

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.879 of 2013

1. SUMAN KANT JHA S/O LATE DHANANJAY JHA R/O VILL.- BAIJANI, P.S.- JAGDISHPUR, DISTRICT- BHAGALPUR, AT PRESENT RESIDING AT JHAUA KOTHI, P.S.- KHANJARPUR, DISTRICT- BHAGALPUR
2. SHAILESH KUMAR SINGH S/O LATE SHALIGRAM SINGH R/O MOHALLA- ADAMPUR, P.S. ADAMPUR, DISTRICT- BHAGALPUR, AT PRESENT RESIDING AT MOHALLA- ADAMPUR, P.S. ADAMPUR, DISTRICT- BHAGALPUR
3. BASANT KUMAR SINGH S/O SHIVJI SINGH R/O MOHALLA- JHAUA KOTHI, KHANJARPUR, P.S. BARARI, DISTRICT- BHAGALPUR, AT PRESENT RESIDING AT MOHALLA JHAUA KOTHI, KHANJARPUR, P.S.- BARARI, DISTRICT- BHAGALPUR
4. RAJ KUMAR SINGH S/O LATE SHANKER PRASAD SINGH R/O MOHALLA JHAUA KOTHI, KHANJARPUR, P.S. BARARI, DISTRICT- BHAGALPUR, AT PRESENT RESIDING AT MOHALLA- JHAUA KOTHI, KHANJARPUR, P.S. BARARI, DISTRICT- BHAGALPUR
5. RAM BILAS MANDAL S/O LATE KAMALESHWARI PRASAD MANDAL R/O VILL.- SHAHPUR, P.S.KAHALGAON, DISTRICT BHAGALPUR, AT PRESENT RESIDING AT JHAUAKOTHI QTR. NO. 43, KHANJARPUR, P.S. BARARI, DISTRICT- BHAGALPUR
6. LALA SATYENDRA PRASAD KARN S/O LATE MAHENDRA PRASAD R/O MOHALLA- BADI KHANJARPUR, P.S. BARARI, DISTRICT- BHAGALPUR, AT PRESENT RESIDING AT MOHALLA- BADI KHANJARPUR, P.S. BARARI, DISTRICT- BHAGALPUR
7. SYED MOHAMMAD T. ASHRAF S/O LATE ZIA KARIM RIZVI R/O VILL.- BAHARPURA, P.S. ISHAQCHAK, DISTRICT BHAGALPUR, AT PRESENT RESIDING AT VILL.- BAHARPURA, P.S. ISHAQCHAK, DISTRICT- BHAGALPUR
8. SUGREEV PASWAN @ SUGRIW PASWAN S/O BHUNESHWAR PASWAN R/O VILL.- SHOBHNATHPUR, P.S.KAHALGAON, DISTRICT- BHAGALPUR, AT PRESENT RESIDING AT MOHALLA JAWARIPUR, P.S. TILKAMAJHI, DISTRICT- BHAGALPUR

... .. Petitioner/s

Versus

1. STATE OF BIHAR THROUGH THE CHIEF SECRETARY GOVT. OF BIHAR, PATNA, BIHAR
2. THE DISTRICT ACCOUNTS OFFICER, BHAGALPUR, BIHAR
3. THE DISTRICT AND SESSIONS JUDGE, BHAGALPUR
4. THE REGISTRAR-CUM-JUDGE IN CHARGE ACCOUNTS, CIVIL COURTS, BHAGALPUR

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Adv, Mr. Anil Kumar Tiwary, Adv & Mr. Akshansh Ankit, Adv
For the Respondent/s : Mr. S.S.P Yadav SC-10

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 23-02-2018

Heard learned counsel for the parties.

This writ petition under Article 226 of the Constitution of India has been filed for issuance of a direction to the respondent-authorities to allow the benefit of assured career progression to the petitioners in terms of Government of Bihar, Finance Department Notification No. 3M.2-5-Ve Pu-28/99-4685 BI 121 dated 25.06.2003 from due date.

It has been submitted on behalf of the petitioners that they are Class-III employees of Civil Court, Bhagalpur and petitioner nos. 1 to 8 were appointed as Class-III employees on 05.09.1985, 12.12.1986, 05.09.1985, 29.11.1998, 05.09.1985, 01.05.1986, 13.10.1988 and 26.10.1988, in the judgeship of Bhagalpur, and since their appointment they are working to the satisfaction of the authorities.

The Government of Bihar, Finance Department issued notification dated 25.06.2003 making provision for Assured Career Progression Scheme for the Bihar Government employees under which all the employees of the State Government became entitled to at least two time bound



promotion in his career. The first on completion of 12 years and second on completion of 24 years of service. Under Rule-5 of the notification, it has been provided that ACP under the scheme shall be subject to passing of departmental examination. Bihar Civil Court Staff (Class III and Class IV) Rules, 2009 are applicable to the petitioners as they are Class-III employees of Civil Court and fall under category-III of Rule-4 of Civil Court Rules. Civil Court Rule provides that a candidate was not to be promoted to higher scale in service unless he qualifies in the examination and Rule-22 (5) of the Civil Court Rules provides that if a clerk is to be promoted to the category-2, he will have to pass the examination of (1) Civil Court and Criminal Court Rules, (2) Accountancy, (3) knowledge of drafting of correspondence and ordersheet and (4) Practice and Procedure.

It has been contended by learned counsel for the petitioners that petitioner nos. 1 to 8 have passed the aforesaid departmental examination and have become eligible for first ACP w.e.f. 09.08.1999, 09.08.1999, 09.08.1999, 29.11.2006, 09.08.1999, 09.08.1999, 13.10.2000 and 26.10.2000.

It has been further submitted that departmental examination as provided in the Civil Court Rules has to be conducted every year but in the Judgeship of Bhagalpur the



same were conducted in the year 1994, 2003 and 2008 i.e. after gap of nine years and five years and in the meantime ACP became due to the petitioners. The petitioners have passed the departmental examination on 14.06.2008 and are entitled for grant of ACP from due date.

A Screening Committee was constituted for making recommendations to grant the benefit of ACP to Class-III employees. After submission of report of screening committee respondent no. 3 passed the order dated 27.11.2008 by which petitioners were allowed 1st ACP in the pay scale of Rs. 5000-150-8000 from due date as stated above, however, it was observed in the order that the pay scale of petitioners shall be fixed from the aforesaid dates, but financial benefits shall be payable to them from 14.06.2008 i.e. date of passing of departmental examination.

In compliance of order dated 27.11.2008 pay of the petitioners was fixed by the accountant, which was also recorded in their respective Service-Books and thereafter the same was sent to respondent no. 2 for verification which were returned by respondent no. 2 with objection that under letter no. 13199-228 of the Registrar, Patna High Court, only after passing the departmental examination of first and second paper,



petitioners are entitled to first ACP and since petitioners have passed the second paper on 14.06.2008, they are entitled to first ACP from 14.06.2008 and as such after necessary modification the Service-Books may be re-sent.

It has been contended on behalf of the petitioners that by the same order dated 27.11.2008, three staffs were allowed first ACP from 09.08.1999 and financial benefits were given from 14.06.2008 and accordingly, their pay were fixed and recorded in the Service-Book by letter dated 03.05.2011 and 28.06.2011 of the Judge Incharge, Accounts, Civil Court, Bhagalpur and the Service-Books of 32 Class-III employees were sent to respondent no. 2, which was returned to respondent no. 4 and the same was returned on 12.10.2011 with objection that letter of relaxing rules be sent along with Service-Book. The petitioners sought information from respondent no. 2 under Right to Information Act, who were informed that since departmental examinations were conducted after a gap of 4-8 years, and in the meantime ACP became due, the concerned administrative department may issue letters relaxing the Rules.

A counter affidavit has been filed on behalf of respondent no. 2, in which it has been stated that the petitioners were appointed on Class-III post between 05.09.1985 to



26.10.1988 in the Bhagalpur Civil Court and were required to pass the departmental examination for getting the benefits of ACP. The petitioners have passed the departmental examination in the year 2008 and as such are entitled to get the first ACP from the date of passing of the examination. The issue raised in this writ petition is no more res integra and it has been held by this Court that once the employee satisfy the criteria or eligibility for his promotion in higher grade and even he has passed the departmental examination subsequent to his due date of promotion, he will be granted first ACP from his due date if there is delay in holding examination by the department in time.

In the present case, the petitioners were entitled for grant of first ACP after completion of 12 years of service as stated in the aforesaid paragraph and although the petitioners have passed the examination in the year 2008 they are entitled to get benefit of first ACP and second ACP from due date as departmental examination were not conducted regularly and same was held after much delay and for which petitioners cannot be made to suffer and administrative department is empowered to relax rules under such circumstance.

Learned counsel for the petitioners have relied upon a judgment of this court dated 06.09.2017 passed in L.P.A No.



806 of 2014 (Binay Shankar Shukla Vs State of Bihar & Ors).
The departmental examinations are expected to be held every year but same was held in 1994, 2003 and 2008 and had it been held every year as per scheduled petitioners would have passed examinations in time.

Petitioners have submitted that they have filed several representation to respondent no. 3 District & Sessions Judge, Bhagalpur, but the same has not been considered till date. Petitioners may file a fresh representation before respondent no. 3 District & Sessions Judge, Bhagalpur, alongwith a copy of judgment and order dated 06.09.2017 passed in LPA No. 806 of 2014 (Binay Shankar Shukla Vs State of Bihar & Ors) and respondent no. 3, if finds, that their case is covered by said judgment then similar benefit is to be extended to petitioners of this case also.

The writ petition is allowed to the extent as indicated above.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07.03.2018
Transmission Date	N.A.

