

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 11020 of 2016

=====

Sandeep Kumar Bharti, Son of Musaphir Ravidas, Resident of village - Hathiyar,
P.O. Hathiyar, P.S. Bodh Gaya, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Old Secretariat, Patna
2. Secretary Bihar Staff Selection Commission, Patna P.O. Veterinary College,
Patna 800014

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Sinha
For the State	:	Mr. Pawan Kumar, AC to GA-9
For the SSC	:	Mr. Kamla Kant Upadhyay Mr. Chandra Bhushan Das

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 22-08-2016

Heard learned counsel for the parties.

The petitioner was an applicant for the post of
Operation Theatre Assistant.

An Advertisement No. 04010115 was issued by
the Staff Selection Commission, inviting applications on
various posts, including Operation Theatre Assistant. As
usual, for such advertisement, the eligibility has been laid
down, which includes the minimum and the maximum age for
various categories of people, including other educational
qualifications etc.

The cut-off date fixed in the advertisement was
01.08.2014.

Petitioner applied; underwent the process of selection; appeared for the interview; and on the date of counseling he was shown the door on the ground that he was less than 21 years of age on the cut-off date, i.e., 01.08.2014.

Petitioner thereafter rushed to the High Court by filing the present writ application. His grievance is that the discretion has been used by extending the upper age limit. In addition to that, discretion has also been used by permitting certain change in the matter of qualification. Therefore, there is no reason why that discretion should not be used for lowering the minimum age to even 18 years or at least allow the petitioner to be appointed on the basis of the fact that on the date of counseling, he had already attained the age of 21 years as well as on the extended date of application, which was 08.03.2016.

On the demand and request of various candidates, keeping in mind that the advertisement to fill up such post was issued after a long period of time and many candidates had become over age, as a matter of policy, the State Government did advise the Staff Selection Commission to enhance the upper age limit for participation and appointment. Further, the minimum age of 21 years for every class and category of people was maintained across the



board.

The relaxation in upper age because of the long gap in advertisement and selection has remained as a matter of policy for a long period of time. But, there are certain posts and positions, which cannot beget a candidate appointment below a particular age, keeping in mind the length of period for acquiring knowledge and degree, if not experience, for such work. The post of Operation Theatre Assistant is one of those posts, where in the opinion of the Court, 21 years is not an unreasonable age for appointment looking at the work place of such person. People at very young and impressionable age neither have the experience nor the qualification to handle challenging as well as demanding atmosphere of an Operation Theatre.

No doubt, in the present case, the date for making application had to be extended by the Staff Selection Commission under the circumstances indicated above, but since the referable point with regard to cut-off date was not altered and that remained as 01.08.2014, the petitioner while applying for such posts knew very well that he lacked eligibility in terms of the advertisement. Merely because he succeeded in making an application and was not eliminated in the initial scrutiny of his application, it does not mean that there was consent and waiver in favour of the petitioner.



Ineligible candidates remain ineligible and they do not acquire eligibility merely by passage of time and opportunity, if the date of the eligibility was not altered in any manner.

It was a case in which the petitioner took a chance by applying and he cannot be rewarded for that.

The Court will not alter the minimum eligibility in age, merely because the respondents did so with regard to upper age limit and also with regard to certain qualification.

The requirement for such minimum age and eligibility has a rational and reasoning behind the same and, therefore, the decision of the respondents are not required to be interfered, nor any kind of indulgence is required to be shown to the petitioner, since he was not 21 years of age on the cut-off date.

Writ application has no merit, it is dismissed.

(Ajay Kumar Tripathi, J)

SKM/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	24.08.2016
Transmission Date	