IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16026 of 2016

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Birendra Kumar Son of Late Parmeshwar Ram resident of Mohalla - Mohanpur Punaichak, P.S. Shastrinagar, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary - Cum - State Transport Commissioner, Main Secretariat, Patna
2. Joint Transport Commissioner - Cum - Secretary Regional Transport Authority, Patna Division, Patna
3. General Administration Department, Government of Bihar through its Principal Secretary, Main Secretariat, Patna
4. Joint Secretary, General Administrative Department, Government of Bihar, Main Secretariat, Patna
5. General Provident Fund Commissioner
6. Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kishore Kumar Thakur, Advocate Mr. Rajesh Kumar, Advocate Mr. Braj Kishore Singh, Advocate
For the State	:	Mr. Ajay Kumar Rastogi, AAG10
For the Accountant General	:	Mr. Lala Purushottam Kr. Rajgrihar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 20-07-2018

Heard Mr. Kishore Kumar Thakur, learned counsel for the petitioner; Mr. Ajay Kumar Rastogi, learned A.A.G.-10 for the State and Mr. P.K. Rajgrihar for the Accountant General.

2. The petitioner has moved the Court for the following reliefs:

> *"(i) For a direction to the respondents to fix the final pension of the petitioner by calculating the same in the grade pay of Rs. 4600 (Pay Scale of Rs. 9300-34,800) in which grade pay /pay scale the pay fixation of the petitioner has been made on grant of 1st, 2nd and 3rd A C P/ M.A.C.P. to him, as also after*

> *adding the amount of annual increments which has been denied to the petitioner with effect from July 2015.*
>
> *Thereby the petitioner prays that the monetary benefit of 1st, 2nd and 3rd A C P / M A C P be provided to him, which has been denied to him on the ground that the petitioner has not the computer efficiency Test. Thus neither the annual increments due since July 2015 has been paid to him nor the final pension of the petitioner has been fixed.*
>
> *(ii) For a further direction to the respondents to make payment of balance amount of gratuity on the basis of such fixation of final pension of the petitioner.*
>
> *(iii) For a further direction to the respondents to make payment of the amount due towards his general provident fund account with statutory interest on the same."*

3. After detailed arguments, learned counsel for the petitioner restricted his claim to grant of due benefit to him accepting him to have been exempted from passing the Computer Literacy Exam in terms of the regulations of the year 2011, with effect from 17.06.2014 and thereby granting him the benefit till his superannuation on 31.01.2016.

4. Learned counsel for the petitioner submitted that taking the path of least resistance, when the concerned authority had forwarded a request to the Competent Authority for exempting the petitioner from having to clear the said examination, under his letter No. 427 dated 17.06.2014, the said date should be taken as the date on which the petitioner had applied seeking exemption and not what the authorities have done, by granting such exemption with effect

from 27.01.2016. Learned counsel submitted that even after recommendation by the respondent no. 2, to the State Transport Commissioner on 17.06.2014, for granting exemption to the petitioner from clearing the said examination, the authorities had never communicated of any further requirement on the part of the petitioner for being granted such exemption and in fact the respondent no. 2 had followed up his request by another letter bearing No. 607 dated 11.06.2015, to the State Transport Commissioner for seeking such exemption for the petitioner. Learned counsel submitted that even in the so called application by the petitioner dated 27.01.2016, he has clearly requested that at least from the date the authority had first forwarded its recommendation to the Competent Authority for grant of exemption to the petitioner i.e., under letter dated 17.06.2014, the same should be deemed to be his date of application.

5. Learned counsel for the State submitted that the authorities have passed the order based on the requirement of the provision in the clause for exemption from the examination, which requires an application by the person who seeks such exemption. Learned counsel submitted that such application having been given by the petitioner only on 27.01.2016, the authorities have rightly taken a decision and granted him exemption from the date of

application, which is the settled law in the field. However, on a query of the Court as to why the term 'application' be not read to include that it could be even orally and then in that view, the request of the respondent no. 2 to the Competent Authority seeking exemption for the petitioner be not taken as an application by him, at least on that day; though, learned counsel for the State made some submissions, but fairly admitted that the law is not very specific with regard to defining the term 'application'.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is inclined to take a liberal view in the matter for the reason that the petitioner cannot be fully blamed to be under the impression that he had no further role to play in the matter, once his superior has already forwarded the claim to the Competent Authority, the conduct of the petitioner cannot be said to be lacking *bona fides.* Moreover, there is no reason why a person will not act by simply making a formal written application when he stands to gain without there being any adverse factor acting against him. Thus, at least from the day when the respondent no. 2 forwarded the request to the State Transport Commissioner seeking exemption from clearing the Computer Literacy Examination by the petitioner i.e., 17.06.2014, the Court holds that it would be the deemed date of the petitioner

having made the application. In that view of the matter, the exemption granted by the authorities shall automatically shift back to 17.06.2014.

7. Accordingly, having held that the exemption from passing of the Computer Literacy Departmental Examination by the petitioner should be from 17.06.2014, the authorities are now required to work out his benefit, both during his service period and for post retiral benefits on the basis of such cut off date. The same be worked out and paid to the petitioner expeditiously and latest within a period of three months from the date of production of a copy of this order before the respondent no. 2.

8. The writ petition stands disposed off in the aforementioned term.

9. It is made clear that the present order has been passed in the peculiar facts and circumstances of the instant case and shall not be a precedence in other cases.

(Ahsanuddin Amanullah, J)

P. Kumar

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