

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.319 of 2010

IN

Civil Writ Jurisdiction Case No. 15953 of 2009

=====

Sushil Kumar, S/O Late Mudrika Lal Das, R/O Moh- Shankarpur Saadpura
Nimchak, P.S-Kaji Mohammadpur, District- Muzaffarpur.

.... Petitioner-Appellant.

Versus

1. The State of Bihar through the Commissioner cum Secretary, Nirman Bhawan, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Engineer in Chief, Road Construction Department, Nirman Bhawan, Patna.
4. The Superintending Engineer, Road Construction Department, North Bihar Circle, Muzaffarpur.

.... Respondents-Respondents.

=====

Appearance :

For the Appellants : Mr.

For the Respondents : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 29-06-2015

The appellant's writ petition claiming the benefits under the Assured Career Progression Scheme having been rejected on the ground of belated date, this Intra Court Appeal.

2. During the pendency of this Intra Court Appeal, a counter affidavit has been filed by the State bring on record Memo No.157 dated 15.03.2012 issued by the Chief Engineer, Central Design Organization, Road Construction Department, Bihar, Patna, by which the appellant has been granted second ACP with effect from

09.08.1999, thus, the earlier order dated 30.03.2009, by which the benefit of ACP had totally been denied to the appellant, was modified.

3. The appellant had earlier filed the writ petition challenging the order dated 30.03.2009, whereby he and another had been denied both ACPs, first ACP and second ACP. The learned Single Judge dismissed the writ petition on the ground that it was belated as he was seeking the relief, which was due to the writ petitioner in the year 1999.

4. We are unable to agree that in such a situation, which was in existence, even if the writ petitioner came to the Court after some delay and he claimed the benefit of Assured Career Progression, which is statutory and not discretionary, the first question, which ought to have been answered, is as to why the State denied the same and not, why the petitioner came to the Court late. For, we hold that the State being the State has to act fairly. Any statutory advantage that has to be conferred upon its employee has to be given by the State without being demanded by its employee. It is the right of the employee, that cannot be denied. Moreover, even this plea of delay which the Court considered is misconceived.

5. Assured Career Progression was introduced by the Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003, which was subsequently amended



in 2006, inter alia, the rules provided for grant of First Assured Career Progression benefit, i.e., upgrading him in the next Higher Pay Scale upon completion of 12 years of service which was without any promotion. Then if in 24 years of service there is no promotion, he would then be entitled to second Assured Career Progression. As these rules were coming with effect from 2003, the benefits thereunder were made retrospective and it was provided that if the benefits either under the first or second ACP was liable to be effected from a date prior to 09.08.1999 then he would be granted it from 09.08.1999 irrespective when it was to be given. Thus, to say as the learned Single Judge has said that for a benefit that became due to the writ petitioner in 1999, he was moving the Court in 2010 is ex facie wrong. It is only when he was denied his benefits by the impugned order dated 30.03.2009, that writ petition was filed in 2010. We, therefore, unable to agree with the view of the learned Single Judge in dismissing the writ petition on the ground of such technical plea itself.

6. We do not propose to remand the matter for, the counter affidavit of the State and the rejoinder by the petitioner is now on record. Further, it may be noted that as the petitioner superannuated in the year 2004, his mental agony should not be extended any further.

7. Having heard the learned counsel for the appellant and

the learned counsel for the State, we, now note some facts, which are not in dispute, which are as under.

The writ petitioner-appellant was appointed as Laboratory Assistant on 12/23.01.1965 in the pay-scale Rs.50-2-70-EB-2-90 per month and posted in the office of the Assistant Engineer, I/C, Soil Testing at Muzaffarpur. There was yet another selection process that was going on in which the writ petitioner-appellant had participated and was selected and, accordingly, he was appointed as Work Charged Research Assistant on 1st June, 1965, in the pay-scale of Rs.230-450/- per month. On such appointment, he was posted under the Assistant Engineer, Testing and Quality Control Sub Division, Muzaffarpur. Having been so posted, he received no promotion and his first promotion that came in the way was on 22.06.2001 when he was promoted as Assistant Director. When the ACP became due, the petitioner sought two ACPs, which were allegedly accrued to him but nothing having been done, moved this Court in 2007 by filing writ petition, which was permitted to be withdrawn to make representation before the authorities instead of deciding the same on merit then and there. Upon the representation being filed by the petitioner, by the impugned order dated 30.03.2009, he was denied both the ACPs on the ground that in between 1965 to 2001, the petitioner had got two promotions. That was challenged before this Court which writ petition

was not entertained. Hence, this Intra Court Appeal.

8. During the pendency of this Intra Court Appeal, the State has changed the stand and granted the writ petitioner-appellant the second ACP with effect from 09.08.1999. The petitioner in his rejoinder has brought on record the facts to clear the misconception with undisputed facts. According to the State, the petitioner was first appointed as Temporary Laboratory Assistant on 23.01.1965 and then promoted to the Work Charged Research Assistant with effect from June, 1965. He refers to the two original orders in respect of these two appointment from which it would appear that both were fresh appointments. They were two different cadres. This has not been understood by the department in correct perspective. The appellant was first appointed as Temporary Laboratory Assistant and pursuant to the independent selection process, he got selected and was appointed as Work Charged Research Assistant. This is not promotion. It is a fresh appointment pursuant to the fresh selection process. That being so, the petitioner has not received any promotion since his initial appointment up to 2001 when he was made Assistant Director. Thus, from 1965, for the next 24 years, i.e., 1989, the petitioner had not got any promotion. Thus, in terms of the Assured Career Progression Scheme, both, first ACP and second ACP became due in 1999 itself.

9. Thus, we have no option but to allow this Intra Court Appeal, which is, accordingly allowed. As the writ petitioner-appellant has already superannuated in the year 2004, we direct the Respondents to see that the order of this Court in respect of grant of both ACPs to the writ petitioner-appellant with effect from 1999 be implemented within a period of three months from the date when the copy of this order is produced before the Chief Engineer, Central Design Organization, Road Construction Department, Bihar, Patna, who shall be liable to comply the order of this Court accordingly.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

P.S./-Bhardwaj

U			
---	--	--	--