

(2012) 03 PAT CK 0020

In the Patna High Court

Case No : CWJC No"s. 4248, 4515 and 4600 of 2012 with I.A. No"s. 2195 and 2032 of 2012

Sunil Kumar

APPELLANT

Vs

The State of Bihar and Others
 Rajesh Kumar Rajshree
and Others Vs The Bihar Public Service Commission, Patna
and Others
 Rajesh Kumar Pathak and Others Vs The
State of Bihar and Others

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 PLJR 161

Hon'ble Judges : R.M. Doshit, C.J.;Birendra Pd. Verma, J

Bench : Division Bench

Advocate : S. Azeem, Akshay Lal Pandit in 4248; Mr. Purushottam Kumar Das in 4515; M/s. Surendra Kishore Thakur and Anish Kumar in 4600, for the Appellant; Lalit Kishore (in 4248); Mr. Neeraj Nandan (in 4515); Mr. Vikash Kumar (in 4600); M/s. Ashok Kumar Singh, Kunal Tiwary, Binodanand Mishra (in 4248, 4515 and 4600); and M/s. Sanjay Pandey For the BPSC, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.—These three writ petitions under Article 226 of the Constitution are filed by the qualified persons aspiring to enter the Bihar Civil Service (Judicial Branch). The petitions are filed to challenge the constitutional validity of Rule 6 of the Bihar Civil Service (Junior Branch) (Recruitment) Rules, 1955 (hereinafter referred to as "Rules 1955") in so far as it does not provide for higher age bar for the candidates of reserved categories, except Scheduled Castes and Scheduled Tribes candidates. It is also the grievance of the petitioners that although the Bihar Public Service Commission has failed to conduct the competitive examination every year regularly as envisaged by the Rules, the age bar has not been relaxed by as many years. The grievance is that while the Commission did not hold examination in the years 2009, 2010 and 2011, many candidates

aspiring to join judicial service became age barred and are rendered ineligible for competitive examination advertised on 14th February, 2012. To buttress the submission, the learned Advocates have relied upon the advertisements published by the Public Service Commissions in the States of Rajasthan, Uttar Pradesh and Jharkhand indicating that the age bar has been advanced by as many years as the examination was not held. It is submitted that it is but reasonable and rational that the age bar should be enhanced as has been done by the Public Service Commissions in the other States. The reliance is also placed on a Bihar Government Resolution dated 22nd June, 2006 indicating the upper age limit for various reserved categories. The effect of the said resolution has been advanced up to 15th December, 2015. The submission is that the said resolution shall also be applied to the Judicial Service in the State of Bihar.

2. Learned Additional Advocate General Mr. Lalit Kishore has appeared for the State Government and Mr. Ashok Kumar Singh has appeared for the Bihar Public Service Commission. Mr. Lalit Kishore has contested the writ petitions. He has submitted that the advertisement has been published in consonance with the Rules 1955. There is no scope for deviation from the said Rules. He has submitted that no rule can be held to be unconstitutional unless it infringes one or other provision of the Constitution or contravenes the Parent Act. In support thereof he has relied upon the judgment of the Hon"ble Supreme Court in the matter of *Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others*, . He has also relied upon the judgment of this Court in the matter of *Rajendra Kumar Singh Vs. The State of Bihar and Others*, and an unreported judgment in the matter of *Kumari Manisha vs. The State of Bihar & Ors.* (CWJC No. 8601 of 2009) decided on 27th July, 2009 (Coram: Shiva Kirti Singh, Acting Chief Justice and Justice Smt. Anjana Prakash).

3. The appointment to the Subordinate Judicial Service in the State of Bihar is governed by the aforesaid Rules 1955. In view of the specific provisions made in the Rules, in our opinion the above referred resolution dated 22nd June, 2006 shall have no applicability. The said resolution has not been issued with a view to augmenting the statutory rules framed by the State Government.

4. It is true that the Bihar Public Service Commission has failed to conduct the competitive examination regularly every year. However, unless the Rules specifically provides for advancement of the age bar, the upper age limit cannot be extended merely because the examination was not conducted in a particular year.

5. The requirement under the impugned advertisement is in consonance with the Rules 1955. We see no substance in the grievance made by the writ petitioners. The petitions are dismissed in limine. Interlocutory Applications stand disposed of.