

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**L.P. A No. 289 of 2013**

Narendra Kumar Paswan

Appellant

Versus

The State of Jharkhand & Ors.

Respondents

**CORAM: HON'BLE THE CHIEF JUSTICE.  
HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR**

For the Appellant : Mr. Pradeep Kumar Deomani  
For the Respondent-State : Mr. Rakesh Kumar Shahi, JC to GA  
For the Respondent-JPSC : Mr. Sanjay Piprawal

CAV on 4<sup>th</sup> March, 2014

Pronounced on 10<sup>th</sup> March, 2014

**R.Banumathi, C.J.** Whether the appellant, a contractual employee under the Sarva Siksha Abhiyan, is entitled to get age relaxation in terms of clause 3 of the Advertisement No.27/2012 of Jharkhand Public Service Commission and whether the respondents are right in denying the appellant from appearing in interview for appointment as Junior Engineer in pursuance of the said advertisement are the points falling for consideration in this intra-court appeal.

2. In pursuance of the requisition from the Water Resources Department, Drinking Water and Sanitation Department, Road Construction Department and Energy Department, the Jharkhand Public Service Commission (JPSC) issued advertisement No.27/12 inviting applications from the eligible candidates for consideration of their

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candidature for appointment on the post of Junior Engineer (Civil/Mechanical and Electrical). Clause 3 of the advertisement provides for minimum and maximum age with cut-off date and stipulates maximum age limit of 40 years for the Scheduled Caste Candidates. It has been mentioned that relaxation of 5 years in age shall be granted to temporary and permanent employees who are working in the services of the State Government. The date of birth of the appellant is 9.10.1970 and the appellant is a Scheduled Caste. The appellant was appointed on contractual basis and has been working in Sarva Siksha Abhiyan since 16<sup>th</sup> November, 2005. The appellant was more than 40 years as on the cut-off date, 31.3.2012. As per the advertisement, the maximum age prescribed is 40 years for the Scheduled Caste candidates, to which the petitioner-appellant belongs. In the written test, the appellant appeared and was qualified for interview but was denied from appearing in the interview held on 7.12.12 on the ground that he is over-age. Stating that his employment under Sarva Siksha Abhiyan is in Government service and he holds a temporary post in the Government of Jharkhand and in terms of clause 3 of the advertisement, the appellant was entitled to age relaxation of 5 years in the maximum age limit, the appellant filed the W.P (C) No.7437 of 2012.

**3.** Learned Single Judge held that in view of the specific condition contained in the order of appointment of RA

the appellant under the Sarva Siksha Abhiyan, his appointment is a contractual appointment and such appointment can not be considered as Government service. Learned Single Judge, relying upon the judgment rendered in LPA No.23/2013 (dated 5<sup>th</sup> March,2013) relating to same advertisement no.27/12, further held that age relaxation of 5 years could be given only to permanent/temporary employees, who are in Government service and the appellant, who is on contractual employment, cannot claim age relaxation.

4. Challenging the order of the writ court, learned counsel for the appellant, Mr. Pradeep Kumar Deomani, contended that the Sarva Siksha Abhiyan is a Centrally sponsored scheme and that the Department of Human Resources, Government of Jharkhand, is the Nodal Department for the Sarva Siksha Abhiyan and the scheme is assisted by Officers of the State Government at various levels and therefore, the appellant is evidently holding temporary post under the Government of Jharkhand and the appellant is entitled to get the benefit of age relaxation of 5 years. Learned counsel further contended that the terms, "permanent employee" and "temporary employee" are nowhere defined in the Jharkhand Service Code and the present case is squarely covered by the decision of Hon'ble Supreme Court rendered in the case of **Union Public Service Commission v. Dr. Jamuna Kurup & Ors. [2008**

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**AIR SCW 3780].** It is further contended by the appellant that the order dated 5.3.13 passed in LPA No.23/2013 is not applicable to the present case for the reason that Rule 48 of the Jharkhand Service Code has not been considered therein and also that the terms, "permanent employee" and "temporary employee" are nowhere defined in the Jharkhand Service Code.

5. Learned counsel for the respondent-JPSC, Mr.Sanjay Piprawal, submitted that the Sarva Siksha Abhiyan is being implemented by the Jharkhand Education Project Council and that the same is registered under the Societies Registration Act and the appointment of the appellant in the Sarva Siksha Abhiyan is purely a contractual service and not a Government service. Learned counsel further submitted that in terms of clause 3 of the advertisement, relaxation of age shall be granted only to the temporary and permanent employees who are in the service of the State Government and the appellant, who is on contract basis under Sarva Siksha Abhiyan, which is not the Government service, is not entitled to age relaxation and the learned Single Judge rightly dismissed the writ petition. Learned counsel would further contend that the issue raised is squarely covered by the decision rendered in LPA No.23/2013.

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6. We have considered the submissions and perused the order of the writ court and the materials on record.

7. - Clause 3 of the advertisement stipulates minimum and maximum age with cut off date (31.3.2012), which has been indicated and further clearly stipulates that relaxation of 5 years in age shall be granted to temporary and permanent employees, who are working in the services of the State Government. Clause 3 stipulates that 40 years of age is the maximum age limit for the scheduled caste candidates to which the appellant belongs. The date of birth of the appellant is 9.10.1970. On the date of Advertisement No.27/12, the appellant had thus already crossed 40 years. In terms of clause 3 of the advertisement, relaxation of 5 years in age shall be granted only to the temporary and permanent employees who are working in the services of the State Government.

8. The relevant portion of clause 3 of the advertisement reads as under:-

“...झारखंड सरकार में कार्यरत स्थायी एवं अस्थायी कर्मचारियों एवं विकलांग उम्मीदवारों को अधिकतम आयुसीमा में 5 वर्ष की छूट देय होगी।”

9. According to the appellant, in terms of clause 3 of the advertisement, he is entitled to age relaxation of 5 years. The appellant is working on contract basis under the Sarva Siksha Abhiyan, which is being implemented by the Jharkhand Education Project Council (JEPC) in all the districts of the State of Jharkhand. The Jharkhand

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Education Project Council is a Society registered under the provisions of the Societies Registration Act. In the order of appointment of the appellant, Annexure - 2, it is clearly stated that his appointment is contractual and not a Government service. The relevant portion of the order of appointment of the appellant reads as under:-

“1 आपका चयन पूर्ण रूपेण अस्थायी एवं औपबंधिकत रूप से नियत मानदेय पर किया गया है । इसे सरकारी सेवा न समझे।”

**10.** Since the employment of the appellant under Sarva Siksha Abhiyan is not a Government service, the appellant cannot seek for age relaxation. The contention of the appellant is that the Government of Jharkhand has Nodal Department for the Sarva Siksha Abhiyan and overall administrative control is vested in the Principal Secretary to the Government of Jharkhand and the executive power of the State Implementing Society is vested in the State Project Director, JEPC, who is assisted by the District Programme Officers, Block Education Extension Officers, Village Education Committees and other allied officials in implementing the Sarva Siksha Abhiyan scheme in the State of Jharkhand and therefore, the appointment of the appellant is to be treated as “temporary Government service” and therefore, the appellant is entitled to age relaxation. The above contention of the appellant does not merit acceptance. The reason being, JEPC is an independent and autonomous body having its own rules and regulations and

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when the appointment of the appellant specifically stipulates that the employment under Sarva Siksha Abhiyan is not to be treated as Government Service, the appellant cannot contend that he has to be treated as "temporary employee" in Government service.

11. Placing reliance upon the decision reported in **[2008 AIR SCW 3780]** (*Dr. Jamuna Kurup & Ors.*), learned counsel for the appellant submitted that in the said decision, Hon'ble Supreme Court held that "employee" includes both permanent and temporary, regular or short term as well as an employee who has been engaged on contractual or ad hoc basis and applying the ratio of the said decision, the appellant being the employee was eligible for age relaxation in terms of Advertisement No.27/12. In the said case, Hon'ble Supreme Court considered the scope and ambit of the word, "employee" and held that Delhi Municipal Corporation has not defined the word, "employee" and restrictive meaning cannot be given to the word, "employee" and in that situation, it has been held by the Hon'ble Supreme Court that in the absence of restrictive definition, the word, "employee" would include both permanent and temporary, regular or short term, contractual or ad hoc.

12. In the present case, the advertisement itself contains restriction regarding relaxation of age to be given to permanent or temporary employees in the Government service and therefore, the above decision reported in **[2008 AIR SCW 3780]** is not applicable to the case on hand. In respect of the

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same Advertisement No.27/12, in LPA No.23/2013, the Division Bench of this Court, vide judgment dated 5.3.2013, has already held that age relaxation cannot be extended to the contractual employees. Following the decision rendered in LPA No.23/2013, the learned Single Judge rightly dismissed the writ petition. We do not find any infirmity in the order of the learned Single Judge warranting interference.

**13.** In the result, this LPA is dismissed.

Sd/-  
(R. Banumathi, C.J.)

Sd/-  
(Shree Chandrashekhar, J.)

True Copy

P.A. on  
15/2/2014

Secretary

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