# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.1140 of 2016**

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Ashwini Kumar Mishra S/o late Shankar Bihari Mishra R/o Vill Baraka Gaun(Sabbal Patti), P.s Simri, Distt Buxar.

.... .... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Finance Government of Bihar, Patna.
2. The Inspector General of Police, (Walfare) Govt. of Bihar, Patna.
3. The Commandant, Mounted Police Force, Bhojpur at Ara.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Satish Chandra Mishra, Adv.
Md. Nurul Hoda, Adv.

For the Respondent/s : Mr. Deepak Sahay Jamuar, AC to AAG 4

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

ORAL JUDGMENT

**Date: 31-08-2018**

Heard Mr. Satish Chandra Mishra, learned Counsel appearing for the petitioner and Mr. Deepak Sahay Jamuar, learned AC to AAG 4, for the State.

The petitioner is aggrieved by the order dated 19.11.2015 passed by the Director General of Police as communicated by the Assistant to the Inspector General of Police (Welfare), whereby in consideration of the claim of the petitioner for grant of benefit of Assured Career Progression the petitioner has though been granted progression with effect from 15.09.2009 in the light of the exemption from the Accounts Examination given by the Headquarters vide letter dated 05.03.2014 but since the petitioner had superannuated on 31.03.2012 that no further progression has been granted. It is this denial of further progression which has aggrieved the petitioner to prefer this writ petition.

There is no dispute on facts as regarding the service tenure of the petitioner as also the claim raised by him for grant of Assured Career Progression under the 'Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as the 'ACP Rules') and the Modified Assured Career Progression Rules, 2010 (hereinafter referred to as the 'MACP Rules'). The dispute is on the denial of progression from the due date(s) as no progression has been given to the petitioner in his entire service tenure of 37 years except the one in the year 2009 and the reason assigned is because, the exemption to the petitioner from appearing in the Departmental Accounts Examination came only with effect from 15.09.2009 and since the petitioner superannuated on 31.3.2012 that the second progression to which the petitioner would have become entitled with effect from 15.09.2019, could not be given.

The only issue which arises for consideration is whether the petitioner was at all required to pass a Departmental Accounts Examination for grant of Assured Career Progression under the 'ACP Rules, 2003' and if not, then what should have been the date from which he would have become entitled to his progressions under the 'ACP Rules, 2003' and/or the 'MACP Rules, 2010.

The short facts accompanying the present case is that petitioner was appointed as a Clerk in the State Police under the Home Police Department on 13.03.1975 and superannuated from the same post after 37 years of satisfactory service with effect from 31.03.2012. In between, the petitioner was neither granted regular promotion nor was given Assured Career Progression under 'the ACP' or 'MACP Rules'. It is after the petitioner superannuated that his representation(s) earlier filed, gave results in the form of grant of progression under the 'ACP Rules' with effect from 15.09.2009 as communicated by the Assistant Inspector General of Police to the Inspector General of Police through letter dated 19.11.2015 impugned at Annexure-3. Since this is the only progression given to the petitioner in 37 years of service, that feeling aggrieved, he is before this Court.

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

While it is the submission of Mr. Mishra that the date of grant of progression under 'the ACP Rules, 2003' as well as the denial of further progression both are incorrect and the petitioner has been wronged by the respondent, these arguments have contested by Mr. Jamuar, learned AC to AAG 4 in reference to clause 4(5) of 'the ACP Rules, 2003' which mandates that an incumbent would have to pass such examination as provided in the Service Rules for regular promotion.

This very issue came up for consideration before a Division Bench of which, I was also a member arising from LPA No. 595 of 2015 (**Ramadhar Thakur vs. The State of Bihar & Ors.).** The Division Bench speaking through Mr. Chakradhari Sharan Singh, J on examination of the judgments on the issue rejected the stand of the State in requiring the incumbents seeking grant of progression under the ACP Rules to pass the Departmental Accounts Examination. For the sake of convenience, I am persuaded to reproduce paragraphs 1, 8 and 11 to 17 of the judgment, which sets at rest the objection raised:

> "1. Taking aid of Clause (J) of Sub rule (3) of Rule 157 of the Bihar Boards Miscellaneous Rules, 1958, whether the petitioner's entitlement to grant of Assured Career Progression under the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as 'the ACP Rules') could be declined on the ground that he had not passed the departmental accounts examination, is the sole question which is involved for determination in the present intra court appeal. By the impugned judgment and order of a learned Single Judge of this Court dated 10.2.2015 passed in C.W.J.C. No. 486 of 2014, the petitioner's claim for grant of Assured Career Progression (hereinafter referred to as the 'ACP') has been rejected on the sole ground that he had not passed the departmental examination nor was he exempted from passing such examination. The reason behind denial of

the petitioner's claim for grant of ACP is manifest from the impugned judgment and order, which is the stand of the State respondents also and is referable to Sub rule (5) of Rule 4 of 'the ACP Rules' which prescribes inter alia that the requirements and mode of sanction for financial progression under the scheme shall be the same as are prescribed under the recruitment/service rules for regular promotion against vacancies. It is the stand of the department that passing of the departmental accounts examination is a condition precedent for grant of a regular promotion, in view of the stipulation in Clause (J) of Sub Rule (3) of Rule 157 of the Bihar Board's Miscellaneous Rules.

8. As has already been noticed, the sole plea which is being taken by the respondents, State of Bihar, to deny the appellant's claim for grant of Assured Career Progression is that the provision under Sub rule (5) of Rule 4, which has already been quoted above, has not been satisfied. It is clear from the language of Sub rule (5) that the requirements for sanction of financial progression under the scheme of rules is the same as prescribed under the recruitment/service rules for regular promotion against the vacancies. It is the plea of the respondents that for grant of regular promotion, passing of the departmental Accounts Examination is a condition precedent. However, no rule governing the service of the appellant nor any notification has been brought to our notice to show that for grant of regular promotion against the vacancies, in the service/cadre to which the appellant belonged, passing of departmental Accounts Examination

was a condition precedent.

11. Since we are of the view that the Clause (J) of Sub rule (3) of Rule 157, interpretation of which is at the core of the controversy, has been discussed threadbare in case of **Maheshwar Prasad Singh** (supra), we shall be referring to the said decision, first. The full bench in the said case had the occasion to consider the interpretation of Rule 157(3)(J), with reference to certain State Government resolutions, to determine the question as to whether the Clerks of the mufassil offices could/can be promoted to selection grade post without passing the final examination in accounts, except during the period between 01.05.1980 and 29.03.1982, since correctness of the law laid down in the case of **Md. Shamsuddin & Ors. Versus State of Bihar** reported in **1983 PLJR 347** was doubted. Considering the said Rule 157 (3) (J) and the correction slip No.30 dated 29.3.1982, which had the effect of amending rule 157(3)(J)(C) of the Rules, the full bench of this Court noticed in paragraph 6 that accounts examination had been treated as an essential qualification at all times, whether for the purpose of crossing the efficiency bar or for confirmation or for the purpose of promotion. The Court held, however, referring to the correction slip No. 30 dated 29.3.1982, that whereas earlier, the requirement of passing of accounts examination was applicable to promotion from lower division to upper division posts, after the amendment through the said correction slip, it was made applicable to promotion to the selection grade only. In substance, the full bench held that in view of the amendment in Rule

157 (3)(J)(c) of 'the Rules', through correction slip dated 29.3.1982, the requirement of passing accounts examination was confined to promotion to selection grade. Paragraph 13 of the full bench decision in case of **Maheshwar Prasad Singh** (supra) is relevant for the present purpose and is being quoted hereinbelow:

> "13. On the basis of the above discussion, I have no hesitation in holding that the State Government was fully competent to amend rule 153(3)(J) of the Board's Miscellaneous Rules by executive instructions and the amendment made vide correction slip no.30 dated 29.3.82 was a valid amendment. Thus, clerks were required to pass the final examination in Accounts as a condition for promotion to the selection grades after 29.3.1982."

12. In our view, thus, the full bench does not support the case of the respondents rather it helps the Appellant's case as it is clear from what has been laid down by the Full Bench that Rule 157(3)(J) requires passing of accounts examination for promotion to selection grade only.

13. Reliance placed by Mr. Amit Bhushan on the decision of this Court in the case of **Rameshwar Roy** (supra) is also of no help to him for the reason that in the said decision learned Single Judge has not noticed the Full Bench decision of this Court in case of **Maheshwar Prasad Singh** (supra), which clearly lays down that the requirement of passing of Accounts Examination under Rule 157(3)(J) of the Bihar Boards Miscellaneous Rules is in respect of grant of promotion to selection grade and not for regular promotion. In our view, learned counsel for the appellant has rightly relied on this Court's decision in case of **Mithilesh Kumar Sinha** (supra)

where the Court held that there was no requirement of passing departmental examination for becoming eligible for promotion from the post of Head clerk to Head assistant. The court held in the said decision that passing of Accounts Examination is necessary for earning selection grade and had no application for grant of substantive promotion. Similar view has been taken by a learned Single Judge of this Court in case of **Syed Mozammil Ashraf** (supra).

14. In the case of **Shashi Sekhar Ambasta**, (supra) reliance on which has been placed by the learned counsel for the appellant, the Court laid down the distinction between the substantive promotion and grant of ACP. The distinction between ACP and regular promotion has been noticed also by a Division Bench of this Court in the decision rendered on 20.04.2015 in **L.P.A. No. 1260 of 2012 (State of Bihar and Ors. Vs. Pramod Kumar)** holding that the ACP is not a promotion, rather it is merely a financial progression.

15. Let's now consider another Division Bench decision of this Court in the case of **Rameshwar Roy** (supra**),** reliance on which has been placed by Mr. Amit Bhushan. As is evident from the said decision, it does not lay down a law that passing of Accounts Examination is a condition precedent for grant of ACP under 'the ACP Rules, 2003'. In that case, the benefit of ACP was denied in view of an order of punishment against the Government servant of denying him regular promotion for a period of 10 years. In that background, referring to Sub rule 5 of Rule (4) ACP Rules, the Division Bench

held that the Rules of promotion could not be said to be not applicable, while granting the benefits under the ACP Scheme. There is rather no controversy over this proposition. We are also of the considered view that the rules of regular promotion may be made applicable for grant of ACP under the ACP scheme.

16. The question however, in the present case, which has already been noticed, is, as to whether for grant of a regular promotion, passing of Accounts examination is a condition precedent or not and in the absence of any such bar for grant of regular promotion under any statutory provision, by invoking rule 157(J)(3) of 'the ACP Rules', the respondents can deny the benefit of Assured Career Progression. We need not reiterate the fact that the respondents have not brought to our notice any statutory provision or executive instruction specifically providing that passing of departmental Accounts Examination is a *sine qua non* for grant of regular promotion. As a matter of fact, for the first time in the year 2015, the State Government of Bihar, in exercise of the powers conferred under Article 309 of the Constitution of India, appears to have made the rules for appointment and service condition of Clerical Cadre of General Provident fund Directorate and its subordinate offices with effect from 18.5.2015, Rule 12 (1) thereof stipulates 'passing in Hindi noting and drafting examination and in both papers of departmental Accounts Examination at higher level as conditions for grant of promotion to the post of Upper Division Clerk'. No provision in the rules, on which reliance is being placed, deals with promotion from the

post of Lower Division Clerk to Upper Division Clerk. Though another set of rules namely, Bihar Secretariat Service Rules 2010 has no application in the present facts and circumstances of the case, yet for the purpose of drawing inference, the provisions under the said rules need to be noticed. The said 2010 Rules deal with the Bihar Secretariat Service, consisting of various posts, as referred to in Rule 3(4), including the post of Assistant. Rule 6 of the said 2010 Rules deals with appointment in Assistant cadre through two modes i.e; by way of the Direct recruitment and by promotion from the Upper Division Clerks of the Bihar Secretariat Clerk service. The Rules do not provide for passing of the departmental Accounts Examination as a condition precedent for regular promotion from the grade of Upper Division Clerk of Bihar Secretariat Clerical Service to Assistant Grade. Further, Rule 10 of the said rules also deals with promotion from lower grade to higher grade. Nowhere the rules specify the requirement passing of accounts examination as a condition for grant of regular promotion.

17. Situated thus, and in view of the discussions, as above, there is no gainsaying that in view of Sub rule 5 of Rule 4 of 'the ACP Rules', the requirements for grant of regular promotion shall be applicable while considering cases for grant of ACP. Since, there is no provision prescribing passing of accounts examination for regular promotion, the appellant could not have been denied grant of ACP. We are of the clear view that the decisions in case of **Rameshwar Roy** (supra) and **Daya Shanker**

> **Singh** (supra) do not lay down the correct law and the same cannot be made applicable."
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> (Emphasis is supplied)

Neither before the Division Bench nor before this Court any material or statutory rule is placed on record which requires the petitioner to pass the Departmental Accounts Examination for the purpose of regular promotion. All along the respondents have been misinterpreting the provision of Rule 157(J) of the Bihar Board Miscellaneous Rules to deny financial progression to its employees and the petitioner herein is also a victim of such misappreciation and misinterpretation of the legal position. That the necessity of passing the Departmental Accounts Examination has been held not a condition precedent for grant of progression either under 'the ACP Rules' or 'the MACP Rules', the opinion of the respondent as found in the letter dated 19.11.2015 at Annexure-3 to grant progression to the petitioner with effect from the date he was granted exemption, is not a correct appreciation of the legal position, rather in terms of the stipulations present in 'the ACP Rules' which allows progression to an incumbent on completion of 12 years/ 24 years of satisfactory service, that there is nothing on record which would demonstrate that the service of the petitioner was not satisfactory, he could have been denied the financial progression(s) on completion of 12/24 years of service in view of the legal position settled in the case of **Ramadhar Thakur** (supra).

Since ‘the ACP Rules, 2003’ was enforced with effect from 9.08.1999, that the petitioner had already completed 12/24 years of service until then, it is a natural consequence that he would be entitled for grant of progression(s), with effect from 9.08.1999 under ‘the ACP Rules, 2003’ and ‘the MACP Rules, 2010’, as the case may be. In my opinion the denial of progressions to the petitioner from the due dates, is illegal and in the circumstances discussed, I direct the respondent nos. 2 and 3 to revisit the issue and pass appropriate orders on the claim of the petitioner for grant of 1st, 2nd and 3rd progression under ‘the ACP/MACP Rules’, as the case may be, in accordance with law bearing in mind the observations above and the law settled in the case of **Ramadhar Thakur** (supra), within a period of three months of the receipt/ production of a copy of this judgment.

The writ petition is allowed with the directions above.

**(Jyoti Saran, J)**

Archana/Surendra

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