

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12453 of 2013

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Tetar Das son of late Rup Lal Das, resident of Mohalla-Sandalpur, P.O.-Mahendru,
P.S.-Sultanganj, District-Patna Pin 800006.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Principal Secretary, Social Welfare Department, Government of Bihar, Barrack
No.2, Old Secretariat, Patna &
3. Director, Social Security and Disability Directorate, Social Welfare
Department, Government of Bihar, New Punaichak (Near Apna Ghar), Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Advocate.

For the Respondent/s : Mr. Ashish Kumar Lal, AC to GA-5.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 26-09-2016

Heard the counsel for the petitioner and counsel for the
State.

In this case, the petitioner is challenging the order dated
07.05.2012 by which the claim of the petitioner to grant the ACP has
been rejected on the ground that the petitioner has already been
granted two promotions. In such circumstances, he is not entitled for
grant of benefit of ACP as he retired from the service as a Headmaster
of the Blind School, Kadamkuan, Patna. He entered into the service in
the as Assistant Teacher in Matric trained scale, later on when he
acquired the qualification of B.A. trained, he was given that scale.

As per the State, he was promoted to the post of
Headmaster, accordingly, he has been given the two promotions



during his life time and, as such, the petitioner is not entitled to the ACP. The ACP scheme is meant only for the employees who has not been granted any promotion during his service tenure as the same is ante-stagnation drive and the benefit of ACP is given in such circumstances. He has already got two promotions during the service life the relief sought for is not sustainable. It appears that the petitioner has approached this Court earlier and this Court has disposed of the matter in CWJC No.9224 of 2007 dated 12.10.2011 and while remanding the matter, the Court has given direction to the respondent to examine whether benefit of B.A. trained scale was mere an upgradation of the scale or was granted by way of promotion. In case of promotion, certainly the petitioner will not be entitled to get the benefit of ACP.

Counsel for the petitioner has placed reliance that in the identical case of one Sushri Pratibha Sahani wherein the court has directed to consider the case of Sushri Pratibha Sahani subject to condition that her grant of ACP was in accordance with law. However, grant of ACP to Sushri Pratibha Sahani would not be precedence and on that basis, the petitioner would not be entitled to the benefit of ACP. If it is found to be legal and justify then it can be used as a precedence. It will be relevant to quote the case of Tetar Das v. The State of Bihar & Ors in CWJC No.9224 of 2007 wherein it has

been held as follows:-

“Thus this Court would remit the matter back to the Competent Authority of the Welfare Department only to examine as to whether the petitioner’s promotion in the B.A trained scale on 28.11.1990 and 28.09.1991 was his regular promotion or only an upgradation of his earlier pay scale. In the event, it is found that the petitioner was given promotion in the pay scale of Rs.880-1510/-, petitioner’s case for grant of A.C.P. will straight way be rejected by recording reasons to this effect but on the other hand if it is found that the use of word promotion in orders dated 28.11.1990 and 28.09.1991 was a misnomer and the grant of pay scale of Rs.880-1510/- or its replacement pay scale of Rs.1640-2900/- was only by way of substituted pay scale of Rs.415-745/-, his case for grant of A.C.P. will be reconsidered in accordance with law and Government rules and policy for grant of A.C.P.

In order to complete this exercise, this Court would give liberty to the petitioner to file his self contained representation for claiming benefit of A.C.P as per the latest Rules, whereafter the Competent Authority of Welfare Department shall take its final decision at an early date preferably within a period of four months from the date of receipt/production of a copy of this order. It is however, made clear that while doing so the respondents while examining the case of the petitioner on merits will not be guided by the precedent of Sushri Pratibha Sahani unless they find the grant of A.C.P to her to be absolutely in accordance with law.”

On perusal of the order, it appears that the respondent authority has not considered the aspects of the matter whether the grant of B.A. trained scale was in upgradation of the scale or it was a promotion. The case of Sushri Pratibha Sahani was not considered as to whether the benefit that was given to her was in accordance with law or not. This aspect of the matter has not conveniently been dealt nor any finding has been recorded.

Counsel for the petitioner submits other teachers have been given the same benefit and those have been treated as a upgradation of the pay and not the benefit of promotion. In such view of the matter, it appears that the respondent authority has not decided the order impugned dated 07.05.2012 in terms of direction. The respondent authority is required to not only to verify the service book but also to decide enhancement of pay scale vide letter dated 28.11.1990 was by way of promotion or upgradation of scale of pay and also examine whether such benefit has been conferred to others. Let the respondent authority examine the case in the above observation and pass an order in accordance with law.

With this direction, the writ petition is allowed. The respondent authority will pass a fresh order in accordance with law within three months from the date of receipt/production of a copy of this order.

(Shivaji Pandey, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.10.2016
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