

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1686 of 2018

In

Civil Writ Jurisdiction Case No.7096 of 2018

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1. Bihar Police Sub Ordinate Service Commission through its Secretary, Santosh Maidan, B. Block, Near R.P.S. Law College, Raghunath Path, Danapur, Patna- 801503
 2. The Secretary, Bihar Public Sub-ordinate Service Commission, Bihar, Sntosh Maidan, B.- Block, near D.P.S. Law College, Raghunath path, Danapur, Patna

... .. Appellant/s

Versus

1. Niranjn Kumar @ Niranjn Kumar Singh Son of Sri Ganesh Prasad Singh R/o Sardiha, P.S.-Simri Bakhtiarapur, Distt. Saharsa.
2. Ashutosh Kumar Chaudhary Son of Sri Baidyanath Chaudhary R/o Baidyanathpur, P.S.- Rosera, Distt. Samastipur.
3. Rahul Kumar Rai S/o Sri Nand Kishore Rai R/o- Kararia, Distt. Gopalganj.
4. Ravi Ranjan Kumar S/o Sri Shashi Bhushan Prasad R/o- Raxa Rahimpur, P.S. Dhaka, Distt. East Champaran.
5. Ravi Bhushan Verma S/o Late Parasnath Verma R/o Bhawanipur, Zirat, P.S.- Chatauni, Distt. Motihari.
6. The State of Bihar through the Secretary, Department of Home, Bihar, Patna.
7. The Secretary, Department of Home, Bihar, Patna.
8. The Director General of Police, Bihar, Patna.
9. The Secretary, Department of Personal and Administrative Reforms, Bihar, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Lalit Kishore, Advocate General Mr. Kunal Tiwary, Advocate
For the Respondent/s	:	Mr. Amresh Kumar Sinha, Advocate Mr. Vikramaditya, Advocate



For the State : Mr. S.K. Sharma, A.C. to AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-02-2019

Re: I.A. No. 233 of 2019

Heard Shri Lalit Kishore, learned Advocate General
and Senior Counsel for the appellant Commission.

2. The appeal is reported to be delayed by 69 days.

3. We have considered the affidavit filed in support
of the delay condonation application and we find that sufficient
cause has been shown to condone the delay in filing the appeal.
The delay is condoned and the appeal shall be treated to be
within time.

4. I.A. No. 233 of 2019 stands allowed accordingly.

Re: L.P.A. No. 1686 of 2018

The appeal has been preferred questioning the
observations which are in the shape of findings rendered by the
learned Single Judge in C.W.J.C. No. 7096 of 2018 concerning
the applicability of the circular dated 23rd January, 2006 issued
by the General Administrative Department, Government of



Bihar. A writ proceeding necessarily including an appeal may not be available against a mere finding if the ultimate relief has not been granted, but in the present case while allowing the writ petitioners to represent before the State Government for age relaxation in terms of the circular dated 23rd January, 2006, certain observations which have been made at internal page 3 and 5 of the judgment have led to the filing of this appeal by the Commission contending, that if the said observations which according to the learned counsel for the appellant touching upon the entire selection process are not set aside, the same would not only affect the present selection process but also future advertisements in this regard.

2. The dispute relates to the selection on the post of Police Sub Inspectors that is being conducted by the appellant Commission that came into existence in the year 2016. The contention of the respondent petitioners before the Writ Court was that on account of the selections not been held annually and advertisements not being published timely, the petitioners were deprived of their right to participate in the said selection process and on account of the advertisement having been issued at a belated stage they have become over age, as such, they were also entitled to be considered after grant of relaxation in age, for



which the foundation was laid on the Memo No. 212 dated 23rd of January, 2006 issued by the State Government extending the benefit of relaxation in age in respect of post for which examinations are conducted through the Bihar Public Service Commission. The contention of the respondent petitioners, therefore, appears to be that they were also entitled to the same benefit of relaxation even if a different Commission has been set up for selections of Police Sub Inspectors.

3. The Commission filed a counter affidavit and from where it can be gathered that the Commission had clearly relied on the judgment of the Apex Court in the case of **Dr. Ami Lal Bhat Vs. State of Rajasthan & Ors.**, reported in (1997) 6 SCC 614 Paragraphs 10 and 11 to contend that the power of relaxation could not be exercised on a wholesale basis as contended, inasmuch as, the appellant Commission was not in existence prior to 2016 and, therefore, there was no question of any delayed advertisement or delayed selection by the Commission. In the said background, the basic contention of the respondent petitioners about delay in the selection process does not arise in so far as the appellant Commission is concerned. In this background, it was also the contention of the Commission that the Government notification dated 23rd January, 2006



extending the benefit of age relaxation in respect of examinations conducted by the Bihar Public Service Commission would not be applicable as the said clarification had been issued by the Government vis a vis the selection process that was delayed by the Bihar Public Service Commission. Thus, contextually, the relaxation was confined in respect of such posts, the selections whereof were being held by the Bihar Public Service Commission.

4. Learned counsel for the appellant, therefore, contends that the aforesaid aspects have nowhere been taken notice of by the learned Single Judge who has proceeded to describe the arguments raised on behalf of the Commission to be a fallacy and a belligerent attitude on the part of the Commission by not adhering to the said notification of the Government dated 23rd January, 2006.

5. Learned counsel for the respondent Shri Amresh Kumar Sinha contends that the respondent petitioners have not preferred any appeal against the said judgment as they had to make a representation before the State Government seeking such relief.

6. Having heard learned counsel for the parties, we do not find any variance in the submissions raised, except for



the fact that the observations made by the learned Single Judge virtually indict the Commission in not adopting the circular dated 23rd January, 2006. We are of the considered opinion that the said directive of the State Government is not binding on the appellant Commission as it was issued in the year 2006 when the appellant Commission was not even in existence. Apart from this, the said direction was in relation to the anomalies having arisen on account of delayed advertisements and selections being held by the Bihar Public Service Commission. There is no such material so as to gather a similar inference with regard to the functioning of the appellant Commission.

7. So far as the issue of grant of relaxation in age is concerned, it is always open to the employer to proceed to extend any such benefit in matters of public employment, yet the same has to be in accordance with law or else such exercise of power may not withstand the test of judicial scrutiny, as has been held by the Apex Court in the case of **Dr. Ami Lal Bhat** (supra). We find that even though the said judgment had been clearly quoted in the counter affidavit of the Commission before the learned Single Judge, the same has neither been noticed nor any opinion rendered thereon.

8. For all the aforesaid reasons, therefore, the



impugned judgment so far as it adversely comments upon the functioning of the Commission as indicated at page 3 and 5 of the impugned judgment shall not be treated as binding and the appeal stands disposed of with the observation that in the event the respondent-petitioners have represented the matter for grant of relaxation, the same can be independently considered in future but the filing of such representation will in no way impede the selection process already undertaken by the appellant Commission.

9. The appeal stands disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

AFR/NAFR	
CAV DATE	
Uploading Date	16.02.2019
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