IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1059 of 2018
In
Civil Writ Jurisdiction Case No.20618 of 2010

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1. The State of Bihar through the Secretary, Registration Excise and Prohibition Department, Govt. of Bihar.
2. The Inspector General of Registration, Bihar, Patna.
3. The Assistant Inspector General of Registration, Bihar, Patna

... ... Appellant/s

Versus

1. Shatrudhan Chaoudahry, son of Late Raghuvir Choudhary, R/O Village + P.O.-Kalwari Chandravan, P.S.-Kanti, District-Muzaffarpur.
2. Tribhuwan Bhakt, son of Raghuni Bhakt, R/O Village Jalil Nagar, P.O. Lalu Chapra, Via Saria Kothi, P.S.-Paru, Distt. Muzaffarpur.
3. Abdul Jabbar, son of Late Akbar Ali, R/O Village Paru, P.O. Paru, P.S. Paru, District-Muzaffarpur.
4. Yogendra Prasad, son of Late Balehan Mahto, R/O Village-Dome Pokhar, Hanuman Mandir Road, P.O.+ P.S.-Town, Muzaffarpur, District-Muzaffarpur.
5. Habiban Nisha, w/o Late Jamil Ahamd, R/O Village- Repura, P.O. Vishudutpur, Via Batahi, P.S. Kanti, Distt. Muzaffarpur.
6. (a) Radha Devi, W/O Late Sudish Narayan Thakur
   (b) Santosh Kumar, son of Late Sudish Narayan Thakur
   (c) Amaresh Kumar Thakur, son of Late Sudish Narayan Thakur

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Pawan Kumar, A.C. to G.A.-1
For the Respondent/s	:	Mr. Siyaram Sahi, Advocate
		Mr. Shashi Bhushan Singh, Advocate
		Mr. Gyan Shankar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-02-2019

<u>Re: I.A. No. 5696 of 2018</u>

After having heard learned counsel for the State of Bihar, we are satisfied that the sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

2. I.A. No.5696 of 2018 stands allowed accordingly.

Re: L.P.A. No. 1059 of 2018

Heard learned counsel for the appellant-State of Bihar and Shri Siyaram Sahi for the respondent-petitioners.

2. Learned counsel for the State of Bihar submits that since the passing of the Accounts Examination is a *sine qua non* for availing of the benefit of the A.C.P. Rules promulgated on 26th of May, 2003 and the respondent-petitioners have not passed the said examination, therefore, they are not entitled for any such benefit and hence, the impugned judgment deserves to be reversed.

3. The background in which the claim of A.C.P. has been made by the respondent-petitioners is that admittedly, they have retired prior to the enforcement of the Rules on 26th of May, 2003, but the said Rules were given effect to with effect from 09.08.1999 when the respondent-petitioners were still in service. Thus, the purpose and object of extending the A.C.P. benefit would stand defeated if the contention of the State of Bihar is accepted. The respondent-petitioners also contended before the learned single Judge that there was no promotional avenues nor there were any rules of promotion in existence and therefore those who had retired between 09.08.1999 and 26.05.2003 in the absence of any such rule of promotion or any avenue of promotion, they are entitled to the A.C.P. benefits, but, at the same time, they are not required or they cannot be compelled to undergo any examinations or otherwise even after retirement they cannot be disqualified for receiving the A.C.P.

4. The appellant-State of Bihar had also taken the stand of the applicability of Rules 156 and 157 of the Board's Miscellaneous Rules.

5. We have heard the matter at length and we find that the learned single Judge was justified in rejecting the second argument with regard to the applicability of Rules 156 and 157 of the Board's Miscellaneous Rules.

6. So far as the first argument relating to the passing of the qualifying examination of Accounts in relation to Clerk is concerned, it is undisputed that prior to the enforcement of the A.C.P. Rules, there were no rules for promotional avenues in the Registration Department. The Rules for the first time came to be enforced on 09th of January, 2004. Secondly, the A.C.P. benefit has been extended for the purpose of providing pecuniary benefits to those who are stagnating. Admittedly, there was no rules for promotion in the Registration Department nor was there any rule for passing of the Accounts Examination in relation to Clerk of the cadre of the Registration Department, which is presently involved. We may point out that a similar matter had arisen in relation to various other Departments in respect of Clerks seeking promotion in the Accounts cadre, that came up before us in L.P.A. No.408 of 2018, decided on 05^{th} of February, 2019. The same was also an issue relating to grant of A.C.P., but in that case, we had found that the avenue of promotion was available in terms of the Bihar Accounts Service Rules, 2000 and therefore the claimants therein were not entitled to seek exemption from passing of the examination for grant of A.C.P. It was also noticed therein that the State Government has extended benefits of A.C.P. to all who had passed the departmental examination. The said case therefore was decided on a different footing where the judgment proceeded on the premise that avenues of promotion were available.

7. In this view of the matter, where the rules for promotion were non-existent and during the period in question there were no promotional avenues, the interpretation given by the learned single Judge for all the reasons given herein above does not suffer from any infirmity, as it rationalizes the claim of the respondent-petitioners in the background that between 1999 and 26^{th} of May, 2003 there was no such requirement for passing of an examination to claim promotion on the post of Accounts Clerk. Consequently, there was no corresponding requirement for passing the examinations for grant of A.C.P. during the said period.

8. Accordingly, in sum and substance, we do not find any error; much less a legal error so as to warrant interference with the impugned judgment. The appeal lacks merits and is accordingly rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

PNM/Saif

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.02.2019
Transmission Date	N.A.