

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.502 of 2017

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Dineshwar Prasad, Son of Late Nand Lal Prasad, Resident of Village - Balkhara,
Police Station - Karpi, District - Arwal, presently residing in village - Sahargama,
Tola - Gandhi Nagar, P.S. - Parihar, District - Sitamarhi, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Civil Surgeon cum Chief Medical Officer, Sitamarhi.
4. The Additional Chief Medical Officer, Sitamarhi.
5. The Medical Officer, Primary Health Centre, Parihar, Sitamarhi.
6. The Joint Director cum State Programme Officer, Malaria, Bihar, Patna.
7. The Assistant Director cum State Programme Officer, Vector Janit Disease Control Programme, Chief Malaria Office, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha-3, Advocate

For the Respondent/s : Mr. Chandrashekhar Singh, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-01-2018

Heard Mr. Satish Chandra Jha No.3, learned counsel
appearing for the petitioner and Mr. Chandrashekhar Singh, learned
Assisting Counsel to Government Advocate No.10 for the State.

The petitioner is aggrieved by the order bearing No.1599
dated 24.11.2016 of the Additional Director cum State Programme
Officer, Vector Janit Disease Control Programme, Bihar Patna,
whereby the claim of the petitioner for counting his entire service
period for the purpose of grant of financial progression under the
Assured Career Progression Scheme, 2003 (hereinafter referred to
as the 'ACP, 2003') has been rejected, inter alia, on grounds that
the order bearing Memo No.1495 dated 9.5.1989, whereby the post



of Basic Health Worker held by the petitioner was converted as a Basic Health Inspector in the same pay-scale, was in the nature of an order of promotion and thus the calculation of the prescribed period would be counted from the said date. A copy of the order is impugned at Annexure-1 to the writ petition.

Mr. Jha, learned counsel appearing for the petitioner while giving the service details of the petitioner, has submitted that the petitioner was appointed as a Malaria Inspector on 12.2.1962 which post was re-designated as Basic Health Worker with effect from 1974 carrying the same pay-scale. He next refers to the order bearing Memo No.1495 dated 9.5.1989 placed at Annexure 2 to submit that the post of Basic Health Worker held by the petitioner was converted as Basic Health Inspector in the same pay-scale and the petitioner was posted against the said post by the said order.

It is stated that the case of the petitioner was considered for grant of financial progression under 'ACP, 2003' and vide order bearing Memo No.301 dated 13.12.2008 present at Annexure 3 the petitioner was granted first 'ACP' with effect from 12.5.2001 treating the order dated 9.5.1989 by which the post held by the petitioner was converted as Basic Health Inspector at Annexure 2 as an order of promotion.

It is submitted that after approaching the respondents to rectify the error and not succeeding, the petitioner came before this



Court in CWJC No.16233 of 2011 which was disposed of by judgment and order dated 26.10.2016 with an advice to the petitioner to raise his grievance before the concerned respondent authorities. It is stated that following the order the petitioner filed his representation at Annexure 7 and which has been rejected by the order impugned.

The short argument advanced by Mr. Jha, learned counsel appearing for the petitioner is that in the entire service career no promotion was given to the petitioner and even though he was granted the junior and senior selection grade but the same is not to be treated as promotion for the purpose of grant of progression under 'ACP, 2003' in view of the provisions of the Assured Career Progression (Amendment) Rules, 2006 as notified vide notification dated 23.3.2006 and made effective from 9.8.1999.

The argument of Mr. Chandrashekhar Singh, learned Assisting Counsel to Government Advocate No.10 is in reference to different paragraphs of the counter affidavit to submit that apart from the fact that the petitioner was granted junior selection grade and senior selection grade with effect from 1.4.1981 and 1.4.1984 respectively, the post of Basic Health Inspector on which the petitioner was posted vide order bearing Memo No.1495 dated 9.5.1989 is a promotional post and is higher than the post of Basic Health Worker. It is thus in reference to paragraph 4(1) of 'ACP'



Rules, 2003 submitted that if an incumbent is posted on different post other than the post held by him which carries a higher pay-scale it would be treated as direct recruitment and in such circumstances the entire period of service would not be counted for the purpose of grant of progression. A decision to such effect is also present in the order bearing Memo No.301 dated 13.12.2008 of the Joint Director, Health Services –cum- State Programme Officer, Malaria, Bihar, Patna whereunder the Basic Health Inspector(s) have been granted the benefit of progression under ‘ACP’ Rules, 2003 on completion of 12 years and 24 years of service from the date they have given their joining on the post of Basic Health Inspector, a copy of which has been impugned at Annexure 3 to the writ petition.

Having heard the submission of learned counsel for the parties, the issue that arises for consideration is:

- (a) Whether the posting of the petitioner against the post of Basic Health Inspector in the same pay-scale as that of Basic Health Worker vide order bearing Memo No.1495 dated 9.5.1989 at Annexure 2 is a promotion; and
- (b) Whether the conversion of the post held by the petitioner vide order dated 9.5.1989 is hit by the proviso to rule 4(1) of the ‘ACP’ Rules, 2003?

In so far as the grant of junior and senior selection grade is



concerned, the 'ACP' (Amendment) Rules, 2006 notified vide notification dated 23.3.2006 at rule 2(1) (क) clarifies the position that in case any incumbent has obtained the benefit of selection grade or time bound promotion prior to 1.1.1996, it shall not be treated as a financial progression under the 'ACP' schemes. Thus in so far as the reference made to the junior and senior selection grade granted to the petitioner from 1.4.1981 and 1.4.1984 respectively is concerned, the 'ACP' (Amendment) Rules, 2006 puts the objection at rest.

In so far as paragraph 4(1) of the 'ACP' Rules 2003 is concerned, I deem it proper to reproduce the same for the sake of convenience and reads thus:

“4. Eligibility and condition: The eligibility under this scheme shall be Regulated by the following conditions:

(1) The basic criterion for the sanction of Financial Progression under the ACP scheme is whether the concerned employee has been working in the same scale of pay, including the revised scale, for the prescribed period of 12/24 years. In such a situation, higher scales of pay shall be sanctioned irrespective of the fact that the person has worked on different posts in the same scale.

Provided that if appointment on a post, different from the post on original appointment, is made in the higher scale of pay, then it shall be treated as direct recruitment and previous service shall not be counted for the purpose of sanction of the benefits of financial progression under the Scheme.

Example: (i) If a person working as Sweeper is recruited on the post of orderly, the scale of pay of which is the same, previous service shall be counted.

(ii) In case of recruitment from the post of orderly to the post of driver, which has a higher scale of



pay the service rendered on the post of orderly shall not be counted.

(Emphasis supplied)

In my opinion, the explanation attached to the rule itself clears the objection raised when it mentions that if a sweeper is appointed against the post of peon in the same scale, the entire service would be counted for the purpose of progression. It further clarifies that in case a peon is appointed on the post of driver in a higher scale then the previous service would not be counted. The situation here is even worse. The petitioner was appointed as a Malaria Inspector on 12.02.1962 and which post was subsequently converted as a Basic Health Worker from 5.6.1974. Such is the statement made by the petitioner in the writ petition and admitted by the respondents at paragraph 6 of the counter affidavit.

Annexure 2 to this writ petition is again a confirmation of the fact that the post of Basic Health Worker was converted as Basic Health Inspector in the same pay-scale and whereafter the petitioner was posted at Parihar in the district of Sitamarhi against a vacant post of Basic Health Inspector.

The records thus confirm that the post held by the petitioner was converted from the post of Malaria Inspector to the Basic Health Worker and from Basic Health Worker to Basic Health Inspector. Now if this would have resulted in grant of higher



scale, matters would be different but it is an admitted position that the conversions were in the same pay scale. Further the Gazette notification present at Annexure 'B' gives a different picture altogether, where the posts of Basic Health Worker and Basic Health Inspector appearing at serial nos. 13 and 12 respectively of the gazette dated 19.12.1989 are shown in lower pay-scale to that of the post of Malaria Inspector which appears at serial no.17 and carries a higher pay scale of Rs.680-965/-.

Perhaps the respondents were well aware of this fact because they have admitted at paragraph 6 of the counter affidavit that when this conversion took place, the petitioner did not lodge any protest. May be, since the petitioner was granted the pay protection he did not raise any protest but the fact is that the post of Basic Health Worker and the post of Basic Health Inspector both carry lower pay-scale than that of the Malaria Inspector as confirmed from the gazette publication at Annexure 'B'.

The legal position thus existing, in view of the admitted factual position that there was no change in the pay scales on conversions(s), the case of the petitioner moves out of the proviso attached to rule 4(1) of the 'ACP' Rules, 2003 because neither the post of Basic Health Worker nor the post of Basic Health Inspector carried a higher pay-scale to that of the Malaria Inspector and even if the petitioner was granted the pay protection for the purpose of



grant of progression, his entire service career from his appointment against the post of Malaria Inspector on 12.2.1962 until his consideration has to be counted for the purpose of grant of financial progression under ‘ACP’ Rules, 2003 as per the explanation attached to Rule 4(1) of the ‘ACP’ Rules, 2003. This relevant aspect has escaped the notice of the respondents.

In the circumstances, I deem it proper to direct the respondent no.6, the Joint Director cum State Programme Officer, Malaria, Bihar, Patna who is the author of the order under which the determination of progression under ‘ACP’ Rules, 2003 has been made to re-consider the case of the petitioner and pass appropriate order in accordance with law within a period of 3 months from the date of receipt/production of a copy of this judgment. As a consequence the order bearing Memo No.1599 dated 24.11.2016 impugned at Annexure 1 is hereby quashed and set aside.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18-01-2018
Transmission Date	NA

