

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18923 of 2015

=====

1. Ram Param Purushottam S/o Late Ramchandra Prasad Resident of Muhalla - Mohanpur, Punaichak, P.O. - Shastri Nagar, P.S. - Shastri Nagar, District - Patna.
..... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Govt. of Bihar.
2. Under Secretary, Mines and Geology Department, Govt. of Bihar.
3. The Director, Mines and Geology Department, Govt. of Bihar.
4. Mineral Development Officer, Munger.
..... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bindhyachal Rai
For Mines Deptt. : Mr. D.K.Sinha, Sr. Advocate
Mr Rajendra Prasad, Spl. PP Mines
For the State : Mr Anuj Kumar, AC to GP 24

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 11-08-2016

The decision contained in Annexure- 1, dated 31.7.2015 issued under the signature of the Under Secretary, Department of Mines and Geology, Government of Bihar is the cause of action for the petitioner to approach the High Court. By virtue of this decision, the respondent authorities have decided not only to annul the benefit of 1st ACP granted to the petitioner but also decided to effect recovery.

The short facts are that the petitioner was appointed as a Clerk some time in the year 1987 and worked in that capacity in the office of District Mining Officer, Munger. He was granted benefit of 1st ACP on 25.11.2004 with effect from 9.8.1999 as part of the benefit of stagnation after the ACP Rules 2003 became effective from

9.8.1999. No doubt, the petitioner has derived the advantage of such grant all along and he is on the verge of superannuation.

Preparatory to retirement naturally the authorities start looking into the service book of such employees to work out their retiral dues and claims. During that course of examination it transpired that the petitioner was not eligible to be granted the benefit of 1st ACP at all because he had not passed the departmental accounts examination. Clarification was sought and it has emerged that some time in the year 1992, the petitioner had appeared in the departmental examination for accounts but he had not cleared his 1st paper though he did qualify in the 2nd paper. The result of the petitioner in the 1st paper was provisional and it was obligatory upon him to pass the 1st paper again meaning thereby that overall the petitioner had not passed the departmental examination which could entitle him for consideration for grant of benefit even under the ACP Rules.

In the writ application a pleading was made about participation and a plea is further taken that since the petitioner was never informed as to the outcome of the examination, he was unaware of the position and he was under the impression that he had already cleared the examination, therefore, never bothered to participate in yet another examination to clear paper I of the accounts examination. Such a plea cannot come to the rescue of the petitioner because burden of finding out the end result of the examination has to be on

the examinee and not the examiner. The petitioner cannot claim that since results are communicated to the department, he was unaware of the position. Since passing of the departmental examination is a must, therefore, the petitioner has to ensure about its outcome.

How the petitioner managed to beget the benefit of ACP despite the above position is not required to be really investigated. There are one to many reasons as to the people like petitioner do manage to earn such benefit without verifying all the factual position.

It is also of significance that the ACP Rules is a statutory kind and anybody claiming benefit under the said scheme has to fulfill the requirements laid down under that scheme. Rule 4 (5) of the 2003 Rules clearly lay down that all the employees have to fulfill the eligibility which is required for substantive promotion, even in the case of grant of benefit of promotion under stagnation scheme. This position stands and so long as that provision is not amended or read down or struck down a person cannot be allowed to derive benefit contrary to the statutory requirements.

Because of the confusion sought to be created on behalf of the petitioner as to the decision taken for such grant, the Court also directed the respondents' counsel to produce the original service book of the petitioner to verify the entries made therein. From a reading of the service book, it is evident that the benefit so given to the petitioner was provisional and subject to confirmation and verification by the



Finance Department. Even if for the sake of argument it is accepted that the benefit was granted by the competent authority, he has done so by ignoring or violating the requirements laid down under the ACP Rules. The State cannot be bound by an illegal decision taken by any of the subordinate authorities especially if certain statutory requirements are required to be met.

It is in this background that Annexure- 1 has come to be passed. Counsel for the petitioner thereafter submits that since this finding was given quite some time back and the petitioner is on the verge of retirement, therefore, the recovery ought not to be made and in this regard he is seeking shelter under a recent Supreme Court decision, which is case of *State of Punjab & others v. Rafiq Masih (White Washer) & others, reported in (2015) 4 SCC 334*. Counsel for the petitioner further also wants to take advantage of a decision rendered by this Bench in the case of *Krishna Nandan Prasad v. State of Bihar, reported in 2016 (1) PLJR 769*.

With due respect to learned counsel for the petitioner, none of the two decisions can help the petitioner in overcoming the rigours of recovery for the simple reason that if a person has derived advantage from a statutory provision, the requirement of the statute must be fulfilled. The benefit of ACP cannot be granted by any authority under the State contrary to the statutory provision and requirement.

Even till today there is no dispute about the fact that the petitioner has not passed the departmental examination which can make him eligible for grant of benefit of ACP. Even now, mere length of service does not make a person eligible. Something more is also required to be done and achieved by that employee before he can derive benefit of such statutory scheme.

If this is so, there is no occasion for this Court to make any exception for the petitioner. If the petitioner was not eligible, he ought not to have been granted the benefit contrary to the Rule. Therefore, the Court will not allow any interference with the decision contained in Anenxure-1 taking cue from the ratio laid down by the Hon’ble Apex Court in the case of Rafiq Mesih (supra) as is the stand of the petitioner’s counsel.

Writ application has no merit. It is dismissed.

The original service book is returned to the counsel for the respondents.

(Ajay Kumar Tripathi, J)

sk

AFR/NAFR	AFR
CAV DATE	
Uploading Date	16.8.2016
Transmission Date	