

(2019) 02 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2854 Of 2019

Deo Narayan Prasad

APPELLANT

Vs

High Court Of Judicature At Patna Administrative Side
Through Its Registrar General And Another

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 02 PAT CK 0009

Hon'ble Judges : Amreshwar Pratap Sahi, CJ;Anjana Mishra, J

Bench : Division Bench

Advocate : Kaushal Kishore, Md. Irshad, Piyus Lal

Final Decision : Dismissed

Judgement

1. Heard Shri Kaushal Kishore, learned counsel for the petitioner. An Interlocutory Application has been filed in Court today, which is taken on record. The office is directed to give a number to this Interlocutory Application.

2. The writ petition has been framed primarily on the ground that the petitioner has been deprived of the opportunity to be a candidate for selection and appointment for the post of District Judge (Entry Level), inasmuch as, had the advertisement been made earlier, the applicant petitioner would not have crossed the age bar so as to make him ineligible.

3. The argument, in essence, is that not holding of the examinations timely has resulted in this deprivation to the petitioner which violates Article 14 of the Constitution of India.

4. We have also heard the learned counsel for the High Court, who has invited the attention of the Court to the earlier Division Bench judgment of this Court dated 3rd of February, 2015 in C.W.J.C. No. 1900 of 2015 where the same issue raised was decided and the petition was dismissed. The judgment is extracted hereinunder:-

"In these writ petitions, the petitioners feel aggrieved by the stipulation of the maximum age limit prescribed in the Advertisement No. 01/2015 for direct recruitment of District Judge (Entry Level) Direct from Bar issued by the High Court of Judicature at Patna.

Heard Sri Sumeet Kumar Singh and Sri Rakesh Kumar Srivastava, learned counsels for the petitioners, Sri Lalit Kishore, learned Principal Additional Advocate General for the State and Sri Piyush Lall, learned counsel for the High Court of Judicature at Patna.

The High Court of Judicature at Patna has issued Notification No. 01/2015 inviting applications for selection and appointment of candidates to the post of Additional District & Sessions Judge direct from Bar. The Clause 3 of the notification pertaining to age limit reads as under:

"3. The candidates, who have not completed the age of 35 years and those who have already completed the age of 50 years as on 05.02.2015, shall not be eligible for consideration for such appointment."

The grievance of the petitioners is that they were incapacitated in submitting the applications since they have crossed the age of 50 years. They also pleaded that since the High Court did not undertake appointment process for the past 2-3 years the age limit needs to be enhanced correspondingly.

We find it difficult to accept the contention of the petitioners. It is well settled that it is the prerogative of the appointing authority to prescribe the age limit and other qualifications for the posts, within the organization. It is only when the age limits are shown to be contrary to any specific provision of law, that a possibility would exist for interfering with the prescribed age limits.

Learned counsel for the petitioners relied upon a decision of the Hon'ble Supreme Court in Sasidhar Reddy Sura vs. the State of Andhra Pradesh and others, reported in {(2014) 2 SCC 158}. A perusal of the same discloses that the Supreme Court found fault with the insistence of minimum age limit by the High Court at the time of selection, when the advertisement was silent on that aspect. In the instant case, the Rule is specific about minimum as well as the maximum age limits.

We do not find any basis to interfere with the notification. The writ petitions are accordingly, dismissed."

5. Learned counsel for the High Court has also invited the attention of the Court to the judgment of the Supreme Court in the case of Dr. Ami Lal Bhat Vs. State of Rajasthan and others, reported in (1997) 6 SCC 614, Paragraphs 10 and 11 that are extracted hereinunder:-

"10. It is next contended on behalf of the appellants/petitioners that under all the service rules concerned there is a provision for age relaxation. In Rule 11(A) of the Rajasthan Medical Services (Collegiate Branch) Rules, there is a provision

for age relaxation by 5 years by the Government in consultation with the Commission. There is also Rule 35 in the said Rules which gives a general power to relax rules in exceptional cases where the Government is satisfied that it is necessary, inter alia, to relax any provision of these Rules with respect to age or experience of any person and this can be done with the concurrence of the Department of Personnel and Administrative Reforms and in consultation with the Rajasthan Public Service Commission. It is urged that in the case of all those persons who are adversely affected because the advertisement for recruitment is issued later than the occurrence of the vacancy, corresponding age relaxation should be given to all candidates. In other words, what is contended is that if on the date when the vacancy occurred, the candidates were within the maximum age prescribed by reference to the cut-off date, then if the advertisement is delayed, their age should be considered with reference to the cut-off date of 1st January following the date of occurrence of vacancy. For example, if the vacancy has occurred on 1st of April of a given year, and the applicant would be within the maximum age on the 1st of January of the following year, then such a candidate will be considered as eligible even if the advertisement is issued not in April of that year but say February of the following year. All the candidates will get age relaxation of one year.

11. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age-limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-barred. We fail to see how the power of relaxation can be exercised in the manner contended."

6. Apart from the aforesaid observations, it would be apt to mention that a right to seek employment is not a fundamental right. The question of selection and appointment or any deprivation arises only after a person is found to be eligible and entitled to seek employment under the relevant rules governed by the terms and conditions of an advertisement. The delay in the issuance of advertisement by itself will not in any way create a right or even a legitimate expectation in favour of a person so as to seek a direction for relaxation in the upper age limit as prescribed for appearing in an examination. This will clearly amount to violating the rules as also the terms and conditions of the advertisement against which the appellant has now raised his grievance and seeks a modification by

pushing back the age limit by three years.

7. We do not find any rational basis for doing so and the action cannot be termed to be arbitrary so as to allow the petitioner to invoke Article 14 of the Constitution of India. Consequently, in the absence of any violation of fundamental or legal rights, we see no reason to interfere. The writ petition lacks merits and is, accordingly, rejected.