IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16343 of 2011

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Laxman Bhagat, son of Late Sitaram Bhagat, resident of Laxmi Chowk, P.S. Brahmapura, Dist. Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Science and Technology Department, Govt. of Bihar, Patna.
3. That Director, Science and Technology Department, Govt. of Bihar, Patna.
4. The Principal, Muzaffarpur Institute of Technology, Muzaffarpur.

.... Respondents

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Appearance:

For the Petitioner : Mr. Shanti Pratap, Advocate
Mr. Arbind Kumar Verma, Advocate

For the Respondents : Mr. Gyan Shankar, AC to GP 2

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-12-2016

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

2. The present writ petition has been filed for a direction to the respondents to modify the effective date as 14.09.2001 instead of 28.08.2009 for the purpose of exemption from passing departmental examination for grant of time bound promotion in the order contained in Memo No. 1615 dated 03.06.2010 issued under the signature of the Director, Science and Technology Department, Bihar, Patna as contained in Annexure-1; for quashing the order vide Memo No. 1394 dated 14.08.2010 issued under the signature of Principal, Muzaffarpur Institute of Technology (hereinafter referred to as "MIT"), Muzaffarpur, as contained in Annexure-2, by which the petitioner has been directed

to deposit an amount of Rs. 98,290/- which has been paid to the petitioner due to wrong pay fixation of pay of the petitioner; and for connected reliefs.

3. The short facts, according to the petitioner, are that he was initially appointed on a Class IV post on 22.12.1976 in Muzaffarpur Institute of Technology, Muzaffarpur and was promoted on a Class III post of Clerk on 01.09.1980 under Extension Scheme. First time bound promotion was granted to the petitioner upon completion of ten years of service on 01.09.1990 with the condition that he would pass the accounts examination within two years. It is submitted that the petitioner passed the preliminary accounts examination but failed to pass the final accounts examination in 1991 after having appeared in the examination. Subsequently, the Government of Bihar issued letter No. 4674 dated 15.05.1992 in connection with exemption from passing accounts examination in the case of Government employees attaining 50 years of age.

4. Learned counsel for the petitioner submits that in his explanation dated 14.09.2001 in response to letter dated 11.09.2001 issued by the Director, MIT, Muzaffarpur it was pointed out that he was entitled to be exempted from passing the examination from the date of such application itself in view of Government's letter No. 4368 dated 28.08.2009, and not from the date of the exemption order as earlier contemplated in condition no. 2 of circular No. 4674 dated 15.05.1992

which stood substituted.

5. Learned counsel for the respondents on the other hand, submits that the impugned order dated 14.08.2010 (Annexure-2) has rightly been passed in view of the various Government circulars, effect having been given from the date of passing of the order, namely on 28.08.2009, and hence the excess payments amounting to Rs. 98,290/- by way of salary have been directed to be recovered from the petitioner. It is submitted that the benefit of the circular dated 28.08.2009 (Annexure-14) could only be made available prospectively and not in relation to the petitioner. It is further submitted that the petitioner's letter dated 14.09.2001 (Annexure-7) cannot be treated as his application for grant of exemption, inasmuch as the same was filed in response to the Department's letter dated 11.09.2001 and was in the nature of an explanation. The petitioner's subsequent representation dated 18.08.2009 may therefore at best be treated as the application of the petitioner.

6. Having heard the parties and on a consideration of the materials on record, this Court is of the view that the impugned order dated 14.08.2010 (Annexure-2) cannot be sustained. The petitioner had earlier approached this Court in CWJC No. 14238 of 2009 which was disposed of by order dated 10.11.2009 (Annexure-12) wherein the submission of the petitioner with regard to his application for exemption dated 14.09.2001 was taken note of. The writ petition was

disposed of on the following terms -

> *"The order dated 28.7.2009 is therefore put in abeyance till such time that the application for exemption of the petitioner, as claimed by him, is not disposed off. The validity of the impugned order dated 28.7.2009 and any objection thereunder in the meantime shall ultimately depend upon such final order to be passed which must be reasoned and speaking in nature to facilitate judicial review should need arise.*
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> *The writ petition stands disposed off."*

7. From the above it is clear that this Court proceeded on the basis of the petitioner's letter dated 14.09.2001 treating the same as his application for exemption. If the respondents were aggrieved in this behalf, they could have moved for appropriate remedy whether by way of review or otherwise. Learned counsel for the respondents however, has not been able to show that any remedial action was taken for the same.

8. In the above view of the matter therefore, it is no longer open to the respondents to take a plea that the petitioner's letter dated 14.09.2001 did not constitute as an application for exemption in view of the order of this Court dated 10.11.2009, which required such application to be disposed of by a reasoned and speaking order. Such direction has clearly not been complied with. The first time bound promotion of the petitioner has been cancelled by order dated 28.07.2009 (Annexure-9) without

reference to the application dated 14.09.2001 of the petitioner, much less recording reasons upon consideration of the grounds mentioned therein.

9. As a result, the impugned order dated 14.08.2010 (Annexure-2) is hereby set aside and the writ petition is allowed. The respondents shall accordingly proceed to dispose of the petitioner’s application dated 14.09.2001 by a speaking order in accordance with law.

10. Needless to say, the order dated 28.07.2009 shall continue to remain in abeyance as ordered by this Court in CWJC No. 14238 of 2009.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	23.12.2016
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