IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12563 of 2013

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Vijay Ram Pandey, son of late Sheo Pujan Pandey, Resident of Village- Tengrahi, P.S. Beriya, District Balia, Uttar Pradesh.

.... Petitioner

Versus

1. The State of Bihar, through the Collector-cum-District Magistrate, Siwan.
2. The Collector- cum- District Magistrate, Siwan.
3. The Additional Collector, Revenue, Siwan.
4. The Deputy Collector, Establishment, Siwan.
5. The Sub-Divisional Officer, Siwan.
6. The Circle Officer, Darauli, Siwan.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Sonat Kumar Mishra, Adv.

For the Respondent/s : Mr. Samir Kumar, A.C. to S.C.-16

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-11-2016

Heard learned counsel for the petitioner and learned counsel for the State.

2. In this case, a prayer has been made by the petitioner for quashing the order containing Memo No.1081 dated 14.09.2011, thereby the representation of the petitioner for granting exemption from passing the departmental examination of Hindi noting and drafting, has been rejected on the ground that the petitioner does not satisfy the conditions of exemption from departmental examination.

3. The petitioner was appointed as Amin in the year 1973 in the Consolidation Department in different Districts till 10.04.1995. In light of the Memo No.1150 dated 26.11.1994, issued by the Deputy Secretary, Revenue and Land Reforms, Government of Bihar, Patna, the services of the petitioner were adjusted in the Revenue Department vide Memo No.1513 dated 12.12.1994, accordingly, he joined the Revenue Department on 11.04.1995. The petitioner was superannuated from service on 30.06.2008.

4. As per the petitioner, he has spent 22 years of service in the Consolidation Department and 13 years in the Revenue Department. In the Consolidation Department, there was no need to pass departmental examination of Hindi noting and drafting, after absorption in the Revenue Department, the petitioner was not knowing for passing the examination, so he did not appear in the said departmental examination. The petitioner filed an application on 24.12.2010 before the District Magistrate, Siwan, mentioning therein that he was adjusted in the Revenue Department and he was not knowing that for having benefit of A.C.P., he will have to pass the departmental Hindi noting and drafting examination, as there is provision for granting exemption, prayer was made for the same. He further filed an application reiterating the same prayer.

5. The Deputy Collector (Establishment), Siwan vide letter dated 7th July, 2011 directed the petitioner to give information on certain facts, such as, whether he continuously taken effort for passing the said departmental examination of Hindi noting and drafting or whether any examination was conducted during that period or before the reaching the age of 50 years, preceding five years no examination was conducted, but it appears that the petitioner did not give any response. However, the Circle Officer, Darauli, Siwan has reported to the Deputy Collector (Establishment), Siwan that the C.R. of the petitioner is proper and he was never put to any departmental proceeding. The Deputy Collector, (Establishment), Siwan vide order containing Memo No.1081 dated 14.09.2011 rejected the request of the petitioner for granting exemption from passing the departmental examination of Hindi noting and drafting on the ground that he does not satisfy the conditions of exemption from departmental examination without mentioning the reason and describing conditions which the petitioner does not satisfy, by a cryptic order his application was rejected.

6. A counter affidavit has been filed by the State, there plea has been taken that the petitioner has not appeared in the departmental examination, though he had a knowledge about the same, and as such, he is not entitled for exemption. But, the stand of the State taken in the counter affidavit cannot fill up the lacuna of the order or its position cannot be improved as has been held by the Hon’ble Supreme Court in the case of ***Mohinder Singh Gill & Anr.***

vs The Chief Election Commissioner & Ors., reported in ***1978 AIR page-851,*** wherein it has been held that any lacuna in the order cannot be filled up or its position cannot be improved by mentioning the reasons in the counter affidavit or otherwise.

7. In such view of the matter, the impugned order of rejection is not sustainable in law as it does not disclose the reason of not fulfilling the conditions of granting exemption from passing departmental examination. Accordingly, the order containing Memo No.1081 dated 14.09.2011 is set aside. The respondent-authorities are directed to pass a fresh order in accordance with law. The petitioner, if so advised, may file fresh application, giving details of the facts. If such an application is filed, the authority concerned will consider the same and pass appropriate order in accordance with law.

8. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	01.12.2016
Transmission Date	