

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.695 of 2016

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Shailendra Kumar, Son of Sri Rajendra Mistry, resident of
Mohalla-Flat No.401, Om Nanda Apartment, Rajendra Path, P.S.-
Gandhi Maidan, District-Patna.

.... Petitioner/Appellant

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

.... Respondents/Respondents

With

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Letters Patent Appeal No. 1404 of 2016

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Jetha Ram Suthar, Son of Sri Varda Ram Suthar, resident of 17,
Ganesh Colony, Badan Pijra, Jaipur, Rajasthan.

.... Appellant

Versus

1. The State of Bihar.
2. The Secretary, the Personnel and Administrative Reforms Department, Govt. of Bihar, Patna.
3. The Chairman of the Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna-800001.
4. The Secretary of the Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg (Bailey Road), Patna-800001.

5. The Secretary, the General Administrative Department, Govt. of Bihar, Patna.

6. The Joint Secretary-cum-Examination Controller, B.P.S.C., 15, Jawahar Lal Nehru Marg (Bailey Road), Patna-800001.

.... **Respondent/s**

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Appearance :-

(In LPA No.695 of 2016)

For the Appellant : Mr. Jitendra Singh, Sr. Adv.

For the Respondent/s : Mr. Lalit Kishore, PAAG

(In LPA No.1404 of 2016)

For the Appellant : Mr. Jitendra Kumar Giri

For the Respondent/s : Mr. Rajeev Kumar Singh, GP-2

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT & ORDER

(C.A.V.)

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 06-09-2016

Since issues involved in both the appeals are common, which arise out of same selection process being conducted by Bihar Public Service Commission (*hereinafter referred to as the 'Commission'*), the two appeals have been heard together and are being disposed of by the present common judgment and order.



2. These appeals have been preferred, under Clause 10 of the Letters Patent of this Court, by the appellants, being aggrieved by the judgments and orders, dated 30.03.2016 and 22.06.2016, respectively, passed by a learned single Judge of this Court, whereby their applications, bearing C.W.J.C. No.1646 of 2016 and C.W.J.C. No.2145 of 2016, filed under Article 226 of the Constitution of India, have been dismissed.

3. These appeals involve very short question as to whether the appellants fulfill the eligibility criteria, in terms of age, as laid down under Clause 6 of the advertisement, dated 02.09.2014, issued by the Commission, inviting applications for 56th, 57th, 58th and 59th Joint Combined (Preliminary) Competitive Examination, 2014. The appellants have been declared ineligible in terms of age, as they have not been found to be fulfilling the criteria, under Clause 6 of the said advertisement, though they were allowed to participate in the preliminary examination, on the basis of the applications, which they had submitted pursuant to the said advertisement.

4. The learned single Judge, by the judgments and orders under appeal, has rejected the plea of the appellants that once they were allowed to participate in

the preliminary test, after issuance of admit cards and scrutiny of their applications, their result of preliminary test should not have been withheld declaring them ineligible.

5. The date of birth of the appellant of L.P.A. No.695 of 2016, namely, Shailendra Kumar, is, admittedly, 04.07.1969 and he belongs to Backward Class Category; whereas, the date of birth of appellant of L.P.A. No.1404 of 2016, namely, Jetha Ram Suthar, is 15.08.1971, who does not belong to any of the reserved categories.

6. The Commission is conducting Joint Combined Examination for different years. The Commission is required to hold Combined Competitive Examination year-wise for selection of candidates to various gazetted posts in the State of Bihar and since the Commission could not hold year-wise competitive examinations, it decided to hold 56th, 57th, 58th and 59th Combined (Preliminary) Competitive Examination, jointly. In order to ensure that because of delay in holding of competitive examinations, the candidates, who were otherwise eligible, in terms of age, during the years, when such competitive examinations ought to have been held, were not put to a disadvantageous situation, it was



decided to prescribe different dates for determining the upper age limit of the candidates, who were ineligible to participate in the process of selection due to their age. In the said advertisement, 01.08.2010 was fixed as the crucial date for determining the upper age limit for the candidates for 56th Combined Competitive Examination. Similarly, 01.08.2011 was fixed for 57th, 01.08.2012 was fixed for 58th and 01.08.2013 was fixed for 59th Combined Competitive Examinations. On the crucial dates, as the upper age limit for unreserved (male) was fixed at 37 years, whereas for, unreserved (female), Backward Class and Extremely Backward Class (male and female), upper age limit was 40 years and, for Scheduled Castes and Scheduled Tribes (male and female), upper age limit was fixed at 42 years. Subsequent to issuance of advertisement notice, dated 02.09.2014, the Commission came out with a clarificatory notice, making it clear that the maximum age limit, as on 01.08.2013, for the candidates, belonging to unreserved (male), shall be 40 years, for unreserved (female), Backward Class and Extremely Backward Class (male and female), the same will be 43 years and for Scheduled Castes and Scheduled Tribes candidates (male and female), it will be 45 years.

7. Evidently, the appellant of L.P.A. No.695 of



2016 was more than 43 years of age as on 01.08.2013. This cannot be in dispute that as on 01.08.2010, which is the crucial date for determining the upper age limit of 56th Combined Competitive Examination, he was more than 41 years of age and he was, therefore, not eligible to apply pursuant to the advertisement inviting applications. He, however, applied for the same and admit card was issued to him, whereafter he participated in the preliminary test. It is his case that on the basis of his performance in the preliminary test, he stands qualified.

8. Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the appellant in L.P.A. No.695 of 2016, has argued that by subsequent notice, dated 26.09.2014, the Commission had fixed 43 years as the upper age limit and, therefore, he should have been held to be eligible, as he had not crossed the age of 43 years, as on 01.08.2010 and 01.08.2011. He has also submitted that once he (appellant) was allowed to participate in the process of selection, he should not have been declared to be ineligible, since before issuance of the admit card, necessary scrutiny of his application was done and he was found to be eligible.

9. Similar is the contention of learned Counsel, appearing on behalf of the appellant in L.P.A.

No.1404 of 2016. The appellant of this case, as has been noted above, belongs to unreserved category and his date of birth is 15.08.1971.

10. It is easily noticeable that none of the appellants fulfilled the criteria of upper age limit, as prescribed in the original advertisement, dated 02.09.2014. Subsequent notice, dated 26.09.2014, is apparently clarificatory in nature and simply makes it clear that such candidates, who fulfilled the eligibility criteria, as on 01.08.2013 (the crucial date for determining the upper age limit for 59th Combined Competitive Examination) are eligible to apply against the said advertisement. This can be understood by a simple illustration with reference to the age limit as prescribed for unreserved category candidates. The maximum age limit for an unreserved category candidate for the 56th Combined Competitive Examination has been fixed at 37 years, as on 01.08.2010. He will be completing 40 years as on 01.08.2013. Thus, a candidate, who fulfills the upper age limit criterion, as on 01.08.2010, of 37 years, will be fulfilling the said criterion as on 01.08.2013. Conversely, a candidate of 40 years of age, as on 01.08.2013, would, by natural corollary, be fulfilling the eligibility criteria as on 01.08.2010 and, therefore, would

be eligible to participate in the process of selection.

11. Apparently, the present appellants do not fit in it, in terms of the upper age limit criteria, as prescribed in the advertisement. Their plea that upper age limit should be enhanced, in view of issuance of aforesaid clarificatory notice, is not at all tenable.

12. We cannot accept the plea taken on behalf of the appellants that only because admit cards were issued to them and they were allowed to participate in the preliminary test, they should be allowed to participate in the further process of selection. Issuance of admit cards, in their favour, was an apparent mistake and, somehow or the other, their ineligibility could not be detected at the time of scrutiny of the application forms. The appellants were allowed to participate in the preliminary test on the basis of admit cards, which were issued by mistake. A mistake, if not irreversible, can be corrected at any stage. No right stands accrued in favour of a person, because of mistake of such a nature. The fact remains that the appellants did not fulfill the basic criteria of being eligible to participate in the process of selection in terms of Clause 6 of the advertisement in question.

13. Since the appellants did not fulfill the eligibility criteria, their candidatures have been rightly

undone by the Commission holding them ineligible to participate in the process of selection.

14. The judgments and orders under appeal, passed by the learned single Judge, do not warrant any interference in the absence of any legal or factual infirmity. We do not find any merit in these appeals.

15. Both the appeals are, accordingly, dismissed.

16. All interlocutory applications, in both the appeals, stand disposed of.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, CJ.:- I agree

(I. A. Ansari, CJ.)

Praveen-II/-

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