

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1640 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 7013 of 2016**

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1. Ashwini Kumar Singh, Son of Late Girija Singh, Resident of Punaichak (Hanumannagar), C.P Thakur Path, P.O. and P.S.- Shastrinagar, District- Patna.
 2. Rakesh Kumar, Son of Late Raghunandan Prasad, Resident of House No 2G/4, Mohalla Bhatbiga, P.O. and P.S.- Rampur, District- Gaya.
 3. Abhay Kumar Roy, Son of Late Subalal Roy, Resident of Village- Sirdilpur, P.O.- Patori, District- Samastipur.
 4. Ajoy Kumar, Son of Late Nageshwar Thakur, presently posted as Accounts Assistant, PESU Division, West, Patna, District- Patna.

.... Appellants

Versus

1. Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna through Chairman cum Managing Director, Patna.
2. Chairman cum Managing Director, Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
3. General Manager (Human Resources), Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
4. Officer on Special Duty (Human Resources/Administration), Bihar State Power Holding Company Ltd., Vidyut Bhawan, Bailey Road, Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. Satish Chandra Jha-3, Advocate
For the Respondent Board : Mr. Anand Kumar Ojha, SC

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 30-11-2016

Heard learned counsel for the parties.

The present Letters Patent Appeal is directed against the order dated 30th June, 2016 passed in C.W.J.C.No. 7013 of 2016 whereby the writ application seeking quashing of the Notice of the Departmental Examination 2016 whereby “Proficiency-in-Accounts’



Examination (*Lekha Pravin Pariksha*) Part I and Part II Examination (for short the “Departmental Examination”) was not set aside.

The appellants are the Accounts Assistants working with the respondent Board. On 16th March, 1962 the Board introduced “Proficiency-in-Accounts” examination. Each candidate was given three chances in respect of each part of the examination. The relevant condition from the circular of the Board mentions as follows:

“The present tentative policy for filling up vacancies in the cadre of Accountants/Senior Auditors has generally been one of promotion on a provisional basis from the existing Accounts Assistant/Bill intendments/Auditors on fulfillment of the criteria of seniority cum good Confidential Reports. In view of the pressing need for manning these posts by persons with suitable capacity and professional ledge, it has been decided to introduce a system of examination called the (L.P.P.) for the purpose of filling up the vacancies of Accountants and above. No Accounts Assistant (or other equivalent category will be considered for further advancement or promotion, unless they have passed parts of this qualifying Examination. For details please see the appendix to this order.

2. This examination will be in two part viz., part I and part II, as per syllabus in the Appendix to Standing Order. Only those who have passed part I, will be permitted to appear in Part II of the Examination.



6. The number of chances that an individual will be given in respect of each part of the examination be three.”

The appellants contend that such decision was modified when Standing Order No.23/DEX-2501/07/869 issued on 7th October, 2009 and the chances of passing the Departmental examination was increased to five but was made sequential. The relevant clause from such circular reads as under:

“8. For passing the aforesaid departmental examination maximum of five consecutive chances will be allowed. This will not be applicable in case of lower division confirmatory examination. Consecutive chance means conduction of examinations. If a candidate fails to appear in any of the conducted examination, he will be deemed to have appeared for the proposer of calculating maximum five consecutive chances.”

Departmental Examination was not mentioned in the above circular which examination was introduced by another circular dated 4th of October, 2010 (Annexure-3). The appellants have appeared in such examination after availing three chances but before availing five chances. It is only at this stage on declaration of the result, the Board found that the appellants have availed more than three chances, therefore, in terms of circular of 16th of March, 1962



the appellants are not eligible for promotion on the basis of the Departmental Examination.

The argument of the respondent Board is that Annexure-2, the Circular no. 862 of 7th October, 2009 deals with the revision of the syllabus of the various examinations including Departmental Examination vide communication dated 4th October, 2010 but does not deal with the number of attempts in such examination. Such is the stand communicated by the Managing Director of the respondent Board on 10th May, of 2016 as well.

We have heard learned counsel for the parties and find that the order of the learned Single Bench holding that the Circular no. 862 dated 7th of October, 2009 is not applicable to the Departmental Examination in question cannot be sustained. The reading of the extract from the Circular shows that it was issued not only to revise the syllabus but also the Rules and Regulations for conducting various examinations. Though initially, Departmental Examination was not part of the Circular but such examinations was included vide communication dated 4th of October, 2010. Therefore, not only syllabus of Departmental Examination stands revised but also the number of attempts stands increased to five in terms of Clause 8 of the circular dated 7th October 2009. Clause 8 of the Circular deals with “aforesaid departmental examination” that examination includes the



Departmental Examination, therefore, it cannot be said that the Circular of 16th of March, 1962 will continue to be applicable for the Departmental Examination and that the Circular dated 7th of October, 2009 is not applicable as it is applicable in respect of syllabus and not in respect of examination. Consequently we find that the order passed by the learned Single Bench is not sustainable, the same is set aside.

The Letters Patent Appeal is, thus, allowed. The respondents shall take consequential steps in accordance with law expeditiously.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

A.I./-

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