

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 11936 of 2011

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Bipin Bihari Roy, son of Shri Rajiv Ranjan Rai, Resident of Kamal
Bhawan, Mohalla – New Dasratha, P.S. – Beur, District – Patna.

.....Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Main Secretariat, Patna.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Director, Mass Education, Human Resources Development Department, Government of Bihar, Bailey Road, Patna.
4. Principal Secretary, Personnel and Administrative Reforms Department, Main Secretariat, Patna.
5. The Principal Secretary, Social Welfare Department, Govt. of Bihar, Main Secretariat, Patna.
6. The Director Integrated Child Development Service Social Welfare Department, Govt. of Bihar, Indira Bhawan, Ram Charitra Singh Path, Bailey Road, Patna.

.....Respondents

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Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur

For the Respondent/s : Mr. Kinkar Kumar, SC-9

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
C.A.V. ORDER

16. 01-03-2017

The sole petitioner, invoking writ jurisdiction of this

Court under Article 226 of the Constitution of India, has prayed

for following reliefs:-

“(i) To quash that part of the letter contained in memo no. 363 dated 09.02.2010, issued under the signature of respondent Director, Integrated Child Development Scheme (hereinafter referred to as ‘I.C.D.S.’ for short) of the social welfare department of the respondent State, by which, the benefit of



Assured Career Progression (hereinafter referred to as 'A.C.P.' for short) has been denied to the employees including the petitioner, who has/have been adjusted in the I.C.D.S. wing of the social welfare department consequent upon their/his retrenchment from the Mass Education (earlier known as non-formal education wing of the Human Resources Department).

(i) For a further direction to the respondents to give to the petitioner the same benefit of adjustment in other regular establishment of the respondent State so as to make him entitled to the benefit of permanent absorption and A.C.P. and other service benefits, which benefits have been extended to the other similarly situated retrenched employees of the non-formal/Mass Education, by adjusting them in the other regular establishments of the respondent State after shifting them from the same I.C.D.S. wing of the social welfare department.

Thereby the petitioner prays that he may also be given the benefit of exercising the option of switching over to the other regular establishment of the respondent State in the light of the resolution contained in memo no. 1638 dated 11th October 2006 issued under the signature of the Commissioner-cum-Secretary, Human Resources Development Department, and if the same benefit is not possible to be extended to the petitioner then to grant him A.C.P. and other service benefit of a regular employee in the light of the order dated 24.08.2009 passed in CWJC No. 10330 of 2009."

2. Short fact, as pleaded in the writ petition, is that the petitioner was appointed as Class III employee in the year 1985 in the Directorate of Adult Education, Govt. of Bihar. Besides petitioner, large number of other persons were appointed against Class III & Class IV posts in between 1979 and 1987. Earlier, in the year 1993, services of the petitioner and other



similarly situated persons were terminated mainly on the ground of closure of Adult Education Project and also on the plea of appointment being illegal. However, subsequently, the termination order was set aside and direction was issued to absorb the petitioner and other similarly situated persons in Non-Formal Education Wing of the Directorate of Adult Education with the same benefits and thereafter, the service of petitioner was also absorbed. In the year 2001, while the petitioner and others were already functioning, the respondent/State again came out with one common order, contained in memo no. 2284 dated 12th of September, 2001, issued under the signature of Deputy Secretary of the Secondary, Primary and Adult Education Department, by which, services of the petitioner and other similarly situated persons were terminated, on the plea that the Central Government had communicated its decision to close the non-formal project and decided to stop giving fund and as such, the non-formal project was closed. The decision of the State Govt. dated 12th September, 2001 was again assailed before this Court by the petitioner through his association namely Bihar State Adult and Non-Formal Education Office Employees Association by way of filing a writ petition, vide C.W.J.C. No. 13009 of 2001. Similarly, some other writ petitions were filed by individual Class III and Class IV



employees. Thereafter, the State Govt. came out with different orders absorbing the services of Class III and Class IV employees. Finally, vide order contained in Memo No. 2102 dated 20-07-2006 (**Annexure – 6** to the writ petition) issued under the signature of Director, Social Welfare Department, I.C.D.S. Directorate, the petitioner alongwith other 167 persons were appointed on adhoc basis. In the appointment letter, there was specific condition mentioned in paragraph 2 that the retrenched employees are being absorbed, in view of Govt. Resolution No. 582 dated 20-05-2005 and their appointment shall be treated as new appointment and no employee shall claim seniority on the basis of their services rendered prior to their retrenchment. However, the service period, spent before the retrenchment period, shall be considered for calculation of pension. Even the account number of G.P.F., which was earlier available before retrenchment, shall continue and pay-scale shall be given on the basis of last pay drawn certificate. After the petitioner and other similarly situated retrenched employee were appointed, the Govt. of Bihar, by its resolution contained in Memo no. 1638 dated 11th October, 2006, resolved to invite options from Clerk-cum-Accountant, Clerk-cum-Typist and other similarly situated employees, like the petitioner, for the purposes of shifting of their services to permanent establishment of the



respondent/State, since they were earlier absorbed under scheme/project and there was likelihood of such scheme or project to be abandoned or closed by the respondent/State in future. It has further been pleaded that pursuant to resolution, several persons were allowed to apply for their option and many persons were employed in regular establishment. The petitioner, being aggrieved due to non-providing option for his absorption in other government department on permanent post, filed a writ petition, vide C.W.J.C. No. 10330 of 2009, which was finally disposed of on 24-08-2009, which is quoted here-in-below:-

“Petitioner is a retrenched employee of Non Formal Education Project and is presently serving in the Integrated Child Development Scheme of the Welfare Department.

It is submitted on his behalf that earlier option was called from few fortunate one's for their absorption in the other Government Department on permanent post but no such option was sought from the petitioner. He, accordingly, represented before the Principal Secretary of the Department in the light of the orders of the Division Bench passed in C.W.J.C. No. 13009 of 2001 and a representation is contained in Annexure – 11 to this application. It appears said representation of the petitioner has been disposed of under order dated 29.10.2008 observing that the Integrated Child Development Scheme is not likely to be closed soon.

Learned counsel for the petitioner states that the scheme may not be closed soon but others similarly situate like him have already been absorbed in the Government Department against permanent post are being allowed A.C.P. and other monetary benefits which is not being allowed to the petitioner as he is serving in the Integrated Child Development



Scheme against a post which is not permanent.

Let petitioner represent before the Principal Secretary of the Department highlighting the aforesaid grievance for grant of similar service conditions as has been allowed to others who have been regularized against permanent post in other Government Department. If it is not possible for the State Government to grant similar monetary benefits to the petitioner then to consider his case for absorption in the other department against permanent post.

Let the petitioner represent before the Principal Secretary of the Department, who should consider the case and pass appropriate orders in accordance with law as early as possible in any case within two months of receipt of his representation.

This writ application is, accordingly, disposed of.”

4. After the disposal of the writ petition, the petitioner filed representation before the authority concerned. The Principal Secretary, Human Resources Development Department by its order, contained in Memo No. 1245 dated 20-11-2009, (**Annexure – 13** to the writ petition) rejected the claim of the petitioner for re-adjustment primarily on the ground that in near future, there was no possibility of close of child development programme. So far as petitioner’s claim for grant of benefits under Bihar State Employees Conditions of Services (‘Assured Career Progression Scheme’) Rules, 2003 (hereinafter referred to as “A.C.P.”) is concerned, the Principal Secretary, Human Resources Development Department in its order dated 20-11-2009 observed that since the petitioner was employed in Social Welfare



Department, the claim for A.C.P. will be taken by the Social Welfare Department in accordance with law. Subsequently, the Director, I.C.D.S., Social Welfare Department asked all the District Programme Officers to furnish information in appropriate proforma for grant of benefit of A.C.P. to Class III and Class IV employees working under I.C.D.S. in Regional office, vide Memo No. 363 dated 09-02-2010 (**Annexure – 1**). By the said communication, it was clarified that the benefit of A.C.P. shall not be provided to employees of PACS, Corporation and Mass Education and also the persons working on daily-wage basis, contract basis and adhoc basis, were not entitled for such benefit. The petitioner in the present writ petition has primarily made a prayer for quashing of part of order contained in memo no. 363 dated 09-02-2010 (**Annexure – 1**) and directed the respondents to give such benefit of A.C.P. even to the petitioner.

5. In this case, petitioner has filed two supplementary affidavits and from the respondents' side also, number of counter affidavits were filed. In the counter affidavit filed on behalf of respondent no. 5 & 6, rejection of the claim of the petitioner for grant of benefit of A.C.P. has been justified taking aid of a Government Circular No. 2023 dated 20-04-2005, wherein it was clarified that benefit of A.C.P. scheme was only admissible to



regular employees, who completed 10/20/30 years of service in regular establishment. The said counter affidavit was replied by the petitioner by way of filing rejoinder on 25th January, 2016.

6. Sri Kishore Kumar Thakur, learned counsel appearing on behalf of petitioner has drawn attention of this Court to **Annexure – 14** to the rejoinder dated 25th January, 2016. He submits that the earlier A.C.P. scheme was modified by the Government Resolution dated 14th July, 2010. He, by way of referring to Clause 22 of the Resolution dated 14-07-2010, has argued that if an employee was declared surplus in its organization and subsequently, appointed in new organization in the same pay-scale or lower pay scale, then services rendered by him in earlier organization will be considered for the purposes of grant of benefit under the A.C.P. scheme. It has been argued by Sri Thakur that surplus denotes even retrenchment. To substantiate his argument that there is no difference between retrenched and surplus employees, he has relied on number of orders passed by the State Govt., which have been brought on record in supplementary affidavits. He has also argued that so far as claim for grant of A.C.P. to employees like the petitioner is concerned, it has already been set at rest by a Bench of this Court in C.W.J.C. No. 17137 of 2009 and other connected writ



petitions, which was allowed on 19-08-2011. For just decision in the matter, it would be appropriate to quote entire order dated 19-08-2011, which is quoted hereinbelow:-

“Heard learned counsel for the petitioners and the State.

The petitioners are aggrieved by the order dated 29.10.2008 informing them that there was no likelihood in near future for closure of the Integrated Child Development Scheme and therefore there was no occasion to consider their request for re-absorption. The petitioners are stated to be working in Ad hoc capacity as Clerk-cum-Typist in the office of the Child Development Project Office under the Social Welfare Department.

Learned counsel submits that initially the petitioners were appointed on Class-III posts in the Directorate of Education in the year 1985. Consequent to the termination of the Adult Education Project on 28.2.1993, their services were terminated. On challenge made before this Court on 1.9.1993 the termination order was set aside and directions were issued to absorb in the non formal wing of Directorate of Adult Education. The petitioners were again terminated on 12.9.2001 on the ground that the non formal Education Project was closing down and the Central Government which was funding it was not willing to do so further. The petitioners again questioned their termination in a writ application.

On 25.3.2005 the respondents took a policy decision to absorb persons like them on vacant posts in different departments/regional offices. On 4.7.2006, the State Government further directed that they should be absorbed with pay protection and given the benefit of the old pension scheme by making provident fund deductions. While some of such persons have been absorbed against regular vacancies, others like the petitioners have been absorbed Ad hoc against regular vacancies as evident from the order dated 20.7.2006 of their absorption. This amounts to hostile discrimination amongst one class of persons who all constitute retrenched employees of the



earlier scheme with regard to all of whom a decision of absorption has been taken. The decision has to be implemented uniformly. The petitioners have no preferences in appointment.

Counsel for the State relies upon an order passed in C.W.J.C. No. 10330 of 2003 and submits that the petitioners may be permitted to represent in like manner.

A counter affidavit is stated to have been filed in C.W.J.C. No. 17494 of 2009 only. The contention of the respondents is that others may have been absorbed against regular vacancies substantively according to the sanctioned vacancies available in that department. The availability of vacancies shall be a relevant fact for purposes of absorption.

Counsel for the petitioner submits that the representation of that petitioner has been rejected on 20.11.2009 vide Annexure-A to the counter affidavit of the respondents presently in C.W.J.C. No. 17494 of 2009 on similar grounds as the impugned order.

The Court holds that all those who were terminated and came to be absorbed under a policy decision form one class. There can be no sub classification between them for purposes of absorption who were all under the policy dated 23.6.2005 to be absorbed against regular sanctioned vacancies in different departments/regional offices. That the policy decision was clear for a permanent absorption is further confirmed by the subsequent decision dated 4.7.2006 to grant pay protection and count past service as pensionable.

All those who were retrenched in like manner form a class. The policy for absorption shall apply uniformly. There had to be some classification on basis of which the respondents took a decision to grant permanent absorption to some of them and not to the others. There had to be a criteria having nexus to the object for differentiation. No such material has been placed by the respondents. The action of the respondents therefore appear patently arbitrary, violating Article 14 of the Constitution of India.

The order dated 20.7.2006 absorbing the



petitioners ad- hoc itself states that they were being so absorbed against regular vacancies. If the vacancies were regular and the policy decision was for permanent absorption, the Court finds it difficult to appreciate an Ad hoc absorption.

It has already been noticed at this stage that they have no preferences. Directions are therefore issued for the permanent absorption of the petitioners in accordance with the policy decision of the respondents themselves in accordance with law.

The petitioners have brought on record today by a way of a supplementary affidavit an order dated 9.2.2010 that such persons absorbed on ad hoc basis shall not be entitled to A.C.P.

Let the respondents now consider the petitioners for regular absorption as also for grant of A.C.P. in light of the present discussion and their own decision dated 4.7.2006 in accordance with law within a maximum period of three months from the date of receipt/production of a copy of this order.

The writ applications stand allowed.”

7. Learned counsel for the petitioner has further argued that it is true that at the time of absorption of the petitioner and other similarly 167 persons, it was indicated that absorption of petitioner and other similarly situated persons was purely adhoc, but subsequently the Director, I.C.D.S., vide its Memo No. 919 dated 12-03-2012 (**Annexure – 15**) has clarified that services of all 168 retrenched employees, who were earlier appointed on adhoc basis, were regularized w.e.f. 20-07-2006 itself. Meaning thereby that petitioner and other similarly situated persons are now being treated as regular employee. According to learned counsel



for the petitioner, once the service of the petitioner with effect from the date of absorption i.e. 20-07-2006 has been regularized with retrospective effect, in view Clause 22 of Government Resolution dated 14-07-2010 (**Annexure – 14**), the petitioner is entitled to get all the benefits of A.C.P.

8. Sri Kinkar Kumar, learned Standing Counsel – 9, at the very outset, submits that the **Annexure – 13** i.e. order contained in Memo no. 1245 dated 20-11-2009 issued by the Principal Secretary, Human Resources Development Department has not been assailed in the present writ petition. The said order was passed in compliance with the order dated 24-08-2009 passed in C.W.J.C. No. 10330 of 2009. He submits that by the said order, the claim of the petitioner for re-employment against sanctioned post was already rejected, vide **Annexure – 13**. So far as claim for benefit of A.C.P. is concerned, the decision was to be taken by the Social Welfare Department. According to learned State counsel, since in the present writ petition, the petitioner by specific pleading has not assailed the order (**Annexure – 13**) rejecting his claim for re-employment against sanctioned post, the petitioner may not be allowed to get the same relief. So far as petitioner's claim in respect of grant of benefit under the A.C.P. scheme is concerned, he has also placed reliance on the Government



resolution dated 14-07-2010 (**Annexure – 14**). He has referred to Rule 1(ii) and Rule 3 of the Bihar State Employees Conditions of Services (Assured Career Progression Scheme) Rules, 2003 and submits that as per statutory provisions, benefit under the said scheme is to be given to regular employee of A, B, C & D category. By way of referring to absorption letter of the petitioner and others i.e. **Annexure – 6** to the writ petition, Sri Kinkar Kumar has argued that the appointment of petitioner and other similarly situated persons was purely adhoc and as such, as per Rule, the petitioner is not entitled to get the benefit under the said scheme. To substantiate his submission by way of referring to statement made in paragraph – 7 of the counter affidavit of respondent no. 5 & 6 filed on 19th March, 2012, he submits that as per Resolution No. 2023 dated 20-04-2005, the scheme of A.C.P. has been clarified with respect to adhoc, daily-wages and contract basis. He submits that it was admissible to only regular employees, who have completed 10/20/30 years of service in regular establishment. According to learned State counsel, the petitioner is not even entitled to get any benefit under the A.C.P. scheme and writ petition is fit to be rejected.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. The fact that



petitioner was employee since the year 1985 has not been disputed, however; it is true that in the year 1993, the petitioner and other similarly situated persons were terminated, then reemployed and again in the year 2001, petitioner and other similarly situated persons were retrenched on the ground that the central government had taken a decision to close the project of non-formal education, in which, the petitioner and other similarly situated persons were employed. But subsequently, in view of orders passed by this Court, the Govt. of Bihar took a decision to re-employ the retrenched employees and as such, vide **Annexure – 6** to the writ petition, about 168 retrenched employees, including the petitioner, were re-employed. Ofcourse, vide **Annexure – 6**, while re-appointing the petitioner and others, it was clarified that the said appointment of retrenched employees shall be treated as new appointment, but at the same time, it was clarified that for the purposes of calculation of pension, their past services may be considered, but they may not be entitled to raise the claim of seniority on the basis of past services. Even the account number of G.P.F. was directed to remain the same. By efflux of time, it is evident vide **Annexure – 15** to the writ petition i.e. an order contained in Memo No. 919 dated 12-03-2012 issued under the signature of Director, I.C.D.S., Social Welfare Department all the



retrenched employees, who were re-employed vide order contained in Memo No. 2102 dated 20-07-2006 including the petitioner, though was earlier employed on adhoc basis, the services were regularized with effect from the date of earlier Notification dated 20-07-2006 and as such, the plea of learned State counsel that the petitioner is not entitled to get the benefit of A.C.P., since the petitioner was adhoc employee, now does not exist. The petitioner's service has been regularized with retrospective effect alongwith others, vide **Annexure - 15** to the rejoinder of petitioner. Moreover, even prior to issuance of order i.e. **Annexure – 15**, a Bench of this Court had examined identical issue that was also pertaining to the same absorption i.e. dated 20-07-2006, whereby, 168 retrenched employees were re-employed. The Single Bench order dated 19-08-2011 passed in C.W.J.C. No. 17137 of 2009 and other connected writ petitions, which has been quoted hereinabove, makes it clear that issue has already been set at rest. This Court by order dated 19-08-2011 in similar circumstance, while directing the respondents to consider the case for regular absorption, had also directed for grant of A.C.P. in accordance with law.

10. Considering the fact that vide **Annexure – 15** i.e. order dated 12-03-2012 passed by the Director, I.C.D.S., the



services were regularised with effect from 20-07-2006, there is no reason to pass a different order, but to direct the respondents to grant benefit of A.C.P. taking into account the past services of the petitioner, prior to retrenchment and grant all consequential benefit forthwith.

11. So far as prayer of the petitioner for giving benefit of exercising option of switching over to the other regular establishment is concerned, the Court is of the opinion that once the said claim of the petitioner was rejected, vide **Annexure – 13** i.e. order contained in Memo no. 1245 dated 20-11-2009 by the Principal Secretary, Human Resources Development Department and same has not been challenged, there is no question to examine such relief. Accordingly, the prayer for granting relief for exercising option for shifting stands rejected.

12. The writ petition is partly allowed.

13. It is directed that all the formalities regarding grant of A.C.P., as discussed above, may be completed preferably within a period of three months from the date of receipt/production of a copy of this order.

(Rakesh Kumar, J.)

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