

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19307 of 2013

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Shri Krishna Singh S/O Late Radha Singh R/O Mohalla- Yadav Nagar, Ward No. 22, P.O+ P.S- Bikramganj, District- Rohtas.

.... Petitioner

Versus

1. The State Of Bihar
2. The Secretary, Water Resources Department, Government Of Bihar, Patna.
3. The Superintending Engineer, Water Resources Department, Dehri Onson, Rohtas.
4. The Superintending Engineer, Water Resources Department, Bhojpur, Ara.
5. The Superintending Engineer, Water Resources Department, Kaimur, Bhabhua.
6. The Executive Engineer, Revenue Division, Water Resources Department at Ara.
7. The Executive Engineer, West Sone High Level Canal Division, Water Resources Department, Kaimur, Bhabhua.
8. The Deputy Collector, Revenue Division, Sone Nahar, Pramandal, Ara, Bhojpur.
9. The Accountant General, Bihar, Patna.

.... Respondent

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Appearance :

For the Petitioner : Mr. Rakesh Narayan Singh, Advocate
For Respondents No.1 to 8 : Mr. Patanjali Rishi, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-12-2017

Heard learned counsel for the petitioner and State.

2. The petitioner has moved this Court for the following
reliefs :-

“I) That the order bearing memo no.636 dated 22.02.2011 passed by respondent Executive Engineer Sone Canal Division Bhabhua contained in Annexure-10 may be quashed and the respondents may be directed for calculating earlier 1719 days service of the petitioner rendered as seasonal



employee prior to his regularization and payment of T.A. as well as ACP.

II) That the respondents may be directed to return the security deposit made by petitioner along with interest.

III) That any other relief or reliefs may be allowed which may be just proper and equitable in the opinion of this Hon'ble Court."

3. The petitioner is aggrieved by non-grant of ACP which has been denied on the ground that he has not cleared the Departmental Examination. With regard to non-consideration of his total working days as 1719 as a seasonal employee, the authorities have restricted it to only 431 days on the ground that no records are available in the Department. Learned counsel for the petitioner submitted that with regard to ACP, the stand of the respondents is totally erroneous. It was submitted that passing of Departmental Examination is required as per the conditions of promotion only where the promotional post is existing. It was submitted that ACP Rules only talk about the person being otherwise eligible for regular promotion and also fulfilling the conditions of passing the Departmental Examination, if such condition exists for granting of promotion. Learned counsel submitted that in the present case, the petitioner was appointed as Seasonal Clerk and there is no



promotional avenue available from that post. It was submitted that once there is no promotional post available, there cannot be any condition of any requirement or eligibility criteria, much less, any requirement for passing any Departmental Examination. Learned counsel submitted that the issue has finally been settled by a Division Bench in the case of **Uday Shankar Prasad vs. The State of Bihar and others** reported as **2017(3) PLJR 824** in which it has been held that if there is a post without any promotional avenue, there cannot be any requirement for passing any Departmental Examination. He further submitted that the petitioner has given sufficient proof of him having worked from 1719 days as a seasonal employee but due to laches of the authorities, who are not looking into their own records, the benefit due to the petitioner is illegally being denied.

4. Learned counsel for the State submitted that the order passed in the case of **Uday Shankar Prasad** (supra) has not taken into consideration the earlier Division Bench judgment in the case of **Gorakh Nath Choudhary vs. The State of Bihar and others** in C.W.J.C. No.11713 of 2010 dated 27.09.2012 by which it has been held that all eligibility criteria required for regular promotion also applies for giving benefit of ACP, including passing of Departmental Examination. Learned counsel submitted that in such view of the matter, the judgment in the case of **Uday Shankar Prasad** (supra)



without noticing the judgment in the case of **Gorakh Nath Choudhary** (supra) is *per incuriam*. With respect to the number of days for having worked as seasonal employee, it was submitted that the same has been duly considered as per the available official records as well as materials submitted by the petitioner.

5. Having considered the matter, the Court finds that the petitioner is entitled for consideration of grant of ACP. The ACP Rules provide that all eligibility criteria, which may otherwise be prescribed for promotion, have to be adhered to and further, if, for regular promotion, passing of any Departmental Examination is required, then that shall also be a requirement for grant of ACP. The scheme itself is in contemplation of there being stagnation on account of lack of vacancies or want of promotional avenues. In the present case, it is not denied that there is no promotional post from the post of seasonal clerk and, thus, to that extent, any further promotion to the petitioner was not available in the existing scheme. Therefore, the requirement under the ACP Rules is satisfied to the extent that in the case of the petitioner, the scheme would be applicable for want of promotional avenue. Coming to the second aspect for grant of ACP, which relates to the person satisfying all the eligibility criteria provided for grant of regular promotion, the same is not a blanket term for the reason, that only when there is any promotional post



available, the question of fixing eligibility criteria for such promotion would arise. In the present case, there being no promotional post available, there is no question of there being any Rules or eligibility criteria prescribed for such promotion. Moreover, the ACP Rules itself contemplate that if in the promotional Rules, passing of Departmental Examination is necessary, the same shall also apply while giving benefit of ACP. In the present case, when there are no promotional posts available and thus no promotional Rules in the matter, obviously there cannot be any prescription or eligibility for passing any Departmental Examination. Thus, in that context, the petitioner was not required to pass any Departmental Examination for considering his case for grant of ACP. The Court is fortified in its view by the order of the Division Bench of this Court in the case of **Uday Shanker Prasad** (supra). As far as the stand of the learned counsel for the State, that the same has not considered the earlier Division Bench judgment in the case of **Gorakh Nath Choudhary** (supra) is concerned, the Court would only note the fact that the same was passed under a different factual background. In the case of **Gorakh Nath Choudhary** (supra), he was a Lower Division Clerk which clearly indicates that there were promotional avenues available to him and in that background, the Court had held, that all requirements for grant of regular promotion, passing of Departmental



Examination being one of them, were required to be fulfilled before grant of ACP. In the present case and in the case of **Uday Shankar Prasad** (supra), the person did not have any promotional avenue and in that background, it has been clarified that there being no promotional avenue, the question of there being any promotional Rules lying down any eligibility criteria, passing of any Departmental Examination could not be a condition precedent for considering grant of benefit under the ACP Scheme. Such view has been reiterated in a subsequent judgment of a Division Bench dated 20.09.2017 in L.P.A. No.1138 of 2014 in the case of **Shio Chand Gupta vs. The State of Bihar and others.**

6. Accordingly, the Court holds the petitioner entitled for consideration for grant of ACP under the scheme. The same shall be done within two months from the date of receipt of a copy of this order by the respondents no.3, 4 and 5.

7. Coming to the issue of the counting of the number of days the petitioner has claimed to have worked as seasonal employee, he shall be at liberty to file a detailed representation enclosing all supporting documents/materials available with him in support of his contention before the respondents no.3, 4 and 5 within four weeks from today. Upon the same being done, the authorities shall look into the matter and verify it with the official records. If the contention of



the petitioner is found to be correct, necessary orders shall be passed and benefit granted to him within two months thereafter.

8. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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