

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.263 of 2016

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Om Prakash Ram, Son of Sri Ganga Ram Harijan, resident of Village and Post Office-Pakwaliya, P.S. Duraunda, District Siwan at present posted as Panchayat Secretary at Maharajganj Block, District Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate Siwan.
3. The Deputy Development Commissioner, Siwan.
4. The District Panchayat Officer, Siwan.
5. The District Accounts Officer, Siwan.
6. The Block Development Officer Maharajganj, District Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Adv.

For the State : Mr. Manish Kumar, G.P.-4

Mr. Ajay Kumar, A.C. to G.P.-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-02-2018

Heard Mr. Jitendra Kumar Roy, learned counsel for the petitioner, and Mr. Manish Kumar, learned Government Pleader No. 8 for the State.

With the consent of parties, the writ petition has been heard with a view to final disposal at the stage of admission.

The writ petition is filed for a direction to the



respondents authorities for grant of 1st ACP, with effect from the due date, *i.e.*, 25.09.2007 in the revised Pay-Band of Rs. 9300-34800/- with Grade Pay of Rs. 4200/- and for grant of 2nd ACP on completion of 20 years of service from the date of joining, *i.e.*, 25.09.1995 in the Grade Pay of Rs. 4600/-, *i.e.*, since 25.09.2015. The petitioner would rely upon Explanation-2 Clause-V attached to Rule 14 of the Bihar Government Servants (Classification Control and Appeal) Rules, 2005 (*hereinafter referred to as the 'Disciplinary Rules'*) for the purpose.

A counter affidavit is filed enclosing the proceedings of the Committee constituted for the purpose which held its meeting on 31.08.2016. The name of the petitioner occurs at Serial No. 62 at running page 75. The order while granting the 1st ACP to the petitioner, with effect from 25.09.2010, and the 2nd ACP with, effect from 25.09.2015, explains that it is in view of the punishment order, bearing memo No. 337, dated 1st March, 2007, a copy of which is enclosed at Annexure 3 to the writ petition, which is the ground for delay.

Not being satisfied that the petitioner has filed I.A. No. 1591 of 2017 to question the order in so far as the date of grant of the two ACPs are concerned and for shifting it back.

Mr. Roy relies on Explanation 2 Clause V attached to



Rule 14 of the 'Disciplinary Rules' in support. According to Mr. Roy, since the penalty order, at Annexure 3, stopped the three increments of the petitioner with cumulative effect. According to him, the moment the period would be over in the year 2010, the petitioner would become entitled for consideration of grant of ACP with effect from the due date because the period of punishment has been over.

The second grievance raised is that although the petitioner has been granted Grade Pay of Rs. 2400/- and 2800/- respectively in respect of the two progressions, but, in fact, he was entitled to a Grade Pay of Rs. 4200/- on the 1st progression and Rs. 4600/- on the second progression.

The arguments have been contested by Mr. Manish Kumar, learned Government Pleader No. 4, and relying upon the very same Explanation, he submits that the situation in the case of withholding of increment, with cumulative effect, is entirely distinct from those present in a case of withholding of increments without cumulative effect. According to learned counsel whereas in a case of an employee facing punishment of stoppage of increment with non cumulative effect, he is entitled for the benefits from the due date on the expiry of the penalty, there is no such facility available to those facing the punishment of stoppage of increments with



cumulative effect because the increments withheld are on a permanent basis. Learned counsel, in support of his submission, has relied upon a judgment of the Supreme Court in case of ***Punjab State Electricity Board Vs. Raj Kumar Goel***, reported in ***AIR 2015 SC 533***, paragraph 13 to 15 and 17 of the judgment.

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

The facts are not in dispute rather are admitted. It is not in dispute that the punishment order dated 01.03.2007, at Annexure 3, has attained finality since it was never questioned by the petitioner before a superior Court. In other words, the order of penalty of stoppage of three annual increments of the petitioner, with cumulative effect, *vide* order passed on 01.03.2007, has attained finality and, thus, until 01.03.2010, the petitioner is not entitled to any increments. In fact, the very scheme, under the Assured Career Progression Rules, 2003, itself conceives of grant of progression to those having completed 12 years to 24 years of satisfactory service, as is manifest from the Explanation attached to paragraph 3 (5) of the scheme, which *inter alia* takes notice of delay in grant of progression to a government servant by virtue of a disciplinary proceeding or having not been found fit for promotion.

Acceptance of submission of Mr. Roy would lead to an



absurd situation, where having faced a disciplinary charge, resulting in stoppage of increments with cumulative effect, the interpretation given by Mr. Roy to the scheme would nullify the effect of such punishment. Obviously, the benefit of progression, under the scheme, is only where the service of the incumbent is found satisfactory. In other words, where the incumbent is facing a disciplinary charge during the period he is due for progression and which has resulted in a penalty, the progression would get postponed until the effect of such punishment is over.

In so far as the case in hand is concerned, since three annual increments of the petitioner had been stopped, *vide* order passed on 01.03.2007, obviously, the petitioner could not have been granted any benefit under the scheme until the effect of the punishment was over, *i.e.*, 01.03.2010. No sooner, the effect of the punishment was over that the Committee has considered his case and has granted the progression with effect from 25.09.2010 with the second progression occurring on 25.09.2015, I find absolutely no infirmity with the order granting progression to the petitioner in so far as the dates are concerned which is in consonance with the spirit of the scheme and the provisions of the 'disciplinary rules'.

This would bring this Court to the issue whether or not the Grade Pay, so granted to the petitioner, is correct, which,



according to him, ought to have been Rs. 4200/- on the 1st grant of ACP and Rs. 4600/- on the 2nd grant in place of Rs. 2400/- and Rs. 2800/- respectively. According to Mr. Roy, in similar circumstances, the others have been granted similar benefit.

On this issue, I deem it proper to grant liberty to the petitioner to represent before the authority concerned and it goes without saying that any such representation, limited to the issue of grant of Grade Pay, is filed by the petitioner, the same would be considered and be disposed of by the authority concerned in accordance with law within a period of three months from date of filing of such representation.

With the observation above, this writ petition is disposed of.

(Jyoti Saran, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

