

(2016) 02 JH CK 0125
In the Jharkhand High Court
Case No : LPA Nos. 661-662 of 2015

Aftab Adil and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Citation : (2016) 2 JCR 396 : (2016) 1 JLJR 643

Hon'ble Judges : Virender Singh, C.J. and P.P. Bhatt, J.

Bench : Division Bench

Advocate : M.S. Anwar, Afaq Ahmed, Altaf Hussain and Pravin Kr. Rana, for the Appellant; D.K. Dubey and Sanjay Piprawall, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J.

1. WP(S) No. 4907 of 2015* filed by one Aftab Adil and WP(S) No. 4908 of 2015*, filed by one Varun Kumar Mahto, involving the same controversy vis-?-vis. relaxation of age were taken together by the learned Writ Court and now dismissed vide impugned order dated 12.10.2015, aggrieved thereof, both the writ petitioners have now filed the instant two appeals viz. L.P.A. No. 661 of 2015 by Aftab Adil and L.P.A. No. 662 of 2015 by Varun Kumar Mahto, hence taken on Board for consideration. It may be noted here that pursuant to our order dated 3.11.2015 whereby certain clarification was sought from the State, a detailed counter has been filed to which both the appellants-writ petitioners have also responded in projecting that in other two cases age relaxation has been given, whereas arbitrarily withheld in the case of the veterinary doctors, who belong to a particular category of BC-I.

2. Both the appellants-petitioners (for short "petitioners"), who belong to the aforesaid category sought age relaxation for appearing in the selection process for the post of veterinary doctors under Advertisement No. 9 of 2015, issued by the Jharkhand Public Service Commission (hereinafter to be, referred as "JPSC").

As per clause-6, concerning age, minimum age prescribed in the advertisement was/is any category 22 years, whereas age limit prescribed in respect of BC-I and II was 37 years with 05 years relaxation. Both the petitioners had become overage by the time aforesaid advertisement was notified.

3. The plea taken by both the petitioners was that Advertisement No. 9 of 2015 relates to backlog vacancies of veterinary doctors which had fallen vacant right from 2006 up to 2013 as the examination of veterinary doctors was earlier held somewhere in 2005 and that after the gap of about 10 years, the aforesaid advertisement of the year 2015 was notified and in between they had crossed the age bar. In support of their contentions, the petitioners relied upon the judgment rendered by this Court in the case of Sanjeev Kumar Sahay vs. State of Jharkhand, reported in , 2008 (3) JCR 267 : [, 2008 (2) JLJR 543] and in the case of Subodh Kumar Jha vs. State of Jharkhand, reported in 2005 (3) JLJR 622 to seek relaxation of age. The case, as projected by the petitioners, did not find favour with the learned Writ Court and while distinguishing the aforesaid two judgments on facts, learned Writ Court dismissed both the petitions.

4. Mr. M.S. Anwar, learned Senior Advocate, appearing for both the petitioners contended that in fact when the fresh Advertisement No. 9 of 2015 was notified, both the petitioners were overage, one by about 8 months and another one by 2 years and 4 months. He submitted that had the State bothered to go in for the examination of the veterinary doctors during the interregnum period of 9 years at any point of time both the writ petitioners could apply being well within the zone of eligibility criteria. He submitted that in this eventuality when the State has thought of filling up the posts of veterinary doctors after such a long gap, the State should have given reasonable relaxation to BC-I category so that certain candidates including the present two petitioners, who had become overage could get the benefit of relaxation of age for appearing in the said examination. Learned senior counsel submitted that in the similar set of circumstances the issue of age relaxation had cropped up in the case of Bhola Nath Rajak & Others vs. The State of Jharkhand & Others, reported in , 2014 (1) JCR 616 (Jhr.) : [2014 (1) JLJR 217] with regard to Judicial Officers, in which the examination was held after lapse of about five years and ultimately the Division Bench of this Court had given the relaxation of 4 years with a direction to JPSC to even extend the date of accepting of the application forms.

5. With regard to granting relaxation of age to other two examinations, Mr. Anwar, learned Senior Counsel, has drawn the attention of the Court to Annexure-8 and Annexure-8/1 to the rejoinder filed to the counter affidavit of the State, whereby 4 years relaxation has been given to the candidates appearing for the Jharkhand Administrative Service and the Jharkhand Financial Service, whereas examination of the Jharkhand Administrative Service was held just 2/3 years back. He submitted that so far as the Jharkhand Administrative Service is concerned, it is the 6th examination, whereas in the present case, it is the 2nd examination of filling up the posts of veterinary doctors. On this rational

also, Mr. Anwar wants to impress upon the Court that the State had been unfair with the candidates belonging to a particular category of BC-I, to which the present two petitioners also belong.

6. Repudiating the submissions advanced by Mr. Anwar, Mr. D.K. Dubey, learned Sr. S.C.-I appearing for the respondents-State, has drawn the attention of the Court to the counter-affidavit dated 1.12.2015 filed pursuant to the order of this Court dated 3.11.2015, in particular, paragraphs-9 to 12 which read:--

"9. That the cut-off age for B.C.-I Category is fixed as 37 years as on 1.8.1976 to 1.8.1991. Petitioner Aftab Adil and Varun Kumar Mahto both are 41 years old. Thus they have been crossed the fixed maximum age limit.

10. That in view of interim order passed on 3.11.2015 by Hon"ble High Court in L.P.A. No. 661/2015 with L.P.A. No. 662/2015, year-wise vacancy arised from year 2006 to 2012 due to retirement/death has been calculated.

The vacancy shown in advertisement No. 9/2015 are as follows:--

U.R.-0, S.C.-35, S.T.-64, B.C.-I-31, B.C.-II-00

These vacancies were calculated at the time of Roster clearance by Department of Personnel Administrative Reforms & Rajbhasha keeping in view total sanctioned strength, present strength and vacancy/excess of veterinary doctors.

Thus advertised vacancies and year-wise vacancy calculated differ in number.

11. In the interim order passed on 3.11.2015 by Hon"ble High Court, a case of Bhola Nath Rajak & Others vs. The State of Jharkhand & Others has been referred. In the above case i.e. W.P.(S) No. 7525 of 2015. Bhola Nath Rajak & others vs. The State of Jharkhand & Others an order has been passed by the Hon"ble Court on 16.1.2014. In which for the appointment on post of Civil Judge (Junior Division) cut-off date for fixing maximum age for 35 years has been fixed 31.1.2009 instead of 31.1.2013.

12. In present case regarding the appointment of veterinary doctors maximum age 37 years has been fixed up for B.C.-I category as on 1.8.2013. As the Jharkhand Animal Husbandry Service Rules, 2013 was published on 30.11.2013 and the Roster clearance done taking into consideration, the vacancy from 2006 to 2013 for the both advertisement, hence cut-off date for age calculation was fixed 1.8.2013. Thus the department is not in a position to change the cut-off date as fixed earlier."

7. Indicating the vacancy position right from 2006-12, annexed as Annexure-A to the said counter-affidavit, the vacancy position with regard to BC-I category right from 2006 up to 2012 turns out to be 4 only. Jharkhand Animal Husbandry Service Rules, 2013 have been published on 30.11.2013 and thereafter the Roster clearance has been taken into consideration. No doubt, despite there being 33 posts of veterinary doctors falling vacant under BC-I category as is clear from Annexure-B, annexed to the counter-affidavit filed by the State, 31

posts have now been advertised, however, that aspect has no relevance so far as the instant matter is concerned.

8. What appears to the Court is that after the vacancy position has been made clear after the Jharkhand Animal Husbandry Service Rules, 2013 were brought into being, JPSC was asked to fill up these vacancies in 2015 resulting into notification of the aforesaid Advertisement No. 9 of 2015. What is worth noticing herein is that the cut-off date mentioned is 1.8.2013 and not any date of 2015, thus giving relaxation of 2 years straightway may be on account of the fact that the vacancy posts were available in 2013 and the advertisement was notified in 2015. Relaxation aspect has thus been taken care of.

9. On a specific query put to Mr. Anwar, learned senior counsel, whether both the petitioners were eligible when earlier at one stage in the year 2005, advertisement was notified for filling the posts of veterinary doctors, Mr. Anwar fairly stated at the Bar that both the petitioners were eligible but whether they did respond to the said notification of the year 2005 or not, he cannot make a categorical statement in this regard. He, however, submitted that, that would not change the complexion of the case as the plea taken by him for relaxation of age is primarily on account of a delay in holding examination for filling up the posts.

10. Be that as it may, whether they had appeared or not, it would be of no relevance, but, undoubtedly, they had a chance to compete, pursuant to the notification/advertisement of the year 2005. We, therefore, after considering the entire matter in its right perspective, are of the view that the petitioners, who had already crossed more than 40 years at the time of issuance of Advertisement No. 9 of 2015 cannot ask for relaxation of age at this stage. In the matter of recruitment, fixation of age limit is the domain of the executive policy and unless there appears to be any arbitrariness in it or any irrational nexus, the Court would not interfere in such like policy decision. Herein in the case on hand, we do not find any irrationality or arbitrariness on any count which can be said to be a ground of indulgence. Case of Bhola Nath Rajak (supra) is entirely distinguishable on facts from the case on hand.

11. As a sequel to the aforesaid discussion, we do not find any infirmity in the order of the learned Writ Court in both the petitions either on facts or on legal aspects warranting our indulgence.

12. The net result is that both the appeals on hand merit dismissal at this stage itself. Ordered accordingly.

*Ed.--Reported in , 2015 (4) JLJR 520.