

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.342 of 2018

In

Civil Writ Jurisdiction Case No.13837 of 2011

-
1. Md. Islam, Son of Late Md. Ishaque, resident of Mohalla-Samanpura, Madarsa Road, Raja Bazar, P.S.- Shastrinagar, District- Patna.
 2. Yogendra Prasad Ambastha, Son of Late Jagtanand Prasad, Resident of Mohalla- Lohanipur West, P.S.- Kadamkuan, District- Patna.
 3. Satya Narayan Prasad Verma, Son of Late Jugeshwar Prasad Verma, Resident of House No. B/5, Road No.18, Mohalla-Rajeevnagar, P.S.- Rajeevnagar, District- Patna
 4. Rajeshwar Prasad Singh, Son of Late Bindeshwar Prasad Singh, Resident of Mohalla- Progressive Colony, Jai Prakash Nagar, Kumhrar, P.S.- Agamkuan, District- Patna.
 5. Ramjee Thakur, Son of Late Laddu Thakur, Resident of Mohalla-Shanti Nagar, Khagri Road, Takia-par, P.O. & P.S.- Digha, District- Patna.
 6. Ram Amir Pandit, Son of Late Bataha Pandit, Resident of near Labour Court, P.S.- Muzaffarpur Town, District- Muzaffarpur.
 7. Sri Rameshwar Prasad Yadav, Son of Late Deviki Singh, Resident of Mohalla- South Indra Nagar, Postal Park, P.S.- Jakkanpur, District- Patna.
 8. Krishna Kumar Prasad, Son of Late Sukhlal Sah, Resident of Mohalla- Rajeevnagar, Road No.7, P.S.- Rajeevnagar, District- Patna.
 9. Nirmal Kumar Singh, Son of Late Chandrika Singh, Resident of Mohalla- Shanti Sadan, Opposite Mahendru Post Office, P.S.- Pirbahore, District- Patna.
 10. Rajendra Prasad Prabhakar, Son of Late Sakaldeep Prasad Roy, New Mica Colony near Ram Kirana Store, P.O.- Digha Ghat, P.S.- Digha, District- Patna.
 11. Nagwati Devi, Wife of Late Rajendra Mahto, Resident of Vaishali Kumbh, Mohalla- Ram Jaipal Nagar, Nashriganj, P.O. & P.S.- Digha, District- Patna.
 12. Indubala, wife of Late Suresh Nandan Prasad, Resident of Mohalla- New Jakkanpur, Chhapra Colony near Shyam Kund, P.S.- Jakkanpur, District- Patna.
 13. Sukhdeo Sahu, Son of Late Asharfi Sahu, Resident of R.K. Puram, Khagaul Road, West Danapur, P.O.- Danapur Cantt. P.S.- Danapur, District- Patna.
 14. Kapildeo Thakur, Son of Late Lakshaman Thakur, Resident of Saketpuri, Road No.1, near Ambedkar Chowk, Hanuman Nagar, P.S.- Kankarbagh, District- Patna.
 15. Ram Chandra Sah, Son of Late Jale Sah, Resident of Mohalla-Naya Tola near Chandralok, P.S.- Muzaffarpur Town, District- Muzaffarpur.
 16. Ram Krishna Sahu, Son of Late Mahavir Sahu, Resident of Mohalla- Bank Colony, Road No.17, P.O.- Keshari Nagar, District- Patna.



... .. Appellant/s

Versus

1. The Bihar State Electricity Board, Vidhyut Bhawan, Baily Road, Patna through its Chairman.
2. The Chairman, Bihar State Electricity Board, Vidhyut Bhawan, Baily Road, Patna.
3. The Secretary, Bihar State Electricity Board, Vidhyut Bhawan, Bailey Road, Patna.
4. The Chief Managing Director, Bihar State Power Holding Company Vidhyut Bhawan, Bailey Road, Patna.
5. The Joint Secretary, Bihar State Electricity Board, Vidhyut Bhawan, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar Verma, Advocate Mr. Amrendra Kumar, Advocate
For the Respondent/s	:	Mr. Ranjit Sinha, Advocate.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 18-12-2018

The present Letters Patent Appeal has been preferred challenging the judgment and order dated 09.01.2018 passed in C.W.J.C. No. 13837 of 2011, whereby the learned Single Judge has declined to allow the prayer of the writ petitioners of CWJC No. 13837 of 2011, along with other analogous cases. The Appellants' further prayer is for grant ACP benefits in terms of the ACP (Amended Rules), as was permissible to State Government employees, as well as employees of the respondent-Board (now the company).

2. The background of the lis, is that the writ



petitioners/appellants came to be appointed as Junior Engineers/Overseers in the erstwhile Board (now restructured and incorporated as Bihar State Power Holding Company w.e.f. 01.11.2012) and were subsequently promoted as Assistant Engineers, and having rendered their respective services, they superannuated in between the years 1999 and 2008.

3. In the year 1998, the Pay Revision Committee was constituted by the respondents and the Bihar State Employees Condition of Service (Assured Career Progression Scheme) Rules, 2003 came to be introduced by the State Government, so as to ensure career advancement of those persons, who were in its employment. However, the said rules were adopted by the respondent-Board vide Notification No. 5 dated 05.04.2005 as contained in Memo No. 26 dated 05.04.2005, and the notification came into force with immediate effect. The said notification was followed by Notification No. 108 dated 07.10.2005, imposing such terms as incorporated therein, and stating that the ACP scheme would be applicable to those who were appointed in the service of the Board after 05.04.2005. Later, a modified Assured Career Progression Scheme, 2010 was introduced vide notification bearing Resolution No. 134 dated 20.08.2010, which spoke of the



implementation of the ACP scheme in toto, as allowed to the State Government employees, but with the rider that the benefit thereof will be given to the Engineer Cadre and the workmen, in terms of the period of entitlement for grant of benefits. As such, in view of the aforementioned decision, the writ petitioners came to be disentitled from availing the ACP Scheme, 2003 and the benefits arising therefrom.

4. It is important to mention here that at the time of constitution of the Board, it had adopted for its employees, the Bihar Service Code mutatis mutandis, and all the decisions taken by the Board for its smooth functioning and granting benefits to its employees, were as per the provisions envisaged under the Bihar Service Code.

5. In consonance with the aforementioned policy by which the Board used to adopt the various schemes of the State Government, it has also given Career Assured Progression to the employees and the scheme was to be implemented in its letter and spirit in terms of ACP scheme 2003 which was further amended in 2006, only to the extent in declaring its operational date to be w.e.f. 05.04.2005. It is needful to submit here that while the Board adopted the ACP scheme 2003, the same was to be given to the employee w.e.f.



05.04.2005, vide notification contained in Memo No. 26 dated 05.04.2005. Subsequently, Notification No. 108 dated 07.10.2005 was issued incorporating such terms that the ACP would be applicable to those who were appointed in services of the Board after 05.04.2005. Later on, a further resolution being Resolution No. 134 dated 20.08.2010 containing the Modified Assured Progression Scheme, 2010 was introduced, which spoke of implementation of the ACP scheme in toto, as has been allowed to the State Government Employees but with a rider that the same would also be given to the Engineer cadre and the workmen. As such, the writ petitioners came to be disentitled from availing the ACP scheme and the benefits arising therefrom.

6. Being aggrieved by the said decision, the Junior Engineers, earlier known as Overseers in the Bihar State Electricity Board, some of whom were promoted as Additional Assistant Engineers & Assistant Engineers in the same scale and who had retired from the service of the Bihar State Electricity Board, came to challenge the aforesaid decision of the Board contained in notification No. 108 dated 07.10.2005 by which the notification dated 05.04.2005 was modified and was made applicable only to the staff appointed after 05.04.2005, meaning



thereby that the old employees alone could not get the benefit of ACP scheme.

7. It was submitted on behalf of the petitioners that the notification of the State Government dated 25.06.2003 could not be changed by the respondent –Board and the change of date by the Board amounted to change of service conditions. Thus, the action of the respondents in issuing the notification as contained in Annexure-4 is completely illegal, ultra virus and fit to be quashed by this Court. It was further brought to the notice by the writ petitioners that the ACP scheme, 2003 has now been replaced by the ACP Scheme, 2010 and the respondent-Board issued a Notification No. 134 dated 20.08.2010 applying the same with effect from 01.01.2009 and Clause -8 of the scheme states that the old scheme, 2003 would be applied till 31.12.2008 (Annexure-5 to the writ petition).

8. It was further submitted by the Appellants that since the ACP scheme was still in vogue, the petitioners were entitled to get the benefit of ACP from 09.08.1999. The Board also constituted a committee vide order dated 17.06.2011 for recommending the promotion of employees under ACP scheme and it was submitted that the notification dated 07.10.2005 itself became redundant after the aforementioned



notification and the petitioners were entitled to get the benefits of the ACP scheme, 2003 as the respondent-Board having adopted the conditions of service of the State Government employees, had no jurisdiction to debar the petitioners from getting the benefits of ACP from 09.08.1999 as they were at par with the employees of the State Government.

9. Constrained by the whimsical attitude of the Board, the writ petitioners came to this Court seeking mandamus for granting of ACP as per the 2003 Scheme stating that the action of the respondent-Board in issuing the notification dated 07.10.2005 and modifying its earlier notification dated 05.04.2005 is completely illegal, arbitrary, discriminatory and unsustainable in law. It was submitted that in view of the Notification of 2010, the action of the Board in declining to grant ACP to the petitioners was not tenable; both on facts and law and, therefore, warrants interference by this Court under Article 226 of the Constitution of India.

10. Controverting the submissions of the Appellants, the Respondent-Board, however, contended that the writ application is devoid of any merit and fit to be dismissed as prior to the implementation of the ACP scheme, the Bihar State Electricity Board had been following the time bound



scale/selection grade scheme for benefit to its employees. The Engineers i.e. Assistant Engineers and above were granted time bound scales as per the provisions of the Board's Resolution No. 28 dated 09.01.1989, whereas the workmen of the Board were to be granted selection/super selection grade as per Board's Standing Order No. 743 dated 11.06.1992. Further the time bound scale was granted to the Junior Engineer on completion of continuous service of 9 years and 17 years respectively under the provisions of Notification No. 78 dated 11.06.1992.

11. It was further stated by the Respondent-Board in their counter affidavit that as per recommendation of the Fifth Pay Revision Committee, the system of Selection grade/time bound promotion scale was replaced with the Assured Career Progression Scheme which was made applicable through notification No. 25 dated 05.04.2005, but on deep consideration and overall examination of the matter, the said ACP scheme/order was amended and was made applicable for all the employees appointed after issuance of Board's notification No. 25 dated 05.04.2005 only. Thus, it was contended that two types of schemes continued to remain in vogue, one for employees of the Board, who were appointed



after 05.04.2005 and another for those, who were appointed before 05.04.2005, in whose cases time bound scale continued to remain in force. Even the notification, Annexure- 5 (letter dated 20.08.2010) made it clear that the Assured Career Progression scheme of BSEB is applicable for those employees who were appointed after 05.04.2005 and, therefore, the writ petitioners being appointees of prior date could not avail the benefits of the scheme of 2003.

12. The further stand taken by the Board in their affidavit is that the BSEB had decided vide Resolution No. 134 dated 20.08.2010 to adopt the Modified Assured Career Progression Scheme, 2010 of the Government of Bihar for the employees of the BSEB, w.e.f. 01.01.2009 in supersession of all previous orders in this regard. In the said notification, it was also stated that the benefit of the scheme will be applicable to Electrical Engineers (General and GTO) on continuous service of 08,16 and 24 years and for the other employees, the same will be applicable on continuous services of 10, 20 and 30 years. Thus, the demand of the writ petitioners was wholly untenable and fit to be rejected.

13. It was thus, submitted by the Respondent-Board that the learned Single Judge after considering all facts



and circumstances and in view of submissions advanced, came to the conclusion that the effect of the adoption of the ACP Rules, 2003 by the Board vide its notification dated 05.04.2005 and the resolution dated 22.09.2005, by which the benefit of ACP has been restricted to the employees who were appointed on or after 05.04.2005, was neither discriminatory in nature nor has it caused prejudice to the petitioners or deprived them of their legal rights which had accrued to them prior to their retirement. He has proceeded to reject the writ application which has necessitated for filing the present appeal.

14. Heard Mr. Sanjay Kumar Verma and Amrendra Kumar learned counsel for the Appellants and Mr. Ranjit Sinha learned counsel for the respondent- Power Holding Company.

15. The very first aspect to be noted in this Appeal is that out of three appellants before us, save and except, Md. Islam (appellant no. 1), the appellant nos. 2 and 3 have superannuated prior to 05.04.2005. The other writ petitioners, who are not before us in appeal had also superannuated prior to the aforementioned date and they had all availed the benefit of financial progression which was earlier applicable during their service tenure. Moreover in all these cases, it was the admitted



position that prior to their retirement, they had availed the benefit of financial progression in whatever form it was in vogue during their service period. Having already availed the benefit of time bound promotion they rose to the higher next promotional post in the higher scale of pay. Furthermore, on the date of their superannuation in the year, 2004, the Board was yet to take a decision to adopt the ACP Rule, 2003 which was invoked only after the Board took a conscious decision to adopt the ACP Rule w.e.f. 05.04.2005. Thus, in our considered view the Appellants had already benefited in pursuance of the earlier scheme prior to the date on which the ACP, 2003 Rules were adopted by the Board and could not avail dual benefits.

16. We are also in agreement with the contention of the learned Single Judge that the Board was well within its domain as an employer to chose a date w.e.f. which the monetary benefits under the ACP Rule should be adopted for its employees and, therefore, there is no question of holding that the parameters adopted by the Board were discriminatory in any manner.

17. The other issue before us is whether the petitioners had assailed the notification dated 05.04.2005 at any point of time. It is not controverted that when the resolution



dated 22.09.2005 had been invoked, these petitioners had also availed the financial progression benefit in the form which was available to them prior to their retirement. Thus, the benefits of the scheme which came to be implemented after their superannuation could not by any stretch of imagination accrue in their favour. Thus, we are of the considered opinion that the petitioners are precluded from making any further claim in this regard.

18. Having given a conscious consideration, we find that the writ was filed, only after the Modified Assured Career Progression (MACP) came into force and thus, their contentions are wholly tenable on both facts and law and it is under the background of such facts and circumstances that the learned Single Judge has rightly rejected the prayer of the writ petitioners. Even in the case of Md. Islam (Appellant No. 1) and/or Kali Bhagat and Surendra Kumar Verma (writ petitioners, who are not before us as appellant), the benefit of the Modified Assured Career Progression scheme could not accrue to their benefit and the contention of the Board clearly reveals that they had all availed the monetary benefits under the then time bound promotions scheme.

19. For the foregoing reasons and also because



the grounds urged by the appellants do not reveal any fresh facets or anomaly or any element of discrimination so as to entertain an application under Article 226 of the Constitution of India, we do not find any reason to interfere in the order of the learned Single Judge. The judgment and order dated 09.01.2018 passed in C.W.J.C. No. 13837 of 2011 is thus, upheld.

20. The appeal stands rejected, accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	A.F.R.
CAV DATE	
Uploading Date	22/12/2018
Transmission Date	

