

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2063 of 2016

In
Civil Writ Jurisdiction Case No.10113 of 2011

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1. The State Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Director, Secondary Education, Human Resources Development Department, Government of Bihar, Patna.
 3. The Divisional Commissioner, Patna Division, Patna
 4. The Regional Deputy Director, Patna Division, Patna.
 5. The Principal Government Senior Secondary School, Rajendra Nagar, Patna.
 6. The Accountant General, Bihar, Patna.

... .. Appellant/s

Versus

Ram Udar Chaudhary, aged about 61 years Son of Late Laksheshwar Choudhary Resident of Vachaspati Nagar, P.O.- Mahendru, P.S.- Bahadurpur, District- Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, Sr. Advocate, AAG 4 Mr Sanjay Prasad, AC to AAG 4
For the Respondent/s	:	Mr. Kumar Kaushik, Advocate Mr Jay Prakash Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 06-02-2018

Heard learned Additional Advocate General for the State as well as counsel for the private respondent.

There is difficulty for this Court to uphold the decision of the learned Single Judge dated 30.10.2015 with regard to a direction for grant of 2nd and 3rd ACP because a decision by way of a



reasoned order rejecting the claim of the 2nd and 3rd ACP was passed on 12.09.2015 and even brought on record as Annexure- J with the counter affidavit of respondent no.5. No doubt, the private respondent filed an I.A. No.7935 of 2015 but from perusal of the writ records and the order-sheet, we do not see that the learned Single Judge allowed the I.A. or in any manner commented or interfered with the decision dated 12.09.2015. If this be so, then only one inference can be drawn that despite the I.A. having been moved by the private respondent, the learned Single Judge refused the prayer. But that does not seem to have been done because without adjudicating the order dated 12.09.2015 issued by the Regional Deputy Director Education, Patna Division, which had categorically refused grant of 2nd and 3rd ACP, the learned Single Judge went ahead and gave a direction for grant of 2nd and 3rd ACP without quashing the order.

At this stage, we are not willing to adjudicate on an issue, which has not been adjudicated by the learned Single Judge, therefore, the effort made by the counsel for the private respondent to attack Annexure- J is of no avail. It is, however, clarified, that the benefit of 1st ACP granted in whatever circumstances, which has been taken note of in the impugned order shall remain with the private respondent.



Appeal stands allowed to the extent indicated above.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2018
Transmission Date	NA

