
(2008) 08 PAT CK 0014
In the Patna High Court

Gautam Kumar Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Citation : (2009) 1 PLJR 589

Hon'ble Judges : R.M. Lodha, C.J.;Ravi Ranjan, J

Bench : Division Bench

Judgement

1. The counsel for the appellant admitted that the date of birth of the appellant is 15th February, 1979. He did not dispute that as per the advertisement dated 5th May, 1997, the appellant did not fulfill the age eligibility as he was seventeen years ten months and fourteen days while the minimum age prescribed was eighteen years as on 31st December, 1996.

2. He, however, raised three fold submission viz; (i) that the cut off date 31st December, 1996 suffers from arbitrariness and has no nexus to the object sought to be achieved; (ii) that the appellant having been given appointment in the year 2005, equity demanded that even if his appointment suffered from illegality, the appointment ought not to have been cancelled and (iii) that the appellant was entitled to the payment of salary for the period he worked.

3. That the recruitment in the government service has to be made in accord with the Service Rules and not de hors is a settled legal position. If the age eligibility is prescribed on a particular date for recruitment in the government service, the candidate has to meet that requirement. While fixing cut off date, there is always a possibility of an argument as to why a particular date has been fixed and not some other date but that does not make the date so fixed arbitrary.

4. Moreover, if the cut off date 31st December, 1996 suffered from arbitrariness or had no nexus to the object sought to be achieved, the petitioner ought to have put in issue the legality and correctness of the said date immediately after the advertisement was issued and published, which was done on 5th May, 1997,

but admittedly, the petitioner kept quiet. It is only after his appointment has been cancelled as it was found that he has been appointed against law since he did not fulfill the age eligibility, the petitioner has now sought to challenge the very fixation of cut off date. We are afraid, the contention of the counsel cannot be accepted.

5. As regards the contention of the counsel for the appellant that the appellant having been appointed, on the principle of equity, his appointment ought not to have been cancelled, suffice it to say, that the appellant could not have been appointed *de hors* law and more, particularly, the eligibility prescribed in the advertisement and if he secured appointment by mistake, he cannot take advantage of that mistake. The second contention also does not deserve to be accepted.

6. As regards the grievance of the appellant that he has not been paid any salary for the period he worked, suffice it to observe that merely because his appointment was found bad in law at a later point of time and that resulted in cancellation of appointment, the appellant cannot be denied his salary for the period he worked.

7. We, accordingly, dispose of the appeal by the following order:

- i) The order dated 21st January, 2008 annulling the appellant's appointment does not call for any interference and challenge to the said order is, accordingly, rejected.
- ii) The respondent No. 2 shall ensure that the appellant is paid his salary etc., for the period he worked as Class - IV (Department of Health) without any delay and in no case later than two months from the date of receipt/production of this order.