

**(2008) 03 PAT CK 0093**

**Patna High Court**

**Case No:** CWJC No. 15298 of 2005

Ex. NB/SUB Sudhir Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** March 14, 2008

**Citation:** (2008) 3 PLJR 167

**Hon'ble Judges:** Shiva Kirti Singh, J

**Bench:** Single Bench

**Advocate:** Harendra Kumar Singh and Fulman Singh, for the Appellant; L.K. Yadav for the Intervener, Mr. JC to AAG 2 for the State and Mr. K.B. Nath for the BPSC, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Shiva Kirti Singh, J.

Heard learned counsel for the petitioner, learned counsel for the interveners. who want to be added as petitioners. learned counsel for the State and learned counsel for the Bihar Public Service Commission. Petitioners are ex-defence personnel and their grievance is that in spite of policy decision of the State Government as evidenced by letter of the Personnel and Administrative Reforms Department. Government of Bihar dated 6.3.1990 contained in Annexure-1, the respondent authorities including the Bihar Public Service Commission (BPSC) are not granting required age relaxation to ex-defence personnel in terms of Annexure-1.

2. It has been shown from recent advertisement made by the BPSC bearing Advertisement No. 4/2007 in respect of Joint (Preliminary) Competitive Examination, 2008 that for the ex-defence personnel the consolidated relaxation of five years of age has been advertised whereas under the policy decision contained in Annexure-1 the required relaxation in age is to the extent of 3 years plus the period actually spent in defence service with a rider that the age of the applicant should not be

more than 53 years on the date of application. Clearly, the relaxation which is in practice evident from the advertisement, which is Annexure-A to the affidavit of BPSC, is not in consonance with the policy decision of the State Government and curtails relaxation of age contemplated for ex-defence personnel.

3. Learned counsel for the State has fairly submitted that the State Government has not revised or modified the policy decision evidenced by Annexure-1 and the State, Government is in favour of its implementation. Learned counsel for the BPSC has submitted that Annexure-1 is merely a resolution of executive policy decision and is not a statutory rule and hence, the BPSC has made some modification in the age relaxation.

4. It is well settled in law that in absence of any statutory rules to the contrary executive decision can occupy the field and even if the rules are in existence, the policy decisions and executive decision can supplement the rules but cannot supplant it. No statutory rule has been brought to the notice of this Court contrary to the policy decision of the State Government contained in Annexure-1. Hence, it is found that the action of the BPSC in not honouring the policy decision of the State Government contained in Annexure-1 in full is erroneous and arbitrary. Hence, adequate reliefs have to be granted to the petitioner as well as to other persons similarly situated as the petitioners i.e. all those ex-defence personnel who may be eligible to apply pursuant to the advertisement of the BPSC bearing no. 4/2007.

5. This Court has been informed that date of preliminary examination has been postponed and no fresh date has been announced as yet. Hence, there is no difficulty in directing the BPSC to issue a corrigendum in respect of age relaxation relating to ex-defence personnel within one week from today. The advertisement should grant at least three weeks time to ex-defence personnel to apply pursuant to that advertisement if they are eligible on account of corrigendum issued in respect of ex-defence personnel. All the applicants who will be found entitled to take preliminary competitive examination in accordance with criteria for ex-defence personnel in consonance with Annexure-1, shall be allowed to take the preliminary competitive examination if they fulfill other conditions.

6. It goes without saying that all categories of services for which the State Government is competent to lay down age criteria for recruitment shall be covered by the policy decision contained in Annexure-1 unless there are rules to the contrary. This shall be kept in mind by the respondents-State and the Bihar Public Service Commission for future transactions.

7. The writ petition is allowed to the aforesaid extent. Let a copy of this order be given to learned counsel for the Bihar Public Service Commission for compliance.