IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10113 of 2011

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Ram Udar Chaudhary, aged about 61 years, Son of Late Laksheshwar Chaudhary, Resident of Vachaspati Nagar, P.O. Mahendru, P.S. Bahadurpur, District- Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna.
2. Director, Secondary Education, Human Resources Development Department, Government of Bihar, Patna.
3. Accountant General, Bihar, Patna.
4. Divisional Commissioner, Patna Division, Patna.
5. Regional Deputy Director, Patna Division, Patna.
6. Principal, Government Senior Secondary School, Rajendra Nagar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik, Advocate.
For the Respondents No.1,2,3 & 6	:	Mr. Sanjay Kumar, A.C. to A.A.G. 6.
For the Accountant General	:	Mr. Jitendra Kumar Roy, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 30-10-2015

Heard learned counsel for the parties.

The dispute in the present case now remains as to whether the petitioner is entitled to 2nd and 3rd A.C.P. benefits which have been denied to him on the ground that he has not cleared the departmental examination.

Learned counsel for the petitioner submits that in the year 2005 pursuant to him having attained the age of 50 years he had applied for exemption from passing of the said departmental examination which was permissible under the Rules and taking note of the same the Controlling Authority had recommended for grant of 1st A.C.P. to the Competent Authority clearly stating that the case of the petitioner may be considered.

It is submitted that subsequently by order dated 21.03.2007, the petitioner and others were granted the benefit of 1st A.C.P. with effect from 09.08.1999 though even the 2nd A.C.P. was due from that very date. It is submitted that thereafter the petitioner was entitled for grant of 3rd A.C.P. from 01.01.2009. Learned counsel submits that once the 1st A.C.P. was granted to the petitioner without any pre-condition, it is obvious that the authorities had given him the benefit of exemption from passing departmental examination and thus there was no ground for them to deny the subsequent 2nd and 3rd A.C.P. Learned counsel submits that even otherwise the petitioner even after being granted 1st A.C.P., only one departmental examination was held in the year 2008 and the petitioner had not appeared at the said examination in view of 1st A.C.P. having been granted without insisting for the petitioner to pass the examination subsequently. Learned counsel further submits that the petitioner had applied in the year 2010 for grant of remaining 2nd A.C.P. and 3rd A.C.P. but till date the same has not been granted to him.

Learned counsel for the State submits that admittedly the petitioner has not cleared the departmental examination as per the Rule governing grant of A.C.P. for which such passing is a basic requirement. It is further submitted that the petitioner had to make a formal application for grant of such exemption which seems to have been made only in the year 2010 when the petitioner, upon superannuation applied for grant of 2nd and 3^{rd} A.C.P. Learned counsel submits that the law relating to exemption being very clear that the request for such exemption has to come from the concerned employee and then only the Department is obliged to take a decision on the same though it may be applicable from the date of the application; but since the application itself came upon superannuation of the petitioner from service, even if the Department could have granted such exemption it would have been infructuous because he had superannuated by that time and the same could not have been given with retrospective effect.

Learned counsel for the petitioner, by way of reply, submits that when the order dated 21.03.2007 was passed granting 1^{st} A.C.P. to him, upon the 2^{nd} A.C.P. not been granted to him, on query from the office he was told that it was due to him not passing the departmental examination and in that light, he had applied in the year 2010 for grant of exemption and 2^{nd} and 3^{rd} A.C.P. It is submitted that in view of the matter, by mere conduct of the parties, the 1^{st} A.C.P. having been given unconditionally and in the background of the fact that the grant of A.C.P. can be granted only upon passing of departmental examination, the only presumption in law would be that the authorities had exempted the petitioner. Thus, once the exemption is granted, for the subsequent stages i.e., grant of 2^{nd} and 3^{rd} A.C.P. the same stipulation of passing of the departmental examination cannot be enforced upon the petitioner.

Having considered the rival contentions, this Court finds substance in the submissions of learned counsel for the petitioner. Taking into account the overall picture, the authority having granted the petitioner 1st A.C.P. by order dated 21.03.2007 without any pre-condition, the presumption would go in favour of the petitioner that he was granted relaxation from appearing in the departmental examination. Once such relaxation is deemed to have been granted, for the subsequent stages i.e., 2nd and 3rd A.C.P., passing of the departmental examination cannot be insisted upon by the respondents. The view taken by the Court supported by a decision of a coordinate Bench of this Court in the case of **Dr. Shree Narayan Pandit vs. State of Bihar** reported in **2013 (1) PLJR 747**.

Accordingly, the writ application stands disposed off holding that the petitioner is entitled to grant of 2nd and 3rd A.C.P. from the due date. The authorities shall ensure that necessary orders are issued in favour of the petitioner and sent to the Accountant General, Bihar within four months from the date of production of a copy of this order before the respondent no. 5. The Accountant General, Bihar shall issue authorization within one month thereafter.

(Ahsanuddin Amanullah, J.)

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