

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13962 of 2008

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Jai Mangal Prasad, son of late Sita Ram Gope, resident of Village – Hemdah, P S – Warsaliganj, District - Nawada

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Engineer, Water Resources (Irrigation) Department, Anisabad, Patna.
3. The Executive Engineer, Water Ways Division, Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ALOK KUMAR SINHA I

For the Respondent/s : Mr. Anil Kumar Sinha, GA9

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 23-09-2015

Petitioner assails Annexure-3 which is dated 18.2.2008. By virtue of this decision the benefit of grant of 1st and 2nd ACP both was granted on 9.8.1999.

Matter was reviewed when it was discovered that the benefit of ACP has been granted to certain persons including the petitioners without passing of the departmental examination. In the case of the present petitioner, the date of passing of departmental examination is said to be 3.12.2004. A decision was taken, therefore, to re-fix the date of benefit w.e.f. 3.12.2004 instead of 9.8.1999.

Counsel for the petitioner submits that since the State did not hold examination regularly, petitioner cannot be faulted. Since the petitioner was more than 50 years of age, he should be exempted

from passing of the departmental examination.

Exemption is not automatic. The Circular lays down certain conditions before exemption can be granted by the competent authority. If the petitioner was interested in exemption he should have prayed for the same at an appropriate time, including on the ground that no adequate number of examination were held by the State, which prevented him from clearing the examination earlier.

Rule 4, sub-rule 5 of ACP Rules, 2003 very clearly indicates that even for the purposes of grant of benefit of ACP, an employee must fulfil all the requirements of promotion on substantive basis.

If that be the position emerging from the rules governing grant of ACP, the order contained in Anneuxre-3, re-fixing the date to 3.12.2004, cannot be said to be arbitrary because admittedly petitioner passed the departmental examination on that date.

Before parting, counsel for the petitioner submits that since there is no fraud or mis-representation by the petitioner, recovery ought not be made.

Entitlement of a government servant flows from a set of rules. He cannot derive benefit over and above what the rules lay down. If benefit had accrued because of an apparent oversight and mistake in applying the rules from where the right of the petitioner to

beget ACP was not taken into consideration, the petitioner cannot sit over the bounty which he has earned by virtue of the decision contained in Annexure-1.

Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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