

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20741 of 2014

Radheshyam Singh, Son of Late Bhola Prasad, Resident of Vivekanand Colony, Near- Diluda, P.S. K.Hat, District- Purnea.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Director (Primary Education), Department of Education, Government of Bihar, Patna.
4. The District Education Officer, Purnea.
5. The District Programme Officer Establishment, Purnea.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Jha, Advocate

For the Respondent/s : Mr. Arvind Kumar, A.C.to G.A.-7

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 22-05-2019

Ref: Interlocutory Application No. 01 of 2019.

By way of filing this Interlocutory Application, the petitioner has challenged the order vide memo no.311 dated 20.05.2015, by which the Director (Primary Education), Patna, has been pleased to reject the prayer of the petitioner for grant of exemption from passing the departmental examination and also made a prayer to direct the respondents to grant the first and second A.C.P. which the petitioner is entitled to.

This Interlocutory Application is allowed and the prayer as well as the averments made in this application will be treated to be the part of the main writ petition.



Ref:- C.W.J.C. No.20741 of 2014.

The petitioner was appointed in the Education Department as Assistant Teacher on 06.02.1980. After serving 13 years of service, he was promoted in the Subordinate Education Service, accordingly, he joined as Lecturer in the District Education and Training Institute, Srinagar, Purnea, worked to the satisfaction of the higher authorities. Thereafter, he was transferred and joined as Block Education Extension Officer, Triveniganj, District- Supaul on 1.12.2004. While working as Block Education Extension Officer, he appeared in the departmental examination in the year 2008, in which he was declared successful in the second paper but he failed in the first paper. Whereafter, he was transferred and joined as Block Education Officer, Silao, District- Nalanda in the year 2010. While working, he filled up the form for the departmental examination, but did not appear as he was not granted permission on account of election duty. Whereafter, the petitioner made an application on 22.02.2011 and requested for grant of exemption from passing the departmental examination and also for grant of A.C.P., which was forwarded by the District Superintendent of Education, Nalanda, vide letter no.288 dated 22.2.2011, from there the petitioner was



transferred and joined as Deputy District Superintendent of Education, Purnea, there he has also made third attempt unsuccessfully as he had not appeared in the examination on account of sudden illness. Whereafter, the petitioner had retired from the service in the year 2013.

From the record, it appears that on first attempt the petitioner had appeared in the examined and cleared the second paper, but failed in first paper, but in the second attempt, the petitioner has taken plea that on account of election duty he was not relieved to appear in the departmental examination, which is not known to this Court. So far third attempt is concerned, he has taken plea that due to sudden illness he could not appear in the departmental examination. Admittedly, the petitioner has taken one attempt and cleared the second paper, but his application for exemption has been rejected without considering the fact that he had made attempt to clear the examination though may be the first time, but there is no finding recorded by the authority about the attempt made by the petitioner for clearing the departmental examination. The Circular of the Government itself provides that if any Government servant makes an attempt unsuccessfully, after 50 years the exemption will be granted and this part has not been dealt with by the Director



(Primary Education), Patna, in his order.

In such view of the matter, the order vide memo no.311 dated 20.05.2015 passed by the Director (Primary Education), Patna, is quashed. The matter is remanded to the Director (Primary Education), Patna, to consider the matter afresh with regard to grant of exemption in passing the departmental examination.

At this stage, learned counsel for the petitioner submits that the petitioner has not been granted the benefit of first A.C.P. as well as second A.C.P. If that be so, the competent authority will look into the matter and take decision in accordance with law in the background of fact that this Court in catena of judgments has held that passing of departmental examination is not pre-condition for grant of benefit of A.C.P./M.A.C.P.

With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	23.05.2019
Transmission Date	

