IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 322 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 16776 of 2012

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Nandji Ram Son of Bhola Ram, Resident of Village - Majhupur, P.S. - Jagdishpur, District - Bhojpur, Ara.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Water Resources Development, Govt. of Bihar, Patna.
3. The Chief Engineer, Water Resources Development, Govt. of Bihar, Patna.
4. The Executive Engineer, Ganga Sone Bandh Surakccha, Division - Digha, Patna.
5. The Sub Divisional Officer, Sub Division, Ganga Surakasha Bandh, Danapur, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Onkar Nath, Advocate
For the Respondent/s	:	Mr. Dhirendra Kumar, A.C. to A.A.G. 10

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)
Date: 20-07-2016

Heard learned counsel for the parties.

The present intra-Court appeal under Clause-X of the Letters Patent of Patna High Court is directed against the order dated 2nd January, 2014 passed by the learned Single Bench by which C.W.J.C. No. 16776 of 2012, filed by the appellant, has been dismissed.

The appellant was appointed as Correspondence Clerk on 18.02.1991. On 11.08.2006, he represented for grant of exemption from clearing the Departmental Accounts Examination. The appellant had moved earlier before this Court in C.W.J.C. No. 19777 of 2011 seeking grant of benefit under the Assured Career Progression Scheme

(ACP), which was disposed off by order dated 05.12.2011 directing his representation to be disposed off in accordance with law by passing reasoned and speaking order. Pursuant thereto, the Chief Engineer, Water Resources Department, by order contained in Memo No. 1307 dated 09.04.2012, rejected the claim of the appellant for grant of ACP. The same was challenged by the appellant in C.W.J.C. No. 16776 of 2012 and dismissal of the writ petition has given rise to the present appeal.

Learned counsel for the appellant submits that once he had applied for exemption from passing of the Departmental Accounts Examination and the same remained pending with the authorities, his claim cannot be rejected on the ground that he has not cleared the said examination and has superannuated. He further submits that the order of exemption is relatable to the date of application and thus the same being of the year 2006, when he was in service, the grant of ACP should have been considered by the respondents.

Learned counsel for the State submits that the appellant, even if applying for any exemption in the year 2006, had not given details with regard to him having appeared at the Departmental Accounts Examination so as to enable the authorities to consider his request for exemption. It submitted that the exemption is not to be granted as a matter of right and is discretionary and has to be considered taking into consideration various factors, including that of the concerned employee having appeared at such examination but not being successful. Thus, it is submitted that the appellant not furnishing any such details, his case has rightly been rejected. Learned counsel submits that the appellant moving the Court initially in the year 2011, after his superannuation, also shows negligence and laches on his part and on this ground alone no relief should be granted to him. It is further submitted that the order of the authorities dated 09.04.2012 is well considered and has rightly not been interfered with by learned Single Bench.

Having considered the rival contentions, we do not find any merit in the present appeal. Though the cause of action to the appellant arose in the year 2006, according to his own showing when he had sought exemption from passing of the Departmental Accounts Examination, he was required to be vigilant and ought to have followed up the matter, moreso when he being aware of his date of superannuation, was required to move the Court well in advance. The fact that he superannuated on 31.05.2011 i.e., almost five years after putting in a request for such exemption, and still not agitating the matter before the Court, upon his superannuation, the authorities finally considering his representation and rejecting the same and that too on cogent grounds, cannot be faulted. The onus was on the appellant to furnish all the details which were required for such effective consideration but, admittedly, from his representation it is clear that the required details with regard to the examinations in which he had appeared were not given, and, thus, the authorities could not have taken a positive decision in his favour.

In any view of he matter, the undisputed factual position being that the appellant neither cleared the Departmental Accounts Examination nor was exempted from the same and the rules relating to grant of ACP being clear that such clearing of the examination/exemption from the same, being a mandatory condition for grant of ACP, the appellant cannot be granted any relief.

For the reasons aforesaid, we find no ground to interfere in the order of the learned Single Bench dismissing the writ application.

Accordingly, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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CAV DATE	NA
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Transmission Date	