

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16526 of 2017

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Amrit Raj, Son of Parmanand Prasad, resident of Village- Gondram, P.O.- Sahsaal,
P.S.- Basnahi, District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Home, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. Bihar Police Sub Inspector Service Commission, Santosh Mansin, B- Block,
Near RPS Law College, Raghunathpur, Danapur, Patna through its Secretary.
5. The Secretary, Bihar Police Sub Inspector Service Commission, Santosh
Mansion, B- Block, Near RPS Law College, Raghunathpur, Danapur, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar

For the Respondent/s : Mr. S.S.PRASAD - SC-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 08-08-2018

The present writ petition has been filed for quashing the second paragraph of the advertisement dated 16.09.2017 bearing advertisement no. 1/17 whereby and whereunder the required educational qualification is that a candidate should possess Bachelor Degree, which had been obtained prior to 01.01.2017. It has been further prayed to permit the petitioner to fill the form for appointment on the post of Police Sub-Inspector, since the petitioner passed Bachelor course in the month of July, 2017 and is thus eligible for the said post of Sub- Inspector of Police.

2. The brief facts of the case are that the petitioner passed matriculation examination in 2011, whereafter he passed his I. Sc. examination and then the petitioner was admitted in B.Tech. (Civil Engineering) in Aryabhatt Knowledge University, Patna wherefrom he obtained bachelor degree on 12.07.2017. An



advertisement bearing no. 1/17 was issued by the respondent Commission on 16.09.2017 in different newspaper inviting applications from the eligible candidates for appointment on the post of Police Sub-Inspector. One of the conditions mentioned in the said application was that the candidates should be possessing bachelor degree on or before 01.01.2017 from any recognized university.

3. The learned counsel for the petitioner has contended that the decision of the Commission to fix the cut-off date as 01.01.2017 for the purposes of possessing bachelor degree is arbitrary, whimsical and contrary to the law of land since the advertisement has been published only on 16.09.2017, thus the cut-off date should have been either the date of advertisement i.e. 16.09.2017 or the last date for filing the form i.e. 30.11.2017.

4. Per contra, the learned counsel for the Commission has submitted that as per the Home Police Department notification dated 30.08.2017, the D.G.P., Bihar is required to get the number of vacancy worked out in the month of July, 2017 as far as the post of Sub-Inspector of Police is concerned. Clause- 2(a) postulates that the candidates shall abide by the directions and conditions contained in the advertisement. Finally, it is submitted that the Hon'ble Apex Court in catena of decisions has held that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rule and if there be no cut-off date appointed by the rule, then such date as may be appointed for the purpose in the advertisement calling for applications shall be the relevant date and in case if there is no such date appointed, then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. In this regard, the learned



counsel for the respondents has referred to the judgments of the Hon'ble Supreme Court reported in **Bhupinderpal Singh vs. State of Punjab** (2000) 5 SCC 262, **A.P. Public Service Commission vs. B. Sarat Chandra**, (1990) 2 SCC 669, **District Collector and Chairman, Vizianagaram Social Welfare Residential School Society vs. Tripura Sundari Devi**, (1990) 3 SCC 655, **M.V. Nair (Dr. Vs. Union of India**, (1993) 2 SCC 429, **Rekha Chaturvedi vs. University of Rajasthan**, 1993 Supp. (3) SCC 168, **U.P. Public Service Commission, U.P. Allahabad Vs. Alpana Ashok Kumar Sharma vs. Chander Shekhar**.

5. The learned counsel for the Commission has submitted that the cut-off date has to be of the year of publication of the advertisement.

6. At this juncture, it would be relevant to quote paragraphs 13 and 14 of the judgment rendered by the Hon'ble Apex Court in the case of **Bhupinderpal Singh** (supra) here in below:-

“13. Placing reliance on the decisions of this Court in *Ashok Kumar Sharma v. Chander Shekhar*¹, *A.P. Public Service Commission v. B. Sarat Chandra*², *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi*³, *Rekha Chaturvedi v. University of Rajasthan*⁴, *M.V. Nair (Dr) v. Union of India*⁵ and *U.P. Public Service Commission U.P., Allahabad v. Alpana*⁶ the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by



which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

14. In view of several decisions of this Court relied on by the High Court and referred to hereinabove, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut-off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellant-petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if



they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut-off date for testing the eligibility qualifications on the principles deducible from the decided cases of this Court and stated hereinabove which have now to be treated as the settled service jurisprudence”.

7. It would also be apt to quote paragraph-6 of the judgment rendered by the Hon’ble Supreme Court in the case of State of U.P. vs. Vijay Kumar Misra reported in (2017) 11 SCC 521 herein below:-

“6. The position is fairly well settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut-off date, if any, prescribed under the rules or stated in the advertisement, is not eligible to be considered for such post. It is relevant to note here that in the rules or in the advertisement no power was vested in any authority to make any relaxation relating to the prescribed qualifications for the post. Therefore, the case of a candidate who did not come within the zone of consideration for the post could not be compared with a candidate who possessed the prescribed qualifications and was considered and appointed to the post. Therefore, the so-called confession made by the officer in the Court that persons having lower merit than the respondent have been appointed as SDI (Basic), having been based on a misconception is wholly irrelevant. The learned Single Judge clearly erred in relying on such a statement for issuing the direction for appointment of the respondent. The Division Bench was equally in error in confirming the



judgment of the learned Single Judge. Thus the judgment of the learned Single Judge as confirmed by the Division Bench is unsustainable and has to be set aside."

8. Yet another celebrated judgment of the Hon'ble Apex Court on the issue under the consideration is the one rendered in the case of **Ashok Kumar Sonkar vs. Union of India & Ors.**, reported in (2007) 4 SCC 54, paragraph nos. 14, 16, 17, 18, 19 and 20 are reproduced herein below:-

"14. A review application was filed which was admitted. The matter was again placed before a three-Judge Bench of this Court in *Ashok Kumar Sharma v. Chander Shekhar*². One of the issues which fell for consideration of the Bench being Issue 1 reads as under: (SCC p. 21, para 5)

"(1) Whether the view taken by the majority (Hon'ble Dr. Thommen and V. Ramaswami, JJ.) that it is enough for a candidate to be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the applications, is correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission Rules to the present case by analogy?"

16. Indisputably, the appellant herein did not hold the requisite qualification as on the said cut-off date. He was, therefore, not eligible therefor.

17. In *Bhupinderpal Singh v. State of Punjab*⁴ this Court moreover disapproved the prevailing practice in the State of Punjab to determine the eligibility with reference to the date of interview, inter alia, stating: (SCC pp. 267-68, para 13)

"13. Placing reliance on the decisions of this Court in *Ashok Kumar Sharma v. Chander Shekhar*², *A.P. Public Service Commission v. B. Sarat Chandra*⁵, *Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M.*



*Tripura Sundari Devi*⁶, *Rekha Chaturvedi v. University of Rajasthan*³, *M.V. Nair (Dr.) v. Union of India*⁷ and *U.P. Public Service Commission v. Alpana*⁸ the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."

(See *Jasbir Rani v. State of Punjab*⁹.)

18. Yet again in *Shankar K. Mandal v. State of Bihar*¹⁰ this Court held that the following principles could be culled out from the aforementioned decisions: (SCC p. 523, para 5)

"(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received



by the competent authority.”

19. In *M.A. Murthy v. State of Karnataka*¹¹ a contention was made that *Ashok Kumar II*² was to be operative prospectively or not. The said contention was rejected, stating: (SCC p. 521, para 8)

“It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in *Ashok Kumar Sharma case No. II*². All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside.”

20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held



by this Court would be the last date for filing the application”.

9. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that the cut-off date by reference to which the eligibility requirement has to be satisfied by the candidate should be the date appointed by the relevant service rule and in case no such cut-off date is mentioned in the service rule, then the same should be one prescribed in the advertisement and only in case if no such cut-off date has been prescribed in the advertisement, only then the cut-off date for the purposes of acquiring the eligibility criteria would be the last date fixed for the purpose of receipt of the application by the competent authority. It is further apparent from the judgments referred to herein above that a candidate, who does not possess the requisite qualification on the cut-off date, can in no case be considered for selection and no relaxation can be granted in view of the fact that the same standard is applicable to one and all across the Board without any discrimination. It is equally well settled law that a choice of date as the basis for selection cannot be said to be arbitrary even if any particular reason is not forthcoming for the choice unless it is shown to be capricious or whimsical in a given circumstance. However, in the present case, the cut-off date has been fixed in context of the year of the advertisement, taking a cue from the circular of the department of Personal and Administrative Reforms dated 23.1.2006, which stipulates that the cut-off date for minimum age is to be fixed in the year of the advertisement.

10. For the reasons mentioned herein above, I find that there is no illegality in the Commission having fixed 01.01.2017 as the cut-off date for the purposes of possessing bachelor degree pertaining to the advertisement of the year 2017. The stand of the



respondents in the present case is squarely covered by the various judgments rendered by the Hon’ble Apex Court, as discussed herein above, in the preceding paragraphs.

11. Having regard to the facts and circumstances of the case, there is no merit in the present writ petition, accordingly, the same is dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	09.05.2018
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