

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20565 of 2016

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Akhileshwar Jha, S/o Late Yogendra Jha, Resident of Village- Kushothar, PS Bahadupur, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Finance Department, Bihar.
3. The Secretary, (Expenses), Finance Department, Bihar.
4. The Additional Secretary, Finance Department, Bihar.
5. The Principal Secretary, Water Resources Department, Bihar, Patna.
6. The Engineer-in-Chief, Water Resources Department, Bihar, Patna.
7. The Chief Engineer, Flood Control & Drainage, Water Resources Department, Samastipur.
8. The Superintending Engineer, Flood Control Circle, Darbhanga.
9. The Executive Engineer, Flood Control Division, Darbhanga.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Jha, Sr. Adv.
Mr. Sanat Kumar Mishra, Adv.

For the Respondent/s : Mr. Anuj Kumar, AC to GP-24

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-12-2017

The petitioner in this writ petition has prayed for issuance of a writ in the nature of Certiorari for quashing the order bearing Memo no. 1335 dated 19.10.2016 passed by the Chief Engineer, Flood Control and Drainage, Water Resources Department, Samastipur, impugned at Annexure P-11, whereby the benefit of Assured Career Progression and Modified Assured Career Progression granted to the petitioner has been cancelled in the light of the advisory issued by the Secretary, Expenditure, bearing Memo No. 8083 dated 7.10.2016. The order also recognizes such grant to the petitioner vide



order bearing Memo No. 585 dated 26.7.2016. The order also provides for recovery of the excess amount so paid. The consequential order has followed the order of the Chief Engineer passed by the Executive Engineer, Flood Control Division, Darbhanga vide memo No. 1088 dated 27.10.2016, impugned at Annexure P-12.

Mr. Anil Kumar Jha, learned Senior Counsel, has appeared for the petitioner alongwith Mr. Sanat Kumar Mishra, Advocate on record, while Mr. Anuj Kumar, AC to GP-24, appears for the respondents.

The parties are in agreement that the legality of the advisory issued by the Secretary, Expenditure, Department of Finance, bearing Memo No. 8083 dated 7.10.2016 alongwith Resolution No. 5276 dated 30.6.2016 and 163 dated 8.1.2016 of the Finance Department was a subject matter of contest in C.W.J.C.No. 18433/2016 (**Shashi Shekhar Ambastha & ors. v. the State of Bihar & ors.**) which was heard analogous with other cases and this Court in consideration of the arguments advanced allowed the writ petitions in the following terms:

“ For the discussions aforementioned, the resolutions of the State Government in its Finance Department bearing No. 163 dated 8.1.2016 in so far as it restricts the benefit of Assured Career Progression to the Graduates exclusively together with is resolution bearing No. 5276



dated 30.6.2016 in so far as it restricts the benefit of Assured Career Progression to only petitioners in C.W.J.C.No. 18015/2011 and C.W.J.C.No. 16346/2011 as well as the opinion of the Secretary (Expenditure), Department of Finance, contained in his letter bearing No. 8083 dated 7.10.2016 at Annexure P-11 to restrict the benefit under resolution dated 8.1.2016 and 30.6.2016 to direct recruits exclusively and to outclass compassionate appointees, those appointed by absorption as well as the Accounts Clerks holding the post by upgradation, from its applicability, are patently discriminatory and are accordingly quashed and set aside.

As a result, all consequential actions taken by the controlling departments against these petitioners are quashed and set aside. The State in its Finance Department together with the controlling departments of the petitioners are directed to accord the benefit of Assured Career Progression to these petitioners as extended to the petitioners in C.W.J.C.No. 18015/2011 and C.W.J.C.No. 16346/2011 from the due date in accordance with law within a period of three months from the date of receipt/ production of a copy of this order together with all consequential benefits.”

Learned counsel appearing for the parties are in agreement that the issue raised in the present writ petition is covered by the opinion of this Court recorded in the case of **Shashi Shekhar Ambastha** (supra).

Having heard learned counsel for the parties and in view of



the judgment passed by this Court in the case of **Shashi Shekhar Ambastha** (supra), the order impugned in the writ petition bearing Memo No. 1335 dated 19.10.2016 of the Chief Engineer, Flood Control and Drainage, Water Resources Department, Samastipur together with letter bearing No. 1088 dated 27.10.2016 of the Executive Engineer in so far as it withdraws the benefit of ACP/ MACP granted to the petitioner vide Memo No. 585 dated 26.7.2016 is quashed and set aside.

The opinion expressed by this Court in the case of Shashi Shekhar Ambastha (supra) would govern the present case as well. As a consequence, let the recovery made from the petitioner, be refunded within a period of three months from the date of receipt/ production of a copy of this order.

The writ petition is allowed in terms of the judgment and order passed in C.W.J.C.No. 18433/2016 (**Shashi Shekhar Ambastha & ors. v. the State of Bihar & ors.**) and analogous cases.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.01.2018
Transmission Date	NA

