

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No 10903 of 2014

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Brajendra Prasad Deo Son of Late Upendra Lal Deo Resident of Village - Sitapur,
Post Office - Sitapur Via Balua Bazar, District - Supaul

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary - cum - Commissioner, Government of Bihar, Water Resources Department, Patna
3. The Finance Commissioner, Government of Bihar, Patna
4. The Chief Engineer, Water Resources Department, Government of Bihar, Birpur
5. The Superintending Engineer, Barrage Circle, Birpur
6. The Executive Engineer, Western Embankment Division, Kananlial at Birpur, Supaul
7. Accountant General, Bihar, Patna

.... Respondent/s

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For the Petitioner/s : M/s Shashi Shekhar Prasad Sinha & Lala
Purushottam Kr Rajgrihar, Advocates

For the State : N O N E

For Accountant General : Mr Satyendra Kr Jha, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 28-08-2018

Heard learned counsel for the petitioner. None appears on behalf of the State. Learned counsel for the Accountant General is present.

2 The petitioner has claimed that he be given the benefit of first time bound promotion with effect from 09.08.1999 instead of 12.10.2007, i e, the date with effect from which the same has been granted. The petitioner has passed the last paper of Accounts Examination on 12.10.2007 and, thereafter, considering the said date to be his date of eligibility for grant of benefit under ACP, consequential benefits have been granted.



3 The petitioner's learned counsel submits that the grant of ACP cannot be deferred till passing of the Accounts Examination. He, however, does not dispute the fact that passing of Accounts Examination is one of the essential qualifications for consideration for the purposes of promotion/ACP to the petitioner. Relying upon the decision in the case of one *Jai Prakash Prasad & Another –Versus- State of Bihar & Others* decided by this Court on 29.03.2017 in *CWJC No 18372 of 2016*, it is submitted that the petitioner cannot be denied the grant of ACP merely for the fact that he has not passed the Examination.

4 The judgment in the case of *Jai Prakash Prasad & Another (supra)* relied upon by the petitioner was on different facts altogether. In that case, the benefits of time bound promotion were deferred by assigning a reason that the petitioners therein had not cleared the limited competitive examination for promotion under the limited 25% quota. Such is not the case here. In the case of *Jai Prakash Prasad & Another (supra)*, this Court had held that the respondents could not insist that the petitioners pass the limited competitive examination for promotion, as if they had passed the examination, they would have got the benefits of actual promotion.

5 Limited competitive examination, in the opinion of the Court, cannot be equated with the Accounts Examination which is



basic qualification for consideration for promotion/ACP.

6 Limited competitive examination, on the other hand, is the process adopted for assessing suitability for grant of actual promotion. Petitioner is not seeking actual promotion. He is only seeking benefits of career progression under the ACP Scheme which contemplates fulfillment of qualification requisite for consideration for promotion, but not inter se assessment of competing claims for grant of actual promotion. Thus, essentially the facts in the case of *Jai Prakash Prasad & Another (supra)* stand on a different footing than that of the instant petitioner.

7 In the instant case, the insistence is that the petitioner should be qualified for consideration for grant of promotion or benefit under the ACP Scheme which is the requirement of Clause 4 of the ACP Scheme. The reliance placed in the case of *Jai Prakash Prasad & Another (supra)* is, thus, of no avail to the petitioner in the instant case.

8 This Court does not find any merit in the claim made by the petitioner. Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.09.2018
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