

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2051 of 2016
IN
Civil Writ Jurisdiction Case No. 2992 of 2014**

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Dr. Subodh Kumar Vishwakarma S/O Late Tarni Prasad Vishwakarma
Resident Of Mohalla- Parbatti, Bhagalpur City, District- Bhagalpur, At
Present- Working As between In Bihar Institute Of Silk And Textile,
Nathnagar, Bhagalpur, District- Bhagalpur

.... Appellant

Versus

1. The State of Bihar.
2. The Principal Secretary, Department Of Industry, Government Of Bihar, Patna
3. The Under Secretary, Department Of Industry, Government Of Bihar, Patna
4. The Director, Handloom And Silk Department Of Industry, Government Of Bihar, Patna
5. The Principal, Bihar Institute Of Silk & Textile, Nathnagar, Bhagalpur
6. Dr. Ram Prasad Sah, son of Late Sonu Sah at Present working as a Lecturer in B.I.S. and T, Nathnagar, Bhagalpur District – Bhagalpur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Banbari Sharma, Sr. Advocate
Mr. Bimal Kumar, Advocate
Mr. Birendra Kumar, Advocate

For the Respondent/s : Mr. Yogendra Prasad Sinha-AAG-7

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 13-04-2018

Challenge in the present Letters Patent Appeal is by
one of the writ petitioners to the judgment dated 09.12.2015
passed by the learned writ court in CWJC No. 2992/2014.

2. The learned writ court has refused to interfere with



the impugned order as contained in Annexure-6 to the writ application by which the Principal Secretary, Industry, Government of Bihar, has rejected the claim of the two writ petitioners by holding that the petitioners cannot be considered for promotion in the cadre posts of the Bihar Industry Service Cadre. One of the writ petitioners has been made respondent no. 6 in the present appeal.

3. The writ petitioner while assailing Annexure-6 to the writ application also prayed for a mandamus commanding the respondents to grant first and second Assured Career Progression (in short the “ACP”) and it’s consequential benefits to the petitioners in view of the State Government circulars, keeping in view that the petitioners were not allowed even a single promotion during their service period.

4. In the Writ-Court the respondents in their counter affidavit submitted that the competent authority considered the case of the petitioners and they have been granted the benefit of 1st ACP w.e.f. 01.10.2003 upon completion of 10 years of service in the pay scale of Rs. 6500-10,500 and 2nd ACP has also been granted w.e.f. 01.10.2011 upon completion of 20 years of service in Pay Band-II, 9300-34,800 (Grade Pay-Rs. 4800). The notifications dated 31.10.2016 issued on 03.11.2016 vide memo no. 5024 has been brought on record as Annexure-A to the



counter affidavit.

5. As regards, the claim of the petitioners for promotion, it is stated that the petitioners were appointed as Lecturers in the Institute in question pursuant to the judicial intervention. The name of the persons who have been cited in the writ application are those who were promoted from Class-III employees on the post of Lecturers, where as these petitioners were directly appointed on the post of Lecturers as a special case by virtue of judicial order.

6. The respondents further contended that so far as the persons named in the para 20 of the writ application are concerned, they are not Lecturers and as such their cases have distinguishable from the case of the petitioners. It is submitted that since the post of Lecturers does not hold any further promotional post, as such the benefits of ACP has been extended so that they do not stagnate in the promotional avenue by way of financial up-gradation. It is the case of the respondents that promotional posts under Service Rules are not to be filled up from teaching cadre as such these petitioners cannot be promoted to the Project Manager or its equivalent posts. The petitioners have been extended the benefit of ACP because admittedly they are the employees of the State Government. It is also submitted that the petitioners have already superannuated



from service.

7. As regards petitioner no. 2 (the present appellant), it is submitted that his case was also considered and rejected by screening committee due to non-availability of annual confidential reports/character roll and the screening committee was not satisfied with the special reports prepared in this case.

8. We now find from the counter affidavit filed on behalf of the respondent nos. 2, 3, 4 & 5 in the present Letters Patent Appeal that in respect of the present appellant, it is stated that he has already retired from the post of Lecturer from the Bihar Institute of Silk and Textile, Nathnagar, Bhagalpur way back in the year 2014. Till date of his superannuation, no junior to the appellant from the said Institute holding the post of Lecturer was promoted under the Bihar Industry Service Cadre Rules, 1987. It is stated that this appellant has been granted the benefits under the ACP scheme, the 1st ACP has been provided w.e.f. 01.10.2003 and 2nd MACP w.e.f. 01.10.2011 which is akin to granting him promotional benefits by way of financial up-gradation.

9. Having heard learned counsel for the appellants, we find that earlier the writ application was preferred by two petitioners, however the impugned judgment dated 09.12.2015 passed by learned writ court has been challenged only by



petitioner no. 2. As regards him, in the counter affidavit filed in the Letters Patent Appeal it has been specifically stated that he has been granted 1st ACP and 2nd MACP which is akin to granting him promotional benefits by way of financial up-gradation in lieu of actual promotion. He has reached the grade pay equivalent to grade pay attached to the promotional post under the cadre Rules. We also find that the respondents have convincingly supported the impugned order as contained in Annexure-6 to the writ application whereunder the petitioner no. 2 cannot claim a promotion on the cadre post to which he was not a member and his appointment was on an ex-cadre post due to judicial intervention. The appellant has already retired from service and has availed the benefits of financial up-gradation. In these circumstances, we do not find any illegality or infirmity in the impugned order.

10. The Letters Patent Appeal has no merit. It is, accordingly, dismissed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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