

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12535 of 2013

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Shyam Narain Kumar Son Of Sri Late Ram Chandra Kumar Resident Of 29,
Kautilya Nagar, P.O. Bihar Veterinary College, P.S. Patna Airport, District Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Education,
Government Of Bihar, Patna
2. Principal Secretary, Department Of Education, Government Of Bihar, Patna
3. Director (Admn) Cum Addl. Secretary , Department Of Education, Government
Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Thaku, Adv.
Mr. Shashank Shekhar, Adv.

For the Respondent/s : Mr. Indradeo Prasad, SC-27

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-09-2016

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

In the present case, the petitioner is challenging an order vide
Memo No. 1021 dated 4.4.2012 issued under the signature of Director,
Administration-cum-Additional Secretary, Department of Education,
Government of Bihar by which the claim of the petitioner for correction of
pay-scale has been rejected on the ground that the petitioner is facing
departmental proceeding and after disposal of the same, his case will be
considered.

Narrative facts are not required to be looked into. The
petitioner was appointed in the Bihar Education Service in the scale of pay
of Rs. 10,000-15,200/-. A question has been raised in the present



application whether the petitioner would be entitled to second ACP in the pay-scale of Rs. 14,300-18,300 or will be entitled to the scale of pay of Rs. 12,000-16,500. The petitioner and similarly situated persons were given second ACP in the scale of Rs. 12,000-16,500. They approached to this Court in CWJC No. 3358 of 2010 and the Court has mentioned details of the fact directed the Principal Secretary, Finance Department to examine the case of the petitioner and pass a reasoned order. In the reasoned order, it has been stipulated that after withdrawal of the scheme of selection grade, the original initial post was in the scale of 6,500 - 10,500/-. Though there is no cadre rule which provides the next stage of promotion, in such case, the Finance Department has taken care of that situation and has stipulated in Rule 3(2) that the financial progression would be given to the concerned employee into scale of pay in the existing promotional hierarchy prescribed in the cadre and for the purpose of ACP, scales of pay would be guide line mentioned in the Finance Department's resolutions and where the promotional hierarchy is not defined in the recruitment/service rules or where the promotional hierarchy consisted of less than two regular promotion grade, the two financial progression would be given under the ACP Scheme in the higher scales of pay as listed in schedule attached to this rules, after discussion arrived to the conclusion that the petitioner of that case were entitled to the 2nd time bound promotion in the scale of pay of Rs. 12,000-16,500/- as the Finance Department has taken view, even if there would have been a cadre rule, the second financial progression would be in the scale of 12,000-16,500/- not to 14,300-18,300/- scale. After



disposal, on the basis of direction, the matter was again placed for consideration in the same writ application and this Court did not concur with the view taken by the Finance Department and directed for fresh consideration. After that, the Finance Department issued a notification dated 30.12.2011, held that those who are in the Headquarter on commissioner level, will be entitled to the ACP in the scale of Rs. 14,300 - 18,300/- but, the rider has been provided that those who are facing departmental proceeding or criminal proceedings will only be entitled to the benefit of higher pay-scale of Rs. 14,300-18,300/- after disposal of criminal case. Here it is not in dispute that the petitioner has not been granted second ACP of 12,000-16,500 but, the question that has been posed for consideration is whether the rule for prohibiting the scale of pay of Rs. 14,000-18,000/- has its reasonableness and purpose or suffers from vice of arbitrariness. As per rule, it prescribes the person who is facing departmental proceeding will not be entitled to the ACP or promotion but, will be subject to disposal of those proceedings and this Court in the case of State of Bihar & Ors. Vs. Dhirendra Prasad Shrivastava passed in LPA No. 758 of 2015 has held that those who are facing departmental proceeding or criminal proceeding will not be entitled to the benefit of ACP but, here is the question that he has already been granted ACP and that has reached to its finality but, the question is only in what would be his scale of pay in 2nd ACP. In terms of Circular of the State Government or the Guideline, the deprivation has been postulated account of pendency of criminal or departmental proceeding, can not be subject matter of consideration as the

petitioner has already been granted the 2nd ACP but, it is not a deprivation that when he is already getting ACP, whether that should be corrected or not.

This Court is of the view that even if already a person has been given the benefit of ACP, there is no bar to make correction and pay the correct scale of pay. If some persons have been mentioned in the petition, has been claimed to the junior, have been granted the scale of pay of Rs. 14,000-18,000/-, in that view of the matter, this Court directs the Principal Secretary of the Finance Department to reconsider the case of the petitioner and decide the fate of the petitioner in the light of the observation given above.

With the aforementioned observation, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.10.2016
Transmission Date	