
(1971) 04 OHC CK 0027
In the Orissa High Court

Biswanath Sahu

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 15-04-1971

Acts Referred:

Citation : (1971) 37 CLT 656 : (1971) 2 LLJ 147

Hon'ble Judges : R.N. Misra, J;B.K. Patra, J

Bench : Division Bench

Judgement

B.K. Patra, J.—The petitioner who is a Matriculate was appointed as a Lower Division Assistant in the Health Department. Annexure-C which is the order of appointment stated that the appointment was subject to his passing the Public Service Recruitment Examination.

2. Rule 3 of the Orissa Ministerial Service (Method of Recruitment and Conditions of Service of Lower Division Assistants in the Offices and the Departments of the Secretariat) Rules, 1951 (hereinafter referred to as the Rules) provides that the recruitment to the service shall be made by means of a competitive examination to be held once every year. Admittedly, no examination was held in the year 1965. On 6-10-1966, a notice was issued by the Public Service Commission calling for applications from candidates desirous of appearing at the recruitment examination. Admittedly, by that date, the petitioner was over-aged and was, as such, not qualified to appear in the examination. As the petitioner could not and did not appear at the recruitment examination he was informed in September, 1967 that he would not be eligible for further promotions in the office, and sometime thereafter he was reverted to his former post of dispatcher. He has, therefore, come up with this writ application contending inter alia that as, under the Rules, Government are bound to hold the recruitment examination once a year and as no such examination was held in the year 1965 and by the time the subsequent examination was held in 1966 the petitioner was already over-aged, he is entitled for exemption for passing the examination or, if that is not possible, to allow him a chance to appear therein and consequently to quash the order

reverting him to his former post.

3. It is not disputed that if an examination had been held in 1965, the petitioner would have been eligible to appear at such examination. We specifically questioned Mr. Roy, learned advocate appearing for the petitioner, whether there is any provision in the Rules authorising the Government to grant exemption in respect of the maximum age prescribed for appearing in the recruitment examination. He pointed out to Rule 20(b) of the Rules. That Rule is clearly not applicable to the petitioner's case. That Rule states that a candidate to be eligible to appear at the examination must be above 21 years of age on the date fixed as the last date for receipt of applications from candidates. In cases of candidates belonging to the scheduled castes and scheduled tribes, the maximum age limit shall be increased by five years. The proviso to Rule 20(b) says that if in any particular year, Government are satisfied that a sufficient number of candidates within the prescribed age limit are not available, they may, by notification, relax the maximum of the age limit specified in the sub-rule; This proviso, therefore, is not intended to cover cases like that of the petitioner. That provision can be invoked only if, in any particular year, Government find that a sufficient number of candidates possessing the qualification are not forthcoming. It is true that as a result of the Government not holding the recruitment examination in the year 1965, the petitioner had been deprived of the last chance he had for appearing at the examination. But however hard that case may be, we feel that we cannot give any relief to him having regard to the rules which do not permit grant of exemption to cover cases like the present. It is a matter entirely for the Government to deal with the petitioner's case taking into consideration the fact that no examination was held in the year 1965.

4. In the circumstances, the petitioner would not be entitled to relief through Court. The writ petition is accordingly dismissed but in the circumstances without costs.

R.N. Misra, J.

5. I agree.