

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14455 of 2013

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Rajnish Kumar S/O Late Ram Naresh Sharma R/O Village- Jamuawan, P.O.-
Tajpur, P.S. Khizersarai, District- Gaya, Present Residing At Yamuna Colony, Beur
Akhadapar, Beur, P.S.- Beur, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary To The Government Of Bihar,
Patna
2. Principal Secretary, Water Resources Department, Anisabad, Government Of
Bihar, Sinchai Bhawan, Patna
3. Joint Secretary, Water Resources Department, Anisabad, Government Of
Bihar, Sinchai Bhawan, Patna
4. Under Secretary, Water Resources Department, Anisabad, Government Of
Bihar, Sinchai Bhawan, Patna
5. Chief Engineer, Water Resources Department, Anisabad, Government Of
Bihar, Sinchai Bhawan, Patna
6. Technical Secretary To The Chief Engineer, Water Resources Department,
Anisabad, Government Of Bihar, Sinchai Bhawan, Patna
7. Superintending Engineer, Design, Planning And Monitoring, Anisabad, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Mishra, Adv.

For the Respondent/s : Mr. Prabhat Kumar, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-02-2016

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

In this writ application, the petitioner has raised a very
limited question as with regard to entitlement of 2nd A.C.P. and 3rd
A.C.P. as the respondents have not taken into consideration the period

the father of the petitioner discharged his duty in the Work Charge Establishment.

The father of the petitioner was appointed in the Work Charge Establishment as a Supervisor on 19.12.1971 and was regularized as a Correspondence Clerk with effect from 15.4.1982 and had died on the said post on 18.7.2010. The question is only limited to the extent that the Chief Engineer vide Memo No. 7830 dated 4.10.2006 has granted large number of persons including the petitioner the benefit of 1st and 2nd A.C.P. and the name of the father of the petitioner stands at serial no. 90. It is also evident that the father of the petitioner was granted 1st A.C.P. and 2nd A.C.P. with effect from 9.8.1999 and later on the Chief Engineer, Water Resources Department vide letter dated 7.12.2006 (Annexure-4) modified the earlier order and thereby made the father of the petitioner is entitled to 2nd A.C.P. from 15.4.2006 instead of 9.8.1999 on the ground that the period of duty discharged in Work Charge Establishment was not taken into account while granting the benefit of A.C.P. Learned counsel for the petitioner has shown the provision of A.C.P. Rule, 2003 which has been made effective from 1999. Clause 4(ii)a of the aforesaid Rule provides that the person, who has been regularized, the duty discharged earlier on Work Charge Establishment, will be reckoned for the purpose of granting benefit of A.C.P. supported his

argument by placing reliance on the notification dated 23.6.2006 (Annexure-2). Clause 4(ii)a of the aforesaid Rule, 2003 reads as follows:-

“4(ii)a The tenure of service as workcharged shall be counted for ACP for these employees who have been regularized from workcharged.”

This notification was issued by the Finance Department where itself has been clarified that the period spent as a Work Charge Employee will be also taken into consideration for the purpose of A.C.P. It appears that under the wrong notion, the Chief Engineer, while passing the impugned order dated 7.12.2006, has wrongly refused to take into consideration the period spent by the father of the petitioner as Work Charge Employee rather he ought to have taken into consideration that periods so much so before passing he impugned order, as per the learned counsel for the petitioner was never given any notice either to the father of the petitioner or his successor and the same has been passed behind their back which also violates the provision of natural justice.

Looking to the entire facts and circumstances of the case, this Court is of the view that the impugned order dated 7.12.2006 is not sustainable in law. Accordingly, the impugned order dated 7.12.2006, with respect to the petitioner, is hereby quashed and the Chief Engineer, Water Resources Department, for the purpose of

A.C.P., is directed to take into consideration the period rendered by the father of the petitioner in the Work Charge Establishment.

With the aforementioned observation and direction, this application is disposed of.

(Shivaji Pandey, J)

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