

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6551 of 2018

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Ram Udar Chaudhary Son of Late Lakheshwar Chaudhary, Resident of
Vachaspati Nagar, P.O.- Mahendru, P.S.- Bahadurpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Education Department, Government of Bihar,
Patna.
3. The Director, Secondary Education, Education Department, Government of
Bihar, Patna. null null
4. The Divisional Commissioner, Patna Division, Patna.
5. The Regional Deputy Director, Patna Division, Patna.
6. The Principal, Government Senior-cum-Secondary School, Rajendra Nagar,
Patna.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kumar Kaushik
For the Respondent/s : Mr.Madhaw Pd. Yadaw- Gp23

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

3 26-02-2024 Learned counsel for the petitioner and counsel for the

State present.

2. This writ petition has been filed for quashing the
order contained in Memo No. 2016 dated 12.09.2015 passed by
the respondent no. 5 by which the claim of the petitioner has
been rejected for grant of 2nd A.C.P. and 3rd M.A.C.P. Further
prayer has been made for directing the respondent authorities to
allow the benefit of 2nd A.C.P. to the petitioner with effect from
01.08.1999 and for grant of M.A.C.P. with effect from



01.09.2009 under the M.A.C.P. Scheme 2010.

3. Counsel further submits that petitioner has earlier moved before this Court vide C.W.J.C No. 10113 of 2011 and during the pendency of the aforesaid petition, an I.A. No. 7935 of 2015 has been filed and the said writ petition was allowed in the favour of the petitioner, and thereafter, petitioner was immediately granted the 1st A.C.P. Counsel for the petitioner submits that the State of Bihar has preferred L.P.A. No. 2063 of 2016 being aggrieved and dissatisfied with the order passed by the Hon'ble Single Judge dated 13.10.2015 in C.W.J.C. No. 10113 of 2011. During the pendency of the said L.P.A., the petitioner was granted 2nd and 3rd A.C.P. from the dividend.

4. Counsel submits that vide order dated 06.02.2018, L.P.A. No. 2063 of 2016 arising out of C.W.J.C. No. 10113 of 2011 has been allowed in which grant of first A.C.P. to the petitioner without appearing the exam has been treated as valid. But on the point of 2nd and 3rd A.C.P., no protection order has been passed by the Hon'ble Division Bench in L.P.A. No. 2063 of 2016 and it is due to this reason the respondent authorities has passed the order by which 2nd and 3rd A.C.P. granted to the petitioner has been stopped.

5. Counsel further submits that the petitioner has



challenged the order passed by the respondent authorities contained in Memo No. 2016 dated 12.09.2015 in which it was decided that the claim of 2nd and 3rd A.C.P is not acceptable.

6. Counsel submits that the said memo i.e. Memo No. 2016 dated 12.09.2015 is hereby challenged in the present writ petition and vide order dated 13.04.2018, order of status-quo has been granted in favour of the petitioner. Counsel for petitioner further submits that from the order impugned, it becomes crystal clear that the grant of 2nd and 3rd A.C.P has been refused by the respondent on assigning the reason that the petitioner has filed his exemption application upon completion of 60 years after retirement and he has not filed his application for exemption after completion of 50 years of retirement. Counsel submits that filing an application for exemption after retirement have no meaning at all, and thereafter, it has been decided that the petitioner is not entitled for the exemption. Counsel further submits that from vide Annexure-3, recommendation was already made for grant of 2nd ACP due to completion of 50 years, therefore, the contention of the State is absolutely wrong that for the first time he has filed application for grant of 2nd and 3rd A.C.P after completion of 60 years after retirement.

7. Counsel for the state on the other hand submits that the



decision has taken by the department is completely in accordance with law as petitioner has filed application for exemption after 60 years only after retirement.

8. Upon perusal of document and hearing the parties, the Court has specifically put question to the counsel for the State that whether the retired employee is entitled for 2nd and 3rd A.C.P or not. Counsel for State fairly submits that even after his retirement, if there is entitlement then 2nd and 3rd A.C.P can be granted.

9. This Court is of the view that completion of 60 years automatically means completion of 50 years. Here, in the present case, Annexure-3 is the letter of the department by which it becomes crystal clear that the entitlement due to completion of 50 year was already acknowledged by the department but benefit has not been granted.

10. So far as the decision of the Hon'ble Division Bench in L.P.A. No. 2063 of 2016 is concerned, the decision has not been passed on merit rather a technical point has been raised and decided.

11. In the light of the above submission, this Court is of the firm view particularly after going through Annexure-3 that petitioner has entitlement for 2nd and 3rd A.C.P from the date on



which the department has earlier granted A.C.P. to him and in this view of the matter, order contained in Memo No. 2016 dated 12.09.2015 passed by the respondent no. 5 is hereby quashed.

12. The respondent authorities are directed to make payment of 2nd and 3rd A.C.P. to the petitioner within 90 days from the date of production of this order.

(Dr. Anshuman, J)

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