

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18498 of 2023

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Shahjahan son of Late Shahidul Haque, resident of Minjhaj Nagar, behind Sadrun Nisha Masjid, Khalilpura, Post Office and Police Station-Phulwari Sharif, District-Patna, Bihar (801505).

... .. Petitioner/s

Versus

1. The Honble High Court of Judicature at Patna through the Learned Registrar General, Patna High Court, Patna.
2. The Learned Registrar General, Honble High Court of Judicate at Patna, Patna High Court, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 12-01-2024

Heard the parties.

2. The writ petition has been preferred for the following reliefs:-

(i) for issuance of an order/direction or a writ of certiorari for quashing paragraph no. 3 of the Advertisement No. BSJS/1/2023 dated 11.12.2023 published for appointment to the post of District Judge (Entry Level) to the extent to which the cutoff date for determination of maximum age limit has been fixed at 01.01.2023;



(ii) for issuance of an order/direction or a writ of mandamus for directing the respondent authorities to fix the cutoff date for determination of age limit at 01.01.2022 in place of 01.01.2023 in view of the fact that no advertisement was published in the recruitment year 2022 and therefore, those who were eligible to participate in the recruitment year 2022 may kindly be allowed to participate in the recruitment year 2023.

3. The petitioner is having LLB degree and is enrolled with the Bihar State Bar Council since 2001. In the year 2021, an advertisement for the examination for the appointment of District Judge (Entry Level) (**Advertisement No. BSJS/1/2021**) was published on 08.12.2021. He appeared in the 2021 examination as a candidate but failed to finally clear the same.

4. Subsequently, petitioner's case is that there was no advertisement in the year 2022 and now the fresh advertisement has come up vide Advertisement No. BSJS/1/2023 for the District Judge (Entry Level) direct from Bar Examination, 2023. Further, as in the year 2021, this year



also the clause 3 of the advertisement has put a bar on the candidate who has not completed 35 years of age and/or has already completed the age of 50 years as on 01.01.2023 and paragraph 3 of the advertisement read as follows:-

“3. The candidates, who have not completed the age of 35 years and those who have already completed the age of 50 years as on 01.01.2023, shall not be eligible for consideration for such appointment.”

5. The petitioner is aggrieved by the said clause and the submission of the learned counsel appearing on his behalf is that the petitioner's date of birth being 05.12.1972, though he would have been eligible for the 2022 examination, as per the present advertisement, he stands debarred. Thus, the submission is that as there was no advertisement for the year 2022, the determination of age be shifted from 01.01.2023 to 01.01.2022.

6. Learned Counsel for the petitioner has put reliance on an order of Hon'ble Apex Court in the case of **High Court of Delhi vs Devina Sharma** reported in **(2022) 4 SCC 643** to support his case.

7. Learned Counsel for the Patna High Court, on the other hand, opposes the prayer stating that it is an



admitted fact that in the year 2021, the petitioner appeared and failed and on that occasion also clause 3 had put a bar on those candidate who on 01.01.2021 have either not completed 35 years of age or have crossed the 50 years of age. The same criteria has been followed this year.

8. He thus submits that the petitioner cannot seek direction in the matter which is a policy decision of the Government and has been consistently followed for many years and declared in the advertisement; which is in accordance with the rules framed.

9. He further submits that so far as the decision of the **High Court of Delhi vs Devina Sharma** (supra) cited by the learned Counsel for the petitioner is concerned, a bare perusal of the same would show that in the year 2019, the High Court had earlier removed the minimum age requirement of 35 years which was reintroduced in February 2022 advertisement. In the aforesaid circumstances, Hon'ble Apex Court held that as they were eligible to appear in the examination earlier, they should be given an opportunity appearing for the examination as there was no examination in the year 2020 and 2021.

10. Learned Counsel for the High Court has further cited the case of **Deo Narayan Prasad vs The High**



Court of Judicature of Patna decided in **CWJC No. 2854 of 2019** on 14.02.2019 in support of his submission.

11. This Court has gone through the rival submissions put forward by the parties and the decision so cited. It is an admitted fact that the fixation of age limit as also the other qualifications that is/are prescribed for the post lies with the appointing authority unless a case is made out that the same is contrary to a specific provision of law and thus the High Court cannot interfere in such matters.

12. In the particular case too, Clause 3 of the 2023 advertisement is just like the year 2021 examination which read as follows:-

“3. The candidates, who have not completed the age of 35 years and those who have already completed the age of 50 years as on 01.01.2023, shall not be eligible for consideration for such appointment.”

13. It is further an admitted fact that the petitioner availed the opportunity in the year 2021 though he could not make it finally and as such, it is not his case that he never got any chance to appear in the examination for the post of District Judge (Entry Level).

14. Further, the petitioner has failed to show



anything in the advertisement so that the same can be termed to be arbitrary and thus violative of article 14 of the Constitution of India. It is a policy decision and the criteria prescribed by it whether it is relating to the age and/or the essential qualification cannot be interfered with.

15. The decision cited by the petitioner of **High Court of Delhi** (supra) cannot come to his rescue as the learned Counsel appearing for the High Court rightly pointed out that the same was passed in the special facts and circumstances and considering that the rules were amended later on. As stated above, the petitioner on the other hand appeared in the 2021 examination.

16. On the other hand, the decision cited by the learned Counsel for the High Court in **Deo Narayan Prasad** (supra) is directly applicable in the present case inasmuch as in that case also the prayer was for grant of appropriate relief in view of the fact that the High Court did not undertake any appointment process for the last two-three years.

17. Citing a case of **Sasidhar Reddy Sura vs. The State of Andhra Pradesh and Ors.** reported in (2014) 2 SCC 158 as also **Dr. Ami Lal Bhatt vs. State of Rajasthan and Ors.** reported in (1997) 6 SCC 614; the Patna High Court



held that delay in issuance of advertisement by itself will not create any right or legitimate expectation in favour of a person so as to seek relaxation in the upper age limit as prescribed for a preliminary examination. The writ petition was thus dismissed.

18. The relevant paragraphs 10 and 11 of the decision of the Hon'ble Apex Court in **Dr. Ami Lal Bhatt** (supra) are incorporated herein:-

"10. It is next contended on behalf of the appellants/petitioners that under all the service rules concerned there is a provision for age relaxation. In Rule 11(A) of the Rajasthan Medical Services (Collegiate Branch) Rules, there is a provision for age relaxation by 5 years by the Government in consultation with the Commission. There is also Rule 35 in the said Rules which gives a general power to relax rules in exceptional cases where the Government is satisfied that it is necessary, inter alia, to relax any provision of these Rules with respect to age or experience of any person and this can be done with the concurrence of the Department of Personnel and Administrative Reforms and in consultation with the Rajasthan Public Service Commission. It is urged that in the case of all those persons who are adversely affected because the advertisement for recruitment is issued later than the occurrence of the vacancy, corresponding age relaxation should be given to



all candidates. In other words, what is contended is that if on the date when the vacancy occurred, the candidates were within the maximum age prescribed by reference to the cut-off date, then if the advertisement is delayed, their age should be considered with reference to the cut-off date of 1st January following the date of occurrence of vacancy. For example, if the vacancy has occurred on 1st of April of a given year, and the applicant would be within the maximum age on the 1st of January of the following year, then such a candidate will be considered as eligible even if the advertisement is issued not in April of that year but say February of the following year. All the candidates will get age relaxation of one year.

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."

19. Patna High Court thus in the case of **Deo Narayan Prasad** (supra) at paragraphs 6 and 7 held as follows:-

"6. Apart from the aforesaid observations, it would be apt to mention that a right to seek employment is not a fundamental right. The question of selection and appointment or any deprivation arises only after a person is found to be eligible and entitled to seek employment under the relevant rules governed by the terms and conditions of an advertisement. The delay in the issuance of advertisement by itself will not in any way create a right or even a legitimate expectation in favour of a person so as to seek a direction for relaxation in the upper age limit as prescribed for appearing in an examination. This will clearly amount to violating the rules as also the terms and conditions of the advertisement against which the appellant has now raised his grievance and seeks a modification by pushing back the age limit by three



years.

7. We do not find any rational basis for doing so and the action cannot be termed to be arbitrary so as to allow the petitioner to invoke Article 14 of the Constitution of India. Consequently, in the absence of any violation of fundamental or legal rights, we see no reason to interfere. The writ petition lacks merits and is, accordingly, rejected.”

20. The petitioner has not shown any arbitrariness in the action of the respondent as also violation of fundamental or legal rights.

21. We thus have no hesitation in following the line drawn by the Patna High Court in the aforesaid case.

22. We do not find any merit in the writ petition and the same is accordingly dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Neha/-

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CAV DATE	
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