

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12566 of 2007**

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Jagdish Prasad son of Sri Niranjan resident of D-81, People's Co-operative Colony,  
P.S.Kankarbagh, Patna-20.

.... .... Petitioner

Versus

1. The State of Bihar through Secretary, S.C. & S.T. Welfare Department, Govt. of Bihar, Patna.
2. The Secretary, Department of Welfare, Govt. of Bihar, Patna.
3. The Secretary, Scheduled Caste and Scheduled Tribe Welfare Department, Govt. of Bihar, Patna.
4. The Joint Secretary, Scheduled Caste and Scheduled Tribe, Welfare Department, Govt. of Bihar, Patna.
5. The Deputy Secretary, Department of Welfare, Govt. of Bihar, Patna.
6. The Director, Welfare Department, Govt. of Bihar, Patna.

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Jainendra Kumar Sinha, Advocate.

For the State : AC to SC-20

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**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL**

ORAL JUDGMENT

**Date: 13-05-2015**

Heard learned counsel for the petitioner and the State.

A counter affidavit has been filed on behalf of the respondent Nos. 1 to 6. The petitioner has filed reply thereto. A supplementary affidavit has also been filed stating therein that during the pendency of this writ application, the petitioner superannuated from the service of the State as In-charge Sub Divisional Welfare Officer, w.e.f. 31.01.2011.

The petitioner belongs to the Scheduled Caste category and was appointed as Block Welfare Officer in the year 1989. He was confirmed on the said post. The grievance is that during his entire



service span, he was not considered and granted promotion first to the next higher post of Sub Divisional Welfare Officer and then to the post of District Welfare Officer. His claim for consideration in the light of the reservation policy of the State had ripened, yet the respondents did not consider the same. Ultimately, he had to superannuate in the same position/status as In-charge Sub Divisional Welfare Officer. In sum and substance, the grievance is that no rank promotion was granted to him.

The respondents, in the counter affidavit, have explained that in exercise of power conferred on the State under Article 306 a Rule has been framed called Bihar Anusuchit Jati Ewam Anusuchit Janjati Kalyan Padadhikari Sawarg, Niyamawali, 2010 ( for short the 'Niyamawali 2010') which is notified and is effective from 12.3.2010. Earlier to this, the service to which the petitioner belongs was not governed by any rule provision. The process of consideration for grant of promotion was taken up but, in the meanwhile, the aforesaid rule was promulgated/notified with immediate effect. The Niyamawali, 2010 required formation/preparation of a seniority list of the Block Welfare Officers and thereafter to grant promotion therefrom based on the principle of seniority- cum- merit. The other conditions for grant of promotion have been provided such as passing of the departmental examination



etc. The departmental promotion committee is required to consider the claim for grant of promotion in the light of the rule provision. In the light of the said provision of the Niyamawali, 2010, a seniority list of the Block Welfare Officer working in the State of Bihar was prepared and circulated vide communication dated 3.5.2010 (Annexure-C) wherein the petitioner figures at Sl . no. 96. It is not the case of the petitioner that any one above in the seniority list or in his category has been promoted on regular basis as In-charge Sub-Divisional Welfare Officer wherefrom he retired. Since the petitioner was not granted any promotion during his service career he is entitled to grant of two benefits under the Assured Career Progression Scheme ( for short 'the ACP Scheme') implemented by the State of Bihar w.e.f. 1999. The respondents are considering the case of the petitioner for grant of both the benefits under the said scheme considering the fact that he was not granted any substantive promotion during his service career.

I have considered the rival submissions of the parties.

It appears to this Court that after coming into force of the Niyamawali, 2010, which has taken effect from the date of the notification, and the previous procedure , if any, prescribed for grant of promotion stands nullified. Consideration and grant of promotion is required to be given as per the rule provision.



The respondents State in the light of the provisions contained in the Niyamawali, 2010 prepared the seniority list of the Block Welfare Officer which has been appended to the counter affidavit (Annexure-A). The petitioner figured at Sl. No. 96 therein. On going through the pleadings on record, it does not appear to this Court that petitioner has made out any case that anyone junior to him in the said gradation list has been considered and granted the substantive/regular promotion to the next higher post/grade of Sub Divisional Welfare Officer. The ACP scheme has been implemented precisely for the purpose of ameliorating such grievance of the employee. If no rank promotion has been granted during the service period then the employee is entitled to grant of two benefits under the said scheme. The respondents have categorically stated in the counter affidavit that such claim of the petitioner is being considered and will be granted as per the scheme very soon.

Taking into account the aforesaid facts, in my view, the relief(s) prayed for in this application does not merit to be granted. The writ petitioner would be entitled to grant of benefits under the ACP scheme in the light of the statements made in the counter affidavit. This Court directs that such consideration for grant of two benefits under the ACP scheme be completed strictly in terms of the scheme within a period of two months from the date of

receipt/production of a copy of this order before the respondent no.2  
i.e. the Secretary, Department of Welfare, Govt. of Bihar, Patna.

The writ application is disposed of with the aforesaid  
direction(s).

**(Kishore Kumar Mandal, J)**

Shyam/-

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