

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10868 of 2013

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Ramakant Prasad, S/O Late Bhabhichhan Singh R/O Villge-Kool, P.S.- Nalanda,
District- Nalanda, Presetnly Posted As Panchayat Sachiv Hilsa Block, Nalanda

.... Petitioner

Versus

1. The State Of Bihar, through the Principal Secretary, Panchayat Raj Department,
Govt. Of Bihar, Patna
2. The District Magistrate, Nalanda
3. The District Panchayat Raj Officer, Nalanda
4. The Block Development Officer, Hilsa, Nalanda

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh,

For the Respondent/s : Mr. Wasim Ahmed Khan, A.C. to S.C.-25

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19-09-2016

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

2. In this case, the petitioner has sought first and second
A.C.P. and M.A.C.P. from 26.10.2001 to 26.10.2009.

3. The petitioner was appointed as Panchayat Sevak and
became Panchayat Secretary on 26.1.2009. The petitioner claimed
that he has unblemished record and has discharged the duty very
diligently.

4. The petitioner is claiming that though he is entitled to the A.C.P. and M.A.C.P. but the respondent-authority has refused the same.

5. In the counter affidavit filed by the State, taking plea that petitioner cannot be given the benefit of A.C.P. or M.A.C.P. as he is facing a departmental proceeding.

6. A short but very important question has been raised by the State, as aforesaid. In support of the same, learned counsel for the State has placed reliance on the judgment of the Division Bench of this Court passed in L.P.A. No.758 of 2015 (The State of Bihar & Ors. vs. Dhirendra Prasad Shrivastava), where identical issue was raised and the Court has held that even if a person has become entitled to the A.C.P. earlier but on the date of the consideration of the benefit, if any departmental proceeding is pending against the said employee, such benefit can not be extended.

7. It will be relevant to quote relevant portion of the judgment, which reads as under:-

“Having considered the rival contentions, we find force in the submissions of learned counsel for the appellants. The ACP Rules came only in the year 2003 and much prior to that, in the year 2001 itself the respondent was suspended and departmental proceeding initiated against him. Thus,



*even though the effective date of grant of 2nd ACP to him would technically be from the year 1999 but on the date of consideration, which obviously is after 2003 when the ACP Rules came into force, the respondent stood disentitled to grant of regular promotion in view of his suspension and pending departmental proceeding in light of the resolution of the State Government bearing No. 7457 dated 11.09.2002. Thus, though the case of the respondent was considered thrice by the Screening Committee, but on 25.11.2006 his case was not recommended due to pendency of the departmental proceeding and again on 02.11.2007 on account of pendency of departmental proceeding and vigilance case and finally on 18.08.2010 due to punishment having been awarded to the respondent. We do not find such action of the authorities is arbitrary or unreasonable. The fact that first order of punishment dated 13.09.2004 has been interfered with by a Bench of this Court is not relevant since at the relevant time when the case of the respondent was being considered for grant of 2nd ACP, cogent material existed before the Screening Committee not to recommend his case. Moreover, we may observe here that learned Single Bench has interfered with the punishment order dated 13.09.2004 only on a technical aspect, since the disciplinary authority had not given notice to the respondent along with reasons for differing with the report of the Enquiry Officer and affording an opportunity to show cause, which cannot be said to giving a clean chit and exonerating the respondent of any misconduct. The decision relied upon by learned counsel for the respondent in the case **K.K. Chaubey** (supra) related to the writ petitioner, who was a Judicial Officer, where the Court had held that the evaluation committee had not considered his entitlement for*



*grant of ACP as the same was only to assess whether he should be allowed the benefit of extended service upto 60 years or made to superannuate on completion of the normal age to superannuation. Moreover, the Government resolution No. 7457 dated 11.09.2002 has not been noticed in the said order which is relevant for the purposes of consideration of the present case. The decision relied upon by learned counsel for the appellants in the case of **Samrendra Singh** (supra) does cover the issue involved in the instant case to the extent that if there is departmental proceeding or criminal case pending on the date of consideration of grant of ACP, the person shall not be entitled to such benefit.”*

8. In such view of the matter, the mandamus cannot be issued, but from the record it appears that “Prapatra-K” has been issued in the year 2014 and even after lapse of two years a petty matter relates to giving the charge to the successor, is pending for consideration.

9. In such view of the matter, the respondent- authority is directed to complete the inquiry pending against the petitioner within a period of one month from the date of receipt/production of a copy of this order and consider the case of the petitioner for granting A.C.P. and M.A.C.P. within a period of two months thereafter.

10. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	28/09/2016
Transmission Date	