
(2000) 08 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 3890 of 1998

Dr. Nagendra Nath Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 PLJR 448

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.N. Jha, Ashim Jha and P.K. Jha, for the Appellant; R.K. Roy, for B.P.S.C. and S. Alamdar Hussain, for State, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—In this case, the Petitioner has prayed for direction on the Respondent (Bihar Public Service Commission B.P.S.C. for short) to accept his form in pursuance of Advertisement No. 66/98 for the post of Head Librarian in Secretariat Library of Govt. of Bihar on condoning the age bar.

2. The brief fact of the case shows that the Petitioner was appointed as Librarian after advertisement and selection, vide order dated 13th March, 1985. He has been confirmed to the said post and is continuing.

3. According to the Petitioner, there is no promotional avenue made for Librarian of Archives Library where Petitioner is functioning. The only higher post is of Head Librarian, available with the Secretariat Library of the State. One Parmanand Sinha was functioning as Head Librarian in the Secretariat Library and superannuated on 31st December, 1986, since then the post is lying vacant and the State of Bihar is taking work by interim arrangement from Librarian of Secretariat Library or the Petitioner. On the basis of the direction of the authority dated 6th January, 1997, the Petitioner has taken over the charge of the post of Head Librarian on 8th January, 1997. The B.P.S.C. issued impugned Advertisement No. 66/98 in newspapers on 17th March, 1998. Therein, the qualification of Master of Library Science has been prescribed as one of the

essential qualification other than the qualification of Graduation. An experience of seven years has also been laid down as Librarian/Assistant Librarian in Library of Govt./Government under-taking.

The Petitioner being not a Post Graduate degree holder in Library Science (M. Lib. Science) is not eligible for appointment to the post of Head Librarian in pursuance of advertisement in question, and for this reason, he has moved this Court to direct the B.P.S.C. to accept his application. This apart, the Petitioner being overage than the age prescribed in the advertisement, has also prayed for relaxation of age bar.

4. The counsel for the Petitioner mainly relied on three decisions of the Supreme Court, namely, AIR 1988 1033 (SC); Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another, ; and Jagdish Pandey Vs. The Chancellor University of Bihar and Another, and suggested that reasonable promotional opportunities should be made available in every wing of public service to generate efficiency in service and to foster the appropriate attitude to more for achieving excellence in service. The observations of the Supreme Court, much less that a person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance was relied upon by counsel, as observed in the case of Council of Scientific & Industrial Research (supra).

5. From the counter affidavit filed on behalf of the Respondents, it will be evident that the post of Head Librarian is a Gazetted post and not a promotional post of Librarian. It is for the said reason, the post has been advertised laying down the minimum qualification and the age limit for such appointment.

6. Now it is a settled law that the appropriate authority/appointing authority are empowered to lay down condition of service, which includes the source from which an appointment is to be made and the qualification required for such appointment. The Court has no jurisdiction under Article 226 of the Constitution of India, even to suggest the source of recruitment or the minimum qualification for such appointment. If one or other source is stipulated to fill up the post or a qualification is laid down for appointment, though the same can be challenged, if arbitrary, otherwise the Court should not interfere with the same. Merely, because the Petitioner does not hold the Master's degree in Library Science and/or he has no avenue of promotion, the advertisement cannot be challenged on that ground, nor the qualification laid down can be held to be arbitrary on that basis. Further, as because the Petitioner has no promotional avenue, he cannot be allowed to derive advantage of the same for appointment to a higher post of Head Librarian for which he is not qualified. This apart, it was brought to the notice of the Court that the State Govt. vide Resolution No. 10770 dated 30th December, 1981 issued from the Finance Department framed scheme for the time bound promotion (1st and 2nd time bound), even in respect of isolated cadre/post where no specific avenue of promotion laid down by the State.

7. In the facts and circumstances, the relief as sought for by the Petitioner cannot be granted, nor he can be allowed to compete with others in pursuance of Advertisement No. 66/98, being not qualified.

8. The writ petition is, accordingly,