

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.700 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 16554 of 2012**

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Sahabuddin, S/o Late Abdul Hassan Mia, Resident of Village - Gyanbigha, P.O -
Bathani, P.S – Neema Chak Bathani, District - Gaya.

.... Appellant/s

Versus

1. The State of Bihar
2. The District Magistrate, Nalanda at Biharsharif
3. The Additional District Magistrate, Nalanda at Biharsharif.
4. The Circle Officer, Block Rahui, District - Nalanda.
5. The Deputy Secretary-cum-Officer on Special Duty, Department of Revenue and
Land Reforms , Government of Bihar , Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajey Kumar, Advocate.
Mr. B.K. Thakur, Advocate.
For the Respondent/s : Mr. S.K. Giri, G.P. 9
Mr. Nikhil Kumar Agrawal, A.C. to G.P. 9

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 03-08-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is
to an order dated 29th of January, 2014 passed by the learned Single
Bench of this Court in C.W.J.C. No. 16554 of 2012, whereby the
claim of the appellant for grant of 2nd Assured Career Progression
(hereinafter referred to as “ACP”) scale remained unsuccessful.

3. The facts are not in dispute. The appellant joined
Government service on 24th of May, 1979. The Bihar State Employees

Conditions of Service Conditions (“Assured Career Progression Scheme”) Rules- 2003 (hereinafter referred to as “ACP Rules, 2003) was notified on 25th of June, 2003 but was made effective from 9th of August, 1999.

4. A punishment was imposed upon the appellant on 14th of July, 2001 wherein, three increments of the appellant were stopped and censure was imposed on him. In terms of Circular dated 17th of May, 1982 (Annexure-C with the counter affidavit filed by the State), the adverse effect of the punishment of censure shall be from the date on which the allegation pertains and for a period of three years. In view thereof, the appellant was given 1st ACP scale on 9th of August, 2002.

5. The argument of learned counsel for the appellant is that in terms of ACP Rules, 2003, if the service of any employee is more than 12 years on the date of application of the Scheme, and if he has been sanctioned first financial progression, then the second financial progression shall be sanctioned on completion of 24 years period of service and for this purpose the condition of completion of additional 12 years provided after the first financial progression shall not apply. The relevant clause reads as under:-

“3(1) Under this scheme, such regular employees of Group ‘B’, ‘C’ and ‘D’ of the State Government, who have not got the benefits of any financial progression during their career, shall be



granted first financial progression on the completion of 12 years of service and second financial progression on completion of a further 12 years of service, after a total of 24 years of regular service.

Explanation

XXX XXX XXX

(iii). If the service of any employee is more than 12 years on the date of application of this scheme, and if he has been sanctioned first financial progression, then the second financial progression shall be sanctioned on completion of 24 years period of service and for this purpose the condition of completion of additional 12 years period after the 1st financial progression shall not apply.”

6. A perusal of the Scheme as extracted shows that substantive clause (1) contemplates the grant of first financial progression on completion of 12 years of service and second financial progression on completion of further 12 years of service. But in respect of an employee who has completed more than 12 years of service prior to the date of application of the Scheme, then he is entitled to second financial progression on completion of 24 years from the date of initial appointment in terms of Explanation 3(iii) of the ACP Rules, 2003.

7. Since the appellant joined the Government service on 24th of May, 1979, therefore, he has joined prior to commencement of the Scheme. He has been granted financial progression after three years of the period of censure which incidentally is the period of after three years of the commencement of the Scheme. It is thereafter, in

terms of Clause 3(iii) of the Scheme, the benefit of second financial progression is to be given on the date he completes 24 years of service and not after 12 years of the grant of first financial progression.

8. In view of the said fact, we find that the order of the learned Single Bench is not the correct enunciation of law and the same is set aside. The Letters Patent Appeal is allowed. Respondents are directed to grant benefit of second ACP scale to the appellant on completion of 24 years of service i.e. on 24th of May, 2003.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P./Anand
N.A.F.R.

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