IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3502 of 2018

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Lalan Singh Yadav Son of Late Sadhu Sharan Singh Yadav Village Anaith Chakiya, P.O. Anaith Arrah, P.S. Udwantnagar, District Bhojpur, PIN 802302, Bihar.

... ... Petitioner/s

Versus

1. The State Of Bihar represented through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Engineer-in-Chief, Road Construction Department, Bihar, Patna.
5. The Chief Engineer, North Bihar Wing, Road Construction Department, Bihar, Patna.
6. The Superintending Engineer, Road Construction Department, North Bihar Road Circle, Muzaffarpur, Bihar
7. The Executive Engineer, Road Construction Department, Road Division, Sheohar, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Kumar Ravish
For the Respondent/s	:	Mr Zeeshan Kalim, AC to SC XX

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CORAM: HONOURABLE MR JUSTICE RAJIV ROY

ORAL ORDER

3 **19-09-2023** Heard Mr Kumar Ravish, learned counsel for the petitioner as also Mr Zeeshan Kalim, learned AC to SC XX.

2 Prayer is for the following reliefs:

> *"(i) to issue a writ of mandamus directing and commanding the authorities of the Road Construction Department – Respondents herein to consider the case of this petitioner for granting him the benefits of Modified Assured Career Progression as per the petitioner's entitlement expeditiously from the respective dates of completion of ten years, twenty years and thirty years of service as per Rules and*

Circulars/Memorandums of the State Government in vogue and in view of recommendations of the respondent No 7;

(ii) to further direction/order/command the respondents to grant this petitioner 'exemption' from passing 'computer efficiency test' as per Bihar Government Servants (Compute Competency for Recruitment and Confirmation) Rules, 2011 brought into force w e f 24.05.2011 in terms of Rule 3 (d) thereof as the petitioner had crossed the age of fifty years way back in the year 2007 itself;

(iii) to direct the respondents to grant this petitioner 'exemption' from passing any other test/examination which the petitioner may be required to clear/pass in view of the fact that this petitioner was regularized in services of the State w e f 28.02.2014 at the age of 57 years and superannuated from services after reaching the age of 60 years on 31.10.2017 and, therefore, he had no occasion and sufficient time to try and pass the test/examination before attaining the age of 50 years and all the applicable circulars regulating departmental examination provides for exemption in case an employee has attained fifty years of age;

(iv) to direct the respondents to pay to this petitioner forthwith consequential benefits on account of grant of the benefit of Modified Assured Career Progression from respective dates as per the entitlement of this petitioner and as per the recommendation of the Respondent No 7 with payment of arrears as well as revision of pension and other pensionary benefits as per revised enhanced salary and last pay of this petitioner;

(v) to any other relief or relief (s) which the petitioner may be found entitled to in the facts and circumstances of the case, and

(vi) cost of this litigation."

3 A counter affidavit on behalf of respondents 3 to 7 is on record in which paragraphs 9 and 10 read as follows:

> *"9 That it is stated and submitted that as per provision of letter No – 11691 dated 09.11.1983 and letter No 4674 dated 15.05.1992 passing of departmental accounts examination as well as departmental Hindi noting drafting is not essential for those employees who have crossed the age of 50 years, but those employees must get exemption from passing the departmental examination by the competent authority. The benefits of promotion will be given from the date of exemption. It is further submitted that the petitioner had neither passed the departmental examination nor get the exemption from the competent authority. Hence, the petitioner is not eligible for getting the benefits of ACP/MACP.*
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> *10 That it is stated that after regularization of his services on the post of Typist, the petitioner had never applied or submitted any application for grant of exemption from passing the examination of Compute Test. The exemption certificate in connection with computer test had also not been granted by any competent authority. Hence, the petitioner cannot take the benefits of exemption of passing the examination of computer test at this stage. As per provision of Bihar Government Servant (Computer Competency for Recruitment and Confirmation) Rule 2011 (already annexed in the wit application), the petitioner had either to pass the computer test or to submit the application for grant of exemption as he was over the age of 50 years. But the petitioner had neither passed the Computer Test nor submitted any*

> *application for grant of exemption from passing the computer test. He had also not taken the exemption from passing the computer test. He had also not taken the exemption certificate from any competent authority in connection with Computer Test."*

4 Learned counsel for the petitioner fairly submits that in the light of the counter affidavit of the respondents, he shall be taking steps to file fresh representation for the said exemption within a period of eight weeks from today.

5 If such a representation is preferred before respondent No 6, the Superintending Engineer, Road Construction Department, North Bihar, Road Circle, Muzaffarpur, Bihar, the same shall be considered and appropriate orders shall be passed within a period of four months from the date of presentation of the representation.

6 The writ petition stands disposed of.

(Rajiv Roy, J)

M.E.H./-

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