

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1993 of 2014

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Mosst, Shashi Prasad W/O Late Damodar Prasad R/O Mohalla- Adarsh Colony,
Damu Chak, P.S. Kazi Mohammadpur, Distt- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Water Resources Department, Sichai Bhawan, New Secretary, Patna, Bihar
2. The Principal Secretary, Water Resources Department, Sichai Bhawan, New Secretary, Patna, Bihar
3. The Commissioner, Tirhut Division, Muzaffarpur
4. The Secretary To The Commissioner, Commissioner Office, Tirhut Division, Muzaffarpur
5. The Under Secretary, Water Resources Department, Sichai Bhawan, New Secretary, Patna, Bihar
6. The Chief Engineer, Water Resources Department, Kalambag Road, Muzaffarpur
7. The Executive Engineer, Tirhut Canal Division, Saraiya, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma
For the Respondent/s : Mr. Shailendra Kumar Jha, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 28-09-2015

28.09.2015

Heard learned counsel for the parties.

Petitioner, who is a widow of Late Damodar Prasad, had earlier filed a writ application for grant of benefit of A.C.P. to the husband after his demise. He entered service in the work-charge-establishment and superannuated from the post of Accounts Clerk from the office of Tirhut Canal Division, Water Resources Department, Saraiya, District-Muzaffarpur on 30th of November, 2004.

The High Court, without expressing any opinion on the merit, directed the authorities to consider such claim, including whether exemption from passing of departmental examination would be granted after the death of husband, so as to enable the petitioner to derive the benefit of A.C.P.

Annexure-11, dated 12.07.2011 is the order rejecting such a plea, primarily on two grounds that benefit of A.C.P. cannot be granted without passing of departmental examination, as it is an essential pre-requisite under the scheme of things as per 2003 Rules and secondly that no exemption from passing of departmental examination can be given after superannuation and death of an employee. The relevant rules for exemption, which are in place lays down certain pre-conditions and they must be fulfilled at an appropriate time, for which husband of the petitioner never took any steps.

The rational and reasoning provided by the Chief Engineer in the decision, contained in Annexure-11 was conformity with the Rules and Circulars. Counsel for the petitioner thereafter draws the attention of this Court to a decision or order, contained in Annexure-13.

With due respect the order, dated 22.12.2011,



contained in Annexure-13 cannot be treated as a precedent and in fact it is per incuriam for the reason that it has not taken into consideration other rules and regulations which occupy the field for giving such a direction.

Since Annexure-11 does not suffer from any legal vice, writ application is dismissed.

(Ajay Kumar Tripathi, J.)

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