

(2016) 10 PAT CK 0029

In the Patna High Court

Case No : Letters Patent Appeal No.861 of 2014(Arising out of Civil Writ Jurisdiction Case No. 441 of 2014)

Satyendra Kumar Sinha

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Citation : (2017) 1 BLJud 25 : (2017) 1 PLJR 416

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Kumari Amita, GP-3. and Mr. Rajesh Kumar, AC to GP-3, for the Respondents; Mr. Dharendra Kumar Jha, Advocate, for the Appellants

Final Decision : Dismissed

Judgement

Mr. Hemant Gupta, A.C.J. - The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 05.05.2014 in C.W.J.C. No. 441 of 2014, whereby the challenge of the appellant to the advertisement (Annexure-4) issued by the Bihar Rural Development Society for appointment on contract basis fixing the maximum age limit as 35 years remained unsuccessful.

2. The stand of the appellant is that in terms of the State Government resolution dated 18.07.2007, the maximum age limit for appointment on contract basis is 65 years, and therefore, fixing the maximum age limit as 35 years is not tenable, as it runs counter to the decision of the State Government.

3. Learned counsel for the appellant relies upon an order passed by the learned Single Bench of this Court in C.W.J.C. No. 16920 of 2012 (Raj Kishore Roy v. The State of Bihar & Ors.) decided on 05.12.2012, wherein as per the advertisement, maximum age for recruitment on contract basis was fixed as 50 years. But when the candidate appeared for interview, he was not allowed for interview as he was 57 years of age and thus over age. On the basis of resolution dated 18.07.2007,

the writ applicant was permitted to participate in the interview.

4. We have heard learned counsel for the parties and find that it is for the employer to fix what should be the age limit for the candidates required to be engaged on contract basis. In exercise of that power, the Rural Development Society fixed the maximum age limit as 35 years for appointment. The resolution of the State Government dated 18.07.2007 is, in fact, the guidelines issued. It is stated in "Clause 8" that the maximum age limit of the employees on contract basis shall be 65 years. In other words, it fixed the cap of the maximum age limit of the working age of the contractual employees and not the age limit for engagement on contract basis. It is something like the age of superannuation for contractual employees. Therefore, the argument raised by the appellant that the candidate who is 65 years of age is liable for appointment on contract basis is completely untenable and cannot be accepted.

5. The order passed in Raj Kishore Roy's case (Supra) does not lay down any principle of law, but it is an order which was passed on the basis of facts disclosed. Since the principles of law were not addressed before the learned Single Bench, the said order cannot be said to be laid down any law in accordance with law. In any case, the said judgment does not lay down correct law, therefore, the same cannot be sustained and is thus overruled.

6. On the other hand, there is another order passed by learned Single Bench of this Court in C.W.J.C. No. 23619 of 2013 (Rajeev Ranjan Chaudhary & Ors. v. The State of Bihar & Ors.) Decided on 05.02.2014, wherein learned Single Bench has held that 65 years of age cannot be made a bench mark for every recruitment, for every post and by every department across the board.

7. As discussed earlier, 65 years of age is not the age of recruitment, but it is the age up to which the contractual employee is permitted to work. In view thereof, we do not find any merit in the claim of the appellant. Accordingly, the present Letters Patent Appeal is dismissed.