IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1249 of 2015

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Git Govind Choudhary son of Late Chakradhar Pd. Choudhary, Resident of Village- Laurhiya, P.O. Madhodih, P.S. - Sangrampur, District -Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner - cum -Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. Commissioner cum Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Executive Engineer, Water Ways Division, Biharsharif, Nalanda.
4. Director, Revenue Administration, Water Resources Department, Govt. of Bihar, Patna.
5. Chief Engineer, Water Resources Department, Biharsharif, Nalanda.
6. District Provident Officer, Biharsharif, Nalanda.
7. The Accountant General (A & E), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Diwakar Prasad Karn, Advocate
For the Respondents No.1 to 6	:	Mr. Subhash Prasad Singh, G.A.-3
		Mr. Shiv Kumar, A.C. to G.A.-3
For the Respondent No.7	:	Mr.Satyendra Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-12-2016

Heard learned counsel for the parties.

2. The petitioner was appointed as a Seasonal Moharrir in the year, 1966 and worked in the said capacity until his regular appointment on permanent post of clerk in the year, 1977 in the office of the Deputy Collector, Revenue Division, Tarapur, Munger. He has retired on 31st December, 2001 from the office of the Executive Engineer, Water Ways Division, Biharsharif, Nalanda. After retirement, the retiral benefits were paid by the respondents to the petitioner on the basis of service rendered by the petitioner from the date of appointment on the post of clerk since June, 1977 until his retirement on 31st December, 2001.

3. The contention of the petitioner is that the service rendered by the petitioner prior to June, 1977 i.e., the period during which he worked as a Seasonal Moharrir has not been taken into account while calculating his retiral benefits.

4. The further grievance of the petitioner is that the respondents have not calculated and fixed his retiral benefits in the scale of Rs.4,000/- to Rs,6000/- after providing benefits of assured career progression (ACP) scheme.

5. In this regard, the petitioner had earlier filed a writ petition before this Court vide C.W.J.C. No.12360 of 2012 which was disposed of on 18.9.2012 with a direction to the petitioner to file a representation before the authority and the respondents were directed to decide the representation of the petitioner within three months from the date of its filing. In the light of the order passed in C.W.J.C. No.12360 of 2012, the petitioner filed a representation before the Chief Engineer, Water Resources Department, Patna for grant of ACP. The said representation of the petitioner was rejected vide order dated 28.6.2013 as contained in Annexure-4 to the present writ petition on the ground that while in service the petitioner had failed to pass the Accounts Examination.

6. The petitioner has assailed the aforesaid impugned order on the ground that for grant of ACP there is no requirement to pass the Accounts Examination. He has contended that similarly situated some other persons, who had not passed the Accounts Examination have been granted ACP by the same Department. It is submitted that the decision of the respondents not to grant the benefit of ACP to the petitioner is wholly illegal and arbitrary.

7. On the other hand, learned counsel for the State has submitted that there is a government resolution dated 26.2.2010 as contained in Annexure-A to the counter affidavit not to grant ACP to the employees without passing the Departmental Accounts Examination and, hence, no ACP can be granted to the petitioner as he had failed to pass the Departmental Accounts Examination while he was in service. He has contended that the decision taken by the respondent- Chief Engineer, Water Resources Department, Patna, is justified in view of the government resolution dated 26.2.2010.

8. I have heard learned counsel for the parties and perused the record.

9. The State of Bihar has framed the Bihar Board's Miscellaneous Rules, 1958 (for short 'the Rules'). The said Rules are applicable to all the subordinate officers under the State Government to the extent they are not inconsistent with any instruction specially issued by the department concerned in relation to any particular office. The Rule 157 of the said Rules mandates that Accounts Examination is a condition precedent for promotion. Clause (J) of sub-rule (3) of the said Rule 157 makes passing of the Accounts Examination a condition precedent for confirmation; for crossing the efficiency bar; and for promotion to the selection grade.

10. The Clause (J) of Sub-Rule (3) of the said Rule 157 reads as under:

> ***"(J)(a) Any clerk, who has not passed the preliminary examination in Accounts, will be neither confirmed nor be allowed to cross the efficiency bar;***
>
> ***(b) A clerk, who has not passed the final examination, will not be promoted to the Selection grade;***
>
> ***(c) In case of non-availability of senior clerk, finally passed in Accounts Examination, any junior clerk, having passed the final Accounts Examination may be temporarily promoted to the Selection Grade:***
>
> ***Provided that the junior clerk temporarily promoted to the Selection grade shall be reverted to the post of clerk if the clerk senior to him passes the final Accounts examination***

> ***within two years from the date of his first supersession and is promoted with effect from any date within the said two years, otherwise the senior clerk would be treated junior to all the clerks promoted to the Selection grade prior to him."***

11. Thus, it would be evident from reading of the aforesaid Rule that without passing the preliminary examination in Accounts a clerk would be neither confirmed nor allowed to cross efficiency bar. Further, a clerk, who has not passed the final examination in Accounts, cannot be promoted to the Selection Grade.

12. The issue involved in the present case was also considered by a Division Bench of this Court in ***State of Bihar vs. Kusheswar Nath Pande***y since reported in ***2013(1) PLJR 939***. Considering the provisions prescribed under Rule 157 of the Rules, the Bench held that passing of the Accounts Examination is a condition precedent for promotion to a higher post or promotion to a higher grade under time bound scheme.

13. Admittedly, the petitioner of the present case has not passed the Departmental Accounts Examination. In view of the binding precedent and in view of the Rule 157 of the Rules, the petitioner is not entitled to receive the benefit of ACP. Accordingly, the order impugned passed by the respondent- Chief Engineer, Water

Resources Department, Patna cannot be faulted with.

14. In view of the discussions made above, the writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	------
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