IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1138 of 2014
IN
Civil Writ Jurisdiction Case No. 15835 of 2012

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Shio Chand Gupta S/o Late Deep Narayan Shah, R/o Village- Kauri Ram, P.O. & P.S.- Mohania, District- Kaimur

.... Appellant/s

Versus

1. The State of Bihar through Secretary, Department of Irrigation, Government of Bihar, Patna
2. The Accountant General, Bihar, Patna
3. The Chief Engineer, Sone Nahar Irrigation, Anisabad, Patna
4. The Executive Engineer, Sone Nahar Irrigation, Anisabad, Patna

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. RAkesh Narayan Singh, Advocate
For the Respondent/s : Mr. Md. N. Hoda Khan

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 20-09-2017

Seeking exception to an order dated 26.02.2014 passed by the Writ Court in Civil Writ Jurisdiction Case No. 15835 of 2012 dismissing the writ petition filed by the appellant claiming benefits of ACP under the Assured Career Progression Scheme, 2003, this appeal has been filed by the appellant under Clause-10 of the Letters Patent.

The learned Writ Court approved the action of the Department in denying the ACP to the appellant on the ground that in

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view of Rule 4.5 of the scheme, the appellant is required to pass the Departmental Examination and as the appellant has not passed the said examination, he is not entitled for the ACP. However, the question which warrants consideration is that the Departmental Examination prescribed under Rule 157 of Bihar Board Miscellaneous Rules, 1958 is for seeking promotion from one post to another and if there is no avenue for promotion from the post in question, the question of passing of the Departmental Examination does not arise. This question has been considered by us in the case of Uday Shankar Prasad Versus The State of Bihar in LPA No. 1871 of 2016 decided on 03.07.2017 and reported in 2017(3) PLJR 824 and it has been held in the aforesaid case that where there is no other avenue for promotion, denial of the ACP on the ground that employee has not passed the Department Examination is unsustainable. In this case also, the petitioner is working as a Clerk and there is specific averment made in para 11 of the pleadings contained in I.A. No. 461 of 2014 in Civil Writ Jurisdiction Case No. 15835 of 2012, where the appellant clearly says that he has no other avenue for promotion and, therefore, he is not required to appear in the Departmental Examination and pass the examination.

In the facts and circumstances of the case, as the case in hand is covered by the judgment reported in 2017(3) PLJR

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824 (Uday Shankar Prasad Versus The State of Bihar), we allow this appeal, quash the order passed by learned Writ Court and direct the respondents to grant ACP to the appellant without insisting upon passing of the Departmental Examination in question. The case of the appellant be considered and decision be taken in the matter within a period of two months from the date of receipt/production of a certified copy of this order.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21/09/2017
Transmission Date	NA

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