
(2013) 01 PAT CK 0056
In the Patna High Court
Case No : CWJC No. 7122 of 2012

Sanjay Kumar Verma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 323(2)

Citation : (2013) 2 PLJR 78

Hon'ble Judges : R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Daya Shankar Prasad, Gautam Shah, Niranjan Kumar and Gopal Pd. Verma, for the Appellant; Lalit Kishor, Sanjay Pandey for the B.P.S.C. and Mr. Vikash Kumar for the State, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.—This petition under Article 226 of the Constitution is filed by one Sanjay Kumar Verma to challenge the constitutional validity of the Bihar Administrative Service (Recruitment) (Amendment) Rules, 2007 (hereinafter referred to as the Rules of 2007). The State of Bihar has, in exercise of power conferred by proviso to Article 309 of the Constitution framed the Rules of 2007 to amend the Bihar Civil Service (Executive Branch) and Bihar Junior Civil Service (Recruitment) Rules, 1951. The Rules of 2007 enables the Bihar Public Service Commission to hold common competitive examination for particular year or for particular years for which examination could not be held in that particular year.

2. The Proviso thereto provides for preparation of common merit list pursuant to such common competitive examination. The second Proviso provides for relaxation of upper age limit in cases the candidates who were eligible for competitive examination in a particular year but have since then become over-aged.

3. Learned Advocate Mr. Daya Shankar Prasad has appeared for the petitioner.

He has submitted that for inexplicable reasons the Bihar Public Service Commission (hereinafter referred to as the Commission) did not hold the competitive examination for several years. The Commission is, therefore, answerable to this Court to explain why in past for several years the competitive examination was not held.

4. He has further submitted that the petitioner and several others like him, who were then eligible have now become over-aged and cannot compete for employment in public service. He has further submitted that although the relaxation in the age limit has been granted it is a mere ruse. Had the examination been held regularly, the petitioner would at least have four chances to compete at such examination. Because of the Rules of 2007, although the petitioner could take the common competitive examination in 2011 but has lost chance to repeat in the following years.

5. Mr. Daya Shankar Prasad has submitted that the Rules of 2007 are made in contravention of Article 323(2) of the Constitution. The contention is recorded with a view to rejecting the same.

6. It is apparent that the Commission has not held competitive examination for recruitment to administrative service for several years. The Commission, therefore, had to hold 48th to 52nd Common Competitive Examination in 2008 and 53rd to 55th Common Competitive Examination in 2011. It is but an ideal that the competitive examination for recruitment to administrative service is held every year regularly. However, if the Commission did not hold the examination regularly as expected, we do not intend to open the Pandora's box to find out the reasons for not conducting the examination regularly. Nor do we intend to make post mortem of the Commission's inaction/failure to conduct such examination. Suffice that, but for the 2007 Rules the petitioner could not have taken 53rd to 55th Combined Competitive Examination held in 2011. Having availed of the opportunity, it does not befit the petitioner to challenge the rules.

7. In any view of the matter, the Rules of 2007 cannot be held to be unconstitutional or ultra vires on the touchstone of any of the known or established principles. Merely, because the petitioner could not take repeated chances at the competitive examination Rules of 2007 does not become unconstitutional as alleged.

8. We do appreciate the anxiety of the writ petitioner that he has lost chance to make repeated attempts at the competitive examination. But, but for the Rules of 2007, the petitioner could not have taken the combined competitive examination conducted in 2011, as it is evident that the petitioner has become over-aged long ago. We see no merit in this petition. Petition is dismissed in limine.