

(2019) 03 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3832 Of 2019

Ram Yad Yadav

APPELLANT

Vs

Hon'ble Patna High Court And Ors

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

Bihar Superior Judicial Service Rules, 1951 — Rule 5, 16(e)
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 03 PAT CK 0007

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

Bench : Division Bench

Advocate : Brisketu Sharan Pandey, Mrigank Mauli, Pince Kumar Mishra

Final Decision : Dismissed

Judgement

Anjana Mishra, J

1. The petitioner on account of having become overage for recruitment as District Judge (Entry Level) Direct from Bar Examination, 2019 has come up praying for a direction to modify the Advertisement No. BSJS/1/2019 dated 19.01.2019 for reckoning the maximum age of 50 years as on 01.01.2017 instead of 01.01.2019.

2. The petitioner admittedly is 52 years of age and he submits that the maximum age prescribed, which is 50 years, should be reckoned on 01.01.2017 on the premise that the respondents have not held the examinations of District Judge (Entry Level) direct from Bar timely. It is also submitted that the Bihar Superior Judicial Service Rules, 1951 as amended w.e.f. 16th February, 2017 also provides for recruitment on yearly basis and for applicability of the roster on yearly basis and, therefore, if the respondents have delayed the holding of the examinations, the same should not defeat the right of the petitioner to take an attempt in the examinations. Reliance has been placed on the order passed on 16th January, 2014 by a Division Bench of the Jharkhand High Court in the case of Bhola Nath Rajak, Ramchander Sahu and Anil Kumar Singh vs. the State of Jharkhand & Ors.

(W.P. (s) No. 7526 of 2013 with I.A. No. 173 of 2014).

3. Responding to the said contention Sri Mrigank Mauli, learned counsel for the High Court has invited the attention of the Court to the Division Bench judgment in the case of Deo Narayan Prasad vs. the High Court of Judicature at Patna and Anr. decided on 14th February, 2019 declining to grant extension. It is also urged that the order of the Division Bench of the Jharkhand High Court proceeded on the premise that there was no provision of a cut-off date for determining the maximum age prescribed for the purpose of Civil Judge (Junior Division) (Munsif). It is submitted that in the instant case the 1951 Rules as amended in 2017 carries a clear prescription to that effect. The validity of the said Rule is not under-challenge and even otherwise in the absence of any power of relaxation having been exercised by the High Court, the same cannot be individually availed of by the petitioner.

It is therefore submitted that the claim of the petitioner is unfounded and the petition deserves to be dismissed.

4. We have considered the submissions raised and the 1951 Rules which were amended on 16th February, 2017. Clause 1 of Appendix-C to the said Rules, which is an essential eligibility condition, recites as under:-

"(1) He must be of the age of 35 years and below the age of 50 years as on 1st January of the year in which advertisement is issued."

5. Clause 14 empowers the State Government with consultation of the High Court to make any amendments with regard to relaxation or exemption in the terms and conditions contained in Appendix-C. Clause 14 is extracted herinunder:-

"14. The State Government may make amendment, from time-time, after the consultation with the High Court, related to any relaxation or exemption in the terms and conditions contained in Appendix- C"

Admittedly, no such power of relaxation has been exercised.

6. Coming to the argument advanced on the strength of sub clause (c) of Rule 5 it would be apt to extract the same for better appreciation. The amended portion of sub clause (c) of Rule 5 is extracted as hereinunder:-

"The recruitment shall be made, as far as possible, on yearly basis, in the following manner."

7. Similarly, the applicability of roster on yearly basis has been added in Explanation (2) of Rule 16 (e) which is extracted hereinunder:-

"The roster for the cadre will operate on yearly basis as per the British calendar year from the date of selection/appointment process is set in motion by the High Court in respect of three different sources of promotion/appointment."

8. It is on the strength of the said provisions the learned counsel has urged that

the recruitment has to be held on yearly basis which the respondents have failed to adhere to, and therefore taking a clue from the order of Jharkhand High Court in the case of Bhola Nath Rajak (supra) it is submitted that such a relaxation should be provided in the present case as well.

9. We are unable to accept this contention for the reason that recruitment on yearly basis has to be held "as far as possible". The words used by the Rule making authority therefore does not create a compulsion but mandates an annual recruitment in the services as far as possible. If the recruitment has been initiated after two years due to some intervening circumstances, we do not see any violation of the Rule relied on by the learned counsel for the petitioner, inasmuch as, the phrase used in the Rule "as far as possible" does not render the issuance of the advertisement invalid. The phrase "as far as possible" was construed to mean that the principles are to be observed unless it is not possible to follow them in the particular circumstances of a case. Reference be had to a judgment of the Allahabad High Court in the case of Smt. Rani Vs. Deputy Director of Consolidation, A.I.R. 1959 All 525. The phrase was again interpreted in the case of K.K. Sharma Vs. Union of India, 1989 (2) SLJ 635. It again came up for consideration before the Apex Court in the case of Osmania University Vs. V.S. Muthurangam and others, reported in (1997) 10 SCC 741 where the Apex Court ruled that the aforesaid phrase inheres inbuilt flexibility. The phrase, therefore, carries with it a discretion as was again held by the Apex Court in the case of High Court of Judicature for Rajasthan Vs. Veena Verma and another, reported in (2009) 14 SCC 734. While the said phrase does not give a licence not to perform, but at the same time, the rigour of a mandate is made discretionary to a certain extent. This is not to say that the examinations should be conducted lethargically or delayed for no valid reason, but the rule making authority has consciously used the said phrase that gives a play in the joints.

10. So far as the issue of roster is concerned, the same will have to be adjusted in accordance with the recruitment process. The annual application of the roster has to be in accordance with the vacancies occurring in the cadre and has to be applied on the basis of the Rules relating to roster. This does not mean that if the examinations have not been held annually the roster will be necessarily violated.

11. So far as the judgment of the Jharkhand High Court is concerned, the same does not lay down any law and rather proceeds to grant a concession in the absence of any Rule fixing the cut-off date for determining max age. In the instant case there is a Rule fixing the cut-off date for calculating the maximum age as on 1st January of the year in which the advertisement is issued. The reasoning of the judgment by the Jharkhand High Court would therefore not be attracted at all.

12. A Division Bench has already rejected such a petition in the case of Deo Narayan Prasad (supra). To grant relaxation to the petitioners selectively would be unfair to other similarly placed aspirants that would violate Articles 14 and 16 of the Constitution of India. Consequently, for all the aforesaid reasons and

taking into consideration the 2017 Rules, we do not find any reason to extend the maximum age limit up to 52 years or above to allow the petitioner to appear in the examinations.

13. In the result, the writ petition lacks merit and, accordingly, rejected.