

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6865 of 2012

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Zila Parishad Rohtas Karamchari Ekai Sangh, Rohtas, Sasaram Through Its
Chairman Rajkishore Singh Son Of Late Kamta Singh
2. Shrawan Ram Son Of Late Shyam Lal Ram Resident Of Village-Simri, P.O.
Sikaria, P.S. Sheosagar, District-Rohtas

.... Petitioners

Versus

1. The State Of Bihar Through The Secretary, Panchayati Raj, Government Of
Bihar, Patna
2. The Secretary, Panchayati Raj Department, Government Of Bihar, Patna
3. Director, Panchayati Raj Department, Government Of Bihar, Patna
4. Deputy Development Commissioner-Cum-Chief Executive Officer, Zila
Parishad, Rohtas, Sasaram

.... Respondents

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Appearance:

For the Petitioners : Mr. Y.V.Giri, Senior Advocate
Mr. Nikhil Kumar Agrawal, Advocate
For the Respondents : Mr. Rajesh Kumar, AC to GP 3

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 19-07-2017

Heard learned counsel for the petitioners and learned
counsel for the respondents.

I.A. No. 6536 of 2014

2. The above interlocutory application has been filed
for amendment in the writ petition by adding the following prayers:

*"1(v) To issue an appropriate writ/order/direction in
the nature of Mandamus directing the Respondents to
immediately implement the decision taken in the
special meeting of the Zila Parishad convened on
15.02.2014 whereby it was decided to give the benefit*



of ACP Scheme to the employees of Zila Parishad, Rohtas, Sasaram.

(vi) To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondents to grant the benefit of Assured Career Progression Scheme to the employees of Zila Parishad, Rohtas, Sasaram from 11.03.2008 and to refund the amount recovered from the employees subsequent to passing of the order dated 14.02.2012 by Respondent No. 4."

3. Having regard to the nature of the prayer, the Interlocutory Application is allowed and treated as part of the writ petition.

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4. The present writ petition has been filed for quashing the letter no. 54 dated 14.02.2012 by which the respondent no. 4 has stopped the benefit of Assured Career Progression Scheme (for short "the ACP Scheme") to the ministerial staff of the Zila Parishad; and for connected reliefs.

5. The short facts of the case according to the petitioner are that as far back as in the year 2008, an in-principle decision was taken by the Zila Parishad, Rohtas, Sasaram vide Memo No. 257 dated 11.03.2008 (Annexure-1) that the benefit of the ACP scheme be made available to the ministerial staff of the Zila Parishad,



and payment of such benefits would be made from the fund of the Zila Parishad in contemplation of approval from the Panchayati Raj Department. This decision was unanimously approved by the general standing committee (hereinafter the 'committee') of the Zila Parishad in its meeting dated 14.06.2008 vide memo no. 892 dated 11.07.2008 (Annexure-2). In view of such decision, all the employees of the Zila Parishad began receiving the benefits under the ACP Scheme until all of a sudden, the Deputy Development Commissioner (the 'DDC') by his impugned letter No. 54 dated 14.02.2012 (Annexure-3) directed stoppage of the benefit of the ACP to the employees, reverting them to their old scale. Pursuant to such impugned order, the benefits of the ACP scheme received by all the employees were fully recovered from them. The Chairperson of the general standing committee of the Zila Parishad by her letter dated 17.02.2012 (Annexure-5) directed the DDC to recall his order dated 14.02.2012, but instead of complying with the said direction, the DDC wrote to the Director, Panchayati Raj Department seeking guidelines in the matter. In turn, the Panchayati Raj Department by its letter dated 30.10.2013 (Annexure-7) observed that the Finance Department had clarified that the Zila Parishads may adopt the ACP Rules subject to the condition that the benefits thereunder would be paid out of the funds of the Zila Parishad and no financial support would be made available by the State Government.



Pursuant to the letter dated 30.10.2013, the committee in its meeting dated 15.02.2014 (Annexure-8) once again unanimously accepted the proposal to adopt the ACP Rules in respect of all its employees.

6. Learned counsel for the petitioners submits that the impugned order dated 14.02.2012 passed by the DDC is wholly arbitrary and illegal and cannot be sustained in law. It is submitted that once the proposal for adopting the ACP scheme was accepted in the Zila Parishad in its committee meeting dated 11.07.2008, pursuant to which the petitioners also started receiving the benefits of the ACP, the DDC all by himself could not have undone the decision of the Zila Parishad committee. That apart, the impugned order having adverse consequences had been passed without any show cause notice to the affected persons. Even the direction of the Chairperson of the Zila Parishad committee to recall his order was not followed by the DDC. In any event, it is submitted that without doubt, the petitioners are eligible for the benefit of ACP in view of the subsequent development by way of the letter dated 30.10.2013 (Annexure-7) issued by the Panchayati Raj Department granting approval subject to the condition that the burden of ACP would be borne by the Zila Parishad itself, and which was unanimously adopted in the Zila Parishad committee's meeting dated 15.02.2014.

7. Learned counsel for the respondents refers to the



counter affidavit to support the impugned order of the DDC on the basis of instructions contained in letter no. 6138 dated 03.12.2008.

8. In reply, learned counsel for the petitioner submits that reliance placed on behalf of the State on letter No. 6138 dated 03.12.2008 is misconceived, inasmuch as even prior to the said letter, the committee in its meeting dated 11.07.2008 had already approved the proposal for grant of ACP to its employees. It is submitted that this was in pursuance of Rule 7(7) of the Bihar Panchayat Samiti & Zila Parishad (Conditions of Service) Rules, 1964 (hereinafter referred to as 'the Rules') (Annexure-4) which contemplates similar service conditions as available to the State Government employees with the exception of pension.

9. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. The Rules governing the service conditions of the employees of the Zila Parishad (Annexure-4) provide for similar service conditions as in the case of State Government employees. The Zila Parishad committee in its meeting held on 11.07.2008 had already adopted the ACP Rules for the benefit of its employees and hence the reliance placed by learned counsel for the State on the subsequent letter dated 03.12.2008 would not be of much relevance. Moreover, a decision having been taken by the general standing committee of the Zila Parishad of which the DDC



was a member, could not have been undone or overridden unilaterally by the DDC acting by himself. The subsequent letter dated 30.10.2013 (Annexure-7) issued by the Panchayati Raj Department also granted conditional approval for grant of ACP benefits to the employees of the Zila Parishads which was duly adopted by the general standing committee in its meeting dated 15.02.2014.

10. In the above view of the matter, the decision of the general standing committee of the Zila Parishad in its meeting dated 11.07.2008 to adopt the ACP scheme cannot be said to be contrary to law. The impugned order dated 14.02.2012 has been passed without any show cause to the employees of the Zila Parishad nor any reasons assigned for directing stoppage of the ACP benefits of the employees. The DDC could not have passed orders contrary to and negating the decision of the general standing committee.

11. The impugned order dated 14.02.2012 passed by the DDC as contained in Annexure-3 of the writ petition is accordingly set aside with consequential effect. It is further directed that having regard to the principles laid down in the case of *State of Punjab and Ors. vs. Rafiq Masih (White Washer)*, (2014) 8 SCC 88, the Respondent no. 4 (Deputy Development Commissioner – cum - Chief Executive Officer, Zila Parishad, Rohtas, Sasaram) is accordingly directed to ensure payment of ACP benefits, as well as refund of the amounts



recovered on this account in the past, to the employees expeditiously, and in any event within a period of three months from the date of receipt/production of a copy of this judgment.

12. The writ petition stands allowed.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.07.2017
Transmission Date	N.A.

