IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2292 of 2016
IN
Civil Writ Jurisdiction Case No. 9660 of 2014

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Shambhu Raut Son of late Nathuni Ram Resident of Village- Sansaraiya, P.S- Nautan, District- West Champaran.

.... Appellant

Versus

1. The State of Bihar.
2. The District Magistrate, West Champaran at Bettiah.
3. The District Accounts Officer, West Champaran at Bettiah.

.... Respondents

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Appearance :
For the Appellant/s : Mr. Prabhu Nath Pathak, Adv.
For the Respondent/s : Mr. Parijat Saurav, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date: 31-10-2018

This intra-Court appeal arises from the judgment and order passed by a learned Single Judge dated 18.11.2016 in C.W.J.C.No. 9660/2014, whereby the writ petition has been dismissed inter alia on grounds that the petitioner is not entitled for reliefs because he passed Accounts Examination only on 29.8.2010 and thus cannot get benefit prior to the said date.

The appellant- petitioner while questioning the remarks of the District Accounts Officer dated 5.1.2013 as appearing in the pay fixation statement enclosed at Annexure 7, whereby the petitioner was denied 2nd MACP, inter alia, on grounds that he cannot be granted two MACPs (Modified Assured Career Progression) under the Modified Assured Career Progression Rules, 2010 (hereinafter referred to as 'the Rules') on the same date i.e. 29.8.2010, prays for a direction to the respondents to grant him 2nd MACP from the due date and accordingly, fix the pay scale.

The petitioner has superannuated on 31.1.2016 during the pendency of the writ proceedings. The order of the learned Single Judge disentitles the petitioner to the relief because he has not passed the Accounts Examination. The issue of passing departmental Accounts examination for the purpose of grant of 'ACP' stands concluded by a Division Bench judgment of this Court of which one of us (Jyoti Saran, J.) was also a Member arising from L.P.A.No. 599/2015 (**Ramadhar Thakur vs. State of Bihar & ors.**) and for the view expressed by the Bench, the passing or non-passing of the Departmental Accounts Examination is held, not a prerequisite for such consideration. The issue in the present case however, is not passing of the departmental examination, rather the issue is whether the petitioner could be granted the 1st and 2nd MACP on the same date.

As noted above, the writ petition has been dismissed on grounds that the petitioner cannot get benefit from any date prior to passing of the examination in question i.e. 29.8.2010 and feeling aggrieved the writ petitioner is before this Court.

We have heard Mr. P.N.Pathak, learned counsel for the writ petitioner and Mr. Parijat Saurav, learned Ac to AAG-10, for the State and have perused the records.

As we have observed above, the reasons assigned by the learned Single Judge for dismissing the writ petition is not sustainable in view of the judgment passed in the case of **Ramadhar Thakur** (supra) but it is not the passing of the departmental examination, which is the reason assigned for denial of the MACP rather it is having found the appellant- petitioner eligible for the grant, the objection forthcoming is that he could not have been given the 2^{nd} MACP from the same date.

We note that the issue has traveled long distance since it was put up for consideration before the learned Single Judge because it is during the course of hearing of the present appeal that the appellant- writ petitioner has been informed about an order bearing Memo No. 57 dated 30.1.2016, whereby he has been granted the 3^{rd} MACP with effect from 14.11.2011 i.e. soon after the earlier MACP granted under the order in question by the respondents.

In our opinion, the respondents having corrected themselves to grant the appellant- writ petitioner the 3^{rd} MACP, the grievance does not survive any more because the petitioner has superannuated with effect from 31.1.2016. What Mr. Pathak at this stage informs is that even though the order to such effect has been passed by the respondent District Magistrate, West Champaran but the consequential action viz. fixation of pay scale and the consequential fixation of retiral benefits of the petitioner has not been carried out though the matter is pending before this Court and a period of more than 2½ years has lapsed. It is submitted that since the passing of such order was not to the knowledge of the appellant- writ petitioner, he could not place it on record either during the course of hearing of the writ petition or before this Court.

We find the situation rather inexplicable for if the District Magistrate, West Champaran had already accorded the benefit to the appellant- writ petitioner, this should have been brought to the notice of the learned Single Judge at the time of hearing of the writ petition as well the consequential action should have been taken by the authorities concerned. The laches on the part of the respondents stands perpetuated because even before this Court the State Counsel is oblivious of these developments.

The order has been placed on record by way of a supplementary affidavit filed today in the present appeal and having noted the same we would direct the District Magistrate, West Champaran to ensure that the consequential benefits arising from grant of the 3rd MACP to the appellant- writ petitioner is provided to him within a period of three months from the date of receipt/ production of a copy of this order, if not already provided.

For the discussions above, the judgment and order of the learned Single Judge passed in C.W.J.C.No. 9660/2014 is set aside.

This appeal is allowed with the directions above but with no order as to costs.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Surendra/-

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