

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3693 of 2014

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Most. Chandrakala Devi, Wife of Late Ramjivan Singh, Resident of Village-
Vyaschak, P.S. Goraul, District Vaishali at Hajipur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue,
Govt. of Bihar, Old Secretariat, Patna
2. The Commissioner, Tirhut Division, Muzaffarpur
3. The District Collector, Vaishali at Hajipur
4. The Circle Officer, Goraul Block, District Vaishali at Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. PREM PRAKASH ARYA

For the Respondent/s : Mr. Rajiv Roy, GP 5

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 12-02-2016

In terms of the direction issued by this Court on 04.01.2016, learned
counsel for the State has produced the original service book of the husband of the
petitioner and also filed a supplementary counter affidavit after due service,
which is placed on record.

2. Petitioner is the widow of one Late Ramjivan Singh, who died in
harness on 31.07.2008 leaving behind the widow and two children. She wants a
direction upon the respondent authorities to grant to him the benefit of ACP,
which was not given to him during the life-time or service period.

3. Husband entered service as an Amin way back on 08/11/1971.
While working in different capacity and while he was in service, he passed away
on 31.7.2008. Other claims and benefits available to the legal heirs of the
employee have been settled but assertion on behalf of the petitioner is that the
benefit of ACP was not given to the husband, therefore, it will have consequences

on the fixation of family pension and other benefits.

4. Respondents were directed to file a counter affidavit and explain the reason for not granting the benefit which the petitioner is looking for. They point out in the counter affidavit that husband of the petitioner did join his service as an Amin but he did not remain so over a period of time, especially after the year 1995 since he got promotion as a Revenue Karamchari. Once he attained that position, there was an obligation upon him to pass Hindi Noting and Drafting Examination, which he had not done till the date of his demise. Since even for the benefit of ACP, which is a scheme provided against stagnation, on the recommendation of the 6th Pay Revision Committee, an employee must fulfill all the requirements which are necessary for even grant of substantive promotion. It is the assertion in the counter affidavits that the husband of the petitioner cannot get the benefit of ACP because he had only passed Hindi reading and writing examination as an Amin and not Hindi Noting and Drafting Examination.

5. In the rejoinder application filed on behalf of the petitioner, an extract or Xerox copy of the service book of the petitioner was annexed and based on the entry learned counsel for the petitioner tried to demonstrate that the husband of the petitioner had passed Hindi Noting and Drafting Examination. It was in this background that the Court ordered for production of original service book but also gave opportunity to the State to verify the position and maybe to file yet another affidavit explaining their stand which at that point of time looked contrary to the entry in the service book.

6. State has produced the original service book where there is a clear entry with regard to the passing of Hindi reading and writing examination, which is not the same thing as Hindi Noting and Drafting Examination. The Court also notices that maybe there is a deliberate effort to confuse the issue by

describing the husband of the petitioner as Revenue Karamchari/Amin, which are two different posts and not one and the same.

7. State has also annexed relevant circulars which govern the issue as well as requirements.

8. If this be so, then there is difficulty in extending the benefit or issuing any direction contrary to the rules or the circulars which are on record.

9. An employee can only derive benefit of a provision of a rule or circular provided he fulfils the requirement within the frame-work of the rules or the circulars. The rigours of the provisions cannot be read down to make available the benefit over and above what is prescribed or is envisaged in the said notification.

10. Writ application, therefore, has no merit and it is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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