

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 13975 of 2011

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Mahendra Baitha S/O Late Tildhari Baitha R/O Vill. Baijnathpur (Rambagh
Chhauradano) P.O. - Chhauradano, Distt. East Champaran.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Water Resources, Government of Bihar,
Patna
3. The Engineer in Chief, Department of Water Resources, Government of Bihar,
Patna
4. The Chief Engineer (Mechanical), Department of Water Resources,
Government of Bihar, Patna
5. The Superintending Engineer (Mechanical), Irrigation Mechanical Circle,
Department of Water Resources, Muzaffarpur, Distt. Muzaffarpur
6. The Executive Engineer (Mechanical) Irrigation Mechanical Division,
Department of Water Resources, Muzaffarpur, Distt. Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar Singh

Mr. Binod Kumar Mishra

For the Respondent/s : Mr. Pankaj Kr. Singh, AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-04-2016

Heard Sri Lalan Kumar Singh, learned counsel who was
assisted by Sri Binod Kumar Mishra, learned counsel for the
petitioner and learned A.C. to Standing Counsel – 28.

2. The petitioner, invoking writ jurisdiction of this Court
under Article 226 of the Constitution of India, has made a prayer for
directing the respondents to grant benefit under the Assured Career
Progression Scheme (in short ‘A.C.P. Scheme’) and for granting 1st
time bound promotion w.e.f. 01-03-1991. A claim has been made for

directing the respondents to grant two A.C.Ps. i.e. 1st A.C.P. w.e.f. 09-08-1999 in pay-scale of Rs. 5000-8000/- and 2nd A.C.P. w.e.f. 09-08-1999 in the pay-scale on Rs. 5500-9000/-.

3. So far as the claim for 1st time bound promotion is concerned, learned counsel for the petitioner, keeping in view the fact that the claim was stale and also the fact that claim for time bound promotion has already been abolished long back, submits that he is not pressing this petition for such relief.

4. So far as grant of A.C.P. is concerned, it has been indicated that the petitioner was functioning as Correspondence Clerk w.e.f. 31-05-2009, however; he was not given the benefit of A.C.P. Scheme during his entire service period. Under the Right to Information Act, he got an information that he was denied his benefit under the A.C.P. scheme, on the ground of non-passing of departmental examination. The petitioner filed an application before the authority concerned, however; all the efforts went in vain and only thereafter, the petitioner approached this Court invoking its writ jurisdiction.

5. Learned counsel for the petitioner submits that in view of settled law, passing of departmental examination was not having any relevance in respect of grant of benefit under the A.C.P. Scheme. To substantiate the submission, learned counsel for the petitioner

firstly placed reliance on a Division Bench judgment of this Court reported in **2012 (1) P.L.J.R. 663 (Avinash Chandra Vs. State of Bihar)**. He also placed reliance on an unreported oral judgment of this Court dated 20-04-2015 passed in L.P.A. No. 1260 of 2012. He submits that in view of settled proposition of law, the petitioner was entitled to get 1st and 2nd A.C.P., as claimed by the petitioner, which has been denied.

6. In this case, by way of filing counter affidavit, the respondent/State has opposed the prayer of the petitioner.

7. Learned counsel for the State, opposing the prayer of the petitioner and referring to statement made in counter affidavit, has highlighted and reiterated that claim of grant of A.C.P. to the petitioner has rightly been rejected, due to the reason that the petitioner has never passed departmental examination.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Since in this case, benefit of A.C.P. to the petitioner has been rejected only on the ground on non-passing of the departmental examination, the Court is of the opinion that as per law settled by this Court, the stand for rejection of claim was totally erroneous. This Court in L.P.A. No. 1260 of 2012 dated 20-04-2015 has categorically observed that *“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 competition 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 the ACP.”

9. Almost similar point was considered by a Division Bench of this Court in **Avinash Chandra’s case (supra)**.

10. Keeping in view the fact that law on this issue has already been settled, certainly the petitioner may not be denied to get the benefit of two A.C.Ps., as claimed by the petitioner.

11. Accordingly, the writ petition is allowed, with a direction to respondents to consider the case of the petitioner for grant of A.C.Ps., as claimed by the petitioner with all consequential benefits.

12. All formalities are required to be completed within a period of three months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J.)

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