

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18372 of 2016

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1. Jai Prakash Prasad, Son of Late Hira Lal Prasad resident of Village & PO Islampur District Nalanda.
2. Upendra Prasad Singh, Son of Late Ram Lakhan Singh resident of Village Hasanpur, P.O Kolawan P.S. Harnaut, District Nalanda at Biharsharif.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Industry Bihar Patna.
3. The Principal Secretary Department of Finance Government of Bihar, Patna.
4. The Director, Handloomed and Sericulture Department of Industry, Bihar, Patna.
5. The Additional Director of Industry, Department of Industry, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Rajesh Dayal, Adv.

For the Respondent/s : Mr. Ravish Chandra, A.C. to S.C.6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-03-2017

Heard Mr. Bindhyachal Singh, learned counsel for the petitioner and Mr. Ravish Chandra, A.C. to S.C.6 for the State.

With the consent of the parties the writ petition has been heard and is being disposed of at the stage of admission itself.

The petitioner while praying for quashing of the order bearing Memo No.1085 dated 8.7.2016 of the Director, Handloom and Sericulture, Bihar, Patna whereby their claim for grant of benefits under the Assured Career Progression Scheme and Modified Assured Career Progression Scheme has been rejected, prays for issuance of a writ in the nature of mandamus for commanding the respondents for grant of the same.



The writ petition could have been disposed of in reference to the judgment of a coordinate bench reported in **2016(3)PLJR 945 (Mahendra Baitha Vs. State of Bihar)** whereby the Bench taking note of the earlier judgments on the issue whether or not an employee praying for grant of the benefits under Assured Career Progression Scheme/ Modified Assured Career Progression Scheme would be required to pass the accounts examination but in the nature of the issues facing the writ petition I deem proper to discuss the issue itself.

The petitioners herein are State Government employees in the Department of Handloom and Sericulture holding the post of Clerk. It is to overcome the stagnation in the matter of promotion that the State framed the Bihar State Employees Service Conditions (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as 'the ACP Rules') vide notification dated 25.6.2003 and a modified scheme was enforced in the year 2010 known as the Modified Assured Career Progression Scheme (hereinafter referred to as 'the MACP Scheme'). The issue relates to grant of benefits to the petitioners under 'the ACP Scheme' in the year 2003. The petitioners herein being found suitable and eligible for promotion for grant of benefits under 'the ACP Scheme' were granted such benefits vide order bearing Memo No. 2776 dated 30.12.2010 only to be withdrawn by a subsequent order bearing Memo No. 859 dated 11.6.2014 which



orders are on record vide Annexures-1 and 4 respectively to the writ petition and by the same order/directions were issued for recovery of the amount drawn by the petitioners by grant of such benefits. Feeling aggrieved, the petitioners came before this court along with some others giving rise to C.W.J.C.No.11996 of 2014 and the writ court taking note of the grievance raised and holding the recovery proceeding unsustainable in reference to the judgment of the Supreme Court rendering the case of **State of Punjab vs. Rafiq Masih** reported in **2015 (1) PLJR 261 (SC)** quashed the recovery proceeding and in so far as the grant of the benefits under 'the ACP Scheme' and 'the MACP Scheme' is concerned, the matter was remanded to the authority concerned for a decision afresh. The judgment of the Bench is present at Annexure-4 to the writ petition and on remand, the claim has again been rejected by the order impugned at Annexure-7/A and feeling aggrieved, the petitioners are again before this Court.

Mr. Bindhyachal Singh learned counsel for the petitioners has made reference to Rule 4(5) of 'the ACP Rules' which inter alia prescribes the same requirements and mode of sanction for grant of financial progression, as prescribed under the recruitment/service rules, for regular promotion against the vacancies.

Learned counsel with reference to Annexure-5 has submitted



that the बिहार उद्योग (हस्तकरघा एवं रेशम) क्षेत्रिय लिपिक (भर्ती एवं सेवाशर्तें) नियमावली, 2015 (उद्योग विभाग) (hereinafter referred to as 'नियमावली, 2015') has been enforced by the Industries Department vide Memo No. 2957 dated 20.7.2015 and rule 10 thereof relates to passing a departmental examination, which examination has already been cleared by the petitioners for regular promotion. He submits that though a grant of benefit under 'the ACP Rules' is not a regular promotion in the strict sense of the term but even if the provisions present at Rule 4(5) is pressed into service, then these petitioners having cleared the departmental examination for regular promotion, the benefit cannot be withdrawn. He thus submits that having even cleared the departmental examination for regular promotion, it would be a travesty of justice to deny them the benefit under 'the A.C.P. Rules'.

The arguments have been contested by Mr. Chandra learned State counsel in reference to the provisions underlying Rule 156 of the Board Miscellaneous Rules which is also relied upon by the respondents in their counter affidavit to canvass that prior to the framing of 'the Rules' present at Annexure-5, any employee claiming benefits under 'the A.C.P. Scheme', had to clear Accounts examination and since admittedly these petitioners had not cleared the said examination, that the grant of the benefits was withdrawn vide



Annexure-4. He submits with reference to the order impugned that the benefits under 'the A.C.P. Scheme' and the promotion under '*नियमावली, 2015*' are distinct and thus a mere clearing of the departmental examination by the petitioners would not be sufficient until they would be passing the Accounts examination.

Learned State counsel has also contested the prayer on the principles of resjudicata for according to him the petitioners having restricted their prayer to 'recovery' only while questioning the withdrawal of the ACP benefits in the previous round, they cannot be permitted to reagitate the matter.

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

The Assured Career Progression Scheme was framed by the State to overcome the stagnation facing the employees in the matter of promotion. The Scheme does not grant a promotion to a higher post rather merely grants a financial progression to the Government servant who awaits a regular promotion but is not forthcoming either due to lack of promotional avenues or may be due to his own merit.

Although Rule 4(5) of the A.C.P. Scheme, Rules, 2003 does inter alia prescribe some kind of examination for grant of such benefits but apart from the fact that these petitioners have passed the examination for grant of regular promotion to a higher post as per the



provisions underlying Rule 10 of 'नियमावली, 2015' present at Annexure-5, even otherwise it would be an absurdity to deny them the benefit of financial progression for not having cleared the Accounts examination in view of the legal position settled in this regard by the Division Bench on the issue whether or not passing of any examination is necessary for grant of A.C.P.

While the opinion of the single Bench was drawn in favour of the petitioner, the matter reached the Division Bench in **L.P.A. No.1260 of 2012 (State of Bihar and others Vs. Pramod Kumar)** in an intra court appeal preferred by the State of Bihar. In the said case the ACP benefits were denied to the writ petitioner on grounds that his pay scale was upgraded in the year, 1999 and thus the period of 12 years would be counted with effect from February, 1999. The second ground assigned for denying such benefit was that the petitioner had failed to clear the limited competitive examination for promotion under the 25% quota. The issue whether or not an employee of the State Government claiming benefits under the ACP Scheme, Rules 2003 was required to pass any examination was considered by the Division Bench in the backdrop of the provisions underling the rules and the opinion so expressed is conclusive, as present at para 3 of the judgment which I deem it necessary to reproduce as that would be squarely applying to the issues raised and



contested herein.

Paragraph 3 of the said judgment reads thus:

“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. There is a distinction between departmental examination and promotional examination. There is no dispute that the writ petitioner had cleared the departmental examination.”



The Division Bench has made a clear distinction in between the benefits accruing on grant of promotion and grant of benefits under ‘the A.C.P. Scheme’ and held that for grant of any such benefit there was no requirement to pass any examination. The issue is even worse as in the present case the petitioners claim to have passed the departmental examination. In view of the law settled by this court in the case of **Pramod Kumar** (supra), the denial of the A.C.P. benefits to the petitioners by the respondents is held illegal and in consequence the order passed by the Director impugned at Annexure-7/A dated 8.7.2016 cannot be upheld and is accordingly quashed and set aside. The petitioner is held entitled to grant of benefits under ‘the A.C.P. Scheme’ together with consequential benefits, which benefit be granted to the petitioners within a period of 3 months from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.05.2017
Transmission Date	NA

