

(2008) 07 JH CK 0009
In the Jharkhand High Court

Sanjay Kumar Samaiyar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Citation : (2009) 2 JCR 398

Hon'ble Judges : Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the order passed by the learned Single Judge on 11.6.2008 in W.P.(S) No. 385 of 2007 by which the writ petition was dismissed holding therein that the petitioner, appellant herein, could not have been permitted to participate in selection if he had crossed the age of 35 years.

2. The appellant/petitioner had filed a writ petition before the learned Single Judge challenging the advertisement No. 10 of 2006 dated 12th July, 2006 issued by the Jharkhand Public Service Commission by which the application for appointment to the post of Inspector Factories and Boiler Inspector was invited wherein minimum age limit fixed for the post as aforesaid was 21 years and maximum was 35 years.

3. The appellant/petitioner assailed the advertisement before the learned Single Judge on the ground that the maximum age limit of 35 years could not have been prescribed by the respondent-State and age relaxation ought to have been granted to the applicant since the examination had not been held for the post of Inspector Factories and Boiler Inspector for the last several years and the examination had been deferred for one reason or the other and therefore, the applicants should have been granted relaxation in the age. The learned Single Judge had been pleased to dismiss the writ petition against which the instant appeal has been preferred.

4. The Counsel for the appellant/petitioner has tried to impress upon this Court

that the advertisement fixing age limit up to 35 years was clearly illegal and unjustified as the age relaxation ought to have been granted to the applicants since the process of appointment for filling up the vacancies had not been advertised for the last several years.

In our considered opinion, the appellant/petitioner could have challenged the advertisement before he participated in the selection process so that the authorities could apply their mind as to whether the upper age limit of 35 years fixed for the post could be relaxed in view of the fact that the examination for selection to the post of Inspector Factories and Boiler Inspector had not been held for the last several years in the State of Jharkhand. The appellant/petitioner, who had applied for the post, claimed the age relaxation only when he was not considered for appointment after which he filed the writ petition after the entire selection process was over. Besides this, the applicant cannot be permitted to challenge the fixation of upper age limit and if at all any challenge could be held sustainable, the same could be entertained perhaps by way of a Public Interest Litigation so that the common cause of all the applicants claiming age relaxation could have been raised.

5. Learned Counsel for the appellant/petitioner has placed reliance on the case of Sanjeev Kumar Sahay and Ors. v. State of Jharkhand and Ors. in W.P.(S) No. 1840 of 2008 with analogous cases disposed of on 30.4.2008 wherein the Division Bench of this Court held that the Judicial Officers whose examination was held in the year 2003 be granted relaxation but the case of the petitioner/appellant herein is clearly distinguishable from the aforesaid case.

6. In All India Judge's Association case AIR 2002 S.C. 1753 it was brought to the notice of the Supreme Court about the huge backlog of pending cases in the Subordinate Judiciary. In view of the exigency the Supreme Court issued directives for filling up the existing vacancies in the Subordinate Courts of all levels latest by 31st March, 2003. The Government of Jharkhand also could not finalize the Rules related to appointment within time and only with a view to uphold the directives of the Supreme Court, 31st March 2003 was held to be the cut off age for upper age limit by the Division Bench of this Court in Sanjeev Kumar Sahay and Ors. case (Supra). No such situation is prevailing in the instant matter and hence we find no parity between the instant case and the case relied upon by the Counsel for the appellant.

7. Learned Single Judge, in our opinion, has rightly not entertained the issue raised by the appellant/petitioner herein and we find no infirmity in the order of the learned Single Judge. Consequently this appeal is dismissed at the admission stage itself.