

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10975 of 2008

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Shyam Sundar Prasad Singh, son of Late Ram Yatan Prasad Singh, resident of
mohalla – magadh Colony, Bari pahari, P.O. +P.S. Soh Sarai District nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary / Secretary building Construction Department
Vishweshwarraiya Bhawan Bailey Road, Patna
3. The Engineer –in-Chief cum Additional Commissioner cum Special Seretary
Building Construction Department, vishweshwarraiya Bhawan Bailey Raod,
Patna
4. the Chief Engineer (South) Building construction Department,
Vishweshwarraiya Bhawan, bailey Road, Patna
5. The Superintending engineer, Building Construction Department, Patna
Bhawan Anchal, Rajbanshi Nagar, patna
6. the executive Engineer, Nalanda Bhawan Pramandal, Biharsharif (Nalanda)
7. The Accountant General / A& E, Bihar Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate

Mr. Manish Sahay, Advocate

For the Respondent/s : Sri Devendra Kumar Sinha, AAG 2

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 10-09-2015

Heard Sri Rajendra Narayan, learned senior counsel, who
was assisted by Sri Manish Sahay, learned counsel for the petitioner,
Sri Devendra Kumar Sinha, learned AAG No. 2 and learned counsel,
who has appeared for the Accountant General, Bihar.

The petitioner, who superannuated on 31.12.2004 as
Accounts Clerk from Building Construction Department, Government
of Bihar, has approached this court invoking its writ jurisdiction
under Article 226 of the Constitution of India, with a prayer to quash
a Communication contained in Letter No. 984 Dated 24.4.2007 issued



under the signature of Superintending Engineer, Patna Bhawan Anchal, Patna/ Respondent No. 5 (Annexure - '7' to the writ petition) whereby, the petitioner's claim for grant of benefit under the Assured Career Progression Scheme (hereinafter referred to as the "ACP" Scheme) was rejected. He has also prayed that after quashing the said order direction may be issued to revise pension after giving him two financial progression under the ACP Scheme. Besides this, a prayer has been made to direct the respondents to make payment of entire monetary benefit with interest.

The petitioner, after retirement had noticed that Bihar Government had come out with a Rule namely, Bihar State Employees Conditions of Service Conditions Amendment ("Assured Career Progression Scheme") Rules, 2006, whereby it was decided that under the said Scheme benefit can be granted to an employee with effect from 9th August 1999. The petitioner thereafter approached the Department for granting benefit under the ACP Scheme. Despite his vigorous persuasion he failed to get any response and thereafter, under the Right to Information Act, he approached the authority concerned for providing the information. Only thereafter, Annexure - '7' was issued and petitioner was informed regarding rejection of his claim for benefit under the ACP Scheme. A plea has been taken that several other similarly situated persons were granted first time bound



promotion prior or similar to the date of time bound promotion granted to the petitioner i.e. 6.8.1983. They were granted such benefit, ignoring the case of the petitioner. It has been pleaded that petitioner was granted first time bound promotion vide Annexure – “1” to the writ petition i.e. Memo No. 223 Dated 8.9.1993. By the said order the petitioner was granted first time bound promotion which was made applicable with effect from 6.8.1983.

Learned counsel for the petitioner placing reliance on Annexure – “4” to the writ petition submits that the Chief Engineer, Building Construction Department, Bihar, had instructed the Superintending Engineer, Building Division, Patna regarding ensuring grant of benefit under the ACP scheme to employees, even to them who had got time bound promotion prior to 1.9.1983. It has been argued that the petitioner was appointed on 6.8.1973 whereas, one Sri Nageshwar Baiha who was appointed on 1.1.1974 and other four persons, who were either appointed few days after the petitioner or a few month before the petitioner in the same year i.e. 1973 have been provided with the benefit under the ACP Scheme even though they had not passed Departmental Accounts Examination nor were granted exemption from passing the same. According to learned senior counsel for the petitioner once persons who were identically situated have been granted relief under the ACP Scheme the



respondent/ State may not adopt a procedure which is contrary to Article 14 and 16 of the Constitution of India. Besides the point of discrimination by way of referring to Annexure - '7' to the writ petition i.e. the impugned order, it has been argued that claim for grant of ACP to the petitioner has been rejected primarily on the ground of non-passing of the Departmental Accounts Examination whereas, this Court has repeatedly held that for granting benefit under the ACP Scheme passing of Departmental Accounts Examination may not be treated as a bar. Learned senior counsel for the petitioner has placed reliance on a Single Bench Judgment of this court reported in **2012 (4) PLJR 266 (Ram Ekbal Singh vs. The State of Bihar & Ors)**. He submits that almost in identical situation where the petitioner of the said writ petition had neither passed Departmental Accounts Examination nor was granted exemption after being denied the benefit under the ACP was granted the same relief by this court. Relying on the judgment of Ram Ekbal Singh Case (Supra) , one another bench of this court in CWJC No. 10613 of 2007 by order dated 19.12.2013 issued direction to consider the case of the petitioner of the said case for grant of ACP. The petitioner of the said case was also denied the same relief on the ground of non-passing of Departmental Accounts Examination. Accordingly, a prayer has been made to grant similar relief.



Sri Devendra Kumar Sinha, learned AAG No. 2, has vehemently opposed the prayer of the petitioner. At the very outset he submits that it is not a case that petitioner was granted first time bound promotion on 6.8.1983, but fact remains that the order for grant of such time bound promotion was issued in the year 1993. Of course it was made applicable with effect from 6.8.1983. He has tried to distinguish the case of the petitioner from others as incorporated in Annexure - '5' to the writ petition. He submits that those five persons who were granted the benefit under the ACP even in absence of passing of Departmental Accounts Examination or without exemption they were granted regular cadre promotion and as such, according to Sri Sinha, the petitioner may not equate his case with those persons. He further submits that under the Scheme itself there is specific provision for passing of Departmental Accounts Examination. On the aforesaid grounds he makes a prayer for dismissal of the writ petition.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that in similar situation five persons whose names have been mentioned in Annexure 5 of the writ petition were granted benefit under the ACP Scheme even though they have not passed the Departmental Accounts Examination. Accordingly, the respondents may not be allowed to

adopt discriminatory plea. The petitioner's case appears almost similar to those persons. So far rejection of the claim of the petitioner due to non passing of the Departmental Accounts Examination is concerned, even after noticing this fact this Court has already held that non passing of the Departmental Accounts Examination may not be treated as a hurdle in granting benefit under the ACP Scheme. This Court in similar term i.e. in terms of the order passed in Ram Ekbal Singh Case (Supra) and the order dated 19.12.2013 passed in CWJC No. 10613 of 2007 is inclined to allow the writ petition. Accordingly, the impugned order i.e. the order contained in Annexure - '7' is hereby set aside. The respondents are directed to consider the case for grant of benefit to the petitioner under the ACP Scheme if the petitioner fulfils other requirements and grant all consequential benefits. All the formalities must be completed within a period three months from the date of receipt / production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

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