

Devisal Hansda Vs. Human Resources Department

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Court : Jharkhand

Decided On : Jul-07-2017

Appellant : Devisal Hansda

Respondent : Human Resources Department

Judgement :

INTHEHIGHCOURTOFJHARKHANDATRANCHI W.P.(S)No.3645of2014 ..
DevisalHansda . Petitioner Versus 1.TheStateofJharkhand 2. Principal Secretary,
Depart. Of Human Resources, Govt. of
Jharkhand,ProjectBhawan,P.O&P.S.Dhurwa,Dist.Ranchi 3. Deputy Secretary,
Depart. Of Human Resources, Govt. of
Jharkhand,ProjectBhawan,P.O&P.S.Dhurwa,Dist.Ranchi
4.TheDirector,SecondaryEducation,Govt.ofJharkhand,Project
Bhawan,P.O&P.S.Dhurwa,Dist.Ranchi .Respondents
CORAM:HON'BLEMR.JUSTICEDR.S.N.PATHAK ForthePetitioner
:Mr.S.K.Sharma,Advocate FortheRespondents :Mr.S.K.Verma,Advocate th
14/Dated7 July,2017 Heardtheparties Vide order dated 17.6.2015 an interlocutory
application preferredbythepetitionerbearingno.2634of2015wasallowedby
thisCourtwhereinaprayerwasmadetoincorporatetheprayerin the main writ petition
regarding grant of exemption from passing departmental examination which has
been rejected by the departmentduringthependencyofthewritpetitionandthatisalso
underchallengebywayofamendmentinthepresentwritpetition.

1. Petitioner has approached this Hon'ble Court with a prayer for granting him M.A.C.P. after granting exemption from passing the departmental examination in the light of Circular No. 11691 dated 09.11.1983 issued by the Department of Personnel, Administrative Reforms and Rajbhasha, erstwhile Government of Bihar petitioner has already completed 58 years of age and he was superannuated in the year 2016. Further prayer has been made for passing appropriate order with respect to services rendered by the petitioner since 26.04.1988 till 30.09.1997 under subordinate Education Service prior to joining in Bihar Education Service, Class II to enable the petitioner to get monetary benefits in fixation of pension, gratuity, leave encashment etc. after his superannuation. 2 Factual Matrix: 2.

It is a case of the petitioner that the petitioner was appointed on the post of Assistant Teacher, History, in Government Russel High School, Jagnathpur, West Singhbhum, vide notification contained in Memo No. 288 dated 15th April, 1988 on recommendation of School Services Board, Bihar by Human Resources Department, Govt. of Bihar. In view of the aforesaid notification, the petitioner joined on the post of Assistant Teacher, History on 26th April, 1988. Thereafter, the petitioner served as Assistant Teacher, History in Govt. Russel High School, Jagnathpur, West Singhbhum till 30.09.1997. The petitioner was appointed under Pay Scale of Rs. 2200752800100 400 on the basis of joint competitive examination by recommendation of Bihar Public Service Commission under Bihar Education Service Class II (Education Department) vide notification dated 22nd July, 1997 issued by Director, Secondary, Primary and Adult Education, Government of Bihar. Pursuant to the said notification, the petitioner assumed charge on the post of Principal, Zila School, Chaibasa on 30.09.1997 and received charge on the post of Principal on 04.10.1997. It is a case of the petitioner that since his joining on the post of Principal, Zila School, Chaibasa on 30.09.1997, he served under the respondents on different posts to best of his ability and petitioner is working as Lecturer, Government Teachers Training College, Ranchi. It is a case of the petitioner that petitioner had appeared in First

and Second half yearly departmental examination, 2005 which was organized in the year, 2007 and his roll no. was 2. The petitioner, though appeared in the said examination but declared unsuccessful. On 7th October, 2008 the petitioner made representation to the Secretary, Department of Human Resources, Govt. of Jharkhand, Ranchi stating therein that he had already completed more than 50 years of age and eligible for grant of exemption from passing the departmental examination as contained in departmental Circular No. 11691 dated 09.11.1983 issued by the Department of Personnel Administrative Reforms and Rajbhasha, Govt. of Bihar. It was specifically stated that in his 3rd representation it has been stated that he had appeared first and second half in the yearly departmental examination, 2005 which was organized in the year but could not succeed. The petitioner requested the Secretary, Department of Human Resources, Govt. of Jharkhand, Ranchi to grant him exemption from passing the departmental examination. Again on 3rd March, 2009 he sent a representation to Deputy Secretary, Department of Human Resources, Govt. of Jharkhand, Ranchi stating therein that he had appeared in first and second half in yearly departmental examination, 2005 which was organized in the year, 2007 but remained unsuccessful. It is a case of the petitioner that he had participated in the departmental examination only once and could not appear in departmental examination earlier because of workload. The petitioner requested the Deputy, Secretary, Department of Human Resources, Govt. of Jharkhand, Ranchi (respondent no. 3) to grant him exemption from passing the departmental examination. It has been stated that petitioner has completed 50 years of age and going to superannuate in the year 2016 and he is working in the grade pay of Rs. 5400/ and has not been given benefits of MACP as he was declared unsuccessful in the departmental examination, 2005 which was held in the year 2007. Through, several representations were filed for grant of exemption from passing the departmental examination in the light of departmental Circular No. 11691 dated 09.11.1983 issued by the Department of Personnel, Administrative, Reforms and Rajbhasha, Govt. of Bihar but till date no decision has been taken

and writ petition was filed in the year 2014. It has also stated that petitioner prior to joining cadre of Bihar Education Service Class II was appointed on the recommendation of School Service Board vide notification no. 288 dated 15th April, 1988 on the post of Assistant Teacher, History in Govt. High School, Russel, Jagnathpur, West Singhbhum, The petitioner since his joining on 24th April, 1988 till 30.09.1997 served under the respondent, regularly without any break best of his ability and was relieved to join on the post of Principal, Zila School, Chaibasapur pursuant to the recommendation of the Bihar Public Service Commission based on joint competition examination. The service rendered by the petitioner since 26.04.1988 to 30.09.1997 prior to joining, the cadre Bihar Education Service Class II is required to be counted for the purpose of monetary benefits such as pension, gratuity, leave encashment etc after his superannuation the petitioner again made representations on 15.04.2014 and 10.06.2014 to the Director, Secondary Education, Govt. of Jharkhand but till date, the respondent has not passed any order in this regard. Hence, the petitioner was compelled to move this Hon'ble Court.

3. Mr. S.K. Sharma, learned counsel for the petitioner submits that during the pendency of the writ application the respondent authorities have rejected the prayer of the petitioner for exemption from the departmental examination which is de hors the rules. Learned counsel relying on the amended Rule, 1992 and submits that nowhere it has been mentioned in the Rule that how many times it's required for employee to appear in the examination. Learned counsel further submits that petitioner has appeared in the examination and declared unsuccessful. Learned counsel submits that there was no further occasion to appear in the departmental examination, as the petitioner has crossed the age of 50 years. The petitioner rightly made representation for exemption from the said departmental examination and the respondent authorities sought to have considered his case by giving exemption from the said examination as petitioner had crossed 50 years of age. The petitioner has also mentioned that because of workload and other unavoidable circumstances, he could not appear in the examination. Learned counsel for the petitioner submits

that in view of 1992 Rules, he should be exempted from the departmental examination. With regard to these second prayer, the learned counsel for the petitioner submits that though the respondent authorities have mentioned in the counter affidavit that the consideration has already been taken with respect to pensionary benefit to the petitioner and an order is required in this regard by this Hon'ble Court for granting of the pensionary benefits. 4. Per contra, counter affidavit has been filed. Learned counsel for the respondent Mr. D.K. Dubey, Senior S.C. vehemently opposes the contention made by the learned counsel for the petitioner and submits that Rule, 1992 is very clear on the point that the petitioner has to appear on several occasions. The petitioner has appeared only once and that also declared unsuccessful and though he has crossed 50 years, his case cannot be considered in view of Circular, 1992. The petitioner never tried to appear in the said examination on several occasions prior to attaining the age of 50 years and, as such, his case was not considered. Learned counsel further submits that exemption under the law is not mandatory, it is the discretion of the authorities and as per the condition put in Rule 1992. With regard to second prayer, the learned counsel for the State submits that steps have already been taken which has been stated in paragraphs nos. 7 to 11 of the counter affidavit. Learned counsel submits that after completion of the process the benefits will be extended to the petitioner.

5. Beth as it may, having gone through the rival submissions of the parties, this Court is of the considered view that the case of the petitioner needs consideration. With regard to first prayer, there is a specific Rule for examination to the employees, who have crossed 50 years and who have appeared and declared unsuccessful. The petitioner appeared in the year, 2007 and at that time he had crossed the age of 50 years there was no occasion for the petitioner to appear again in the said examination as per Rule. The petitioner has rightly approached the respondent authorities for giving the said relaxation as per Rule 1992, which was illegally rejected by the respondent authorities. 6. Resultantly, order

dated 3.3.2015 is hereby quashed and set
aside. I, hereby, direct the respondent authorities to reconsider the
case of the petitioner regarding grant of exemption in view of Rule 6
1992. With regard to second prayer, it has already been taken into
consideration and steps have been taken by the respondents, I direct
the respondent to complete the entire process within a period of 10
weeks from receipt of copy of this order. If, the petitioner is found entitled, the benefits may
be extended within further period of six
weeks after the decision of the respondent authorities. (Dr.S.N.Pathak,J.) Anjali/

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