

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1260 of 2012

IN

Civil Writ Jurisdiction Case No 18015 of 2011

- =====
1. The State Of Bihar
 2. Principal Secretary Road Construction Department, Government of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna
 3. Principal Secretary Rural Works Department, Government of Bihar, Patna
 4. Principal Secretary, Finance Department, Government of Bihar, Patna
 5. Engineer-In-Chief-Cum-Additional Secretary Road Construction Department, Government Of Bihar, Bishweshwaraiya Bhawan, Bailey Road, Patna
 6. Engineer-In-Chief-Cum-Additional Secretary Road Rural Works Department, Government Of Bihar, Patna
 7. Chief Engineer, Rural Works Department, Government of Bihar, Patna
 8. Executive Engineer Planning and Resources Management Division (Headquarter-1), Rural Works Department, Government of Bihar, Patna
 9. Superintending Engineer (Mechanical) N.H. Mechanical Circle, Road Construction Department, Patna
 10. Executive Engineer, Design Division (Headquarter-1) Rural Works Department, Government Of Bihar, Patna

.... Appellant/s

Versus

Pramod Kumar S/O Late Ganga Sagar Choudhary R/O Mohalla- Rajiv Nagar, Police Station- Rajiv Nagar, Town & District-Patna, Presently Posted As Senior Accounts Clerk In The Office Of Executive Engineer, Design Division (Headquarter-I), Rural Works Department, Government Of Bihar, Patna

.... Respondent/s

=====

For the Appellant/s : Mr Md Anis Akhtar, AC to GA 1

For the Respondent/s : M/s S B K Mangalam, Ravi Ranjan & Chandan, Advs

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 20-04-2015

Heard learned counsel for the appellant-State and learned counsel for the writ petitioner-respondent. With their consent, this Letters Patent Appeal is being finally disposed of at this stage itself.

2 The facts are not in dispute. The writ petitioner was appointed as an Accounts Clerk on compassionate ground in the year 1992. It may be relevant to note that earlier in this State, the Class III post of Accountants was divided in two parts that is Junior Accounts Clerk and Senior Accounts Clerk. With retrospective effect, with effect from 01.05.1980, the two posts were merged and a singular post of Accounts Clerk was created. It was decided virtually to bifurcate again the post into Junior and Senior accounts Clerk in 1999. While doing so, it was also decided that all persons working as Accounts Clerk as in 1999 would be treated as and continued as Senior Accounts Clerk. For some reason, writ petitioner was treated as Junior Accounts Clerk from the time he was appointed though technically at that time that post was non-existent. This led to a litigation whereby this Court held that he would be entitled to a pay scale of Accounts Clerk from the date of his appointment. Thus retrospectively, his pay scale was enhanced from the date of his appointment. In the year 2003, the Assured Career Progression (ACP) Rules framed. Writ petitioner was denied the first ACP which would technically be available to him in the year, 2004 that is on completion of 12 years of service. It appears that it was denied on two grounds. First that in 1999, his pay scale had been upgraded and, thus, his pay scale having been upgraded, he is only to be considered

for grant of first ACP after 12 years of the said date. The second ground on which he was disentitled was that there is a 25% quota for promotion through limited competitive examination. The next scale of pay which he would get would be that of the promotional post and as he had not cleared the limited competitive examination, he was not found fit for promotion and, as such, would not get the pay scale of the promotional post. Being aggrieved, writ petitioner filed the writ petition which was allowed. The order denying him first ACP on completion of 12 years of service from 1992 that is with effect from 2004 was set aside with a direction to grant the ACP. Hence, State has preferred this intra-Court appeal in which an ad interim stay had been granted. An interlocutory application was filed for vacating the stay and as noted above, both counsels agreed to argue the matter for final disposal instead on the application for vacating the ad interim stay.

3 Having heard the learned counsels and considered the matter, in our view, the appeal merits no consideration. As noticed above, there were only two grounds for rejecting the claim of the writ petitioner. The first was that he had received an upgradation of pay scale in the year, 1999 and, as such, the 12 years period would be counted from 1999 and not 1992 when he was initially appointed. On the face of it though the submission may be attracted, on facts, it is

misconceived. What was done in 1999 was the writ petitioner was held entitled to the upgraded pay scale right from the time of his appointment in 1992. It was not an upgradation of pay scale in course of his appointment and subsequent to his appointment. He was paid the arrears from the time of his appointment upto the date of order. Therefore, he was receiving the upgraded pay scale from the date of appointment continuously and there was no upgradation in midstream. Thus, this ground, as urged by the State, is misconceived. The second ground was that petitioner not having qualified or not having taken the limited competitive examination for promotion, he could not be given the promotional grade of pay of Accounts Officer which was the next pay scale. This is equally misconceived. Had he taken those limited examinations and passed, he would be entitled to promotion. There is a distinction between promotion and ACP. ACP is a personal enhancement of pay scale to overcome stagnation. What is given is the next higher pay scale on completion of the period specified. It is not a promotion for if promotion is to be granted then he would get the promotional post as well which is not the case under ACP. Therefore, to say that as he had not taken the competitive examination for promotion, he would be disentitled to get ACP is not only misconceived but to us it appears to be a mala fide ground to deny ACP. ACP Rules do not stipulate passing of promotional examination

because if a person passes the promotional examination then he would be promoted as such. There is a distinction between departmental examination and promotional examination. There is no dispute that the writ petitioner had cleared the departmental examination.

4 Thus, in our view, the denial of the first ACP to the writ petitioner was clearly illegal and without jurisdiction. While affirming the order of the learned Single Judge, we would only add that the benefits of the first ACP, which became due to the writ petitioner in the year 2004 which he has since been denied, be given forthwith not later than two months from today, the responsibility of which shall be on the Principal Secretary, Department of Finance, Government of Bihar, Patna.

5 Needless to mention that any subsequent amendment to the Rules would not affect the right which had accrued to the writ petitioner.

6 This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

M.E.H./-

U			
---	--	--	--