

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.1646 of 2016**

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1. Shailendra Kumar, son of Sri Rajendra Mistry, resident of Mohalla- Flat No.401, Om Nanda Apartment, Rajendra Path, Police Station- Gandhi Maidan, District- Patna.

.... .... Petitioner/s

Versus

1. The Chairman, Bihar Public Service Commission, 15- Jawaharlal Nehru Path, (Bailey Road), Patna  
2. Secretary, Bihar Public Service Commission, 15- Jawaharlal Nehru Path, (Bailey Road), Patna.  
3. The Joint Secretary-cum-Examination Controller, Bihar Public Service Commission, 15, Jawaharlal Nehru Path, (Bailey Road), Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr Ajay Prasad  
Mr. Ajit Kumar Sinha  
For the Respondent/s : Mr. Lalit Kishore, Sr. Advocate  
Mr Satyabir Bharti  
Ms Aparna Arun

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**ORAL JUDGMENT**

**Date: 30-03-2016**

Petitioner is one of the candidates, who has been shown to be ineligible for participation in the Mains Examination, which is being conducted by the Bihar Public Service Commission (hereinafter referred to as 'BPSC'), which is 56<sup>th</sup> to 59<sup>th</sup> Common Combined Competitive Examination. Annexure- 1 is the list of candidates, who have been shown to be ineligible in various categories. Since petitioner belongs to the backward category candidate and he has been found to be more than 40 years of age on 1.8.2010, the cut-off date, his Roll No.437511 also finds mentioned in Annexure-1, to be more precise petitioner on that date has been found to be 41 years 27 days

old.

Submission of the counsel for the petitioner is that when petitioner applied, he was allowed to sit in the Preliminary Examination. He should not have been issued an Admit Card or allowed to participate. Only after he cleared the Preliminary Examination, at the stage of the Mains Examination such a bar is being created. In addition to that, petitioner also talks in terms of Annexure- 6 where certain extended dates and eligibility has been made applicable to certain candidates by a notification issued by BPSC dated 26.9.2014.

There is no dispute that the minimum age so fixed by the General Administration Department for such appointments for various categories of people for the competitive examination in question was to be reckoned with effect from 1.8.2010. Since petitioner was born on 4.7.1969 and he is more than 40 years of age, he was not eligible in the very first place to participate in the competitive examination even for preliminary stage. But since there were more than four lakhs applicants, who applied to sit for the Preliminary Examination, the omission of such kind did creep in but the scrutiny was done before the conduct of the Mains Examination. Even otherwise the Preliminary Examination is not a qualifying examination but an elimination examination.

Learned senior counsel, Mr Lalit Kishore submits that Annexure- 6 was issued with the object of accommodating such number of candidates by giving an opportunity to participate in the examination in question since it was a combined examination for the 56<sup>th</sup>, 57<sup>th</sup>, 58<sup>th</sup> and 59<sup>th</sup> batches. However, the benefit which became available in terms of Annexure-6 cannot accrue to the petitioner because of his date of birth and the age which was coming in his way of such participation despite Annexure-6.

Enough of leeway has already been given in terms of age relaxation. Further relaxation by any interpretation would be doing violence to the eligibility and the yardstick, which has been laid down, which, in the opinion of the Court, any way is rather late in life. If the petitioner has been declared ineligible because of being overage, the same is not a matter of debate or adjudication. There is nothing wrong with the decision notified in Annexure- 1 with regard to his ineligibility and merely passing of Preliminary Examination does not create a right in his favour.

Writ has no merit. It is dismissed.

**(Ajay Kumar Tripathi, J)**

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