

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5404 of 2010

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1. Prem Paswan S/O Late Babulal Paswan R/O Vill.- Dhurlakh, P.S.- Samastipur,
Distt.- Samastipur

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Bihar, Patna
2. The Secretary-Cum-Commissioner, Department Of Rural Development, Bihar, Patna
3. The Secretary-Cum-Commissioner, Department Of Revenue, Bihar, Patna
4. The Deputy Secretary, Department Of Rural Development, Bihar, Patna
5. The Commissioner, Darbhanga Division, Darbhanga
6. The District Magistrate, Samastipur
7. The Chairman, D.R.D.A., Samastipur
8. The Deputy Development Commissioner-Cum-Chief Executive Officer, D.R.D.A., Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, Mr. Sitaram Prasad, Mr. Anjani Kumar
For the State	:	Mr. AC to GP-15

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-05-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present writ petition, petitioner is seeking relief to
quash the letter no.6143 dated 19.6.2006 (Annexure-1) issued
by the Secretary-cum-Commissioner, Department of Rural
Development, Bihar, Patna by which the claim made by him to
grant ACP has been rejected and further prayer has been made
that as per circular vide resolution dated 14.6.2007 (Annexure-



18) passed by Managing Committee of District Rural Development Agency, Samastipur (hereinafter referred to as DRDA) the petitioner should be granted the benefit of ACP.

In the year 1976, an advertisement was published for appointment of Lower Division Clerk by the office of the Deputy Collector Establishment. The petitioner and others were issued their respective admit cards and vide memo no. 900 dated 10.5.1976 (Annexure-2) petitioner and others were called for typing test. Thereafter vide letter no. 1232 dated 25.6.1976 (Annexure-3) the petitioner was directed to produce the educational certificates for verification of the same whereupon the petitioner complied the direction and he produced all the credential for verification and later on vide letter no. 1408 dated 5.7.1976 (Annexure-4) the petitioner was informed that he was selected accordingly petitioner and one Abha Sahay were handed over the appointment letter vide memo no.122 dated 15.5.1976 (Annexure-5) to be engaged as Small Farmers Development Agency (hereinafter referred to as SFDA). In fact 17 posts were advertised for appointment but 19 persons were selected and out of 19 persons, two persons, namely petitioner and Abha Sahay were asked to join the services of SFDA and in the appointment letter it has been provided the scale which was applicable to the



employees of the Collectorate and further stated that time to time the pay scale was kept at par with the scale and pay of the Collectorate staff. When ACP Scheme was introduced the petitioner has claimed for the benefit arising from the ACP Scheme which has been denied by the Deputy Secretary, Government of Bihar (Annexure-1) having stated that the staff of DRDA is not at par with the Government employee as scheme of ACP has not been introduced and as such the petitioner is not entitled for the same.

Learned counsel for the petitioner has taken two pleas; first an advertisement was published by the Collectorate and in terms of advertisement petitioner had applied against that vacancies and petitioner was selected. As respondents were required to select 17 candidates, two persons, namely, the petitioner and one Abha Sahay were picked up and asked to join the post. It has further been submitted that in the merit list, the position of the petitioner was fairly above and persons who were juniors to the petitioner were kept in the Collectorate but these two persons were picked up arbitrarily and sent to SFDA as they have no alternative but to join as SFDA as they were given impression that they will get all benefit at par with the staff of the Collectorate. Further submitted that the Government of India, Ministry of Agriculture



and Irrigation, Department of Rural Development has issued compendium of instructions on SFDA projects where in it has been mentioned that Agency would engage two categories of employees; first those appointed directly as temporary staff by the Agencies and second those appointed on deputation from State Services, in the case of first category, the pay and allowances shall be as prescribed by the Agency in accordance with the Ministry's Circular of 4.3.71 which should roughly correspond to but should not exceed the remuneration given to similar staff employed by the State Government. In the latter case, the officers and staff will either draw pay in the scales prescribed in the Ministry's Circular of 4.3.1971 or their own personal pay in the State Government's scales and the normal deputation allowance as admissible under State rules which should be paid by the Agency as foreign employer.

So scheme itself envisages two types of the employees, first they have been directly engaged and secondly employees of the State Government will be brought on deputation. Admittedly, in the present case, the petitioner was selected on account of advertisement issued by the Collectorate and he was not selected by the SFDA. Further learned counsel for the petitioner has brought the judgment of this Court in C.W.J.C. No. 10653 of



2008 disposed of on 27.4.2015, it relates to Rural Development Department, Government of Bihar which is also an Agency as like SFDA. In that case the question of absorption was taken into consideration and it has been recorded that Government has taken a decision that after 1.4.1999 employees of the State Government will be deputed to do the work of DRDA and those who have been appointed earlier would be absorbed in course of time. This was policy decision of the State Government and accordingly in that case the Court has directed to pass an appropriate order absorbing those persons in permanent Government service pursuant to the Government's decisions as noted above of year 2003 and 2006 and submitted that instead of depriving the petitioner from the grant of ACP he should have been given benefit as they were appointed at the instance of Collectorate. Persons who were junior in the merit list were given employment of Collectorate but from merit list randomly the petitioner and another female Abha Sahay were sent to SFDA when the persons junior to the petitioner have been kept in Collectorate and granted the benefit of ACP and as such he cannot be deprived of ACP, whereas the State has submitted that though there is no dispute on facts that petitioner was selected against the advertisement of the Collectorate but when he was sent to SFDA



he had never raised objection and as such the petitioner cannot claim entitlement of ACP.

The judgment passed in the writ petition has been affirmed by the Division Bench vide L.P.A. No.208 of 2015 and the view taken by the learned Single Judge has been affirmed.

It is well known principle of law that waiver does not apply when constitutional right is at stake and one thing is very clear that SFDA envisages two classes of employees, first they will be engaged departmentally by SFDA and another employees will be deputed by the State Government. When the petitioner was selected by the Collectoriate and having been asked to discharge the duty as SFDA his status will be on deputation of the employee of the State and every time the pay scale was kept at par with the State Government and never before they were informed that they will not be entitled for the benefit of ACP. When this Court has taken a note of the policy decision of the State Government to absorb those persons who are appointed before 1.4.1999 and direction was given for their absorption in the State Government, in such circumstances, the plea of the State that the petitioner is not entitled for ACP is completely is discriminatory in nature and it amounts to exercising power arbitrarily and illegally, the claim of the petitioner is rejected for



the benefit of ACP is not sustainable in law.

In such view of the matter, this Court is of the view that the order dated 19.6.2006 passed by the Deputy Secretary is illegal and the same is quashed as nowhere the Deputy Secretary has considered the fact that advertisement was published from the Collectorate and examination was conducted by the Collectorate and later on petitioner and Abha Sahay were picked for SFDA not on the basis of seniority. So those who are junior to the petitioner are getting ACP, in such circumstances, petitioner cannot be deprived of said benefit. Accordingly this Court directs the respondent State to give benefit of ACP to the petitioner without any delay preferably within a period of four months from the date of receipt/production of a copy of this order. It goes without saying that petitioner will be entitled to all benefit at par with the juniors who were in the merit list along with the petitioner.

Accordingly this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	8.6.2018
Transmission Date	NA

