

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5512 of 2015

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Mahesh Pd. Singh. S/o Late Ramnandan Singh. Resident of Mohalla -
D.V.C. Road, Yarpur, P.S.- Gardanibagh, District - Patna, working as
Assistant in BISCOMAN, Bihar, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
3. District Officer-Cum-Chairman, DRDA, Jamui.
4. Deputy Development Commissioner-Cum-Deputy Chairman, DRDA, Jamui.
5. The Secretary, Biscoman, Bihar, Patna.
6. Special Work Officer, Rural Development Department, Government of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar Singh, Adv
For the State : Mr. Pawan Kumar AC to GA-9
For BISCOMAN : Mr. Ishwari Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 09-04-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ
application reads as follows:-

“Certiorari for quashing the impugned order as contained in memo no. 2 Mu/Abhi, dated 06/1/2015 passed by Deputy Development Commissioner whereby the claim of the petitioner for grant of difference amount of salary of 6th pay revision for his deputation period i.e. 26/9/98 to 26/3/2011 as pre the last pay certificate issued from the District Rural Development Agency (DRDA) Jamui as also benefit of ACP and gratuity was refused.

For direction upon the respondents to give difference amount of salary of 6th pay revision for his deputation period i.e. 26/9/98 to 26/3/2011 as per the last pay certificate issued from the District Rural Development Agency (DRDA) Jamui as also benefit of ACP to the petitioner.”

3. Learned counsel for the petitioner has initially



sought to assail the impugned order passed by the D.D.C. Jamui, on the ground that when the petitioner was working on deputation in District Rural Development Agency (DRDA), Jamui for a period of more than 11 years in between 26.09.1998 to 26.03.2011, his denial of the benefit of ACP by the authorities of the D.R.D.A. Jamui as per the impugned order is wholly bad specially when the D.R.D.A Jamui has already given such benefit of ACP to another employee namely, Kedar Sah. He has also explained that on account of this impugned order neither the authorities of the D.R.D.A Jamui nor the principal employer of the petitioner namely BISCOAUN is paying the petitioner the benefit of ACP.

4. Learned counsel for the State on the other hand has submitted that the benefit of ACP is permissible to the Government servant or such organizations who had adopted the ACP Rules for their own employees but then in D.R.D.A. Jamui or for that purpose D.R.D.A.

Jamui has not adopted the concept of ACP.

5. He has further submitted that if the petitioner wants to enforce the terms and conditions including his grant of ACP against the BISCOMAUN, the writ application is not maintainable.

6. In the considered opinion of this Court, the question which would go to the root of the matter as to whether the benefit of ACP was extendable to the employees of D.R.D.A Jamui. That answer has been given by the D.D.C. Jamui in the impugned order that such a decision had been taken after making necessary verification and inquiry from the Government of Bihar wherein the Rural Development Department had clarified that the employees of D.R.D.A are not the Government servants, inasmuch as, they are also not being paid the benefit of pension and gratuity whereas the resolution of Finance Department dated 14.07.2010, clearly lays down that the benefit of ACP has to be extended only to the Government servants. As a matter



of fact, the illustrative case of one Kedar Sah, an employee of D.R.D.A, Jamui who was granted benefit of ACP has already been noted by the Rural Development Department and a recommendation has been made to cancel such grant of ACP to him as the same was not payable to Kedar Sah. The impugned order in fact while rejecting the claim of the petitioner for grant of ACP also records not only cancellation of grant of benefit of ACP and 6th Pay Revision Committee of Kedar Sah but also recovery of the amount paid to him.

7. Once this aspect becomes clear that the illegal benefit of ACP or 6th Pay Revision Committee given to Kedar Sah has already been withdrawn and consequential order of recovery of the said amount had been passed, the plea of discrimination also vanishes. In any event, the petitioner has to be governed by the terms and conditions of his deputation. His order of deputation does not even remotely refer to much less entitle him for the benefit of ACP. If the BISCOMAUN had adopted



the policy of ACP, it will be for the petitioner to settle his claim with BISCOMAUN, because at the end of the day it is the BISCOMAUN who is the principle employer of the petitioner. A person like petitioner on deputation and that too not being government servant cannot claim benefit of ACP as a matter of right which is only by way of removal of anti stagnation measure in absence of regular promotion. As a matter of fact promotion also cannot be given to an employee on deputation at the deputed place. Promotion always has to be given by the principal employer which in the case of the petitioner is BISCOMAUN.

8. In that view of the matter, this Court does not find any error in the impugned order either on fact or in law.

9. That being so, this writ application fails and is, accordingly, dismissed.

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(Mihir Kumar Jha, J)