

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5799 of 2017

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1. Kumud Ranjan Prabhat Son of Sri Shiv Narayan Rai Resident of Village- Mannipur, P.O.- Sari, P.S. Waris Nagar, District- Samastipur.
 2. Raj Ranjan Kant Son of Sri Surendra Prasad Resident of Village +P.O. Saidabad Mannipur, P.S. Kako Pali, District- Jehanabad.
 3. Rahmate Alam Son of late Islam Resident of Village- Dihuli Ishhak, P.O. Dihuli Bujurg, P.S. Sakra, District- Muzaffarpur.
 4. Md. Naushad Ansari Son of Md. Farooque Ansari Resident of Village- Etwan, P.O.- Dhanej, P.S. Kochas, District- Rohtas.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Principal Secretary, Science and Technology Department Govt. of Bihar, Patna.
3. Bihar Public Service Commission through its Secretary, 15 Jawaharlal Nehru Marg, Bailey Road, Patna.
4. Chairman , Bihar Public Service Commission, Bihar, Patna.
5. Additional Secretary Cum Examination Controller, Bihar Public Service Commission, Patna.
6. Principal Secretary, Road Construction Department, Govt. of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Adv.
For the Respondent/s : Mr. Prabhat Ranjan, AC to GP-6
For the BPSC : Mr. Sanjay Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-08-2017

Heard Mr. Pramod Kumar, learned counsel appearing for the petitioners, Mr. Prabhat Ranjan, learned AC to GP-6, for the State and Mr. Sanjay Pandey, learned counsel for the Bihar Public Service Commission.

The writ petition was filed by four petitioners complaining against fixation of cutoff date by the respondent Bihar Public Service Commission in the advertisement so published for appointment of Assistant Engineers (Civil and Mechanical), a copy of which is



present at Annexure 3. During the course of argument it transpired that of the four petitioners while petitioner nos. 1, 2 and 4 were yet to qualify on the educational qualification as they continued to be students of 8th Semester, the petitioner no.3 Rahmate Alam was a graduate and thus fully eligible to apply but the only impediment on his way was that he fell short on age on the basis of the cutoff date so fixed by the Commission for determining the minimum age of an applicant which was fixed as 1.8.2016. According to learned counsel the petitioner's age was short by three and half months.

It is taking note of these admitted circumstances that this writ petition, in so far as petitioner nos. 1, 2 and 4 is concerned, was disposed of by holding them ineligible to apply on grounds of not fulfilling the educational qualification and the matter proceeded in so far as petitioner no.3 Rahmate Alam is concerned. While granting time to the respondent State and the respondent Bihar Public Service Commission to inform as to how and why, when the advertisement in question was published in the year 2017, they have fixed the cutoff for determining the minimum age of the applicant as 1.8.2016 i.e. retrospectively and not the year in which the advertisement was published, the Commission was directed to provisionally accept the application of the petitioners, subject to the outcome of this writ petition.



Counter affidavits have been filed on behalf of the respondents. The Principal Secretary has been very candid in his stand in the counter affidavit so filed on his behalf. In paragraph 7 of the counter affidavit it is mentioned that on query made by the Bihar Public Service Commission through letter no. 2455 dated 22.11.2016 as to what would be the cutoff date for determination of the age of a candidate for filing his/her application for appointment, a reply was sent through letter no. 9533 dated 28.11.2016 informing them that the cutoff date needs to be regulated in terms of the circular no. 212 dated 23.1.2006 of the Department of Personnel and Administrative Reforms, a copy of which is enclosed at Annexure 'C' to the counter affidavit of the Principal Secretary and Annexure 14 of the supplementary affidavit.

While it is the argument of Mr. Pramod Kumar, learned counsel for the petitioners, that in terms of the circular dated 23.1.2006 of the Department of Personnel and Administrative Reforms it is the year of the advertisement which should be the year to fix the cutoff date for determining the minimum age limit, the main contest is coming from the Commission and according to Mr. Pandey, learned counsel appearing for the Commission, this has been the practice of the Commission while issuing advertisement in relation to vacancies. According to Mr. Pandey, it is the year for which a



vacancy is determined which also becomes the basis for determining the cutoff date and since in the present case the vacancies have been calculated for the year 2016, hence the cutoff date has been fixed as 1.8.2016. Mr. Pandey, learned counsel for the Commission simply relies on the past practice adopted by the Commission in this regard. He has also produced a copy of the last advertisement issued by the Bihar Public Service Commission for filling up of the post of Assistant Engineer (Mechanical) bearing Advertisement Nos. 1, 2, 3 and 4 of 2011 and informs that the cutoff date for each of the advertisement was fixed as 1.8.2011 except advertisement No. 3 of 2011 in which the cutoff was fixed as 1.8.2010.

I have heard learned counsel for the parties and have perused the records.

There is no dispute amongst the parties that the cutoff date is guided by the circular of the Department of Personnel and Administrative Reforms dated 23.1.2006 present at Annexure 14 of the supplementary affidavit and Annexure 'C' to the counter affidavit of the Principal Secretary, Road Construction Department. In fact as I have already noted, even the Commission was in a dilemma to seek a query in this regard as manifest from their letter bearing no. 2455 dated 22.11.2016 and their query was responded to by the Road Construction Department through their letter dated 28.11.2016 at



Annexure 'A' in reference to the circular no. 212 dated 23.1.2006 of the Department of Personnel and Administrative Reforms which has been incorrectly mentioned as General Administration Department. In fact a copy of the letter of the General Administration Department has also been enclosed by the Principal Secretary in his affidavit vide Annexure 'B' which again makes reference to circular no. 212 dated 23.1.2006 of the Department of Personnel and Administrative Reforms on the issue of fixation of cutoff date. It is now to be seen as to what is the import of the advisory issued by the Department of Personnel and Administrative Reforms in so far as it concerns determination of cutoff and for the purpose I deem it necessary to put on record paragraphs 2 and 3 of the circular which runs as under:

“2. इस संबंध में यह उल्लेखनीय है कि बिहार लोक सेवा आयोग के पूर्व परामर्श से कार्मिक एवं प्रशासनिक सुधार विभाग के पत्रांक – 11013 दिनांक– 17.06.77 द्वारा अध्याचना भेजने हेतु एक समय सारणी परिचारित की गई थी। उक्त परिपत्र के अनुसार प्रति वर्ष रिक्तियों का आकलन पहली अप्रिल की स्थिति के अनुसार करते हुए 30 अप्रिल तक अध्याचना आयोग को भेजी जानी थी। तदनुसार आयोग द्वारा विज्ञापन का प्रकाशन 15 जुलाई तक कर दिया जाना था। उक्त आधार पर नियुक्ति हेतु कट ऑफ डेट का निर्धारण 01 अगस्त किया गया था। परन्तु हाल के वर्षों में उक्त समय सारणी का अनुपालन नहीं होने के कारण राज्य सरकार की सेवाओं/संवर्गों में नियमित रूप से नियुक्ति की कार्रवाई संभव नहीं हो पा रही है।

3. उपर्युक्त तथ्यों के आलोक में अनुरोध है कि रिक्तियों का आकलन प्रतिवर्ष किया जाए तथा तदनुसार आयोग को अध्याचना प्रतिवर्ष भेजना सुनिश्चित किया जाए। परन्तु यदि



किसी कारण से ऐसा संभव नहीं हो सकें तो वैसी स्थिति में जो उम्मीदवार अंतिम विज्ञापन/परीक्षा के समय उम्र के आधार पर पात्रता रखते थे और उसका बाद भी अगले वर्ष या उसके बाद वाले वर्ष में भी परीक्षा होने पर परीक्षा में भाग लेने हेतु अधिकतम उम्र सीमा के आधार पर योग्य होते, परन्तु विज्ञापन नहीं होने के कारण अधिकतम उम्र सीमा पार कर जाते हैं और कालक्रम में अगली परीक्षा हेतु विज्ञापन निकालते समय उम्र सीमा के आधार पर अयोग्य हो जाते हैं तो वैसे अभ्यर्थियों को ऐसी परीक्षा में भाग लेने का अवसर दिया जाए तथा मात्र उम्र के आधार पर अयोग्य होने की स्थिति में उन्हें परीक्षा में भाग लेने से वंचित नहीं किया जाए।”

A plain reading of the advisory at paragraph 2 would show that a schedule has been fixed for initiating a selection process and which obliges the requisitioning department to calculate the vacancies by the 1st April and send its requisition by 30th April to enable the Commission to publish the advertisement by 15th July fixing a cutoff date on 1st August of that year. The circular of the Department of Personnel and Administrative Reforms also grants protection to such of the candidates who have crossed the age limit due to delayed advertisements. Paragraph 3 of the advisory has an overriding effect when it provides that notwithstanding any delay in publication of an advertisement, such of the candidates who were within the prescribed age limit on the date of the last advertisement and would be within limit even in the next two following years but had crossed the age limit due to non-publication of advertisement each year, such



candidates should be allowed to participate in the examination and should not be debarred from participating in the selection process on age grounds.

Two stipulations are very clear from the circular of the Department of Personnel and Administrative Reforms dated 23.1.2006 i.e. (a) the cutoff date for minimum age is to be fixed in the year of the advertisement; and

(b) all those persons who have become over age due to time lag between the previous advertisement and the subsequent advertisement, should be allowed to participate by granting them age relaxation.

Mr. Pandey has very strenuously argued that as per the past practice the cutoff date has been determined on the basis of year for which the vacancies have been calculated.

In my opinion, the fixation of cutoff date for allowing the candidates to participate in a selection process has got nothing to do with the determination of vacancies nor any such stipulation is present in the circular dated 23.1.2006. While the determination of a vacancy is a step towards inviting application, the determination of the cutoff date is determined by the year of advertisement and has no nexus with the year of determination of vacancy. In my opinion, any other interpretation given to the circular dated 23.1.2006 would be



discriminatory because by a retrospective fixation of a date for the purpose of minimum age, all such applicants who are eligible to participate in the examination as per the year of advertisement, are kept out for no justifiable reason. The policy decision so relied upon by the parties while giving relief to such of applicants who had become overage due to delayed advertisements, does not shut the doors for those who but for retrospective fixation of a cut off date in an advertisement, are fully eligible to participate in the examination, if the cut off date is fixed as per the year of the advertisement.

In fact the very advertisement relied by learned counsel for the Commission, issued in the year 2011, would confirm that of the four advertisements so published in the same year, while three of them fixed the cutoff as 1.8.2011, one of them had a cutoff as 1.8.2010.

In my opinion, the practice adopted by the Commission to determine the cutoff date on the basis of the year of vacancy, is contrary to the stipulations so present in the circular so claimed to be followed by the Commission for determining such cutoff date which nowhere prescribes for a retrospective fixation of a cutoff date rather the stipulation present at paragraph 2 is self eloquent that it has to be the year of publication of advertisement and the reason is plain and simple i.e. allowing maximum participation in a selection process.



For the reasons so discussed, the retrospective cutoff date fixed by the Commission in their Advertisement No. 2, 3 and 4 of 2017 is held contrary to the stipulations present in the circular of the Department of Personnel and Administrative Reforms dated 23.1.2006 and is accordingly modified to read as 1.8.2017 and since the application of the petitioner no.3 has been accepted by virtue of the interim order passed on 3.5.2017, the interim order is hereby confirmed.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.09.2017
Transmission Date	NA

