

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5806 of 2012

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Vishwanath Prasad Sah Son Of Late Ram Swaroop Sah Resident of Mohalla- Jai Mahavir Colony, Sandalpur, P.S. Bahadurpur, District - Patna

.... Petitioner

Versus

1. The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... Respondents

With

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Civil Writ Jurisdiction Case No. 13837 of 2011

With

Interlocutory Application No. 7587 of 2011,

Interlocutory Application No. 7888 of 2013,

And

Interlocutory Application No. 2254 of 2017

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1. Sheo Shankar Thakur S/O Late Kishori Thakur R/O Mohalla - Hanuman Nagar, P.S. Kankarbagh, Distt.-Patna.
2. Kapildeo Thakur S/O Late Lakshman Thakur R/O Mohalla - Saket Puri, Road No.1, Hanuman Nagar, P.S. Patrakar Nagar, Distt.-Patna.
3. Rajeshwar Prasad Singh S/O Late Bindeshwar Prasad Singh R/O M/H-Progressive Colony, Jai Prakash Nagar, Kumhrar, P.S. Agamkuan, Distt.-Patna.
4. Nirmal Kumar Singh S/O Late Chandrika Singh R/O M/H-Shanti Sadan, Opposite P.O. Mahendru, P.S. Pirbahore, Distt.-Patna.
5. Rajendra Prasad Prabhakar S/O Late Sakaldeep Prasad Roy R/O M/H-New Mika Colony, P.S. Digha, Distt.-Patna.
6. Rameshwar Prasad Yadav S/O Late Devki Singh R/O M/H-South Indira Nagar, Posta Park, P.S. Jakkanpur, Distt.-Patna.
7. Smt. Induwala Devi W/O Late Suresh Nandan Prasad R/O M/H-Chhapra Colony, P.S. Jakkanpur, Distt.-Patna.
8. Nagwati Devi W/O Late Rajendra Mahto R/O M/H-Vaishali Kunj, Ram Jaipal Nagar, Nasriganj, P.S. Danapur, Distt.-Patna.
9. Ramjee Thakur S/O Late Laddu Thakur R/O M/H-Shanti Nagar, Khagari Road, P.S. Digha, Distt.-Patna.
10. Viveka Nand Prasad S/O Late Lakshmi Prasad R/O M/H-Mainpura, P.O. Danapur Cantt, P.S. Danapur Cantt, Distt. Patna.
11. Md. Abu Zar S/O Late Abdul Qudus R/O M/H-New Azimabad Colony, P.O. Mahendru, P.S. Pirbahore, Distt. Patna.
12. Aniruddha Poddar S/O Sri Siya Ram Poddar R/O M/H-B/152, P.C. Colony, P.S. Kankarbagh, Distt. Patna.
13. Sheo Kishore Prasad Verma S/O Late Buneshwari Prasad Verma R/O M/H-B/94, P.C. Colony, P.S. Kankarbagh, Distt. Patna.
14. Krishna Kumar Prasad S/O Late Sukhlal Sah R/O M/H-Rajiv Nagar, Road No.



- 7, P.S. Digha, Distt. Patna.
15. Shukhdeo Sahu S/O Late Asharfi Sahu R/O M/H-R.K. Puram, Khagaul Road, P.S. Danapur, Distt. Patna.
16. Shashi Nath Prasad Gupta S/O Late Jamdagini Prasad Gupta R/O M/H-101, Hari Om Place, P.S. Shastri Nagar, Distt. Patna.
17. Md. Islam S/O Late Md. Ishaque R/O M/H-Madarsa Road, Samanpura, P.S. Shashtri Nagar, Distt.-Patna.
18. Ram Krishna Sahu S/O Late Mahadev Sahu R/O M/H-Kesari Nagar, P.S. Digha, Distt.-Patna.
19. Ram Chandra Sah, S/o Late Jali Sah, R/o Moh. Naya Tola, P.S. Muzaffarpur Town, Distt. Muzaffarpur,
20. Surendra Kumar Verma, S/o Late Nageshwar Prasad, R/o Moh. 102, Om Sai Villa, Main Road, Kankarbagh, P.S. Kankarbagh, Distt. Patna,
21. Vishundeo Prasad, Son of Late Chulhai Sah, R/o Moh. Saket Puri, Road No. 1, Hanuman Nagar, P.S. Patrakar Nagar, District Patna,
22. Lakshman Prasad Pal, son of late Mukh Lal Bhagat, R/o Moh. Saket Puri, Road No. 1, Hanuman Nagar, P.S. Patrakar Nagar, District Patna,
23. Deo Nandan Prasad, son of late Munshi Prasad, R/o Mohalla – Sona Bhawan, Teacher Colony, Ram Chandra Pur, P.S. Bihar Sharif, District – Nalanda,
24. Ganauri Prasad Singh, son of late Sundar Mahto, R/o Mohalla – Mahalpur, P.S. Bihar Sharif, District Nalanda,
25. Visheshwar Dayal, son of late Kashi Prasad Gupta, R/o Main Road Balia, P.S. Bali, District Balia, U.P.,
26. Jagdish Ram, son of late Ram Prasad Thakur, R/o Mohalla – Trinandi Swami Ashram, P.S. Dehri on Sone, District Rohtas,
27. Kali Bhagat, son of Lali Lal Bhagat, R/o Mohalla – Behta, P.S. Gaya, District Gaya,
28. Yogendra Prasad Ambashtha, son of Jagatanand Prasad, R/o Mohalla – Rajendra Nagar, P.S. Kadamkuan, District –Patna,
29. Dhruv Narain Srivastava, son of late Bishundeo Narain Lal, R/o Mohalla – Kachi Pakki Road, P.S. Ram Dayalu, District Muzaffarpur,
30. Dhruv Naraina Sahu, son of late Ram Swaroop Sahu, R/o Seta Kutir, Jasdeo Nagar, P.O. Bahiri, District Darbhanga,
31. Satya Narain Prasad Verma, Son of late Yogeshwar Prasad Verma, R/o Mohalla – Rajiv Nagar, Road No. 18, P.S. Digha, District Patna,
32. Ram Naresh Singh, son of late Deep Narain Singh, R/o Mohalla – Saket puri, Road No. 2, Hanuman Nagar, P.S. Patrakar Nagar, District Patna,
33. Hare Ram Prasad Ambashtha, son of late Jogeshwar Prasad, R/o Mohalla – Rukunpura, P.S. Rupaspur, District Patna,
34. Ram Amir Pandit, son of late Batahu Pandit, R/o Mohalla – Near Labour Court, P.S. Muzaffarpur Town, District Muzaffarpur.

..... Petitioners

Versus

1. Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, Patna,
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna,
3. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna,
4. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna,
5. Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Chairman,(Added vide order dt. 9.1.18 in I.A. No. 2254/2017)
6. Chairman, Bihar State Power Holding Company Limited, Vidyut Bhawan,



Bailey Road, Patna, ,(Added vide order dt. 9.1.18 in I.A. No. 2254/2017)
7. Managing Director, Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna. ,(Added vide order dt. 9.1.18 in I.A. No. 2254/2017).

.... Respondents

With

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Civil Writ Jurisdiction Case No. 12016 of 2013

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Sheoji Choubey. Son of Late Balbhadra Choubey. Resident of Flat No. 41, Block - 6, Sector - 7, H.I.G. Bahadurpur Housing Colony, P.S. Patrakar Nagar, District - Patna

.... Petitioner

Versus

1. Bihar State Electricity Board through Its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
4. Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna

.... Respondents

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Appearance:

(In CWJC No.5806 of 2012)

For the Petitioner/s : Mr. Naresh Chandra Verma, Advocate.
For the Respondent/s : Mr. Anand Kumar Ojha, SC, BSPHCL & (BSPHCL) Mr. Ashok Kumar Karn, Advocate.

(In CWJC No.13837 of 2011)

For the Petitioner/s : Mr. Naresh Chandra Verma, Advocate.
For the Respondent/s : Mr. Anand Kumar Ojha, SC, BSPHCL & (BSPHCL) Mr. Ashok Kumar Karn, Advocate.

(In CWJC No.12016 of 2013)

For the Petitioner/s : Mr. Naresh Chandra Verma and Mr. Natraj Verma, Advocates.
For the Respondent/s : Mr. Ranjit Sinha, Advocate. (BSPHCL)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-01-2018

Re. IA No. 7888/2013 in CWJC No. 13837/2011.

I.A. No. 7888/2013 has been filed for substitution of the petitioner no. 1 Sheo Shankar Thakur, who died on 01.03.2013. The



prayer is to substitute his widow Chinta Rani in place of the deceased petitioner no. 1 Sheo Shankar Thakur. It is also stated in the petition that the deceased petitioner no. 1 has left behind him two sons and two daughters, who have authorized their mother Chinta Devi to fight this case.

In the facts and circumstances stated in the petition, I.A. No. 7888/2013 is allowed.

Re. IA No. 2254/2017 in CWJC No. 13837/2011.

I.A. No. 2254/2017 has been filed for addition of parties as stated in Paragraph 1 of the application.

The respondents have no objection.

I.A. No. 2254/2017 is, therefore, allowed.

Re. IA No. 7587/2011 in CWJC No. 13837/2011.

I.A. No. 7587/2011 has been filed for amendment of the relief prayed in the Writ Application by allowing the petitioners to challenge the Board's Resolution no. 8165 dated 22.09.2005. The petitioners pray to allow the said amendment as mentioned in Paragraph 2(i), (ii) & (iii) of the Interlocutory Application.

The respondents have no objection to the same.

I.A. No. 7587/2011 is allowed and the prayer made in the Interlocutory Application shall be treated as part and parcel of the reliefs prayed in the Writ Application.



Re. CWJC Nos. 5806/2012, 13837/2011 & 12016/2013.

Heard learned counsel for the petitioner(s) in all the three Writ Applications and learned counsel representing the Bihar State Power Holding Company Limited.

Although the matters are listed under the heading - “Orders on Petitions”, with the consent of the parties the matters have been heard and are being disposed of at this stage.

As requested by the learned counsel for the parties, CWJC No. 12016 of 2013 has been heard at first instance. The issues involved in all the Writ Applications are common and the decision of this case will govern the other two Writ Applications as well.

The petitioner in CWJC No. 12016 of 2013 is a retired Junior Engineer of the erstwhile Bihar State Electricity Board which has been restructured and unbundled in different incorporated companies with effect from 01.11.2012.

Respondents no. 5, 6 & 7, who have been added as party respondents in CWJC No. 13837 of 2011, are the Bihar State Power Holding Company Limited and its authorities.

The Writ Application(s) was/were filed initially against the erstwhile Bihar State Electricity Board (in short, ‘Board’) for issuance of a direction to the respondents to give the benefit of Assured Career Progression Scheme (hereinafter referred to as ‘the ACP’) from



09.08.1999 to the petitioner(s) and consequent upon that to pay all monetary benefits after quashing the Resolution dated 8165 dated 22.09.2005 and the Notification dated 07.10.2005 issued by the respondent Board as contained in Annexures 2 & 3 respectively.

The facts revealed from the pleadings exchanged by the parties would show that the petitioner(s) in all these three Writ Applications retired from service sometime in the year 2004 as Junior Engineer / Assistant Engineer. At the time of their retirement, the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as 'the ACP Rule') notified vide Notification No. 3M-2-5-PR-28/99 4685 F(2), as contained in Annexure-1 to CWJC No. 12016/2013, had already come into force for the employees of the State Government, but the said ACP Rule was not adopted by the Board of Directors of the erstwhile Board, a Public Sector Undertaking and statutory Corporation of the Govt. of Bihar, which had been constituted in the year 1958 under the Electricity Supply Act, 1948.

Learned counsel for the petitioner(s) does not dispute the fact that the ACP Rule was notified by the State Govt. only for the employees of the State Govt. and in the ACP Rule it was made clear that it would not apply to the employees of the Public Sector Undertakings.



It is the contention of the learned counsel for the petitioner(s) in all these cases that the respondent Board when resolved to apply the ACP scheme vide the Notification dated 05.04.2005 (Annexure-1) and reviewed it on 22.09.2005, the effect of the adoption and application of the ACP scheme would relate back to 09.08.1999 as envisaged in the Notification dated 25.06.2003 issued by the Finance Department of the Govt. of Bihar.

Learned counsel has taken me through the first Notification bearing no. 25 dated 05.04.2005 issued by the Secretary, Bihar State Electricity Board (Annexure-1 to the CWJC No. 12016/2013) whereunder the decision of the Board to adopt the ACP Rule 2003 has been notified. This adoption by the Board is in exercise of the powers conferred by the Board under Section 79(C) of the Electricity Supply Act, 1948. The Notification further says that (i) pay scale for the purpose of ACP scheme will be notified later, (ii) the Notification shall form part of the relevant Cadre Regulations wherever applicable and (iii) the order comes into operation with immediate effect.

Learned counsel submits that in its 513th Meeting of the Board of Directors held on 22.09.2005, the Board vide Agenda Item No. 43/2005-2006 reviewed its earlier order and this time it was decided that the ACP will be made applicable to the staff appointed



after issuance of that order.

It is the grievance of the learned counsel for the petitioner(s) that by limiting the benefit of the ACP Rule which was already adopted by the Board vide Anneure-1 to the Writ Application (CWJC No. 12016/2013), the Board has discriminated between the employees who had been working prior to 05.04.2005 and that of those who came to be appointed with effect from 05.04.2005.

In course of argument, answering the query raised by the Court as to whether the petitioner(s) has/have availed the benefit of higher pay scale after his/their appointment and then whether he/they has/have also availed the benefits under the time-bound-promotion scheme which was in vogue during the period of his/their employment and prior to his/their retirement, the answer is a positive 'Yes', meaning thereby that the petitioner(s) had got the benefit of higher scale of pay after he/they came to be appointed and then has/have availed the benefit of the time-bound-promotion scheme which was/were in vogue when he/they was/were in service. Nevertheless, learned counsel for the petitioner(s) submits that the effect of adoption of the ACP Rule would be that all the petitioners would be entitled to the benefit under the ACP Rule and the monetary benefits in terms of ACP Rule will be required to be calculated with reference to their respective date of appointment.



On the other hand, learned counsel representing the erstwhile Board / Bihar State Power Holding Company Limited in CWJC No. 12016/2013 and also in other two Writ Applications though separately submits that in fact the whole Writ Application is misconceived as the petitioner(s) in these Writ Applications are unable to appreciate that the benefits under the ACP Rule have been provided to remove the stagnation to those employee(s) who may have to suffer by remaining in the same scale of pay in his/their whole service career. The benefits under the ACP Rule do not confer any benefit of designation or it does not change the nature of duties to be performed by an employee. Learned counsel referred Annexure-3 to the Writ Application, which is a Notification dated 07.10.2005 issued by the Secretary of the Board, who has notified the decision of the Board taken vide the Resolution No. 8165 dated 22.09.2005 whereunder it has been decided to adopt the ACP Rule, 2003 only for the staff appointed after issuance of the Board's Notification no. 25 dated 05.04.2005.

Attention of this Court has also been drawn towards the statements made in Paragraph 6 of the Counter Affidavit wherein it is stated, inter alia, that this system of granting time-bound-scale continued to remain in vogue for those who were appointed before 05.04.2005 whereas the ACP scheme of the State Govt. was made



applicable to those employees who were appointed thereafter.

Expanding this argument, learned counsel for the Board in CWJC No. 13837/2011 has taken me through the statements made in Paragraphs 7 & 8 of the Counter Affidavit filed in the said case. It is stated therein that the ACP scheme is applicable for those employees who were appointed after 05.04.2005 and thus the benefit of this scheme remained inapplicable in case of the writ petitioner(s) who was/were appointed much earlier and had already retired in the year 2004. It is further stated that the Board had decided vide its Resolution No. 134 dated 20.08.2010 to adopt the Modified Assured Career Progression Scheme, 2010 of the Govt. of Bihar which are applicable as ACP scheme for the employees of the Board with effect from 01.01.2009 in supersession of all previous orders in this regard. It is further stated that the benefit of this scheme will be applicable for Electrical Engineers (General & G.T.O.) on continuous services of 8, 16 and 24 years and for other employees same will be applicable on continuous services of 10, 20 and 30 years which is only applicable with effect from 01.01.2009.

In the Counter Affidavit, the respondent Board has taken a categorical stand that the demand of the writ petitioners to grant the benefit of ACP scheme with effect from 09.08.1999 is not worth consideration since at that point of time no ACP scheme was



applicable in the Board.

Learned counsel for the petitioners has filed a Supplementary Affidavit in CWJC No. 13837/2011 wherein he has brought on record a copy of the order dated 26.03.2012 passed in **CWJC No. 5454/2012 (Atiqur Rahman & Ors. Vs. The Bihar State Electricity Board & Ors.)** by a co-ordinate bench of this Court in what is said to be a similar matter. The co-ordinate bench of this Court had given liberty to the petitioners to approach the Chairman, B.S.E.B. (Board), Patna by filing a fresh application and the authority concerned was directed to decide it by a speaking order. Learned counsel has brought on record the said speaking order by which the claim of the petitioners in the said case has been rejected by the Board. It is stated that a Writ Application has been preferred against the said order which is pending consideration in this Court.

Although learned counsel for the petitioners submitted that the petitioner(s) in these cases may also be allowed to file representations but in the nature of the dispute and the stand taken by the Board in clear terms, this Court finds no reason to direct filing and consideration of representations at this stage.

Consideration

Having heard learned counsel for the parties and upon perusal of the records, this Court finds that the only issue which has



been brought for adjudication in this case is as to whether the effect of adoption of the ACP Rule 2003 by the Board vide its Notification dated 05.04.2005 (Annexure-1) and then the Resolution dated 22.09.2005 by which the benefit of ACP Rule has been restricted to the employees, who are appointed on or after 05.04.2005, is discriminatory in nature and has prejudiced the petitioners, depriving them from their legal right, if any, accrued to them prior to their retirement.

In all these cases, it is admitted position that the petitioners retired sometime in the year 2004 and prior to their retirement they had availed the benefits of financial progression in whatever form it was in vogue during their service period. Admittedly, they got the benefit of time-bound-promotion scheme and in some cases rose to the next promotional post in higher scale of pay. Further when they retired from service in the year 2004 the Board had not even adopted or had taken a decision to adopt the ACP Rule, 2003 which was notified by the State Govt. only for its employees, making it very clear that the Rule will not apply to Public Sector Undertakings. If this was the position and then, much after the retirement of the employees, such as, the petitioners, the Board took a conscious decision to adopt the ACP Rule with effect from 05.04.2005 (Annexure-1 to CWJC No. 12016/2013), it was within the domain of the Board as an employer to



choose a date with effect from which the monetary benefits under the ACP Rule should be adopted for its employees and is made applicable.

The petitioners did not come forward to raise any issue even after the Notification dated 05.04.2005 and the Resolution dated 22.09.2005 were notified as it appears they had already availed the financial progression benefit in the form it was available to them at the time of their retirement or prior to their retirement. It is only when the Modified Assured Career Progression (MACP) scheme came to be notified they raised an issue and this time they started agitating their claim by challenging the Resolution of the Board dated 22.09.2005.

This Court, in the facts and circumstances pleaded before it, would come to a conclusion that the impugned Notification and the Resolution of the Board do not suffer from any illegality or infirmity inasmuch as the Board as an employer took a conscious decision to adopt the ACP Rule with effect from 05.04.2005 for the employees, who came in employment after the said date. The earlier financial progression scheme which was in force for the erstwhile employees are still in vogue for them. These petitioners had retired from service much before the Board took a conscious decision based on the recommendation of its committee to replace the existing system of selection grade and time-bound-promotion scheme with the ACP



scheme and they had already availed the monetary benefits under the then prevailing time-bound-promotion scheme.

The Writ Applications are devoid of merit, thus all these applications are accordingly dismissed.

There will, however, be no order as to cost.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.01.2018
Transmission Date	N/A

