

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2475 of 2013

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1. Baidya Nath Jha Son Of Late Sadanand Jha Resident Of Badi Patandevi Colony,
Building Of Mohan Sinha, Patna City, P.S.- Alamganj, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary-Cum-Finance Commissioner, Finance Department,
Government Of Bihar, Patna
3. The Director (Press And Stationery), Finance Department, Government Of
Bihar, Patna
4. The Deputy Secretary (Press And Stationery) Finance Department, Government
Of Bihar, Patna
5. The Superintendent, Secretariate Press, Government Of Bihar, Gulzarbagh,
Patna
6. The Deputy Superintendent, Secretariate Press, Government Of Bihar,
Gulzarbagh, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ANJU JHA, Adv.

For the Respondent/s : Mr. Mithilesh Kumar Upadhyay, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-01-2016

Heard counsel for the petitioner and the State.

The dispute between the parties is about the date of
fixation of ACP to the husband of the petitioner, as he has been
granted 2nd ACP with effect from 1st July 2005 and 3rd ACP with
effect from 1st July 2011 but as per counsel for the petitioner, the 1st
ACP should have been given with effect from 9th August 1999 and the
3rd with effect from 1st January 2009.

Short facts of the case is that the husband of the
petitioner was appointed as Compositor in Secretariat Press,



Gulzarbagh on piece rate basis with effect from 14th August 1974. Later on, vide Resolution of the Finance Department dated 20th October 1978 (Annexure-3), all the persons who were working on piece rate basis as compositor were brought in the regular scale of Rs.220-315 with effect from 1st June 1976. Again vide letter dated 18th July 1981, husband of the petitioner was appointed as Corrector in the same pay scale of Rs.220-315/- with effect from 1st July 1981.

The Government has addressed the issue with regard to grant of time bound promotion with respect to person employed on piece rate basis brought in regular pay scale, the Finance Department, Govt. of Bihar issued letter dated 19th May 1987 (Annexure-6) whereby and whereunder for the purpose of granting time bound promotion 1st entry on piece rate would be taken into consideration.

Petitioner was granted 1st time bound promotion vide Annexure-5 dated 14th June 1989 with effect from 18th September 1984 but the financial benefit was given with effect from 19th May 1987. The Government of Bihar after abolishment of time bound promotion scheme, brought ACP Scheme of 2003 whereby it has been provided that 1st ACP will be granted after completion of 12 years of service and 2nd after completion of 24 years and later on the Government has modified the scheme by MACP (ACP modified

scheme) of 2010 whereby the benefit of 3rd ACP was given after completion of 30 years.

It appears that one Bipin Bihari Choudhary had moved before this Court in CWJC No. 14285 of 2009 for the purpose of grant of ACP in terms of ACP Rules, in pursuance thereof, petitioner's husband and others were granted 1st and 2nd ACP with effect from 9th August 1999 but the petitioner's husband and others were not granted any financial benefit and for that petitioner approached this Court in CWJC No. 9816 of 2012 which was disposed of on 16th July 2012 (Annexure-9) with a direction to the authority concerned to consider the case of petitioner's husband and in pursuance thereof the Government of Bihar issued the impugned Office order dated 21st November 2012 by which the Government has modified the date of 2nd ACP and 3rd ACP to his prejudice and made them effective from 1st July 2005 and 1st July 2011 respectively.

Counsel for the petitioner submits that the action of the authority in changing date s of 2nd and 3rd ACP to his prejudice is not proper and justified and the same is illegal and wrong as the 2nd ACP should be made effective with effect from 9th August 1999 and the 3rd ACP be given with effect from 1st January 2009 as the petitioner's husband had completed 24 years of service in the year 1998 treating his entry in piece rate category, as first entry as such, he is entitled to

3rd ACP with effect from 1st January 2009.

Counsel for the State submits that the entry in service will be treated from the date the husband of the petitioner came in the regular scale i.e. with effect from 1st July 1981 as it makes it clear that he has been made regular from the aforesaid date, as such, the Government has not committed any illegality in fixing the 2nd and 3rd ACP of the husband of the petitioner.

Having considered the rival contention of the parties, it is amply clear that the petitioner had entered in service as a piece rate employee with effect from 14th September 1974 and in terms of Annexure-6, the Government has taken a policy decision that the persons working on piece rate basis as compositor later on brought to the regular pay scale for the purpose of granting financial benefit by way of time bound promotion, his first entry will be treated from the date of entry as piece rate basis.

In view of the decision of the State Government, the State Government cannot say that his first ACP will be computed from 1st July 1981 in stead of his entry on 14th September 1974. Ino such view of the matter, this Court finds that the Government has committed illegality in fixing 2nd and 3rd ACP of husband of the petitioner, as such, the respondents concerned are directed to make necessary correction in the dates with regard to granting ACP to the

husband of the petitioner.

Accordingly, the order dated 21st November 2012 (Annexure-1` and 10th December 2012 (Annexure-1/A) are quashed and the respondents are directed to pass fresh order making correction in the light of observations made above and issue the correct necessary order within a period of six months from the date of receipt/production of copy of this order.

With the above observation and directions, this petition is allowed.

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(Shivaji Pandey, J)