

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.421 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 16117 of 2012**

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Narendra Kumar, Son of Late Raghunath Sahai, Resident of Flat No. MIG-5, Barari
Housing Board Colony, Barari, Bhagalpur

.... Appellant/s

Versus

1. The State of Bihar Through The Secretary, Water Resources Department, Govt.
Of Bihar, Patna
2. The Chief Engineer, Water Resources Department, Bhagalpur
3. The Executive Engineer, Design Division No- 2 (Rupankan Pramandal No. 2),
Water Resources, Bhagalpur
4. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Choudhary
Mr.Nagendra Kumar

For the State : Mr. Madhav Prasad Yadav, GP-23.
Mr. Rajesh Kumar Sinha, AC to GP 23

For the Accountant General: Mr. Arun Kumar Arun

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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: 12-08-2016

The challenge in the present Letters Patent Appeal is to an order dated 21.01.2014 passed by the learned Single Bench of this Court in CWJC No. 16117 of 2012, whereby the claim of the appellant for grant of benefit of Assured Career Progression Scheme remained unsuccessful.

The appellant was appointed on daily wages as a



Chowkidar in the year 1973. Later, on 30.04.1974 the appellant was taken on work charged establishment. It was on 12th October, 1981, the appellant was appointed Correspondence Clerk. It was the said date, which according to the respondents, became relevant for grant of time bound promotion in terms of Circular dated 30th December, 1981 and 21st September, 1994.

The appellant earlier filed CWJC No. 14692 of 2008, challenging the cancellation of Time Bound Promotion granted to the petitioner on 02.11.2007. The said writ petition was allowed on 16th August, 2010 and first time bound promotion was restored with effect from 01.05.1984.

The subsisting grievance of the appellant is in terms of the Bihar State Employees Conditions (Assured Career Progression Scheme) Rules, 2003, (hereinafter referred to as “ACP Rules”) the appellant claims benefit of ACP Scheme from the date of his initial appointment, i.e. 01.05.1974. In the alternative, it is argued that the appellant is entitled to revised scale after completion of 12 years from the date he was given the time bound promotion.

On the other hand, the stand of the respondents in the counter affidavit is that the appellant was appointed in a regular establishment only on 12.10.1981. Therefore, the first time bound promotion was due on 12.10.1991. But in the light of the order of this

Court dated 16th August, 2010 as mentioned above, time bound promotion was granted to the petitioner with effect from 01.05.1984. In paragraphs 12 and 13 of the counter affidavit it has been asserted as follows:-

“12. That the scheme of assured career progression is governed by the Rules framed for the purpose, the assured career promotion Rules 2003, under which an employee is entitled to ACP on completion of 12 years and 24 years of service in the same pay scale, provided he fulfills all the qualifying criteria for such promotion enumerated in the rule. Rule 4 clause 4 (explanation) clearly stipulates that the period of service rendered as work charge establishment shall not be counted for the computation of period under assured career progression scheme and as such the petitioner’s period of service for computation of qualified years for consideration begins with 12.10.81, the date on which he was appointed as correspondence clerk in regular establishment, and as such the first A.C.P. fell due on 12.10.93 and second A.C.P. fell due on 12.10.05.

13. That Rule 4 Clause 5 stipulates that passing of prescribed departmental examination shall be essential condition for sanction of benefits under scheme. The petitioner had not passed the required departmental accounts examination nor had been exempted from the examination till 17.4.07, and as such he does not qualify to get benefits of the scheme prior to his exemption from the examination i.e. on 17.4.07.”

The learned Single Bench referred to Clause (5) of Rule 4 of the ACP Rules, 2003 which contemplates that conditions stipulated

for any promotion are required to be satisfied even for grant of ACP Scheme. Since the appellant has not passed the departmental examination for promotion, therefore, his entitlement for ACP Scheme would arise only after such condition was waived on 17th April 2007.

On the other hand, learned counsel for the appellant contends that once exemption has been given, then the appellant would be entitled to the benefit of ACP scale on completion of 12 years of service and not from the date of grant of exemption. The relevant clause of the Rules, i.e. Rule 4(5) reads as under:-

“(5) The prescribed requirement and mode of sanction of financial progression under the scheme shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies, if the Rules/Resolutions prescribe passing of the departmental examination of any qualification for promotion that shall also be a essential condition for sanction of benefit under the scheme. Provided that after completion of 12/24 years of service, the financial progression become due and for this, there shall be no bar of period prescribed for regular promotion.”

The letter of granting exemption bearing Memo No. 635/Stha. dated 17.04.2007, has been produced by the respondents as Annexure-A in the counter affidavit. The communication is to the effect that the appellant is exempted from qualifying the departmental

examination and that such order will be effective from the date of issuance of the letter. It is in the light of the exemption granted to the appellant, the date of grant of ACP scale is to be examined.

The condition for grant of ACP after completion of 12/24 years of service is passing of the departmental examination as if it is a condition for promotion. It could not be disputed by the appellant that passing of departmental examination was necessary condition for promotion from the post of Clerk which the appellant was holding in the year 1984. Therefore, without qualifying the departmental examination, the appellant was not eligible for ACP scale.

The exemption granted to the appellant specifically states that it shall be applicable with effect from 17.04.2007. Therefore, the appellant became eligible for promotion only after 17th April, 2007. Thus, he would be entitled to the benefit of first level ACP scale after having completed 12 years only on 17.04.2007.

Admittedly, the appellant has been conferred benefit of first and second ACP scale from 17.4.2007. Such grant of ACP scale cannot be said to be incorrect in any manner. Therefore, in the light of Rule 4(5) of the Rules read with the exemption communication dated 17.04.2007, the appellant will not be entitled to ACP scale from any earlier date. Such benefit has been rightly granted from the date of exemption from qualifying the departmental examination.

In that view of the matter, we do not find any merit in the present Letters Patent Appeal. The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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