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**(2020) 08 PAT CK 0072**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 19577 Of 2014

Deep Narayan Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision:** Aug. 28, 2020

**Acts Referred:**

- Constitution Of India, 1950 - Article 14, 16, 21, 226

**Hon'ble Judges:** Sanjay Karol, CJ; S. Kumar, J

**Bench:** Division Bench

**Advocate:** Mrityunjay Kumar, Pawan Kumar

**Final Decision:** Disposed Of

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### **Judgement**

Heard learned counsel for the petitioner and learned counsel for the respondents.

Petitioner has prayed for the following relief(s):-

I. For issuance of a writ in the nature of Mandamus to declare the Section 3.4 under Chapter-3 of the statutes for appointment of Teachers

(Assistant Professor Grade) for the Universities of Bihar, 2014 (Annexure-2) as ultravires and unconstitutional.

II. Further issuance of a writ in the nature of Mandamus directing the respondent authorities to consider and refix the minimum age (23 years at

present) for Appointment to the post of Assistant Professor under different Universities in the State of Bihar as published in Advertisement No. 44-

84/2014 (Annexure-2) by the Bihar Public Service Commission, Patna, (hereinafter referred to as BPSC).

III. Further for issuance of a writ in the nature of Mandamus directing the respondent authorities to refix the cut-off date for counting of

minimum/maximum age as 01.08.2014 in the abovesaid advertisement in place of 01.01.2014 and accordingly published the advertisement.

IV. For a direction to the Respondent Commission to treat the application form of petitioner as valid and genuine for the post of Assistant Professor in subject Geography during pendency of the writ application.

In this case following order was passed on 19.11.2014:-

“Learned counsel for the petitioner submits that Section 3.4 under Chapter-3 of the Statutes for Appointment of Teachers (Assistant Professor

Grade) for the Universities of Bihar, 2014 is discriminatory and therefore ultra vires and unconstitutional as having fixed minimum age for appointment

to the post of Assistant Professor under different Universities of the State as 23 years, whereas for similarly situated Assistant Professors in the

Engineering Colleges of the State of Bihar the minimum age as per the advertisement as contained in Annexure-5 to the writ petition has been given

as 22 years and such appointments are not only for engineering subjects but also for Mathematics, Physics, English, Geology and Chemistry and thus

there is no justification for the respondents to have fixed the minimum age of 23 years for Assistant Professors in the other Universities of the State

by the aforesaid Statutes.

It is submitted by learned counsel that in the other States, including UP, MP and Chhattisgarh and the Central Universities the minimum age is either

21 or 22 years for which different advertisements have been annexed in the writ petition/supplementary affidavit.

As prayed for by learned counsels for the respondents, put up on 10th December, 2014 to enable them to file their respective counter affidavits in the matter.

It is pointed out by learned counsel for the petitioner that tomorrow (20.11.2014) is the last date for submission of applications against the

advertisement issued by the Bihar Public Service Commission and he prays that he and similarly situated persons may be permitted to submit the

same. The Bihar Public Service Commission is directed to accept the applications filed by the petitioner and similarly situated persons who have

completed the age of 22 years as on the cut off date provisionally for which the date of accepting the applications shall stand extended to 27.11.2014

till 5 P.M. instead of 20.11.2014 as given in the advertisement. The necessary corrigendum notice shall be issued by the BPSC forthwith.

The rights of the petitioner and similarly situated persons shall abide by the result of the writ petition.â€

In this case following order was passed on 23.07.2018:-

â€œHaving considered Clause 3.4 of the notification in question for appointment on the post of Assistant Professors, we find that looking to the

essential educational qualification prescribed, a candidate would acquire the said qualification at the age of 22 and becomes eligible for appointment at

the age of 22 years.

If that be so, the rationale and justification for fixing the minimum age of entering into such service on 23 years should be explained by the State

Government as we see no reason as to why a student who is at the age of 22 years and who has acquired the minimum qualification should be

deprived for one year from appearing in the examination.

To explain to us the rationale and the justification for fixing the age of 23 years as the minimum age of entering into the service in question, which

aspect has not been dealt by the State Government in the counter affidavit, we grant three weeksâ€™ time to the Chancellor and the State

Government who are respondents herein to file supplementary counter affidavit and explain the aforesaid position. In the meanwhile, such of the

petitioners who have been appointed, they are permitted to work on the post in question.

List after three weeks.â€

The issue raised in this writ petition came for consideration before a Division Bench of this Court in CWJC No. 1024 of 2015 (Shilpi Kumari Vs. the

State of Bihar & Ors) and same stood dismissed on 25.10.2018 by following order:-

â€œBy way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ/direction to declare Section

3.4 under Chapter-3 of the statutes for appointment of Teachers (Assistant Professor Grade) for the Universities of Bihar, 2014 as illegal, ultra vires,

unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India.

2. Heard learned counsel for the respective parties at length.

3. The aforesaid statutes/provision provides the minimum age for appointment to the post of Assistant Professor at 23 years as on January, 1st of the year of advertisement. Therefore, when the advertisement was issued inviting the application for the post of Assistant Professor i.e. on 14.09.2014, the minimum age prescribed was 23 years as on 1st of January, 2014.

4. Therefore, it is the case on behalf of the petitioner that as the statutes namely "statutes for appointment of Teachers (Assistant Professor Grade) for the Universities of Bihar, 2014" has been enacted after 1st of January, 2014, the minimum age of 23 years ought not to have been and could not have been as on 1st of January, 2014.

5. On the aforesaid ground only, the statutes for appointment of Teachers (Assistant Professor Grade) for the Universities of Bihar, 2014, cannot be said to be illegal, ultra vires or unconstitutional. There shall be and there must be a cut off date for the eligibility, more particularly with respect to the age limit. Therefore, when the advertisement is issued in the year 2014 and the minimum age of 23 years is required to be completed as on 1st of January, 2014, the same cannot be said to be illegal and unconstitutional.

5.1 Section 3.4 of the statutes provides that a candidate must have completed minimum 23 years of age as on January, 1st of the year of advertisement. Therefore, there is a logic and nexus with respect to fixing the minimum cut off date as on January, 1st of the year of advertisement.

6. Under the circumstances, there is no substance in the present petition and the same deserves to be dismissed and is dismissed.

In view of the judgment and order dated 25.10.2018 passed by a Division Bench of this Court in CWJC No. 1024 of 2015 (Shilpi Kumari Vs. the State of Bihar & Ors), the present writ petition is dismissed.

However, in peculiar facts and circumstances of present case, the applications which were accepted by the BPSC pursuant to interim order passed by this Court and appointments made thereafter such appointees need not be disturbed and their appointment stands protected. It is made clear that such protection is available to those appointees only who were appointed against Advertisement No. 44-84/2014 (as contained in Annexure-2) pursuant to interim order passed by this Court.

Accordingly, this writ petition is disposed of.