IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20618 of 2010

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1. Shatrudhan Choudhary Son of late Raghuvir Choudhary Resident of Village- Kalwari Chandravan, P.O. Kalwari Chandravan, P.S. Kanti , District- Muzaffarpur.
2. Tribhuwan Bhakt Son of late Raghuni Bhakt Resident of Village- Jalil Nagar, P.O. Lalu Chapra Via - Saria Kothi, P.s. Paru, District- Muzaffarpur.
3. Abdul Jabbar S/O Late Akbar Ali R/O Vill.-Paru, P.O. Par, P.S. Paru Distt.- Muzaffarpur
4. Yogendra Prasad Son of Late Balchan Mahto Resident of Village- Doma Pokhar, Hanuman Mandir Road, P.O . & P.S. Town Muzaffarpur, District- Muzaffarpur.
5. Habibun Nisha Wife of late Jamil Ahmad Resident of Village-Repura, P.O. Vishudutpur, Via- Batahi, P.S.Kanti, District- Muzaffarpur.
6. (a) Radha Devi, wife of late Sudish Narayan Thakur
   (b) Santosh Kumar son of late Sudish Narayan Thakur
   (c) Amaresh Kumar Thakur, son of late Sudish Narayan Thakur

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Registration, Excise and Prohibition Department, Government of Bihar, Patna
2. The State of Bihar through the Secretary Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. Inspector General of Registration, Bihar, Patna.
4. Inspector General of Registration, Bihar, Patna
5. Assistant Inspector General of Registration, Bihar, Patna.
6. Assistant Inspector General of Registration, Bihar, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Raju Giri, Adv.
For the Respondent/s : Mr. Ram Balak Mahto, AG
Mr. Pranav Kumar, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-05-2017

Heard Mr. Y.V. Giri, learned Senior Counsel appearing for the petitioners who appears with Mr. Pranav Kumar learned Advocate on record and Mr. Krishna Chandra, A.C. to Advocate General.

The writ petition is another addition to the chain of unwarranted litigation. A thoroughly confused stand of the State opposes the relief prayed in the writ petition.

The petitioners pray for issuance of a writ in the nature of certiorari for quashing the decision of the State Government in its Registration, Excise & Prohibition Department as contained in the letter dated 28.6.2010 of the Assistant Inspector General of Registration, Bihar, Patna addressed to the petitioners whereby the benefit of Assured Career Progression to the petitioners under the Bihar State Employees Conditions (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as 'the A.C.P. Rules') has been rejected inter alia in reference to Rule 4(5) thereof, the Bihar Registration Clerical Cadre, Rules 2004 and on grounds of the failure of the petitioners to pass the Accounts Examination. A copy of the order is impugned at Annexure-5 to the writ petition. The petitioners also pray for grant of consequential benefits.

Of the six petitioners choosing to question the decision, the petitioner No.6 Sudesh Narayan Thakur has deceased and stands substituted.

Mr. Giri learned Senior counsel while espousing the case of the petitioners has submitted that the petitioners were initially appointed against the post of Extra Clerk and were promoted to the post of temporary clerk in the pay scale of Rs.3050-4590. While the petitioner No.1 was promoted to the post of temporary clerk on 6.12.1982,the petitioner Nos.2 and 3 were promoted on 24.2.1981 and the petitioner No.4 was promoted on 7.2.1981 and the petitioner Nos. 5 and 6 were promoted on 23.2.1981. He admits that all the petitioners have superannuated. While the petitioner No.1 superannuated on 31.1.2002, petitioner No.2 superannuated on 31.10.2001, the petitioner No. 3 superannuated on 31.7.2001, petitioner No.4 on 31.12.2002 and petitioner No.5 on 31.1.2001 and petitioner No.6 on 31.7.2003.

It is submitted by learned Senior counsel that on 26.5.2003 'the A.C.P. Rules' were enforced with effect from 9.8.1999 and while Rule 3 clearly provides that such of the Groups B, C and D employees of the State Government who have not got benefit of any financial progression during their career, would be granted the first financial progression on completion of 12 years of service and second financial progression on completion of 24 years of regular service, rule 4(5) inter alia provides that the rules applicable under the relevant Recruitments/Service Rules for regular promotion would apply for grant of such progression. According to the petitioners, they having been appointed as a temporary clerk in the regular scale in the year 1981/82 they become entitled for the progression on and around the year 1993-1994 but since the Scheme was made applicable with effect from 9.8.1999, they would be entitled with effect from the said date. It is submitted that vide letter No.1042 dated 21.4.2008, the Assistant Inspector General of Registration asked for the details of such of the employees who though entitled to the benefits under 'the A.C.P. Rules' but had superannuated. A copy of the letter is present at

Annexure-2. Since no benefit was being granted to the petitioners they represented on 25.3.2009 before the Inspector General of Registration vide Annexure-3 and renewed their prayer on 5.3.2010 vide Annexure-4. The prayer of the petitioners have been rejected by the impugned order dated 28.6.2010 inter alia on grounds that they had not passed the departmental Account Examination as required under rule 4(5) of 'the ACP rules' and as mandated under the Bihar Registration Clerical Cadre Rules, 2004 (hereinafter referred to as 'the Cadre Rules') and hence they were not entitled for the benefit.

The short argument advanced by Mr. Giri to question the impugned order is that 'the Cadre Rules' was enforced with effect from 9.1.2004 and much prior thereto the petitioners had superannuated and thus in absence of any Recruitment Rules governing these petitioners at the relevant time, their claim could neither be rejected on merits nor in reference to 'the Cadre Rules' which was not even in existence on the date when the petitioners became eligible to the benefits under 'the A.C.P. Rules'. Mr. Giri has relied upon the following judgments in support of his submission that a clear distinction have been drawn by the Court in between a grant of regular promotion and a grant of benefit under the A.C.P. rules.

(1) **2011(3)PLJR 474 (Shashi Shekhar Ambasta Vs. State of Bihar);**

(2) **2012 (4)PLJR 266 (Ram Ekbal Singh Vs. State of Bihar);**

and

(3) An unreported judgment in **L.P.A.No.1260 of 2012 (State of Bihar & Ors. Vs. Pramod Kumar)**.

The argument of Mr. Giri has been contested by Mr. Chandra learned counsel appearing for the State who in reference to the submission present at paragraphs- 17 to 21 of the counter affidavit filed on behalf of the respondent Nos. 1 to 3 i.e the Department of Registration, has submitted in reference to the Bihar Board Miscellaneous Rules (hereinafter referred to 'the Rules') that Rules 156 and 57 of 'the Rules' requires every Lower Divisional Clerk to pass the Accounts Examination for promotion as a Upper Divisional Clerk and thus any clerk who has not passed the preliminary examination in Accounts would not be allowed the benefit under 'the A.C.P. Rules'. Learned counsel has also referred to the minutes of the meeting present at Annexure-J to support the necessity of passing the Accounts Examination as provided under the Rule 156-157 of 'the Rules' and which according to learned counsel were a relevant consideration for grant of A.C.P. benefits.

I have heard learned counsel for the parties and I have perused the records.

While the impugned order refers to the Bihar Registration Clerical Cadre Rules, 2004 and rule 4(5) of 'the ACP rules' for rejecting the claim of the petitioners for grant of benefit under 'the

A.C.P. Rules', the reasons assigned have been expanded in the counter affidavit to rely upon Rule 156-157 of the 'the Rules' which inter alia requires the Clerks to pass the Accounts Examination for crossing the efficiency bar or for grant of promotion to the post of Upper Divisional Clerk.

In my opinion, either of the two objections are not sustainable and the reasons are not to many.

In so far as the order dated 28.6.2010 impugned at Annexure-5 makes reference to the 'Cadre Rules' of 2004, the very fact that 'the Cadre Rules' were brought in force with effect from 9.1.2004 as confirmed by the notification present at Annexure-1 i.e much after the date on which the petitioners became entitled to the benefit, the reliance is completely misplaced and incorrect.

To put the records clear, while these petitioners became entitled to the benefit under 'the A.C.P. Rules' at least with effect from the date from which it was brought in force i.e 9.8.1999, 'the Cadre Rules' were enforced only on 9.1.2004 as manifest from Annexure-1. Meaning thereby, these 'cadre rules' were not even in existence when these petitioners became entitled for grant of benefit under 'the A.C.P. Rules'. The reliance thus by the respondents on the 'Cadre Rules', to deny such benefit to the petitioners, is wholly illegal, reflects lack of application of mind and is accordingly rejected.

In so far as the reliance of the respondents in their counter affidavit to Rule 156 and 157 of ‘the Rules’ is concerned, apart from the fact that the respondents cannot be permitted to supplement reasons in their counter affidavit, as stands concluded by the judgment of the Supreme Court rendered in the case of **Mohinder Singh Gill** reported in **A.I.R. 1978 S.C. 851,** even otherwise, the reliance is completely out of context. A grant of financial progression being a means for overcoming stagnation in a service and not being in the nature of a promotional benefit, the reliance on Rules 156 and 157 is wholly misconceived for it has no application in such cases. In my opinion, uncalled for objections have been put up by the respondents to deny the benefit accruing to the petitioners under ‘the A.C.P. Rules’. Rule 3(1) of ‘the ACP rules’ extends the benefit to all such regular employees in Group B,C and D service of the State Government who have not got the benefits of any financial progression during their career and except that such benefit of the first financial progression is to be granted on completion of satisfactory service of 12 years of service with further 12 years satisfactory service required for the second financial progression, the rule puts no other preconditions.

Having framed a Scheme to overcome stagnation in service career, a spanner is sought to be put through Rule 4(5) of ‘the A.C.P. Rules’. The Scheme undisputedly does not grant regular promotion rather merely grants a financial progression to a Government servant who awaits a regular promotion but is not forthcoming and thus with the object to provide an incentive to such Government servant in their service career that these rules were framed. Even though Rule 4(5) of 'the A.C.P. Rules' requires the incumbent to pass the examination provided under the Recruitment Rules for Regular Promotion but then the moment an incumbent would pass a promotional examination then he becomes entitled to a regular promotion and the State would have to provide him with the regular promotion and not a mere benefit of financial progression. In simple words whereas the benefit under 'the ACP rules' simply provides the Government servant the benefits of the financial progression, the moment he passes the examination for a regular promotion, he not only gets the financial progression but also the promotional post attached therewith. It is explaining this very distinction that a Bench of this Court while expressing its opinion in the case of **Shashi Shekhar Ambasta** observed as follows:

> "8. There has to be difference between a substantive promotion and grant of ACP. The latter does not result in the benefit of higher post carrying a higher pay scale. It is basically an anti-stagnation measure to uplift the sagging spirit of an employee who may not have had an avenue of promotion or may have failed to secure promotion. A person may remain as Accounts Clerk throughout his life either for reason of lack of avenue for promotion or for having failed to qualify in the examination for promotion as Accounts Officer. To put at par the issue of grant of ACP with grant of promotion by requiring passing of the limited competitive examination for both purposes may prove counter productive to the entire scheme of ACP. If he clears the examination he gets promotion to higher post and he does not require ACP. If he does not clear the examination he stagnates and requires ACP. Yet it is

> denied because he did not pass the examination. The amendment made on 21.8.2008 (*sic*-28.1.2008?) in the ACP Scheme visualises that if there is avenue for promotion from one cadre to another then the basic of the pay scale of the promotional cadre post is available as ACP. There is no rider incorporated in it for clearing any examination much less any other process for promotion to the next higher post in the next cadre. To this Court, the amendment is clear in its language and only visualizes that the next higher post in the next cadre is an avenue for promotion."

A similar expression finds placed in the judgment of **Pramod Kumar** (supra) by the Division Bench and the relevant extract runs as under:

> "3 Having heard the learned counsels and considered the matter, in our view, the appeal merits no consideration. As noticed above, there were only two grounds for rejecting the claim of the writ petitioner. The first was that he had received an upgradation of pay scale in the year, 1999 and, as such, the 12 years period would be counted from 1999 and not 1992 when he was initially appointed. On the face of it though the submission may be attracted, on facts, it is misconceived. What was done in 1999 was the writ petitioner was held entitled to the upgraded pay scale right from the time of his appointment in 1992. It was not an upgradation of pay scale in course of his appointment and subsequent to his appointment. He was paid the arrears from the time of his appointment upto the date of order. Therefore, he was receiving the upgraded pay scale from the date of appointment continuously and there was no upgradation in midstream. Thus, this ground, as urged by the State, is misconceived. The second ground was that petitioner not having qualified or not having taken the limited competitive examination for promotion, he could not be given the promotional grade of pay of Accounts Officer which was the next pay scale. This is equally misconceived. Had he taken those limited examinations and passed, he would be entitled to promotion. There is a distinction between promotion and ACP. ACP is a personal enhancement of pay scale to overcome stagnation. What is given is the next higher pay scale on completion of the period specified. It is not a promotion for if promotion

> is to be granted then he would get the promotional post as well which is not the case under ACP. Therefore, to say that as he had not taken the competitive examination for promotion, he would be disentitled to get ACP is not only misconceived but to us it appears to be a mala fide ground to deny ACP. ACP Rules do not stipulate passing of promotional examination because if a person passes the promotional examination then he would be promoted as such……………………………………."

In my considered opinion the scheme formulated under 'the ACP rules' has to be given a purposeful construction and not interpreted in a manner which defeats the very object for which it was framed.

Perhaps the respondents were conscious of the faux pas committed in the impugned order to reject the claim of the petitioners because 'the Cadre Rules' were not even in existence on the date on which these petitioners became entitled to the benefits under 'the A.C.P. Rules' and it is for this reason that they have chosen to supplement the reason by relying upon Rule 156 and 157 of 'the Rules' to justify the decision as confirmed from paragraphs 17 to 21 of the counter affidavit.

In my opinion even the reliance of the respondents on Rules 156 and 157 of the Board Miscellaneous Rules does not come to their aid for these are the rules provided for either crossing the efficiency bar or for grant of regular promotion which is not the same as a grant of financial progression because there is no element of a promotion. In fact, if these incumbents were to be guided by Rules 156 and 157 for a benefit of financial progression then there was no necessity/requirement for framing of 'the ACP rules' at all. In fact, the State was much conscious that the grant of financial progression had no promotional benefits except for the financial benefits with the person remaining on the same post and it is thus to allow the incumbent to overcome such stagnation that 'the ACP rules' were framed which are sought to be equated at par with the Promotional Rules. The distinction between grant of financial progression and grant of regular promotion has already been explained in the judgments referred to above and requires no further reiteration.

Reliance has also been placed by learned State counsel on the minutes of the meeting present at Annexure-J in support of the contentions advanced but in my opinion the minutes are supportive of the opinion expressed hereinabove for while the Agenda Nos. 1, 2 and 3 are proposals for Regular Promotion, it is Agenda No.4 which deals with the issue of benefit under Time Bound Promotion Scheme and 'the A.C.P. Rules' and the Departmental Establishment Committee while specifically observing that since regular promotion cannot be granted to the persons named thereunder, has proceeded to grant the benefit under the Time Bound Promotion Scheme on completion of 10 years of service in terms of the Resolution No.10770 dated 30.9.1981 and grant of benefit under 'the A.C.P. Rules' on completion of 12 years of satisfactory service with no reference as to the requirement of passing any Accounts Examination.

For the reasons so discussed, the order dated 28.6.2010 passed by the Assistant Inspector General of Registration impugned at Annexure-5 is quashed and set aside. The respondents are directed to grant the benefits under 'the A.C.P. Rules' to the petitioners with effect from the date they became entitled for such benefit within a maximum period of 3 months from the date of receipt/production of a copy of the order .

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	01.06.2017
Transmission Date	NA