

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8389 of 2021

1. Jaydeep Kumar Abhay Son of Nagar Jeet Singh Resident of North S.K. Puri, House No. 135, Ramkrishna Path, P.S. and P.O. - Patliputra, Patna, District- Patna, Bihar - 800013.
2. Kumar Sushil Lall Son of Late Moti Lall Resident of Village and P.O. - Bhagan Bigha, P.S. - Rahui, District - Nalanda, Bihar - 803118.
3. Rohit Kumar Son of Govind Pathak Resident of Hanuman Mandir, Ward No. 7, Sitamarhi Chakmahila, P.S. - Sitamarhi, District- Sitamarhi, Bihar - 843302.
4. Pashupati Nath Prasad Son of Raja Ram Prasad Resident of Village - Nawada, P.S. - Rasulpur, P.O. - Chainwa, District- Saran, Bihar - 841204.
5. Swarn Lata Daughter of Pandit Nagina Lal Resident of Behind R.B.I., Salimpur Ahra, P.S. - Gandhi Maidan, Lane No. 3, District - Patna, Bihar - 800003.
6. Praveen Kumar Son of Sri Jagdish Mishra Resident of B/53, Mitramandal Colony, Saket Vihar, Anishabad, P.S. Phulwarisharif, District- Patna, Bihar - 800002.
7. Abhimanyu Kumar Singh Son of Nageshwar Prasad Sinha Resident of Shakuntla Sadan, Mohanpur Punaichak, P.S. Shastri Nagar, District- Patna, Bihar - 800023.
8. Sushil Kumar Sudhanshu Son of Ram Varan Singh Resident of At and P.O. - Balaur Kishunpur, P.S. - Kurhari, District- Muzaffarpur, Bihar - 844120.
9. Varun Kumar Son of Shyam Nandan Sharam Resident of Village - Brahmathan, P.O. and P.S. - Bariarpur, District- Munger, Bihar - 811211.
10. Dilip Kumar Mishra Son of Awadesh Mishra Resident of Laxmi Niwas, Road No. 07, Lachhmipur, P.S. - Darbhanga, District- Darbhanga, Bihar - 846009.
11. Dilip Kumar Son of Jyotish Nuniya Resident of Ramol Nuniya Tola, Tahirpur, Salmara, P.S. Azamnagar Katihar, District- Katihar, Bihar - 855113.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Bihar Public Service Commission, through its Chairman, 15, Jawahar Lal Nehru Marg, bailey Road, Patna.
4. The Chairman, Bihar Public Service Commission, 15 Jawahar Lal Nehru Marg, Bailey Road, Patna.
5. The Secretary, Bihar, Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.
6. The Controller of Examination, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. Manish Kumar, GP-4
Mr. Sanjay Pandey, Advocate
Mr. Abhinav Srivastave, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 02-02-2022

The Bihar Public Service Commission (BPSC for short) came out with an advertisement for conducting 66th Civil Services Combined Competitive Examination on 16.09.2020. The Cut-off-date for determination of maximum qualifying age had been fixed as 01.08.2020. The petitioners have admittedly crossed the upper age limit as on the said cut-off-date. It is their case that the BPSC has not been able to perform its duty of conducting the Combined Competitive Examination (CCE for short) on annual basis and it was taking about 4-5 years on an average to issue an advertisement for appointment to the aforesaid civil services in the State of Bihar. This resulted into combining of many competitive examinations into one, through a single advertisement. Accordingly, 40th to 42nd common CCE was held in 2007, 53rd to 55th common CCE was held in 2011, 56th to 59th common CCE was held in 2014 and 60th to 62nd common CCE in the year 2016. Thereafter, 63rd, 64th, 65th CCEs have been admittedly held on annual basis through advertisements issued in the years 2017,



2018 and 2019 respectively.

2. As has been noticed at the outset, advertisement for 66th CCE came to be issued by the BPSC in 2020. The petitioners, in the present writ application, are seeking a direction to the respondents to grant appropriate age relaxation to enable them to participate in the upcoming 67th CCE, primarily on the ground of failure on the part of BPSC to conduct CCE examination annually and thereby causing hardship to the petitioners because they missed to get adequate number of chances to appear in the examination.

3. The petitioners have disclosed in paragraph 6 of the writ petition, number of attempts availed by them in the previous examinations held by the BPSC. Relevant part of paragraph-6 is being reproduced hereinbelow :-

- i. That the petitioner number 1 participated in 53rd to 55th, 56th to 59th, 60th to 62nd, 63rd, 64th and 65th Civil Services Combined Competitive Examination but could not clear the Preliminary Examination. The aforesaid petitioner belongs General Category.*
- ii. That the petitioner number 2 qualified in the Preliminary Examination in 48th to 52nd, 53rd to 55th, 56th to 59th, 60th to 62nd Civil Services Combined*



Competitive Examination and participated in the Main examination. He also cleared the Main examination in 53rd to 55th Civil Services Combined Competitive Examination and participated in the interview but could not be finally selected. Thereafter he has participated in Preliminary Examination of 63rd, 64th and 65th Civil Services Combined Competitive Examination. The aforesaid petitioner belongs to SC Category.

iii. That the petitioner number 3 participated in the Preliminary Examination of 53rd to 55th Civil Services Combined Competitive Examination. Thereafter he qualified in the Preliminary Examination of 56th to 59th, 60th to 62nd, 63rd and 64th Combined Competitive Examination and participated in the main Examination. The aforesaid petitioner belongs to General Category.

iv. That the petitioner number 4 participated in the Preliminary Examination of 48th to 52nd, 53rd to 55th, 56th to 59th, 60th to 62nd and 64th Combined Competitive Examination. The aforesaid petitioner belongs to EBC Category.

v. That the petitioner number 5 participated in 60th to 62nd, 63rd and 65th Civil Services Combined Competitive Examination but could not proceed after the Preliminary



Examination. The aforesaid petitioner belongs to EBC Category.

vi. That the petitioner number 6 participated in 53rd to 55th, 56th to 59th, 60th to 62nd Civil Services Combined Competitive Examination and cleared the Preliminary Examination in 56th to 59th Combined Competitive Examination and appeared for Main examination. The aforesaid petitioner belongs to General Category.

vii. That the petitioner number 7 participated in 53rd to 55th, 56th to 59th, 60th to 62nd, 63rd and 64th Civil Services Combined Competitive Examination and could not succeed in the Preliminary Examination. The aforesaid petitioner belongs to General Category.

viii. That the petitioner number 8 participated in 53rd to 55th, 56 to 59, 60th to 62th, 63rd, 64th and 65th Civil Services Combined Competitive Examination but could not succeed after the Preliminary Examination. The aforesaid petitioner belongs to BC-2 Category.

ix. That the petitioner number 9 participated in 45th, 46th, 47th, 48th to 52nd, 53rd to 55th, 56th to 59th and 60th to 62nd Combined Competitive Examination. The petitioner succeeded in all the Preliminary Examination in which he participated. The aforesaid petitioner cleared Main examination



on three occasions in 53rd to 55th, 56th to 59th and 60th to 62nd Civil Services Combined Competitive Examination and appeared in interview on all three occasions but could not be finally selected. The aforesaid petitioner belongs to EBC Category.

x. That petitioner number 10 participated in 48th to 52nd, 56th to 59th, 60th to 62nd, 63rd, 64th and 65th Civil Services Combined Competitive Examination but could not succeed after Preliminary Examination. The aforesaid petitioner belongs to General Category.

xi. That the petitioner number 11 participated in 48th to 52nd, 56th to 59th, 60th to 62nd Civil Services Combined Competitive Examination but could not succeed after Preliminary Examination. The aforesaid petitioner belongs to EBC Category.”

4. The petitioners No. 1, 3, 4, 6 and 8 had earlier approached this Court by filing a writ application giving rise to CWJC No. 8747 of 2020 seeking a direction to the respondent BPSC to allow age relaxation and afford further opportunity to participate in the 66th CCE. The said writ application was disposed of by an order dated 11.12.2020 with a direction to the BPSC to consider the representation of the petitioners of that case, taking into account its earlier assurance and practice of relaxation of age,



in case examinations are not held annually by such public bodies.

5. In compliance of the said order of this Court dated 11.12.2020 the BPSC considered the representation of the petitioners of CWJC No. 8747 of 2020 and has rejected the same by an order dated 22.12.2020. Apart from seeking aforesaid direction to the BPSC to grant age relaxation to the petitioners, they are also seeking quashing of the aforesaid order passed by the BPSC dated 22.12.2020. In the said order, the BPSC has lucidly discussed circumstances requiring grant of age relaxation for various examinations held up to 62nd CCE which was held with 60th and 61st CCEs. Dealing with the specific allegation of the petitioners of that case that they were deprived of number of attempts to appear in CCEs because the BPSC had held four CCEs for 15 examinations which was to be held annually, the BPSC rejected the plea taking into account the fact that they had already availed several attempts. The BPSC relied on a decision of this Court rendered on 04.12.2020 in CWJC No. 5619 of 2020(***Ram Milan Thakur vs. The State of Bihar and others***) and order dated 10.01.2013, passed in CWJC No. 7122 of 2012 (***Sanjay Kumar Verma vs. the State of Bihar & Ors.***) to deny the claim of the petitioners for age relaxation. The BPSC concluded, upon thorough examination of all factual aspects that as common CCEs



were held, no candidate had to suffer because of the grant of age relaxation to eligible aspirants appropriately and the petitioners of CWJC No. 8747 of 2020 (most of them are petitioners herein) had not suffered any loss because of absence of age relaxation in the advertisement in question.

6. It is the petitioners' case that the BPSC relied on Rule 4 of Bihar Civil Services (Executive Branch) Rules, 1951 (for short 'the Rules') to deny age relaxation but it ignored the provisos added to Rule 4 by way of Amendment in 2007. Rule 4 of the said Rules reads as under :-

"4. The Commission shall announce in each year in such manner as they think fit, the number of vacancies in each service to be filled by direct appointment on the result of a competitive examination and shall invite applications, from candidates eligible for appointment under Rules 6 and 7. The competitive examination will be conducted by the Commission and will normally be held between the months of November and February unless otherwise notified.

"Provided that if, for only reason the Commission is not being able to hold the competitive examination for a particular year or years, it shall be open to the commission to hold common competitive examination for a particular year or years for



which competitive examination could not be held in that particulars year or year.

Provided further that in the event of competitive examination being held for more than one year on requisition being made by the Government, it shall be open to the commission to hold one competitive examination for a particulars year or years and vacancies of particular year or years for which competitive examination could not be held in that particulars year may be clubbed together for the purpose of proportion of merit list of successful candidates and in the event of common competitive examination held by the commission, it shall not be necessary to prepare separate merit list for each recruitment year: Provided further that if common competitive examination is being conducted for particular year or years as a special case, the applicant shall be entitled to relaxation of upper age limit provided such applicant was eligible in that particulars recruitment year for which the common competitive examination is being conducted.”

7. It is the petitioners’ case that the Rules do not prescribe any limit on number of attempts which eligible candidates may take. On the said reasoning, it is the petitioners’ case, as disclosed in the writ petition, that minimum age to



participate in the examination is 21 years and maximum, 37 years. Thus, a candidate otherwise qualified is eligible and has a right to participate sixteen times in CCEs for civil services. During the period of 15 years between 2002 to 2016, only four opportunities were provided to the candidates who were aspirants of Bihar Civil Services. This aspect, the petitioners contend, has not been considered in the impugned order passed by the BPSC.

8. The petitioners have also placed into service a letter dated 23.01.2006, issued by the General Administration Department which contains resolution of the Government, whereby it was decided to grant age relaxation to such candidates who became over-aged due to long delay in issuance of advertisement of the posts. It is the petitioners' case, based on the said resolution, that the candidates who were eligible to participate in the year prior to which the last advertisement was issued, but could not participate due to failure of the BPSC to issue advertisement annually and have crossed the upper age limit in the interregnum should be allowed age relaxation to enable them to participate in the selection process, which is initiated thereafter.

9. The petitioners have cited examples in the writ petition to demonstrate that age relaxations have been granted by the BPSC in different recruitment processes.



10. A counter affidavit has been filed on behalf of the State of Bihar. Referring to the order passed by the BPSC dated 22.12.2020 it is the case of the State of Bihar that the BPSC has already provided chance for over-aged candidates in different CCEs.

11. The BPSC has issued advertisement for 67th Combined (Preliminary) Competitive Examination on 24.09.2021 which prescribes minimum and maximum age limits for various categories of candidates eligible to participate in the examination. The petitioners are seeking stay of the further process of recruitment against the said advertisement dated 24.09.2021 through I.A. No. 1 of 2021.

12. It is crucial to note that none of the petitioners have stated that they could not participate in either of the CCEs because such examinations were not annually held by the BPSC resulting into the petitioner becoming over-aged. On the contrary, it is evident that the petitioners had opportunity to participate in the examinations held by the BPSC from 40th CCE to 65th CCE. In most of the chances, they failed to clear even preliminary examination except petitioner no. 9 who had appeared in 53rd to 55th, 56th to 59th and 60th to 62nd CCE held by the BPSC.

13. The circular of the State Government of Bihar dated



23.01.2016 does not come in aid to the petitioners' case as it provides for grant of relaxation in upper age limit if upper age limit of a candidate crosses between two advertisements due to delay in notification of the advertisement. In such circumstances, the circular contemplates providing one chance to the over-aged candidates to appear in the subsequent recruitment process. In the present case, the petitioners did participate in previous examinations and they have not been able to make out a case that they could not participate in any examination held by the BPSC on account of them becoming over-aged, because of the failure on the part of the BPSC to conduct the CCE annually. The petitioners, in the Court's opinion, have not been able to make out any case of infringement of any of their legal or fundamental rights.

14. At this juncture, it is considered useful to notice Supreme Court's decision in case of ***Dr. Ami Lal Bhat vs. State of Rajasthan & Ors.***, reported in ***(1997)6 SCC 614*** wherein the Supreme Court held in paragraph 11 as under :

“11. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the



maximum age-limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-barred. We fail to see how the power of relaxation can be exercised in the manner contended.”

15. In case of ***Food Corporation of India vs. Bhanu Lodh*** reported in (2005) 3 SCC 618 the Supreme Court has held that power of relaxation in age is not intended as an ‘open sesame’ for all and sundry. The view expressed by the Supreme Court in case of **Dr. Ami Lal Bhat** (supra) has been reiterated in subsequent decisions including in case of ***Hirandra Kumar vs. High Court of Judicature at Allahabad and another*** reported in 2019 SCC online SC 254. In case of ***Union of India & Ors. vs.***



Shivbachan Rai reported in **(2001) 9 SCC 356** the Supreme Court has held that prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy.

16. The Division Bench decision of this Court rendered on 15.02.2019 in LPA No. 1686 of 2018 (***Bihar Police Subordinate Service Commission through its Secretary vs. Niranjana Kumar***), relying on the Supreme Court's decision in case of **Dr. Ami Lal Bhat** (supra) has held in paragraph 6 and 7 as under :-

“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.”

17. Rule 4 of the Rules, which has been quoted hereinabove, permits holding of a common competitive examination for a particular year or years for which examination could not be held in that particular year or years. It further permits that in the event of competitive examination being held for more than one year or requisition being made by the Government, it shall be open to the Government to hold one competitive examination for a particular year or years and vacancies of particular year or years for which competitive examination could not be held in that particular year may be clubbed together for the



purpose of preparation of merit-list of successful candidates and in the event of common competitive examination held by the BPSC, it shall not be necessary to prepare separate merit-list for each recruitment year.

18. Invoking the aforementioned provision under Rule 4 of the Rules, common CCEs had been held for certain years for which the CCEs were not held by the BPSC annually, as noted above.

19. The third proviso to Rule 4 of the said Rules is a complete answer to the submissions advanced on behalf of the petitioners which, in no uncertain terms, prescribes that if common competitive examination is being conducted for a particular year or years as a special case, the applicant shall be entitled to relaxation of upper age limit provided that applicant was eligible in that particular recruitment year for which the common competitive examination is being conducted. In the impugned order dated 22.12.2020, the Chairman of BPSC has referred to various common CCEs advertised from year 2007 to demonstrate that age relaxation was granted to such candidates who were eligible in terms of age for either of the CCE e.g. 53rd to 55th common CCE and so on. Age relaxation cannot be granted *de hors* the statutory prescription.



20. The submission that the petitioners ought to have had opportunity to make as many attempts as could have been permissible since they acquired the minimum eligibility in terms of age and education till the date they acquired maximum age is wholly unjustified and not at all tenable. The selection process in question is governed by respective service rules. No violation of any statutory Rule has been demonstrated nor have the petitioners been able to make out any case of discrimination violating Articles 14 and 16 of the Constitution of India.

21. For the aforesaid reasons, I do not find any merit in this application, which is accordingly dismissed.

22. There shall be no order as to costs.

23. I.A. No. 1 of 2021 stands disposed of.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NA
CAV DATE	22.10.2021
Uploading Date	08.03.2022
Transmission Date	NA

