(2014) 02 JH CK 0051

In the Jharkhand High Court

Case No : L.P.A. No. 46 of 2013

Prem Chandra Pd. Verma — APPELLANT

Vs

The State of Jharkhand and Others — RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Citation : (2014) 02 JH CK 0051

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Binod Kumar, for the Appellant;

Final Decision : Allowed

Judgement

1. This Letters Patent Appeal is directed against the order dated 2.1.2013 passed in W.P. (S) No. 6079 of 2004 in and by which the learned Single Judge has declined to quash letter no. 483 dated 20.8.2004 issued by the Divisional Commissioner, Singhbhum (Kolhan) Division and further declined to issue direction to the respondents to consider the case of the appellant for granting benefit under the Assured Career Progression Scheme. The appellant was appointed as a Clerk on 6th September, 1968. The appellant had appeared for the departmental accounts examination held in the year 1994 and passed first paper but was unable to clear the second paper. Again the appellant appeared in the departmental examination second time in 1997 but could not clear the examination. In the year 1999 again the departmental Accounts examination was conducted but the appellant could not appear due to urgent official work. In the meanwhile, the appellant has completed 50 years of age on 1.8.1998. The appellant retired from service on 31.7.2008 and during the period of retirement, he was holding the post of Accounts Clerk.

2. The Government vide Notification no. 4674 dated 15.5.1992 issued certain guidelines for giving exemption to those employees from appearing in the departmental examination, who have completed 50 years of age and that they

will be given the benefit under Assured Career Progression scheme at par to the persons entitled.

3. The appellant after attaining the age of 50 years had applied for granting exemption on the ground of above Notification no. 4674 dated 15.5.1992 issued by Personnel & Administrative Reforms Department.-However, respondent nos. 3 and 4 have rejected the prayer of the appellant and declined to grant exemption. The appellant then filed W.P. (S) No. 6079 of 2004 seeking to quash the letter no. 483 dated 20.8.2004 issued by 3rd respondent-Divisional Commissioner, Singhbhum (Kolhan) Division. The learned Single Judge dismissed the writ petition holding that the appellant did not fulfill the requirement as laid down in the Notification at Annexure-1 dated 15th May, 1992 and the petitioner again tried to avail such exemption in the year 1999 even after completion of 50 years of age and thus in these facts and circumstances, action of the respondents cannot be found fault with and on those findings the learned Single Judge dismissed the writ petition.

4. Challenging the impugned order, the learned counsel for the appellant contended that the Writ Court did not keep in view the fact that the appellant had completed 50 years of age on 1.8.1998 and since the appellant had earlier twice appeared in the department examination, his case is fit to be considered for exemption from appearing in the departmental examination. It was further contended that the case of the appellant was not considered by the learned Single Judge in the light of the guidelines issued for granting exemption from appearance in the departmental examination after completing 50 years of age. According to the petitioner-appellant, the case of similarly placed employee, namely, Shri Kishori Mohan Prasad was considered and the said Shri Kishori Mohan Prasad was granted exemption as per the said Notification no. 4674 dated 15.5.1992.

5. We have considered the submissions of learned counsel for the appellant as well as learned JC to GP-IV and also perused the materials on record. It is not in dispute that the appellant first time appeared for the departmental examination of Accounts in the year 1994 and could not clear the second paper and again he appeared at the departmental examination second time in the year 1997. However before appearing for the third time in the departmental examination, he has attained the age of 50 years on 1st August, 1998. The aforesaid Notification no. 4674 dated 15.5.1992 (Annexure-1) regarding grant of exemption to an employee from clearing departmental examination, indicates as under:

(i) Exemption from appearing at departmental examination will be applicable to those Gazetted/Non-Gazetted Government servants, who have completed 50 years of age;

(ii) The order of exemption will be effective from the date of issuance of the said exemption order;

(iii) The exemption would be granted only to those employees,

(a) who have continuously tried to appear at the examination but

could not succeed; or

(b) who could not appear in the examination due to governmental work; or

(c) the scheduled departmental examination could not be held during last five years with respect to those, who have completed fifty years of age.

(iv) Keeping in view that the skill is not adversely effected, exemption is to be given to only those, whose character roll/remarks are good, work is satisfactory, no departmental proceeding is pending or no punishment has been awarded during their service period;

(v) The right to give exemption from appearing at the departmental examination will be optional and not mandatory;

(vi) Exemption order would be granted under the approval of departmental Secretary and in case of government servants, working in Muffasil offices, the exemption order will be issued under the approval of Divisional Commissioner;

(vii) Before issuing the exemption order, approval of Personnel and Administrative Reforms Department would not be necessary.

6. Since the appellant has appeared at the departmental Accounts examination, at least, two times, we are of the view that the appellant satisfies the requirement, as stated in the above notification dated 15th May, 1992(Annexure-1). It is also pertinent to note that respondent no. 5-Superintending Engineer, Drinking Water & Sanitation Department has made recommendation to 4th respondent for granting exemption to the appellant from appearing at the Departmental Accounts Examination on the ground that the appellant has crossed the age of 50 years and that he had continuously appeared in the departmental examination. It appears that the said recommendation of the 5th respondent was not taken into consideration by the 4th respondent. According to the respondents, it is the discretion of the authorities, either to grant or not to grant exemption, but we are of the view that exercise of such discretion must be in accordance with the guidelines issued in the Notification dated 15.5.1992 (Annexure-1).

7. We are, therefore, of the view that the 4th respondent has not examined the case of the appellant in accordance with the guidelines of the above Notification dated 15.5.1992. The order at Annexure-2 dated 6.9.1999, whereby representation of the appellant for granting him exemption from appearing at the departmental accounts examination has been rejected, appears to be a non speaking order. In this view of the matter, the order of the learned Single Judge is liable to be set aside. The Letters Patent Appeal is, accordingly, allowed and the order of the learned Single Judge passed in W.P. (S) No. 6079 of 2004 is, hereby, set aside. The matter is remitted back to the 4th respondent for considering the case of the appellant, in the light of Notification no. 4674 dated

15.5.1992(Annexure-1).