IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13903 of 2013

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Madhubala Sinha W/o Late Ashok Kumar resident of mohalla- Bhawanipur Zirat (Opp. The Central Co-Operative Bank, Motihari), P.O.- Motihari, P.S.- Chhatauni, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar, Secretary, R.C.D. Bihar Patna
2. The Superintending Engineer, N.H. Circle, Muzaffarpur
3. The Executive Engineer, N.H. Division, Motihari

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Priyadarshi
For the Respondent/s : Mr Anirban Kundu, SC-24
Mr. Kumar Mangalam, AC to SC 24

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-10-2016

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

In this case, the petitioner, who is wife of late Ashok Kumar, has claimed for grant of ACP in terms of 2003 ACP Scheme.

The husband of the petitioner was appointed as Correspondence Clerk on 27.04.1975, vide letter no. 222, issued by the Executive Engineer, N.H. Wing, Design and Quality Control, Division No. 6, Gaya, he passed the Hindi Noting and Drafting Examination on 20.02.1977. The respondent granted the 1st ACP to him, but later on, it transpired that he could not clear the Accounts Examination hence, grant of 1st ACP to him, was treated to be illegal and passed the order dated 1st June 2009 (Annexure-B) thereby directed for recovery of the amount whatever has been paid on account of grant of ACP.

The counsel for the petitioner submits that as the husband of the petitioner had passed the Hindi Noting and Drafting Examination, is sufficient for entitlement of the benefit of ACP, but wrongly order has been passed.

As per the 2003 ACP Scheme, the person would be entitled to the benefit of ACP subject to the condition that he must satisfy all the conditions for the regular promotion, it is not only required to pass the Noting and Drafting Examination, but also to clear the Accounts Examination.

Admittedly the husband of the petitioner did not clear the Accounts Examination and as such, it cannot be assailed that the action of the respondent authority in withdrawing its earlier decision, thereby withdrawn the benefit of ACP, cannot be faulted and consequential recovery cannot be treated to be illegal. It is also relevant to notice that the order has been passed, vide Memo no. 727 dated 1st June 2009, but the husband of the petitioner did not challenge the same during his life time.

In such view of the matter, this Court does not find any merit in the present case and the same is, accordingly, dismissed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
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