

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16458 of 2018

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Rajesh Kumar Singh, S/o Late Dayanand Singh, Resident of MIG 78,
Housing Board Colony, Barari, District- Bhagalpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Inspector General Prisons and Correctional Services, Bihar.
5. The Special Secretary, Home Department (Special Branch), Bihar, Patna.
6. The Joint Secretary cum Director (Administration), Bihar, Patna.
7. The Superintendent, Mandal Kara, Jamui, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Advocate Mr. Om Prakash Kumar, Advocate Mr. Sunit Kumar, Advocate
For the Respondent/s	:	Mr. Md. N.H.Khan -SC-1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 22-11-2018

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

2. In this case, the petitioner has entered into service as Jail Clerk on 05.03.1997 and after completion of two years' of probation period he was confirmed as Jail Clerk, but having been stated that he was discharging the duty of Upper Division Clerk. It has further been submitted that as he could not pass the departmental examination as per the Government of Bihar, General Administration Department's notification No. 3127



dated 06.03.2018. As he has completed 50 years of age, he filed an application for exemption from passing the departmental examination as per the Rule 9 of the Bihar Prisons and Correctional Services Clerks Cadre (Recruitment and Service Conditions) Rules, 2016. However, in the meantime, the petitioner has also cleared the departmental examination and secured 40% marks, as having claimed that petitioner has completed 12 years of service on 04.03.2009, but neither he has been given next promotion, which he is entitled to nor he has been granted first ACP on the ground that he has not passed the departmental examination.

3. It appears from the counter affidavit that the case of the petitioner for promotion was considered by the Departmental Promotion Committee, but he has been held to be not entitled on account of failure to pass the departmental examination.

4. Learned counsel for the petitioner has raised three points; first, that under the provisions of Assured Career Progression Rules, he is not required to pass the departmental examination, placing reliance on the judgment and order passed in L.P.A. No. 599 of 2015, arising from C.W.J.C. No. 486 of 2014. In the said judgment, the Division Bench after



considering the facts of the case has arrived to a finding that there is no need to pass departmental examination for clerical post and in that case, the Court has considered the judgment of the Full Bench as well as two judgments of the Division Bench, which have been held to be *per incuriam*. Second point has been taken that he has already crossed the age of 50 years and filed an application for exemption from passing the departmental accounts examination, that has not been considered and no action has been taken in pursuance thereof and third point has been taken that as per the Cadre Rules he is required to secure 40% marks, which he has done it and there is no need to secure 60% marks.

5. In contra, learned counsel for the State submits that the petitioner having been not granted the benefit of A.C.P. or promotion on account of the fact that he has failed to pass the departmental examination, which is the condition precedent for the same and so far the crossing the age of 50 years is concerned, it has been stated that he has not filed any such application, which has been disputed by learned counsel for the petitioner and stated in a categorical manner in this writ petition and attached the copy of his application for grant of exemption. But, in the counter affidavit, there is no



reply with regard to percentage of mark to be secured to pass the departmental examination and the petitioner has secured 40% marks in the departmental examination.

6. The order passed in L.P.A. No.599 of 2015 (Ramadhar Thakur vs. The State of Bihar & Ors.), is binding upon me as well as the petitioner has already crossed the age of 50 years.

7. In such view of the matter, let the authority consider the case of the petitioner and grant the relief as has been claimed by the present petitioner along with all the consequential benefits within a period of eight weeks from the date of receipt/production of a copy of this order.

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

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	28.11.2018
Transmission Date	N/A.

