

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1070 of 2019

Arising out of

Civil Writ Jurisdiction Case No.11407 of 2016

1. The State of Bihar, through the Chief Secretary, Main Secretariat, Patna.
2. The Principal Secretary, Cabinet Secretariat (Civil Aviation) Department, Main Secretariat, Patna.
3. The Director-cum-Special Secretary, Directors of Civil Aviation, Cabinet Secretariat (Civil Aviation) Department, Government of Bihar, Patna Airport, Patna.
4. The Chief Flight Instructor, Bihar Flying Institute, Civil Aerodrome, Patna.
5. The Principal Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
6. The Principal Secretary, Transport and Civil Aviation Department, Government of Bihar, Patna.
7. The Principal Secretary, Disaster Management Department, Government of Bihar, Secretariat, Patna.

... .. Appellant/s

Versus

Siyawar Sharan Dwivedi, S/o Late Ram Surat Dwivedi, R/o- Mohalla-Sheikhpura Yadubir Bhavan (Durga Ashram Gali), P.S.- Shastri Nagar, District- Patna

... .. Respondent/s

Appearance :

For the Appellants : Mr. Mritunjay Kumar, AC to AAG 6
For the Respondent : Mr. Kishore Kumar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 20-12-2022



Heard learned AC to AAG 6 for the State and Mr. Kishore Kumar Thakur, learned counsel for the respondent-writ petitioner.

2. Pursuant to order dated 08.12.2022, the petitioner-respondent no. 3, namely, Mr. Captain Sheo Prakash, is present.

3. The present appeal is directed against the judgment and order dated 06.02.2019 passed in CWJC No. 11407 of 2016 by which the authorities concerned were directed to grant the benefit of ACP and MACP to the writ petitioner from the due date as he was entitled to within a period of four months.

4. Learned counsel for the State initially had taken a stand that because the respondent-writ petitioner had not cleared the departmental examination, he was not entitled to the relief.

5. A perusal of the order discloses that the respondent-writ petitioner was granted specific exemption from passing the departmental examination at the time when the erstwhile Bihar Flying Club was taken over by the State government as per Memo No. 137 dated 17.03.1974. Thus, the respondent-writ petitioner was granted first ACP and second MACP but when the time came for considering his third MACP, the same was denied on the ground that he had not passed the departmental examination. The Court, to verify the factual position, had initially required the



learned State counsel to assist, but upon failure to do so, the petitioner no. 3 was directed to appear with the records. The petitioner no. 3 is present in Court along with the records. On a direct query of the Court as to whether such exemption was granted to the respondent, the answer is in the affirmative.

6. Once such factual aspect is not disputed, it is surprising as to how the authorities after granting the respondent first ACP and second MACP, at the third stage can deny the benefit only on the ground that he has not passed the departmental examination. It would have been another story if the respondent-writ petitioner had not completed the required time period of his service but here also, the officer takes a categorical stand that the respondent has completed the required time period (*kalawadhi*) for being considered for grant of 3rd MACP.

7. Having regard to the aforesaid, the Court has no hesitation to record that the appeal is absolutely without any substance and deserves to be rejected.

8. For reasons aforesaid, there being no merit in the appeal, the same stands dismissed.

9. The officer present has assured the Court that the order of the learned single Judge shall be complied with within two weeks from today.



10. Personal appearance of the officer stands dispensed
with.

(Ahsanuddin Amanullah, J)

(Sunil Dutta Mishra, J)

Ranjeet/-
J. Alam/-

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