

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No. 7526 Of 2013
WithI.A NO. 173 OF 2014
-----1. Bholanath Rajak
2. Ramchander Sahu
3. Anil Kumar Singh

Petitioners

Versus

The State of Jharkhand & Ors.

Respondents
-----For the Petitioners : Mr. Anil Kumar
For the Respondent-State : Mr. Jai Prakash, AAG
For the Respondent-JPSC : Mr. Sanjoy Piprawall
For the High Court : Mr. Ajit Kumar
-----**PRESENT****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR****CAV on 10th January, 2014 Pronounced on 16th, January, 2014**

R. Banumathi, C.J. The petitioners seek for a direction upon the respondents to fix the cut off for upper age limit to be 31.1.2009 by substituting the same to the advertisement issued, vide Advertisement No.4/2013 dated 10.12.2013, inviting applications for the post of Civil Judge (Junior Division) and to extend the time for submission of their applications and that backward category of candidates be given relaxation of three years in the maximum age limit.

2. Jharkhand Public Service Commissioner (JPSC) issued Advertisement No.4/2013 published in various

newspapers on 10.12.2013, by which applications were invited from the eligible candidates for the post of Civil Judge (Junior Division) (Munsif) fixing the maximum age of 35 years for the candidates of general category with the cut off date of 31.1.2013 for the purpose of calculating the maximum age of 35 years. The writ petitioners are the aspiring candidates for the examination. The case of the petitioners is that the examination was held for appointment on the post of Civil Judge (Junior Division) (Munsif) in 2008 and thereafter examination for appointment on the post of Civil Judge (Junior Division) (Munsif) was not conducted. Since the examination was not conducted after 2008, writ petitioners and similarly placed candidates had completed the age of 35 years and since they have crossed the upper age limit of 35 years as fixed by the respondents in the impugned advertisement, the writ petitioners are being deprived of the opportunity from appearing in the examination. Since the examination was not conducted after 2008, the cut off date for calculating the maximum age limit of 35 years ought to have been fixed as 31.1.2009 instead of 31.1.2013. Hence, this writ petition.

3. When the matter came up for admission on 20.12.2013, after hearing the counsel for the writ petitioners and also for the respondents and following the judgment rendered in the case of *Sanjiv Kumar Sahay & Ors. Vs. State of Jharkhand & Ors.* reported in 2008(2) JLJR 543, which pertains

to the recruitment on the post of Civil Judge (Junior Division) (Munsif) in 2008, we passed the following orders:-

"14. Without expressing any opinion on the merits of the contention of the Petitioners, we permit the petitioners to submit their applications, fixing the maximum age 35 years with the cut-off date as on 31.01.2009. We also permit all those similarly placed persons who would be eligible to submit their applications and appear, taking the cut-off date as on 31.01.2009 (for the maximum age of 35 years).

15. We direct the respondent nos.2 to 4 to issue supplementary advertisement by 24.12.2013 in this regard, fixing the maximum age 35 years with cut-off date as on 31.01.2009. The applications so received taking the cut-off date 31.01.2009, shall be subject to the decision of this case and the same shall be indicated in the supplementary advertisement."

Accordingly JPSC has issued supplementary notification fixing the cut off date as 31.1.2009 for the purpose of calculating the maximum age of 35 years and also extending the time for submission of the applications from 6.1.2014 to 10.1.2014.

4. The point falling for consideration in this case is as to whether the writ petitioners are entitled to have the cut off date as 31.1.2009 for the purpose of calculating the maximum age of 35 years due to non-holding of the examination in terms of the Jharkhand Judicial Service (Recruitment) Rules, 2004.

5. It is relevant to refer the relevant rules for recruitment of Civil Judge (Junior Division) (Munsif) and rules 4 and 5 of the Jharkhand Judicial Service (Recruitment) Rules, 2004, being relevant, are reproduced below:-

"4. From time to time, the Commission, in consultation with the High Court, may decide and notify the number of vacancies of Civil Judge (Junior Division/Munsiffs) as

are required to be filled up by appointment to be made on substantive or ad hoc basis, in accordance with these rules and shall then proceed to initiate the process of direct recruitment and invite applications from intending candidates eligible for appointment under these Rules.

However, while deciding and notifying the vacancies, the Commission shall make it subject to the Act, Rules and Regulations in force regarding the reservation of vacancies in posts and services under the State so that vacancies category wise, reserved for Schedules Castes, Schedules Tribes and Other Backward Classes, are included in the prescribed number in the notification issued by the High Court for this purpose.

5. *Eligibility-* A candidate shall be eligible to be appointed as Civil Judges, Junior Division (Munsiffs) under these Rules provided:-

(a) He is above the age of 22 years and below the age of 35 years as on the last day of January of the year in which applications for examination are invited.

Provided that in the case of a female candidate, or candidates belonging to Scheduled Caste or Scheduled Tribe there shall be relaxation of the upper age limited by 3 years.

(b) He is a graduate in law from a recognize University and enrolled as an Advocate under the Advocate Act, 1961, and

(c) He possesses sound health bears good moral character and is not involved in, or related to any criminal case involving moral turpitude.

6. By perusal of the Rules, it is evident that there is no provision for fixing the cut off date for determining the maximum age prescribed for the post of Civil Judge (Junior

Division) (Munsif). We are conscious of the fact that normally decision fixing cut-off date is not interfered with by the Courts. However, huge backlog of undecided cases, large number of vacancies which have accumulated since 2008, which has also affected the ratio of Judges compared to the population of the State, are also the considerations which we have to keep in mind.

7. In Dr. Ami Lal Bhat vs. State of Rajsthan and Others (1997)6 SCC 614, the Supreme Court held that fixing the cut-off date for determining the maximum or minimum age prescribed for a post is in the discretion of the rule-making authority or the employer. Fixing an independent cut-off date, far from being arbitrary, makes for uncertainty in determining the maximum age. While deciding this issue, the Supreme Court however observed that power of relaxation is required to be exercised in public interest, 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 and the Hon'ble Supreme Court held 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 Rajsthan 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 fide in connection with any delay in issuing an advertisement. The 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-debarred. We fail to see how the power of relaxation can be exercised in the manner contended."

8. Admittedly no examination for filling up the post of Civil Judge (Junior Division) (Munsif) was held after 2008. In absence of regular examination for recruitment of Judicial Officers in the cadre of Civil Judge (Junior Division) (Munsif), the petitioners could not appear for the examination. In the meanwhile, the writ petitioners and similarly placed candidates have completed the maximum age of 35 years. By the reason of delay in holding the examination, the writ petitioners should not be disqualified from appearing in the examination.

9. Learned counsel for the petitioners placed reliance on the judgment rendered in the case of *Sanjiv Kumar Sahay & Ors. Vs. State of Jharkhand & Ors.* reported in 2008(2) JLJR 543, where this Court allowed relaxation of age by modifying the cut off date fixing the maximum age of 35 years from 31.1.2008 to 31.1.2003. This Court ordered that the cut off date fixed in the impugned Advertisement No.13/2008 be as on 31.3.2003. After referring to rules 4 and 5 and various

decisions of Hon'ble Supreme Court and also Patna High Court, this Court held as under:-

"Admittedly, no examination was held for appointment on the post of Munsif for the last 7 years. Although, respondent/State were under an obligation to hold examination and to fill up vacant posts every year. Although, there is no compulsion, on the part of the Government to make appointment even vacancies are available but at the same time if the vacancies are allowed to accumulate and bulk appointments are made at a time, there may be possibility of candidates possessing inferior merit coming in. Whereas if examinations are held periodically the chances are that the best of the available candidates should be appointed. Apart from that, those law graduates, because of inaction on the part of the respondents in holding examination every year, started practicing as lawyer in different courts and they have gained Bar experience for more than five years. If age relaxation is given to those law graduates who became over age for non-holding of examination, then there shall be every chance of good experienced candidates may be appointed on the said post".

10. In the case of **Subodh Kr. Jha vs. State of Jharkhand & Others** [(2005)3 JLJR 622], the Jharkhand Public service Commission issued advertisement in 2005 inviting applications for appointment on the post of A.P.P. One of the conditions put in the advertisement was upper age limit on 31.1.2005 should not exceed 35 years for general category candidates. Similar plea was taken by the writ petitioners that State of Jharkhand although came into existence in November, 2000, no examination was held for filling up the post of Public

Prosecutor and so most of the eligible candidates were deprived of because of the fact that they have crossed the age of 35 years. In paragraphs 5 and 6 of the said decision the Court observed as under:-

"5. There is no dispute that by virtue of Bihar Reorganization Act, 2000 the State of Jharkhand came into existence on 14th November, 2000. Admittedly, since the creation of the State of Jharkhand no examination was held for selection of A.P.Ps. and it is for the first time in 2005 the respondents have come with an advertisement. The candidates who were eligible for applying to the said post and now have crossed 35 years of age have certainly been deprived of the said post because of the inaction of the respondents. In such circumstances, relaxation in age is to be given to those candidates who have crossed their maximum age limit.

6. Mr. Piparwall, learned counsel appearing on behalf of the Commission has produced before me copy of order dated 22.01.2003 passed in WPS No.289/2003 and submitted that in similar circumstances a writ petition was dismissed by this court. From perusal of the order it appears that the Commission had issued advertisement for Combined Competitive Examination for appointment in Jharkhand Civil Service. The writ petitioner prayed for a direction upon the respondents to give relaxation of three years in the upper age limit of 35 years for general categories. The learned Single Judge of this court dismissed the writ petition holding that the power of relax age for appointment or the power to fix the maximum age for appointment or the power to fix cut off date for appointment is vested with the Appointing Authority/State of Jharkhand. However, Mr. Piparwall, learned counsel very fairly submitted that after dismissal of the said writ petition the respondent-State gave two years relaxation in age for appearing in the Combined Competitive Examination".

11. Admittedly for recruitment to the post of Civil Judge (Junior Division) (Munsif), Jharkhand Public Service Commission issued advertisement in the year 2008 and thereafter Advertisement No.4/2013 issued on 10.12.2013 and there is a gap of about more than 5 years between the earlier advertisement issued in the year 2008 and in the year 2013. As a consequence, the eligible candidates aspiring to appear for the Civil Judge (Junior Division) (Munsif) examination might have crossed their age between the period 2008 and 2013 and therefore, they did not have the opportunity of appearing in the examination. Having regard to the fact that there was no examination for recruitment for the post of Civil Judge (Junior Division) (Munsif), the cut off date for the recruitment of Civil Judge (Junior Division) (Munsif) of 2013 (Advertisement No.4/2013) should be 31.1.2009 to render justice to the deprived eligible candidates due to over-age. Accordingly, the cut off date for fixing maximum age of 35 years in the impugned notification is ordered to be 31.1.2009 instead of 31.1.2013.

12. I.A No.173/2014 has been filed for a direction to the respondents to give age relaxation to the Backward Classes in B.C I and B.C II in upper age by extending the same by 3 years in the maximum age limit. Rule 5 of the Jharkhand Judicial Service (Recruitment) Rules, 2004, provides for relaxation of upper age limit by 3 years only for the candidates

belonging to Scheduled Caste or Scheduled Tribe and the rule does not stipulate relaxation of upper age limit for the backward candidates. By a separate order in W.P(S) No.7667 of 2013 dated 16.1.2014, we have dismissed writ petition seeking age relaxation in respect of backward category of candidates.

13. The Jharkhand Judicial Service (Recruitment) Rules, 2004, is in place for the past 10 years. The petitioners have neither challenged the rules, nor filed any writ petition seeking for a direction to relax maximum age limit for backward category candidates. The interlocutory application has been filed at the verge of last date for submission of application for the examination of Civil Judge (Junior Division) (Munsif) Recruitment 2013. Since the interlocutory application has been filed at the last moment, we are not inclined to entertain this interlocutory application and we dismiss this Interlocutory Application.

13. This writ petition is allowed with the following observations/directions:-

(A) The cut off date 31.1.2013 fixed in the impugned Advertisement No.4/2013 dated 10.12.2013 is modified as 31.1.2009 and relaxation in age by modifying the cut off date is not only confined to the writ petitioners but also to the similarly placed candidates who possess other requisite

qualification as per the Advertisement No.4/2013 dated 10.12.2013 issued by the Jharkhand Public Service Commission.

(B) The last date of submission of the application extended by the Jharkhand Public Service Commission from 6.1.2014 to 10.1.2014 in pursuance of the order of this Court dated 20.12.2013 is confirmed.

(C) The Jharkhand Public Service Commission is directed to receive and process the applications of the writ petitioners and also other candidates who submitted their applications in pursuance of the interim order passed by this Court dated 20.12.2013.

(R.Banumathi, C.J)

(Shree Chandrashekhar,J)

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