

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.758 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 5030 of 2008

Along with

Interlocutory Application No. 3146 of 2015

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1. The State of Bihar
 2. The Chief Secretary, Government of Bihar
 3. The Secretary, Road Construction Department, Government of Bihar, Patna
 4. The Deputy Secretary, Road Construction Department, Government of Bihar, Patna.
 5. The Accountant General, Bihar, Patna

.... Appellant/s

Versus

Dhirendra Prasad Shrivastava, son of late Baidyanath Prasad, resident of House No. 85, Patliputra Colony, P.O. and P.S. Patliputra, District Patnha.

.... Respondent/s

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Appearance :

For the Appellants : Mr. Kumar Alok, SC 8
Mr. Raj Kumar Singh, AC to SC 8

For the Respondent : Mr. Amit Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 17-05-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 3146 of 2015

The present Interlocutory Application has been filed seeking condonation of delay of 131 days in filing of the Letters Patent Appeal. Taking into consideration the averments made in the Interlocutory Application and after hearing learned counsel for the parties, we find that sufficient cause has been shown for the appeal

being filed beyond the limitation period.

For the reasons aforesaid, the delay in filing of Letters Patent Appeal stands condoned. Interlocutory Application No. 3146 of 2015 stands disposed off.

Re.: Letters Patent Appeal No. 758 of 2015

The present intra-court appeal under Clause X of the Letters Patent of Patna High Court is directed against the order dated 17.10.2014 passed by the learned Single Bench by which CWJC No. 5030 of 2008 filed by the respondent has been allowed and direction has been issued granting him 2nd ACP and all consequential benefits with effect from 09.08.1999 within a period of 8 weeks.

The writ petitioner, respondent herein, joined Government service as Engineer Assistant on 30.12.1971. The post was later on merged with the post of Assistant Engineer. Subsequently, he was promoted to the post of Executive Engineer in the year 1998. Thereafter, the State Government, in exercise of powers under proviso to Article 309 of the Constitution of India, notified the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2006 (hereinafter referred to as the 'ACP Rules'). The same was made effective from 09.08.1999. The respondent claimed grant of 2nd ACP on the basis of having completed 24 years of service, but the same was denied on the ground



of pendency of departmental proceeding by the Screening Committee on 25.11.2006. Earlier, on 20.08.2001, the respondent was suspended and departmental proceeding initiated which culminated in punishment order dated 13.09.2004 of withholding of two increments with cumulative effect and censure for the year 2000-01. He was again suspended on 19.05.2006 and departmental proceeding initiated and an FIR /Vigilance Case was also lodged on 26.06.2006. The respondent retired while under suspension on 31.07.2007 and the departmental proceeding was made to continue under Rule 43 (b) of the Bihar Pension Rules, 1950. The case of the respondent was again placed before the Screening Committee on 28.11.2007 for grant of 2nd ACP but once again he was not recommended in view of the pendency of departmental proceeding and the vigilance case. He was ultimately awarded punishment under order dated 05.01.2009 by which 50% of pension and gratuity were deducted. The matter was again placed before the Screening Committee for consideration on 18.08.2010 and his claim was rejected in view of him having been awarded punishment. However, the retirement benefit after punishment was paid to the respondent on 17.06.2009. The respondent filed revision against the punishment order dated 05.01.2009 in which the punishment was revised to deduction of 25% of pension and gratuity in place of 50%.



Learned counsel for the appellants submits that charges against the respondent pertain to the period 1999-2001 and the ACP Rules came into being only in the year 2003. He further submits that Rule 5 of the ACP Rules clearly stipulates that condition for grant of ACP shall be the same as required for grant of regular promotion. Learned counsel refers to Resolution No. 7457 of the Government of Bihar in the Department of Personnel and Administrative Reforms dated 11th September, 2002 to contend that at the time of consideration for promotion, the decision to initiate departmental proceeding and pendency of criminal case shall have adverse impact. The same has also been reiterated by Government Circular No. 9270 dated 17.12.2013. Learned counsel refers to the decision of this Court in the case of **Samrendra Singh v. Union of India** reported as **2008 (2) PLJR 77** to contend that for grant of benefits under ACP scheme, other norms for grant of promotion have to be applied.

Learned counsel for the respondent submits that grant of 2nd ACP was due in the year 1999 when no departmental proceeding or criminal case was pending. He submits that the consideration has to be in terms of the due date and subsequent events cannot be taken note of. He further submits that the appellants have wrongly denied such benefit of 2nd ACP to the respondent. He relies upon a decision of this Court in the case of **K. K. Chaubey v. High Court of**

Judicature at Patna reported as **2008(2) PLJR 346**. He further submits that punishment awarded to the respondent of withholding of two increments with cumulative effect and censure for the year 2000-01 under order dated 13.09.2004 has since been set aside by order dated 23.04.2015 in CWJC No. 12680 of 2008.

Having considered the rival contentions, we find force in the submissions of learned counsel for the appellants. The ACP Rules came only in the year 2003 and much prior to that, in the year 2001 itself the respondent was suspended and departmental proceeding initiated against him. Thus, even though the effective date of grant of 2nd ACP to him would technically be from the year 1999 but on the date of consideration, which obviously is after 2003 when the ACP Rules came into force, the respondent stood disentitled to grant of regular promotion in view of his suspension and pending departmental proceeding in light of the resolution of the State Government bearing No. 7457 dated 11.09.2002. Thus, though the case of the respondent was considered thrice by the Screening Committee, but on 25.11.2006 his case was not recommended due to pendency of the departmental proceeding and again on 02.11.2007 on account of pendency of departmental proceeding and vigilance case and finally on 18.08.2010 due to punishment having been awarded to the respondent. We do not find such action of the authorities is arbitrary or unreasonable. The



fact that first order of punishment dated 13.09.2004 has been interfered with by a Bench of this Court is not relevant since at the relevant time when the case of the respondent was being considered for grant of 2nd ACP, cogent material existed before the Screening Committee not to recommend his case. Moreover, we may observe here that learned Single Bench has interfered with the punishment order dated 13.09.2004 only on a technical aspect, since the disciplinary authority had not given notice to the respondent along with reasons for differing with the report of the Enquiry Officer and affording an opportunity to show cause, which cannot be said to giving a clean chit and exonerating the respondent of any misconduct. The decision relied upon by learned counsel for the respondent in the case **K.K. Chaubey** (supra) related to the writ petitioner, who was a Judicial Officer, where the Court had held that the evaluation committee had not considered his entitlement for grant of ACP as the same was only to assess whether he should be allowed the benefit of extended service upto 60 years or made to superannuate on completion of the normal age to superannuation. Moreover, the Government resolution No. 7457 dated 11.09.2002 has not been noticed in the said order which is relevant for the purposes of consideration of the present case. The decision relied upon by learned counsel for the appellants in the case of **Samrendra Singh** (supra)

does cover the issue involved in the instant case to the extent that if there is departmental proceeding or criminal case pending on the date of consideration of grant of ACP, the person shall not be entitled to such benefit.

For the reasons aforesaid, the Letters Patent Appeal stands allowed. The order passed by the learned Single Bench dated 17.10.2014 in CWJC No. 5030 of 2008 is set aside and the writ petition stands dismissed.

In view of the appeal having been allowed, Interlocutory Application No. 3147 of 2015, for interim stay of the impugned order, and Interlocutory Application No. 3433 of 2016 for modification of order dated 18.04.2016, passed in the present appeal, having become infructuous stand disposed off.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A