, this Court referred to Anwar Ali Sarkar [State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 Cri LJ 510 : 1952 SCR 284] , and observed that the due process clause in the American Constitution could not apply to our Constitution. The Court also referred to A.S. Krishna [A.S. Krishna v. State of Madras, AIR 1957 SC 297 : 1957 Cri LJ 409 : 1957 SCR 399] wherein Venkatarama Ayyar, J. observed: (AIR p. 303, para 13)*

"13. ... The law would thus appear to be based on the due process clause, and it is extremely doubtful whether it can have application under our Constitution."

47. *In D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] , the Constitution Bench of this Court had an occasion to consider the scope, content and meaning of Article 14. The Court referred to earlier decisions of this Court and in para 15, the Court observed: (SCC pp. 317-18)*

"15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."





48. *In E.P. Royappa [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] , it has been held by this Court that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. This Court observed in para 85 as under: (SCC p. 38)*

"85. ... From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

49. *Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders—if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be*





considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is."

49. Further, the sole fact that the Rules of 2022 deals with contractual hiring cannot create a classification so as to prescribe a different minimum eligibility age than what has been prescribed under the Rules of 1965 for making regular appointments. The said so called classification fails to meet the test of permissible classification as it lacks *intelligible differentia*.

The discernible reasons assigned by the respondent – State for making the said classification that a person with 21 years of age would be more mature, expert and would perform in a better manner are without any justification and empirical data and as a matter of fact runs contrary to their own Rules of 1965.

50. Now, considering the doctrine of severability while dealing with the challenge to the constitutionality of a statute or a rule, Article 13(2) of the Constitution of India in unequivocal terms provides that the State shall not make any law which takes away or abridges the rights conferred by Part-III and any law made in contravention of this clause shall, **to the extent of contravention**, be void.

The Hon'ble Supreme Court in the case of ***Anjum Kadari Vs. Union of India*** reported in **(2025) 5 SCC 53** by referring to Article 13(2) of the Constitution of India has held that while considering a challenge to a statute, the entire statute does not need to be struck down, as it is void only to the extent that it contravenes the Constitution. Relevant paragraphs 103 to 106 reads as under:-





103. *In the foregoing sections of this judgment, we have upheld the constitutionality of the Madarsa Act on various grounds, that were urged before the High Court and subsequently, before this Court. However, certain provisions of the Madarsa Act which pertain to the regulation of higher education and the conferment of such degrees have been held to be unconstitutional on the ground of lack of legislative competence. Thus, the question that arises is whether the entire legislation must be struck down on this ground. In our view, it is in failing to adequately address this question of severability that the High Court falls into error and ends up throwing the baby out with the bathwater.*

104. *The entire statute does not need to be struck down each time that certain provisions of the statute are held to not meet constitutional muster. The statute is only void to the extent that it contravenes the Constitution. This position may be derived from the text of Article 13(2) itself, which states:*

13. (2) *The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."*

105. *Although Article 13(2) upholds this proposition in the context of laws which abridge the fundamental rights in Part III, the same doctrine is equally applicable to provisions of a statute which are set aside on the ground of lack of legislative competence. This position has also been affirmed by a steady line of precedent of this Court. We may helpfully refer to the observations in the *locus classicus* on the subject.*

106. *In R.M.D. Chamarbaugwalla v. Union of India [R.M.D. Chamarbaugwalla v. Union of India, 1957 SCC OnLine SC 11], a Constitution Bench of this Court adjudicated on the constitutionality of certain provisions of the Prize Competitions Act, 1956 and its allied rules. This Court, speaking through T.L. Venkatarama Ayyar, J., had occasion*



to lay down the contours of the doctrine of severability and held that when a statute is in part void, it will be enforced as regards the rest, if that part is severable from what is invalid. It was clarified that it is immaterial whether the invalidity of the statute arises by reason of its subject-matter being outside the competence of the legislature or by reason of its provisions contravening other constitutional provisions. To determine whether the specific provisions or the portion of the statute which is invalid is severable from the rest of the statute, this Court adopted certain rules of construction, which are as follows: (SCC OnLine SC para 22)

"22. ... 1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. ...

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. ...

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. ...

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance



different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. *The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; ... it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provision therein.*

6. *If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. ...*

7. *In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the Preamble to it. ..."*

(emphasis supplied)"

Further reliance is placed upon judgment of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh Vs. Jai Prakash Associates Limited** and other connected matters reported in **(2014) 4 SCC 720**, paragraphs 63 to 67 of which reads as under:-

"63. *To decide the third issue, the concept of severability needs to be noticed. The doctrine of severability provides that if an enactment cannot be saved by construing it consistent with its constitutionality, it may be seen whether it can be partly saved.*

64. *The doctrine of severability was considered in R.M.D. Chamarbaugwalla v. Union of India [AIR 1957 SC 628] in which it was observed that: (AIR p. 636, para 21)*





"21. ... When a statute is in part void, it will be enforced as [against] the rest, if that is severable from what is invalid."

The Court also observed seven propositions of severability, out of which, one of them provided that if the valid and the invalid portions are distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable.

65. *The principle of severability was also discussed in A.K. Gopalan v. State of Madras [1950 SCC 228 : AIR 1950 SC 27 : (1950) 51 Cri LJ 1383] , wherein the Court observed that what we have to see is, whether the omission of the impugned portions of the Act will "change the nature or the structure or the object of the legislation".*

66. *In the facts of the present case, striking down Clause (1) of the notification alone does not change the object of the legislation. It is a notification passed in public interest and therefore even if Clause (1) of the notification is expunged, leaving behind the rest of the notification intact, the purpose of the Government to grant rebate to provide incentive to the manufacturing units using fly ash is not lost.*

67. *This doctrine was also enunciated in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] . The question that arose was whether, for the purpose of application of the liberalised pension rules, the Government of India could stipulate 31-3-1979 as the date for dividing government employees into two classes: one class who had retired before 31-3-1979 who would not be entitled to the benefits of the liberalised pension rules and the other class who retired after 31-3-1979 who would be entitled to such benefits. One of the questions that came up for consideration is whether a specified date could be severed if it is found to be wholly irrelevant and arbitrary. This Court observed that: (SCC p. 335, para 50)*





"50. ... If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrary ... and having an undesirable effect of dividing homogeneous class and of introducing the discrimination, the same can be easily severed and set aside."

The Court further opined that while examining a case under Article 14 of the Constitution, the approach is removal of arbitrariness and if that can be brought about by severing the mischievous portion the Court ought to remove the discriminatory part retaining the beneficial portion. The Court therefore concluded that severance never limits the scope of legislation but rather enlarges it."

51. Thus, taking guidance from the above principles laid down by the Hon'ble Supreme Court, for removing arbitrariness, invalidity and inconsistency in Rule 6 of the Rules of 2022, so far as it provides for a minimum age eligibility which is inconsistent with Rule 10 of the Rules of 1965, the minimum age eligibility of 21 years provided in the impugned Rule 6 of the Rules of 2022 for making appointment on the post of A.N.M./Health Worker (Female) deserves to be struck down and is to be read in consistence with Rule 10 of the Rules of 1965. Thus, the minimum eligibility age for making contractual appointments on the post of A.N.M./Health Worker (Female) has to be in consistence with the minimum eligibility age prescribed in Rule 10 of the Rules of 1965.

52. The entire discussion made above leads to the sequitur that Rule 6 of the Rules of 2022 is struck down to the extent it prescribes 21 years as a minimum eligibility age for making appointment on contractual basis on the post of A.N.M./Health Worker (Female) and has to be read at par with the minimum





eligibility age of 18 years prescribed in Rule 10 of the Rules of 1965 for making regular appointments on the same very post.

I. Conclusion

53. Resultantly:-

- (a) Writ petition(s) stands allowed;
- (b) Rule 6 of the Rajasthan Contractual Hiring to Civil Posts Rules, 2022 (Rules of 2022), to the extent it prescribes 21 years as a minimum eligibility age for making appointment on contractual basis on the post of A.N.M./Health Worker (Female) and runs contrary to the minimum eligibility age of 18 years prescribed in Rule 10 of the Rules of 1965 for making regular appointments on the same very post, is declared as ultra vires and is consequently, struck down to the said extent.
- (c) Minimum eligibility age of 21 years as provided in the second Advertisement dated 06.07.2023 (Annexure-5) read with corrigendum Advertisement dated 12.01.2024 (Annexure-6) is quashed and the minimum age eligibility of the petitioner be assessed on the basis of Rule 10 of the Rules of 1965.
- (d) No order as to cost.

54. All other pending application(s), if any, stand disposed of.

(ANUROOP SINGHI),J

(DR. PUSHPENDRA SINGH BHATI),J

Yagya, Shuchita & Danish/

