IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11620 of 2013

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Baidyanath Mishra Son of Sri Bhutto Mishra, resident of village-Meha, P.O. Parihara, P.S. Balia, District Begusarai, retired from the post of Upper Division Clerk, Balia Sub - Division Office, District – Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Divisional Commissioner, Munger Division, Munger.
2. The District Magistrate - cum - Collector, Begusarai.
3. The Deputy Collector, District Establishment, Begusarai.
4. The Sub-Divisional Officer-cum-Sub-Divisional Magistrate, Balia Sub-Division, District – Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Adv.

For the Respondent/s : Mr. Anil Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 04-10-2016

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

The limited grievance has been raised by the petitioner that he has been granted the exemption from the date of order i.e. with effect from 9th May 2012 whereas claim has been made that the said exemption should have been granted from the date of attaining the age of 50 years and the representation filed by the petitioner for granting the relief in terms of the Circular of the Government dated 28th August 2009, has been rejected by the Divisional Commissioner, Munger vide letter No. 2331 dated 11th October 2012 on the ground that the said Circular is not applicable to the petitioner, as he has superannuated from the service in the year 2008 i.e. prior to enforcement of the Circular of 2009.

The counsel for the petitioner submits that the Circular of 2009 is not only applicable to those persons who have crossed the age of 50 years after the enforcement of Circular dated 28.08.2009, but it will also be applicable to those who have already superannuated from the service. He further submits that the Government of Bihar has already modified the letter No. 4674 dated 15th May 1992 by adding that the exemption will be made applicable on the date the employees attained the age of 50 years and it was not a New Circular, but it was an amendment made to letter No. 4674 of 15th May 1992 and the contents of the matter itself shows that this letter was issued on the basis of an agreement made between the Non-Gazetted Karmchari Sangh/Rajpatrit Karmchari Sangh and the State Government and it has been made clear that the said Circular will be made applicable to those who have already superannuated from service on account of the fact that the order for exemption is not applied the retrospective date. The counsel for the petitioner submits that though the said letter cannot give effect to the retrospectively, but it is the nature of an explanation to the earlier Circular of 1992 so it will be treated to be a part of Circular dated 15th May 1992 and as such, the same would be made applicable to those who have already superannuated from service whereas the counsel for the State has submitted that the Circular has been issued on 28th August 2009 and the petitioner has already superannuated from service in 2008. It is well known principle of law that the Circular cannot be a retrospective effect, but always has a prospective effect. Act of the legislature and rules framed under section 309 can be given the retrospectivity but no retrospectivity to any letter or any executive instruction.

Having considered the rival contentions of the parties, earlier the Government has issued a Circular no. 4674 dated 15th May 1992 which was made applicable from the date of issuance of the letter, but on an agreement between two sides, it was decided that it will be made applicable to those persons who have already superannuated from service. The Commissioner has not examined this aspect of the matter, but straightway has gone for holding that as the petitioner has superannuated from service in 2008, the Circular of 2009 will not be made applicable, but the Commissioner has not taken care of, in what circumstances, letter dated 28th August 2009 has been issued and whether it can give effect to those who have already superannuated from service, as on the basis of agreement amendment has been made to the Circular of 1992.

In such view of the matter, the case is remanded to the

Divisional Commissioner, Munger to examine this aspect of the matter and take decision in accordance with law.

For the convenience, the petitioner is directed to file a fresh representation giving details of the fact, annex the relevant records whatsoever in his favour and the Commissioner would decide the case within a period of three months from the date of filing of the representation.

Accordingly, this petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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