

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1658 of 2015

IN

Civil Writ Jurisdiction Case No.12981 of 2014

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1. Samrendra Kumar, S/o Late Jhingru Thakur, Resident of village - Dayalpur, P.S. - Bihpur, District - Bhagalpur.
2. Binod Kumar Singh, S/o Sri Vishwa Nath Singh, Resident of Village - Madhe, P.S. - Navi Nagar, District - Aurangabad.
3. Pratap Kumar Singh, S/o Late Shiv Shankar Pd., Resident of village - Badi Machhua Toli, Near Danapur Cantt., P.S. - Danapur, District - Patna.
4. Ravi Shekhar Pandey, S/o Late Rambriksha Pandey, Resident of Village - Arari, P.S. - Sarai, District - Vaishali.
5. Satish Chandra Prasad, S/o Late Baidya Nath Pd., Resident of village - Pauk, P.S. - (Jairampur Morh), Barbiga, District - Sheikhpura.
6. Birendra Kumar, S/o Late Dodraj Prasad, Resident of Village - Jorarpur, P.S. - Deepnagar, District - Nalanda.
7. Chandra Bhushan Prasad, S/o Late Basant Singh, Resident of Village + P.O. - Nagarnausa, P.S. - Nagarnausa, District - Nalanda, Pin - 801305.
8. Sunil Kumar Sinha, S/o Sri Uma Shankar Pd., Resident of Village - Sahi Niwas, New Colony - Jail Hata, P.S. - Daltanganj, District - Palamu (Jharkhand).
9. Arun Kumar Singh, S/o Sri Rajendra Prasad Sing, Resident of Village - Bijulia, P.S. - Samho, District - Begusarai.
10. Sudhir Kumar Singh Shastradhar, S/o Late Umeshwar Singh, Resident of village - Sakri Gali, P.O. Gulzarbagh, P.S. Alamganj, District - Patna.
11. Viswanath Kumar, S/o Suraj Dayal Singh, Resident of village - Jamhuria, Via - Usri, District - Jehanabad.

12. Ram Suresh Choudhary, S/o Late Tej Narayan Choudhary,
Resident of Village - Shastram, P.S. - Biroul, District - Darbhanga.
13. Parma Nand Singh, S/o Late Ram Kailash Singh, Resident of
village - Garura, P.S. - Sanjhauli, District - Rohtas.

.... **Appellants**

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health and Family
Welfare, Govt. of Bihar, Patna.
3. The Additional Secretary, Department of Health, Govt. of Bihar,
Patna.
4. The Director-in-Chief, Health Services, Government of Bihar,
Patna.
5. The Bihar Staff Selection Commission, Patna.
6. The Chairman, Bihar Staff Selection Commission, Patna.
7. The Secretary, Bihar Staff Selection Commission, Patna.

.... **Respondents**

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Appearance :

- For the Appellant : Mr. Subodh Kumar Jha, Advocate
Mr. Pranav Kumar Jha, Advocate
- For the State : Mr. Anil Kr. Sinha, Govt. Advocate No.9
- For the BSSC : Mr. Kamla Kant Upadhyay, Advocate
Mr. C.B. Das, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

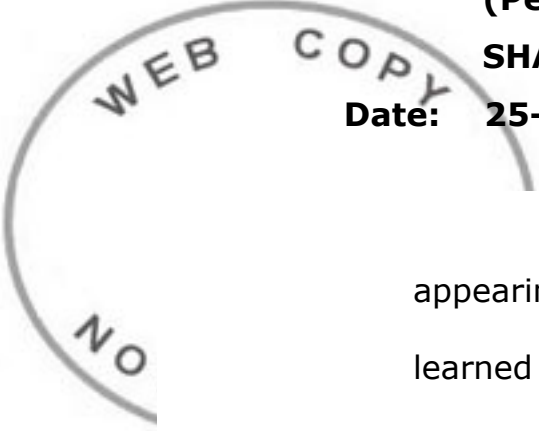
And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 25-02-2016



Heard Mr. Subodh Kumar Jha, learned Counsel, appearing on behalf of the appellants, Mr. Anil Kumar Sinha, learned Counsel, appearing on behalf of the respondents-State of Bihar. Heard also Mr. Kamla Kant Upadhyay, learned Counsel, appearing on behalf of the Bihar Staff Selection Commission.

2. This appeal, under Clause 10 of the Letters Patent of this Court, calls in question the judgment and order, dated 10.08.2015, passed, in C.W.J.C. No.12981 of 2014, by a learned single Judge of this Court, whereby he dismissed the writ application, filed under Article 226 of the Constitution of India, by these appellants. The appellants claim that they have been possessing requisite qualification for appointment as Pharmacist in the Health Department of the Government of Bihar since prior to the year 1992.

3. This is not in dispute that in the year 1992, an advertisement was issued, inviting applications for appointment to the posts of Pharmacist, which, for some reasons or the other, could not yield any result inasmuch as the selection process could not be brought to any logical



conclusion. Since the situation continued for years together, some of the diploma holders in Pharmacy approached this Court seeking, by invoking Article 226 of the Constitution of India, a direction to the State-respondents to fill up the posts of Pharmacist in accordance with law. They raised a grievance that despite existence of 2000 vacancies of Pharmacist, in different surgencies, the posts were not being filled up after following due selection procedure by appointing persons having requisite qualification; rather, by way of stopgap/*ad-hoc* arrangement, persons, not possessing the requisite qualification, were being allowed to discharge the functions of Pharmacist, which requires technical know-how. The present appellants were not the petitioners in the said writ application, filed in the year 1998, registered as C.W.J.C. No.4302 of 1998 [Rajiv Ranjan & Anr. Vs. State of Bihar & Ors.]. This Court, in the context of the facts and circumstances, disposed of the aforesaid writ application with the following direction:-

"In the facts and circumstances, I feel that the matter should be decided by the Commissioner-cum-Secretary, Health Department at first instance. The petitioners will file a representation before the Secretary, Health Department, who in his turn will enquire from different surgencies



as to how many posts of pharmacists are vacant and are being manned by way of adhoc arrangement. On receipt of such information, if it is found that certain posts of pharmacist in one of other surgency is being manned by way of adhoc arrangement for years together and have not been filled up on regular post, he will direct the competent authority to fill up such posts after due advertisement, in accordance with law.

A decision in this respect be taken and step as may be ordered to be taken by the Secretary, Health Department and communicated to the petitioners within a period of four months from the date of receipt of such representation. If the vacant posts of pharmacists are being manned by way of adhoc arrangement, the said posts are required to be filled up after due advertisement, in accordance with law, preferably within a period of one year from the date of receipt of such representation.

If the posts of pharmacists have not been filled up for years together and thereby deprived eligible candidates to apply in such case the question of relaxation of age of

persons be also considered, who have become over age in the meantime.

The writ petition stands disposed of, with the aforesaid observations."

(Emphasis mine)

4. As is evincible from this Court's order, dated 21.07.1999, passed in C.W.J.C. No.4302 of 1998 (**Rajiv Ranjan**) (supra), the question as regard grant of relaxation of age for such persons, who became over-aged in the absence of any selection process having been undertaken for years together, was left to be considered by the State Government. There was no positive direction to relax the upper age limit.

5. Later on, the State Government came out with an advertisement, bearing No.22/Pharma-1/99, published in the newspaper, on 25.01.2000, issued by the Directorate of Health Services, Government of Bihar, inviting applications for appointment to the posts of Pharmacist. The said advertisement is on record by way of Annexure-1 to the writ application. The very opening paragraph of the said advertisement refers to this Court's decision, passed in case of **Rajiv Ranjan** (supra), in compliance of which, the advertisement had been issued. The said advertisement prescribed, as the eligibility criteria, 18 years to be the



minimum age and 35 years to be the maximum as on 31.12.1999, for appointment to the posts of Pharmacist. While prescribing the age limit, as noted, the advertisement also stipulated relaxation in age, (i) in pursuance of this Court's order, and (ii) for candidates belonging to reserved category, in terms of Circulars issued by the State Government.

6. Before we proceed to take note of various other facts, we must point it out that this is an admitted fact that as on 31.12.1999, the appellants herein had crossed the age of 35 years. Though, on the date of advertisement, there was no decision of the State Government, providing relaxation in maximum age and the appellants had crossed the age limit, they, however, submitted their applications against the said advertisement, presumably, under the belief and impression that they would be covered by age relaxation if any decision is taken by the State Government in terms of this Court's order, dated 21.07.1999.

7. Before the process of selection could proceed further, the State of Bihar came to be bifurcated into two successor States, viz. State of Jharkhand and rest of Bihar, with effect from 15.11.2000. The selection process came to a stand still for reasons not available on record. No decision was taken by the State Government for relaxing the upper



age limit. In the year 2004, the State Government came out with Bihar Pharmacist (Procedure, Service Condition and Recruitment) Rules, 2004 [**hereinafter referred to as the "Rules"**]. The Rules, framed under Article 309 of the Constitution of India, prescribed for, *inter alia*, the process of recruitment.

8. Without proceeding further with the advertisement, issued in the year 2000, in terms of the aforesaid Court's order, the State Government came out with another advertisement, issued on 07.04.2006, inviting applications against 1116 posts of Pharmacist. In terms of the Rules of 2004, the maximum and the minimum age of 18 years and 35 years, respectively, were prescribed, fixing the date 01.08.2003, as the cut-off date for determination of eligibility, in terms of age. The 2006 advertisement aforesaid, though contained provision for relaxation of age for reserved category, it did not stipulate relaxation for such candidates, who had become over-aged, because of delay in undertaking process of selection, as was directed by this Court in the order, dated 21.07.1999, in case of **Rajiv Ranjan** (supra).

9. Those, who fell aggrieved by the subsequent advertisement, the effect of which was to completely shut down the earlier advertisement, issued on



25.01.2000, approached this Court, under Article 226 of the Constitution of India, by filing several writ applications. It transpires from the records of the case that the Health Department of Government of Bihar took specific stand before this Court to conduct a separate selection test for the applicants of Advertisement No.22/Pharma-1/99, issued on 25.01.2000, against posts vacant and sanctioned of Pharmacist up-to 1999, which remained in the State of Bihar after bifurcation into two successor States. In view of the stand so taken by the State of Bihar, this Court, by an order, dated 14.11.2007, passed in C.W.J.C. No.11405 of 2004 and other analogous cases, disposed of the writ applications, directing the State of Bihar to hold a separate selection test for the applicants of Advertisement No.22/Pharma-1/99 and fill up the vacancies in accordance with the terms and conditions, mentioned in the said advertisement, with respect to available vacancies against sanctioned posts of Pharmacist remaining in the State of Bihar, under Bihar Reorganization Act, till the year 1999, i.e., the date of advertisement.

10. Evidently, thus, the State Government was required to proceed in terms of the Advertisement No.22/Pharma-1/99 for those, who had applied, with only alteration that the number of vacancies, so advertised, i.e., 1059, stood proportionately reduced with the bifurcation of

the State of Bihar.

11. We are not required to go into all those details, pertaining to subsequent decision of the State Government/recruiting agency (Bihar Staff Selection Commission) to hold a written test for the purpose of selection instead of interview, as prescribed in the advertisement, which was disapproved by a learned single Judge of this Court and affirmed by a Division Bench, in Letters Patent Appeal, with clear direction that the selection process was required to be completed in terms of the said advertisement.

12. The controversy arose subsequently, when some of the candidates were declared over-aged by the Bihar Staff Selection Commission [**hereinafter referred to as the "Commission"**], in terms of the Advertisement No.22/Pharma-1/99 and were kept out of the process of selection. This is to be noted here that the State Government by that time had not taken any decision for granting age relaxation in terms of this Court's order, dated 21.07.1999, passed in case of **Rajiv Ranjan** (supra). This led to another round of litigation and some of the candidates, who were declared over-aged, approached this Court, seeking direction to allow them to appear in the interview. The Commission took the stand that unless the State Government took a



decision for relaxing age, as indicated in the advertisement, in the light of this Court's order, dated 21.07.1999, no relaxation could be granted by the Commission in the process of selection. The first of such writ application, filed by these appellants (petitioners in writ proceeding), under Article 226 of the Constitution of India, had given rise to C.W.J.C. No.17455 of 2011 [Binod Kumar Singh & Ors. Vs. The State of Bihar & Ors.]. By an order, dated 18.10.2011, passed in C.W.J.C. No.17455 of 2011 and another similar matter [C.W.J.C. No.18042 of 2011 (Rameshwar Rai & Ors. Vs. The State of Bihar & Ors.)], this Court had directed the State Government to take a decision, in this regard, within a period of two weeks and convey its decision to the Commission so that further interview letters could be issued to the eligible candidates. No decision could, however, be taken by the State Government, as directed by this Court, within aforesaid period of two weeks. The State Government sought for some time from this Court for taking a decision in this regard. This Court, in such circumstances, passed an interim order, dated 25.11.2011, asking the Commission to issue provisional interview letters to the petitioners of C.W.J.C. No.17455 of 2011 and other analogous cases and allow them, thus, to participate in the selection process subject to further order of the Court. This order is on record by way of Annexure-4 to

the writ application. The said order, dated 25.11.2011, is extracted hereinbelow:-

"Considering the fact that the last date of interview as per the schedule by the Bihar Staff Selection Commission has been fixed as 8.12.2011, this Court by its order dated 18.10.2011 had given time to the State Government to take a decision which it was required to take by order dated 21.7.1999 of this Court and this fact has also been mentioned in the advertisement published in 1999, but as yet no such decision has been taken.

Today, learned Government Pleader No.10 submits on instructions that it will take another one month time for the decision to be taken by the State Government regarding age relaxation.

In the aforesaid view of the matter, the respondent Bihar Staff Selection Commission is directed to issue provisional interview letters to the petitioners of all the three writ applications so that they may appear in the same interview process for which learned counsel for the Staff Selection Commission submits that three Interview Boards are functioning



at present. The Commission must ensure that the petitioners are interviewed by any of the said three Interview Boards on the date which may be convenient to it, for which purpose the Commission will take suitable steps for informing the petitioners for appearing in the interview.

It is directed that the result shall not be published until the petitioners are interviewed. It is further made clear that the result of the petitioners shall not be published until further orders of this Court and would be subject to the result of the writ applications.

Put up these matters in the same position on 9th January, 2012."

13. Several persons, thereafter, approached this Court with similar grievance and obtained similar interim orders. The appellants had participated in the interview pursuant to interim order of this Court. It is not in dispute that in the light of an order of this Court, dated 15.03.2012, passed in C.W.J.C. No.194 of 2012, the appellants were shown to be selected. However, in the absence of any decision as regards age relaxation, their names could not be recommended by the Commission for appointment. It



transpires that since the decision, at the appropriate level, could not be taken, this Court, again, asked the officials, *vide* order, dated 19.06.2013, passed in C.W.J.C. No.17455 of 2011 and other analogous cases, to take a final decision with regard to relaxation in age.

14. Finally, the Health Department of the State Government of Bihar came out with a letter, dated 08.07.2013, communicated to the Secretary, Bihar Staff Selection Commission, wherein a decision was taken on the question of relaxation of upper age limit as laid down in the Advertisement No.22/Pharma-1/99. From the said letter, it transpires that the State Government decided to grant relaxation in upper age limit for such candidates, who had acquired qualification, in Pharmacy, between the years 1992 to 1999, but had crossed the upper age limit in the year 1999. Evidently, the benefit of age relaxation was given to such candidates only, who had obtained qualification in Pharmacy after 1992 and those, who had obtained the said qualification before 1992, were not given such benefit.

15. The appellants are such candidates, who had acquired qualification in Pharmacy before 1992 and are, thus, not covered by the decision of the State Government for granting age relaxation, as contained in letter, dated 08.07.2013. The writ application, filed by these appellants,

bearing C.W.J.C. No.17455 of 2011, came to be disposed of, with a batch of other writ applications, *vide* judgment and order, dated 14.03.2014, in the following terms:-

".....

23. *As noted above, the Commission has supplied the list of 143 candidates who were found to be over-age in terms of the advertisement dated 25.1.2000 and, therefore, the Commission must scrutinize each and every application with reference to the Government decision regarding relaxation of age and those who are found to be qualifying in terms of the age qualification as clarified and amended by the State Government in its letter dated 8.7.2013 must be allowed to appear in the interview, which has to be now held in respect of such of the petitioners and others who were not issued interview call letter and/or were not allowed to appear in the interview for one reason or another only on account of their being over-age.*

24. *It is, however, made clear that such opportunity of appearing in the interview shall be given only to those of the petitioners who have already not appeared in the interview*



pursuant to the interim order of this Court, whose names have also been referred above as per the compact chart submitted by the learned counsel for the Commission. In other words, none of the petitioners of CWJC No. 17455 of 2011, CWJC No. 18042 of 2011, CWJC No. 22115 of 2011, CWJC No. 21636 of 2011, CWJC No. 19513 of 2011, CWJC No. 21768 of 2011, CWJC No. 21772 of 2011 and CWJC No. 19965 of 2011 would be given any further opportunity for appearing in the interview. Such opportunity of interview will, however, be given to the petitioners of CWJC No. 706 of 2012, CWJC No. 22890 of 2011, CWJC No. 919 of 2012, CWJC No. 1902 of 2011, CWJC No. 194 of 2012, CWJC No. 8665 of 2012 and CWJC No. 8104 of 2012, subject to their being covered by the government decision dated 8.7.2013.

25. By way of abundant precaution and in order to be fair to those persons who are not petitioners before this Court but are amongst the lot of applicants of the advertisement dated 25.1.2000, who were not issued an interview call letter only on account of over-age and later included in the list of 143 persons and are

covered within the parameter of the age relaxation given by the State Government in its order dated 8.7.2013, will also be allowed to appear in the interview to be separately conducted for such over-age candidates.

26. Keeping in view that a period of fifteen years is now going to be completed from the date of the first order of this Court by which appointments were to be made within one year, this Court would expect the Commission to expedite the matter so that the interview of the left over candidates on account of over-age is completed at the earliest so that the Commission can send its revised recommendation to the State Government for appointment on the post of Pharmacist. This exercise, therefore, must be completed by the Commission within a period of four months from the date of receipt of this order.

27. This Court would also direct the authorities of the State Government and the Principal Secretary of Health Department to ensure the appointment to be made on the post of Pharmacist on the basis of recommendation of the Commission

pursuant to the advertisement of 25.1.2000 must be completed in next four months from the date of receipt of such recommendation.

28. With the aforementioned observations and direction, these writ applications are disposed of."

16. A Letters Patent Appeal No.1292 of 2014 was, thereafter, preferred by the appellants assailing the judgment and order, dated 14.03.2014, aforesaid of learned single Judge. This fact cannot be disputed that till the adjudication of C.W.J.C. No.17455 of 2011, with other analogous cases, on 14.03.2014, the appellants did not question the legality of the Government's decision, pertaining to relaxation of age, as communicated to the Commission *vide* letter, dated 08.07.2013. It transpires that during the pendency of L.P.A. No.1292 of 2014, the appellants preferred a writ application, under Article 226 of the Constitution of India, giving rise to C.W.J.C. No.12981 of 2014, challenging the legality of the said letter, dated 08.07.2013. A Division Bench of this Court, *vide* order, dated 19.01.2015, passed in L.P.A. No.1292 of 2014 (preferred against the judgment and order, dated 14.03.2014, passed in C.W.J.C. No.17455 of 2011), made following observations:-

"As the appellants had not challenged, in C.W.J.C. No. 17455 of



2011, the letter, dated 08.07.2013, aforementioned, it becomes quite obvious that they cannot express any grievance, in this appeal, as against the relaxation of age granted by the Government by its letter, dated 08.07.2013, aforesaid. This position could not be disputed and for this reason only, these appellants have already filed a separate writ petition, which has given rise to C.W.J.C. No. 12981 of 2014.

It has, however, been submitted on behalf of the appellants, that the directions given by the order, under appeal, would not cause prejudice to their cases which they have pleaded in the writ petition, namely, C.W.J.C. No. 12981 of 2014, which is still pending for decision.

We do not find any substance in the above submission inasmuch as the direction has been given to the Commission to make recommendations in terms of the Government letter, dated 08.07.2013, and other relevant materials and the State Government has been directed to make appointment in accordance with the recommendations, which may be made by the Commission.

It is, now, submitted, on behalf



of the appellants, that they may be allowed to withdraw this appeal with liberty to press CWJC No. 12981 of 2014 and that the decision, rendered in the order under appeal and direction given therein, shall not cause any prejudice to the adjudication of the right, if any, of the appellants.

.....”

The said L.P.A. No.1292 of 2014 was allowed to be withdrawn with the aforesaid observations.

17. The learned single Judge of this Court dismissed the writ application, bearing C.W.J.C. No.12981 of 2014, by judgment and order, dated 10.08.2015, mainly on two grounds. Firstly, that the dispute, as raised in the writ proceedings, stood squarely answered in the judgment and order of this Court, dated 14.03.2014, passed in C.W.J.C. No.706 of 2012 and other analogous matters including C.W.J.C. No.17455 of 2011. The learned single Judge was of the further view that there was cogent and valid reason for granting age relaxation to only such candidates, who had acquired qualification, in Pharmacy, during the period 1992 and 1999.

18. Mr. Subodh Kumar Jha, learned Counsel, appearing on behalf of the appellants, assailing the judgment



and order, dated 10.08.2015, aforesaid, passed in C.W.J.C. No.12981 of 2014, by the learned single Judge, has placed heavy reliance upon the letter, dated 23.01.2006, issued by the Personnel and Administrative Reforms Department, Government of Bihar, and has submitted that the State Government ought to have extended age relaxation to such candidates also, who had acquired qualification prior to 1992. He would contend that it was because of the laches on the part of the respondents that the selection process could not be undertaken for years together for filling up the posts of Pharmacist and, thus, the appellants and other similarly situated persons, who had acquired qualification before 1992, could not get an opportunity to participate in the process of selection. He would also contend that in terms of Clause-III of the decision of the State Government, as contained in letter, dated 23.01.2006, all such candidates, who had fulfilled the eligibility criteria, in terms of age, on the date of last advertisement, should have been allowed to participate in the selection process held pursuant to subsequent advertisement even if they had become over-aged in terms of the subsequent advertisement. He has, accordingly, submitted that the letter, dated 08.07.2013, being wrong and illegal in the teeth of the communication, dated 23.01.2006, ought to have been struck down by the learned single Judge.



He has further submitted that the learned single Judge erred in relying upon the observations made, in the judgment and order, dated 14.03.2014, passed in C.W.J.C. No.706 of 2012 and other analogous cases, by a learned single Judge of this Court ignoring the subsequent observations made by a Division Bench of this Court in the order, dated 19.01.2015, passed in L.P.A. No.1292 of 2014, wherein this Court had made it clear that the disposal of the appeal would not debar the adjudication of C.W.J.C. No.12981 of 2014 and the appellants' rights, if any, shall not be prejudiced by the withdrawal of the said appeal.

19. Mr. Anil Kumar Sinha, learned Counsel, appearing on behalf of the respondents-State of Bihar, on the other hand, contends that there is rational behind extending the benefit of age relaxation to such candidates, who acquired qualification, in Pharmacy, after 1992 and before 1999. He further contends that, as per the own case of the appellants, no selection process was undertaken after 1992. It was, therefore, decided that those, who had acquired qualification after 1992, but did not receive any opportunity to participate in the process of selection, because of the fact that no selection process was undertaken, they were given the benefit of age relaxation. He would, accordingly, contend that since the advertisement, inviting applications, was issued



in January, 2000, it was decided that those, who despite acquiring qualification after 1992, became ineligible for consideration, in terms of the said advertisement, on the ground of having become over-aged, the relaxation of age be given as the relaxation of age has accordingly been given to this class of persons. He would also submit that merely on the basis of observations and directions of this Court, contained in the order, dated 21.07.1999, passed in C.W.J.C. No.4302 of 1998, the appellants cannot claim, by way of right, any age relaxation, though it is within the discretion of the State Government to grant such relaxation in order to mitigate hardship, caused to a class of persons in the given facts and circumstances of the case. He would also submit that the appellants having failed to challenge the validity of the letter, dated 08.07.2013, at the first instance, during the pendency of C.W.J.C. No.17455 of 2011, which came to be disposed of alongwith a batch of writ applications, i.e., C.W.J.C. No.706 of 2012 and other analogous cases, on 14.03.2014, they are, now, disentitled from questioning the validity of said communication in a subsequent proceeding. He would further submit that, in the facts and circumstances of the present case, the learned single Judge rightly dismissed the writ application.

20. We have perused the pleadings available on



the record and have considered the rival submissions advanced on behalf of the parties. It is apparent that the impugned communication, dated 08.07.2013, was known to the appellants during the pendency of C.W.J.C. No.17455 of 2011. A learned single Judge of this Court, while disposing of the said writ application, by judgment and order, dated 14.03.2014, had taken note of the said communication, dated 08.07.2013, and had allowed the respondents to proceed in terms of the said communication. The appellants did not challenge the validity of the said judgment and order before the learned single Judge in C.W.J.C. No.17455 of 2011. This aspect has been noticed subsequently by a Division Bench of this Court in the order, dated, 19.01.2015, passed in L.P.A. No.1292 of 2014 (supra).

21. In our considered view, the appellants having not assailed the legality of the said communication, dated 08.07.2013, before the learned single Judge of this Court, in C.W.J.C. No.17455 of 2011, though, they had opportunity to do so, they were estopped from raising such a plea in a subsequent proceeding. The claim of the appellants, thus, stood barred by acquiescence.

22. In the present case, the appellants could have questioned the validity of the State Government's decision, as contained in letter, dated 08.07.2013, in C.W.J.C.



No.17455 of 2011, which they did not do. Applying the principle of acquiescence, we are of the considered view that the claim of the appellants, challenging the said decision in a subsequent proceeding, could not have been entertained and has rightly not been entertained by the learned single Judge of this Court, by the judgment and order, under appeal, dated 10.08.2015. Further, nothing has been shown to us on behalf of the appellants to make out a case that as on the date of publication of advertisement, there existed any statutory Rule in relation to appointments to the posts of Pharmacist, providing any mandatory or directory requirement, that year wise vacancies should be advertised for being filled up. We do not find any merit in the submissions, made on behalf of the appellants, that the communication, dated 23.01.2006, issued several years after the date of advertisement, having no statutory force, could be made the basis for challenging the legality of the Government's decision, as contained in the letter, dated 08.07.2013, providing for age-relaxation. The appellants have not been able to establish any legal or fundamental right for grant of relaxation in age. The decision of the State Government to grant, in the light of certain observations made by this Court, relaxation in the upper age limit, in peculiar facts and circumstances of the present case, cannot not be said to be unfair or unreasonable.

23. In view of the facts and discussions, as narrated and discussed above, we do not find any merit in this appeal warranting our interference with the judgment and order, dated 10.08.2015, passed in C.W.J.C. No.12981 of 2014, by the learned single Judge of this Court.

24. This appeal stands dismissed accordingly.

25. There shall be, however, no order as to costs.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ. : I agree

(I. A. Ansari, ACJ.)

Praveen-II/-

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