

**Anil Kishore Pandit**

v.

**The State of Bihar and Others**

(Civil Appeal No. 1566 of 2024)

02 February 2024

**[Hima Kohli and Ahsanuddin Amanullah, JJ.]**

**Issue for Consideration**

Matter pertains to permissibility of an employer to change the qualifications prescribed in the advertisement midstream, during the course of the ongoing selection process.

**Headnotes**

**Service law – Appointment to the post – Change in the qualifications prescribed in the advertisement midstream, during the course of the ongoing selection process – Permissibility:**

**Held:** Employer cannot change the qualifications prescribed in the advertisement midstream, during the course of the ongoing selection process – Any such action would be arbitrary as it would tantamount to denial of an opportunity to those candidates who are eligible in terms of the advertisement but would stand disqualified on the basis of a change in the eligibility criteria after the same is announced by the employer – Having applied for appointment in accordance with the terms prescribed in the advertisement, a candidate acquires a vested right to be considered in accordance with the said advertisement – This consideration may not necessarily fructify into an appointment but certainly entitles the candidate to be considered for selection in accordance with the rules as they existed on the date of the advertisement – Any subsequent amendment to the advertisement during the course of the selection process unless retrospective, cannot be a ground to disqualify a candidate from consideration – Division Bench erred in setting aside the order of the Single Judge of the High Court and cancelling appellant's appointment to the post of Amin on the ground of his being overage on basis of the change in criteria/qualification in the selection process during midstream – Impugned judgement quashed and set aside – Earlier order

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passed by respondents appointing the appellant to the post by reckoning the age of the candidate in EBC category as 40 years, as on 01.01.2011 upheld. [Paras 8, 12, 13]

### Case Law Cited

*N.T. Devin Katti and Others v. Karnataka Public Service Commission and Others, (1990) 3 SCC 157; Mohd. Sohrab Khan v. Aligarh Muslim University and Others, [2009] 2 SCR 907 : (2009) 4 SCC 555; Zonal Manager, Bank of India, Zonal Office, Kochi and Others v. Aarya K. Babu and Another, [2019] 11 SCR 627 : (2019) 8 SCC 587 – referred to.*

### List of Keywords

Change the qualifications prescribed in the advertisement midstream; Selection process; Appointment; Arbitrariness; Change in the eligibility criteria/qualification; Right of candidate.

### Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1566 of 2024  
From the Judgment and Order dated 24.01.2017 of the High Court of Judicature at Patna in LPA No.1892 of 2015

### Appearances for Parties

Subhro Sanyal, Sagar Roy, Sandeep Lamba, Amber Shehbaz Ansari, Dr. Nilakshi Choudhury, Kaushal Kishore, Mr./Ms. Avni Singh, Sanjay Kumar, Ms. Aakanksa Tiwari, Advs. for the Appellant.

Samir Ali Khan, Pranjali Sharma, Kashif Irshad Khan, Neeraj Shekhar, Kartik Kumar, Mrs. Kshama Sharma, Advs. for the Respondents.

### Judgment / Order of the Supreme Court

#### Order

1. Leave granted.
2. The appellant is aggrieved by an order dated 24<sup>th</sup> January, 2017, passed by the Division Bench of the High Court of Judicature at Patna whereunder, an intra-Court Appeal<sup>1</sup> filed by the respondent

<sup>1</sup> LPA No. 1892 of 2015

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no.8 herein against an order dated 07<sup>th</sup> March, 2013, passed by the learned Single Judge in a writ petition<sup>2</sup> filed by the appellant herein was allowed and as a result thereof, the order passed by the respondent no.1-State Government in compliance of the order passed by the learned Single Judge to appoint the appellant, if his date of birth was found to be within the permissible range as on 01<sup>st</sup> January, 2011, was set aside.

3. A reference to the brief facts of the case is considered necessary. Vide memo dated 13<sup>th</sup> October, 2011, the District Employment Officer, West Champaran, Bettiah published an advertisement inviting applications from suitable candidates for appointment to the post of Amins on contractual basis. The cut off date of the age as per the District level vacancy was fixed as 40 years as on 01<sup>st</sup> January, 2011, for the Economic Backward Class<sup>3</sup> category, both males and females. The appellant applied for selection to the said post pursuant to the advertisement dated 13<sup>th</sup> October, 2011. It is not in dispute that as on 01<sup>st</sup> January, 2011, the appellant's age was 39 years 11 months and 27 days. In other words, the appellant qualified the age criteria in terms of the subject advertisement. The records reveal that in pursuance to a letter<sup>4</sup> subsequently issued by the Principal Secretary Revenue and L.R. Department, Government of Bihar, another notice was displayed on the Notice Board of the Collectorate, West Champaran on 15<sup>th</sup> November, 2011, stating that interested parties could apply till 30<sup>th</sup> November, 2011.
4. The appellant appeared for the written examination on 22<sup>nd</sup> January, 2012. Thereafter, a merit list was prepared for counselling in which his name was placed at Serial No.2. The District establishment prepared a selection list on 04<sup>th</sup> December, 2012, where his name was placed at Serial No.9, whereas that of the respondent No.8 was at Serial No.11. The remarks column noted that the appellant's candidature was cancelled on the ground of his being overage.
5. Aggrieved by the aforesaid, the appellant submitted a representation before the District Magistrate for rectification of the results, but to no avail. The appellant then filed a writ petition before the High Court on

<sup>2</sup> CWJC No. 15685 of 2012

<sup>3</sup> For short the 'EBC'

<sup>4</sup> No. 446(4)/Revenue (dated 04th November, 2011)

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28<sup>th</sup> August, 2012, which was disposed of vide order dated 07<sup>th</sup> March, 2013, with a direction issued to the Collector, West Champaran to examine his grievance and pass necessary orders of appointment, in the event the date of birth of the appellant was found to be correct, i.e. 05<sup>th</sup> January, 1971, in terms of his Matriculation Certificate. On 27<sup>th</sup> June, 2015, the appellant was appointed to the post of Amin by the District Magistrate West Champaran, Bettiah.

6. Aggrieved by the said appointment, the respondent no.8 filed an intra-Court appeal before the Division Bench stating inter alia that he was not made a party by the appellant in the writ petition and assailing his appointment on the ground that the appellant was overaged in terms of the press communication dated 01<sup>st</sup> November, 2011. Agreeing with the stand of the respondent No.8, the Division Bench has passed the impugned judgement. The Division Bench was of the opinion that the entire selection process had been carried out on the basis of treating the cut off date as 01<sup>st</sup> November, 2011. It was observed that though the advertisement at the District level did officially fix the cut off date as 01<sup>st</sup> January, 2011, it was not considered sacrosanct since uniformity was required to be maintained across the State with regard to the cut off date fixed.
7. Learned counsel for the appellant assails the impugned order on the ground that the Division Bench erred in ignoring the date of the public advertisement that mentioned the cut off date as 01<sup>st</sup> January, 2011, for reckoning the age of a candidate, which in the case of the appellant herein who belongs to the extremely backward category, was 40 years. He states that the subsequent communication issued by the respondents changing the cut off date from 01<sup>st</sup> January, 2011 to 01<sup>st</sup> November, 2011, was not placed in public domain through any advertisement, as had been done earlier. Instead, it was displayed only on the Notice Board in the office of the Collectorate, which was not the correct procedure to be adopted and could not have been treated as overwriting the initial advertisement issued on 01<sup>st</sup> January, 2011.
8. It is settled law that it is not open for an employer to change the qualifications prescribed in the advertisement midstream, during the course of the ongoing selection process. Any such action would be hit by the vice of arbitrariness as it would tantamount to denial of an opportunity to those candidates who are eligible in terms of

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the advertisement but would stand disqualified on the basis of a change in the eligibility criteria after the same is announced by the employer. Having applied for appointment in accordance with the terms prescribed in the advertisement, a candidate acquires a vested right to be considered in accordance with the said advertisement. This consideration may not necessarily fructify into an appointment but certainly entitles the candidate to be considered for selection in accordance with the rules as they existed on the date of the advertisement. To put it differently, the right of a candidate for being considered in terms of the advertisement stands crystalized on the date of the publication of the advertisement. Any subsequent amendment to the advertisement during the course of the selection process unless retrospective, cannot be a ground to disqualify a candidate from the zone of consideration.

9. In the above context, this Court in **N.T. Devin Katti and Others v. Karnataka Public Service Commission and Others**<sup>5</sup> has held as under :

“11. .... Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature”.

10. A similar view has been expressed in **Mohd. Sohrab Khan v. Aligarh Muslim University and Others**<sup>6</sup>, where this Court did not approve the change of the criteria/qualification in the selection process by the Selection Committee constituted for filling up the post Lecturer in Chemistry in the respondent-University and observed as follows :

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5 (1990) 3 SCC 157

6 [2009] 2 SCR 907 : (2009) 4 SCC 555

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“25. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in Pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer in Chemistry, for Pure Chemistry and Industrial Chemistry are two different subjects.

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27. The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Master’s degree-holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of Pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to Pure Chemistry stream.

11. Quoting the aforesaid decision in Zonal Manager, Bank of India, Zonal Office, Kochi and Others v. Aarya K. Babu and Another<sup>7</sup>, this Court made the following pertinent observations :

“14. If the above decision in Mohd. Sohrab Khan case [Mohd. Sohrab Khan v. Aligarh Muslim University], is kept in perspective it is clear that while examining the correctness of the action of the employer what would be sacrosanct will be the qualification criteria published in the notification, since if any change made to the qualification criteria midstream is accepted by the Court so as to benefit only the petitioners before it, without making it open to

<sup>7</sup> [2019] 11 SCR 627 : (2019) 8 SCC 587

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all the qualified persons, it would amount to causing injustice to the others who possess such qualification but had not applied being honest to themselves as knowingly they did not possess the qualification sought for in the notification though they otherwise held another degree. Therefore, if there is any change in qualification/criteria after the notification is issued but before the completion of the selection process and the employer/recruiting agency seeks to adopt the change it will be incumbent on the employer to issue a corrigendum incorporating the changes to the notification and invite applications from those qualified as per the changed criteria and consider the same along with the applications received in response to the initial notification. The same principle will hold good when a consideration is made by the Court.”

12. Coming back to the case at hand, we are inclined to agree with the submissions made by learned counsel for the appellant. In the first instance, the respondents ought not to have issued a subsequent communication after having issued a public advertisement fixing the cut off date for reckoning the age of candidates, as on 01<sup>st</sup> January, 2011. The initial decision taken by the respondents was sought to be overturned later on, merely on the basis of an internal discussion within the department and it was decided that a fresh notice be issued changing the date that was initially fixed as 01<sup>st</sup> January, 2011 to 1<sup>st</sup> November, 2011. This was done without following the due process as prescribed, of issuing a public advertisement, etc. Nor was the earlier advertisement recalled. In the meantime, going by the earlier advertisement issued by the respondent, the appellant had already applied. As per the said advertisement, his age was within the permissible range. Not only that, he was high up in the selection list and was even appointed to the post of Amin on 27<sup>th</sup> June, 2015.
13. Having regard to the aforesaid facts and circumstances of the case, the impugned judgement is quashed and set aside. It is deemed appropriate to set the clock back and uphold the earlier order passed by the respondents appointing the appellant to the post of Amin by reckoning the age of the candidates in the EBC category as 40 years, as on 01<sup>st</sup> January, 2011.

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14. The appointment of the appellant to the post of Amin is restored w.e.f 27<sup>th</sup> June, 2015, the date of his initial appointment, without any break in service. The appellant would be entitled to all the notional benefits except for the actual wages, having not discharged his duties on the said post in all these years. A letter reappointing the appellant to the subject post shall be issued by the respondents on the above terms within two weeks from today. The appointment of the respondent No.8 cannot be sustained and stands revoked in the light of the aforesaid orders.
15. The present appeal is allowed on the above terms.

*Headnotes prepared by:* Nidhi Jain

*Result of the case:*  
Appeal allowed.