

(2008) 12 PAT CK 0002

In the Patna High Court

Case No : CWJC No's. 18418 and 18331 of 2008

Pramod Kumar Singh (Advocate) and Another

APPELLANT

Vs

The State of Bihar and Others
 Pramod Kumar Singh
Vs The State of Bihar and Others

RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 1 PLJR 530

Hon'ble Judges : Chandramauli Kr. Pd., Acting C.J.; Ravi Ranjan, J

Bench : Division Bench

Advocate : Pramod Kr. Singh in 18418, M/s Ashwini Kumar Singh, Mrigank Mauli in 18331, M/s B.K. Chaudhary, Anil Kumar Singh in 18554 and Mr. Ashutosh Ranjan Pandey in 18695, P.K. Shahi, Sanjay Pandey, Vikash Kumar in 18418, M/s P.K. Shahi, Sanjay Pandey in 18331 and Mr. Sanjay Pandey in 18695, Tara Kant Jha and Amish Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

1. In all these writ applications common questions of law and facts arise and as such, they were taken up together and are being disposed of by this common order. Facts lie in the narrow compass.

2. The Bihar Public Service Commission published advertisement bearing advertisement No. 3/2008 inviting applications from the candidates for appointment to the post of Civil Judge (Junior Division). According to that advertisement upper age limit for appointment in terms of the advertisement as on 1.8.2008 is 35 years for general category and 40 years for the candidates belonging to Scheduled Castes and Scheduled Tribes. Petitioners intend to offer their candidature for appointment but having crossed the upper age limit they are not eligible to be considered.

3. Accordingly their prayer is for a direction to the respondents to shift back the cut-off date ranging from 1.8.2001 to 1.8.2006 for the purpose of determination

of age.

4. It is not in dispute that last advertisement for appointment was made in the year 2005 (Advertisement No. 43 of 2005) in which the cut-off date originally advertised was 1.8.2005 but shifted back to 1.8.2000. It is further not in dispute that the State Government by its resolution dated 22.6.2006 had enhanced the upper age limit for appointment in Government Services, same is as follows:-

(i) Unreserved class (men)-37 years

(ii) Backward class/Extremely backward class (men and women)-40 years

(iii) Unreserved class (women)- 40 years

(iv) Scheduled Caste and Scheduled Tribe (men and women) 42 years

5. It is further an admitted position that the Bihar Public Service Commission had made common advertisement for 48th to 52nd Joint Competitive Examination (Advertisement No. 4 of 2007) inviting applications for various posts in different services including Bihar Administrative Service (Deputy Collector) and Bihar Police Service (Deputy Superintendent of Police) in which cut off date for determination of age limit has been fixed as follows:-

48th Joint Competitive Examination-1.8.2002

49th Joint Competitive Examination-1.8.2003

50th Joint Competitive Examination-1.8.2004

51st Joint Competitive Examination-1.8.2005

52nd Joint Competitive Examination-1.8.2006.

6. We have heard Mr. Basant Kumar Choudhary Senior Advocate, Mr. Ashwani Kumar Singh and Mr. Ashutosh Ranjan Pandey for the petitioner. State is represented by Mr. Advocate General, whereas Mr. Tara Kant Jha, Senior Advocate appears on behalf of the High Court.

7. Learned Counsel for the petitioners contend that cut-off date 1.8.2008 to determine the upper age limit is arbitrary. It is pointed out that the advertisement in question for appointment has been issued after three years and in the meantime many of the candidates have become over age and they shall be deprived of their right to offer their candidatures for appointment to the post of Civil Judge (Junior Division). In support of the submission reliance has been placed on an observation of learned Single Judge in the case of Bishun Dutta Jha & Prs. vs. The B.P.S.C. & Others, 1999(2) PLJR 215 and our attention has been drawn to the following passage:-

"X X X X

The other grievance of the petitioners is that in terms of rules every year vacancy has to be notified and the steps have to be taken by the Commission for

appointment. However, due to laches on the part of the respondents examination is not being conducted for a long period as a result of which many candidates (Advocates) who were eligible to apply during that period, have now become overage. This grievance of the petitioner appears to be genuine as the rules provided that the vacancy has to be notified each and every year and the Commission has to take steps for holding the competitive examination and if the same is not done then the candidates who became illegible (sic-eligible?) during that period cannot be allowed to suffer. As such by way of the interim order a direction is issued to the respondents to allow the candidates also who were illegible sic-eligible?) to apply in terms of the rules between the last advertisement and before issuance of advertisement No. 18/97 dt. 18.3.99 for 25th Bihar Service Competitive Examination. Accordingly, the Commission is directed to issue a corrigendum or advertisement to this effect. This interim order is subject to the final result of the case.

X X X X"

(underlining ours)

8. Reliance has also been placed on a Division Bench judgment of the Jharkhand High Court in the case of Sanjeev Kumar Sahay vs. State of Jharkhand, 2008(2) JLR 543 and our attention has been drawn to paragraphs-20 and 26 of the said judgment which reads as follows:-

"20. Be that as it may, the question that falls for consideration is as to whether in the facts and circumstances of the present case, particularly, when no examination was held for the last seven years and the year 2008 only State Service Commission took up the matter and the impugned advertisement was issued and by that time, most of the candidates who were eligible to appear in the examination had crossed their age, it is fit and proper to give relaxation in age.

X X X X

25. We, therefore, dispose of all these writ applications with the following directions:-

(i) The cut-off date fixed in the impugned advertisement fixing maximum age as 35 years shall be as on 31.3.2003. This relaxation in age shall not confine to writ petitioners but also for all candidates who are otherwise eligible for the said posts.

(ii) Time for submission of applications is consequently extended till 17th May, 2008.

(iii) The respondents-Commission shall immediately inform about the age relaxation and cut-off date and also the last date of submission of application by publication in all the newspapers."

(underlining ours)

9. It has also been pointed out that Rule 3 of the Bihar Civil Services Judicial Branch (Recruitment) Rules, 1955 (hereinafter referred to as the Rules) provides for publication of the number of vacancy in the post of Civil Judge (Junior Division) every year and the Commission, by virtue of Rule 4 of the Rule is obliged to announce in each year the number of vacancies to be filled in that year on the results of competitive examination, hence their failure to do the same deserves to be taken note of and the cut-off date according to the petitioners deserves to be shifted back varying from 1.8.2001 to 1.8.2006. It is emphasized that when provisions of Rules 3 and 4 are not adhered to strictly the cut-off date fixed according to Rule 6 of the Rules deserves to be shifted back.

10. Learned Advocate General representing the State as also Mr. Tara Kant Jha, Senior Advocate appearing on behalf of the High Court, submit that appointment to the post of Civil Judge (Junior Division) is governed by Rules and that having prescribed the cut-off date for determination of age, this Court in exercise of its power of judicial review, would be incompetent to shift back the cut-off date. They point out that the case in hand is not of one of those cases in which the advertisement for appointment to the post of Civil Judge (Junior Division) has been made after long years.

11. Having appreciated the rival submission, we do not find any substance in the submission of the learned counsel for the petitioners. Admittedly, appointment to the post of Civil Judge (Junior Division) is to be made in accordance with the provision of the Rules. As much arguments have been advanced with reference to Rules 3, 4, 5 and 6 of the Rule, we deem it expedient to reproduce the same:-

"3. The Governor shall decide in each year the number of vacancies in the posts of Munsifs to be filled by appointments to be made on a substantive basis or on a temporary basis or both.

4. The Commission shall announce in each year, in such manner as they think fit, the number of vacancies to be filled that year by direct recruitment on the results of a competitive examination and shall invite applications from candidates eligible for appointment under these rules. The competitive examination will be conducted by the Commission and will normally be held between the months of November and February.

5. The Commission may fix a limit in any particular year as to the number of eligible candidates to be admitted to the examination and, if the number of candidates exceeds the limit fixed, the Commission may make a preliminary selection of candidates to be admitted to the written examination, on the basis of their academic records.

6. A candidate may be of either sex, and must

(a) be under 35 years and over 22 years of age on the 1st day of August preceding the year in which the examination is held:

Provided that a candidate belonging to a Scheduled Caste or a Scheduled Tribe

must be under 40 years and over 22 years of age on the said date:

Provided further that no candidate who does not belong to a Scheduled Caste or a Scheduled Tribe shall be allowed to take more than five chances at the examination;

X X X X"

12. Rule 3 of Rules obliges the Governor to decide in each year the number of vacancies in the post of Civil Judge (Junior Division). Rule 4 contemplates recruitment to the post of Civil Judge (Junior Division). Rule 4 casts duty on the Commission to announce in each year the number of vacancies to be filled in that year by direct recruitment. Rule 6 of the Rules in specific terms provide that a candidate of unreserved category for being eligible for appearing in the examination must be under 35 years on 1st of August preceding the year in which the examination is held whereas for the candidate belonging to the Scheduled Caste or Scheduled Tribe, the upper age limit is 40 years. The determination of upper age thus is governed by statutory Rules. In the face of it, it is difficult for this court in exercise of its power of judicial review to shift back the cut-off date. Any such, direction, in our opinion, would amount to amending the Rules.

13. Now referring to the decision of the learned Single Judge in the case of *Bishun Dutta Jha & Ors. vs. The B.P.S.C. & Ors.* (supra), the same is clearly distinguishable. In the said case after long gap of more than seven years the advertisement was made and the learned Single Judge by an interim order directed for shifting the cut-off date. Similar is the position in the case of the judgment of the Jharkhand High Court in the case of *Sanjay Kumar Sahay vs. State of Jharkhand* (supra). While giving the direction quoted in the preceding paragraph of this judgment, it had taken note of the fact that no examination at all was held for the last 7 years. Fact situation in both the cases is different and in the face of the statutory Rules we are constrained to observe that it is not within our power to shift back the cut-off date.

14. Learned counsel for the petitioners then contends that when the upper age limit for appointment to Government services is higher, there is no justification to keep a lower age limit for appointment to the Judicial Service. According to the petitioners this amounts to hostile discrimination, which infringes petitioners right guaranteed under Articles 14 and 16 of the Constitution of India. This argument has been noted only to be rejected. The Judicial Service undoubtedly is one of the services under the State and has a unique position in that. Independence of Judiciary is an essential attribute of rule of law, which is a basic feature of the Constitution. It is preposterous to compare the Judicial Service with the executive in the public services of the State. The Judicial Service constitutes a different and distinct class and it has been recognized as such. Every Judicial Officer even at the initial stage exercises sovereign power and there are various immunities and privileges attached to the office. In such

circumstances, we are of the opinion that the complaint of discrimination is absolutely misconceived.

15. It has also been contended on behalf of the petitioners that in the earlier year the cut-off date was shifted back and hence it should be shifted back in the present year also. We do not find any substance in the submission of the learned counsel for the petitioners. Simply because that in earlier year the State Government in consultation with the High Court had shifted back the cut-off date, that shall not entitle the petitioners to claim the same benefit this time also. We hasten to observe that it may be possible for the State Government to amend the Rules after consultation with the High Court but that is not possible to be done by Judicial fiat. As observed earlier, earlier the cut-off date was shifted back as the advertisement for appointment was made after long years.

16. It has also been contended on behalf of the petitioners that age limit should be fixed in such a manner that each of the candidates get opportunity to appear in the examination at least for five chances. In this connection reference has been made to the second proviso to Rule 6(a) of the Rules. The proviso relied on restricts the number of opportunities of each candidate belonging to unreserved category can avail and in no way it confers any right to the petitioners to appear in the examination at least for five times. This submission therefore is devoid of any merit. It is rejected accordingly. In the result we do not find any merit in these applications and they are dismissed accordingly, but without any order as to cost.