

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.911 of 2014

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1. Harendra Kumar Prasad Srivastava S/O Late Prashuramjee Prasad R/O Quarter
No. K-3, Lane No. 6, Ayodhyapuri, Srinagar, P.S. - Siwan Muffasil, Dist. - Siwan

.... Petitioner/s

Versus

1. The State Of Bihar , Through Principal Secretary, Water Resources Development
Department, Govt. Of Bihar, Patna
2. The Under Secretary, Water Resources Development Department, Govt. Of
Bihar, Patna
3. The Deputy Secretary, Water Resources Development Department, Govt. Of
Bihar, Patna
4. The Secretary, Finance Department, Govt. Of Bihar, Patna
5. The Under Secretary, Finance Department, Govt. Of Bihar, Patna
6. The Chief Engineer, Water Resources Development Department, Siwan
7. The Superintending Engineer, Saran Canal Circle, Siwan
8. The Executive Engineer, Saran Canal Division, Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAKESH KUMAR SHRIVASTAVA & MR
RAJENDRA NARAYAN,SR.ADV

For the Respondent/s : Mr.KISHORE KANT SINGH,AC TO SC4.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 06-02-2015

The petitioner wants quashing of the impugned order, contained in Annexure-5 dated 29-4-201 issued under the signature of Chief Engineer, Water Resources Department, Siwan, by virtue of which the respondents have refused to give him the benefit of second A.C.P with effect from 9-8-1999 for the reason that they have refused to calculate the period of service rendered by the petitioner in the work charge establishment which he had initially joined in the year 1973.

He also wants a direction upon the respondents to include the period spent by the petitioner in the work charge establishment for counting of the number of years for grant of benefit of second A.C.P as well as M.A.C.P, because many a persons similarly situated has been extended this benefit. It is the stand of the learned senior counsel that it is discriminatory, if not violative of Articles 14 and 16 of the Constitution, and the violation is being practiced by the respondents if Annexure-5 is allowed to stand.

The benefit of A.C.P is entitled to employees on the basis of A.C.P. Rules initially notified in the year 2003 effective from 1-8-1999. This Rule has been subsequently amended and modified in the year 2006 and 2010.

Annexure-2 is the 2006 Amendment, which is a part of the writ application. The learned counsel relies on Rule 5 of the said Amendment, which talks in terms of grant of benefit of A.C.P even for the period of service under work charge establishment. He fairly submits that prior to 2006 Rule, there was

some ambiguity whether the benefit of service rendered in the capacity as work charge employee could be taken into consideration the periods spent by them in that capacity.

There is no dispute with regard to the provision; it is the reading of the provision where the problem arises. Reading of Annexure-5 indicates that the stand has been taken by the respondents in relation to the present petitioner because though the petitioner joined in the work charge establishment on 14-7-1973 with pay-scale of Rs.220-315/-, the petitioner was regularized or appointed on higher post of Accounts Clerk with pay scale of Rs.260-408/- effective from 31-7-1981. In other words, the petitioner did not continue right from 1973 in the same capacity as work charge employee; he got higher promotion and higher pay-scale and to that extent the stagnation of the petitioner stood removed on 31-7-1981.

If the stagnation takes place, it has to be referable to 31-7-1981 and the same cannot be lost sight of nor can the date be pushed to 14-7-1973 when the petitioner secured service as work charge employee. The respondent-authorities have calculated the entitlement of the petitioner on the basis of 31-7-1981 and rightly so , because the period spent as work charge employee came to an end by his so called regularization in the regular establishment and his appointment by promotion on the next higher post with a higher pay-scale. The stagnation, if any, has to be reckoned from 31-7-1981.

That is the logic which has been provided in Annexure-5 under challenge. There is nothing wrong with the rationale and reasoning given in the said annexure. Therefore, it is not required to be interfered with.

So far as the question of discrimination which has been raised by the petitioner, it is made clear that merely because some authorities have been either



indiscreet or blatant and not aware of various rules which came into existence with regard to grant of such benefit in contravention of A.C.P. rules , this cannot form the benchmark for grant of benefit, which would be per se illegal, because employee can not demand the benefit over and above what has been provided for in accordance with the Service Condition and Rules.

The learned senior counsel has pointed out instances from the Notification contained in Annexure-6 series. Some of those instances do make out a case where some similarly situated persons like the petitioner have been extended the benefit of second A.C.P. by counting the period right from the date of entry into the service as work charge employee and ignoring the fact that such persons were given the benefit of higher post and pay down the line. Obviously, this has been done not only in contravention of the rules, but also may be a deliberate mischief done at the local level where such recommendations are made or benefit extended for many a reasons , which this Court is not required to record in detail.

Those illegal grant of benefit, therefore, cannot form the basis for extending the same benefit to the present petitioner. In fact, a case is made out for a direction upon the Water Resources Department that in every case where the second A.C.P. has been granted by calculating the period from the date of entry in service in work charge establishment and ignoring the subsequent promotion on higher post and pay-scale; all those notifications are required to be revisited, because no employee can demand and beget any emolument from the public exchequer over and above what he is entitled to.

The Principal Secretary, Water Resources Department, Bihar, Patna must issue an appropriate direction across the board across the State to do the exercise to ensure that those , who are not entitled to the benefit of such kind and

have been extended such benefit by wrong interpretation or mischief, do not continue to pocket the advantage indefinitely at the cost of the State exchequer.

The writ application is dismissed. Let a copy of this order be sent to the Principal Secretary, Water Resources Department, Government of Bihar, Patna.

(Ajay Kumar Tripathi, J)

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