IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.599 of 2015
IN
Civil Writ Jurisdiction Case No. 486 of 2014

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1. Ramadhar Thakur, son of late Ram Baran Thakur, resident of village-Semra Nijamat, P.S.- Sahebganj, P.O.- Bishunpur Patti, Distt.- Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Finance Department, Bihar, Patna.
2. The Joint Commissioner, Accounts Administration-cum-Director, Provident Fund Directorate, Bihar, Patna.
3. The District Provident Fund Officer, Samastipur.
4. The District Treasury Officer, Samastipur.
5. The Accountant General, Bihar Patna.

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Sidhendra Narayan Singh, Adv.
For the Respondent/s : Mr. Amit Bhushan, A.C. to G.P.16
For the Accountant General: Mr. Dr. Anand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 19-03-2018

Taking aid of Clause (J) of Sub rule (3) of Rule 157 of the Bihar Boards Miscellaneous Rules, 1958, whether the petitioner's entitlement to grant of Assured Career Progression under the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as 'the ACP Rules') could be declined on the ground that he had not passed the departmental accounts examination, is the sole question which is involved for determination in the present intra court appeal. By the impugned judgment and order of a learned Single Judge of this Court dated 10.2.2015 passed in C.W.J.C. No. 486 of 2014, the petitioner's claim for grant of Assured Career Progression (hereinafter referred to as the 'ACP') has been rejected on the sole ground that he had not passed the departmental examination nor was he exempted from passing such examination. The reason behind denial of the petitioner's claim for grant of ACP is manifest from the impugned judgment and order, which is the stand of the State respondents also and is referable to Sub rule (5) of Rule 4 of 'the ACP Rules' which prescribes *inter alia* that the requirements and mode of sanction for financial progression under the scheme shall be the same as are prescribed under the recruitment/service rules for regular promotion against vacancies. It is the stand of the department that passing of the departmental accounts examination is a condition precedent for grant of a regular promotion, in view of the stipulation in Clause (J) of Sub Rule (3) of Rule 157 of the Bihar Board's Miscellaneous Rules.

2. In view of the nature of controversy involved, we consider it apt to reproduce herein below the provisions as contained in Clause (J) of Sub-rule (3) of Rule 157 of the Bihar Board's Miscellaneous Rules and Sub-rule (5) of Rule 4 of the ACP Rules.

<u>Rule 157(3)(J) of the Bihar Board's Miscellaneous Rules.</u>

> "(J) (a) Any Clerk, who has not passed the preliminary examination in Accounts, will be neither confirmed nor

be allowed to cross the efficiency bar;

(b) A Clerk, who has not passed the final examination, will not be promoted to the Selection grade;

(c) In case of non-availability of senior clerk, finally passed in Accounts Examination, in junior clerk, having passed the final Accounts Examination may be temporarily promoted to the Selection Grade;

Provided that the Junior Clerk temporarily promoted to the Selection grade shall be reverted to the post of clerk if the Clerk senior to him passes the final Accounts Examination within two years from the date of his first supersession and is promoted with effect from any date within the said two years, otherwise the senior clerk would be treated junior to all the clerks promoted to the Selection grade prior to him."

Rule 4(5) of the ACP Rules.

"4(5) The prescribed requirement and mode of sanction of financial progression under the scheme shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies. If the Rules/Resolutions prescribe passing of the departmental examination or any qualification for promotion that shall also be a essential condition for sanction of benefit under the scheme, provided that after completion of 12/24 years of service, the financial progression become due and for this, there shall be no bar of period prescribed for regular promotion.

Explanation: (i) Not withstanding any provision for relaxation in the period of service for regular promotion to certain categories of employees contained in any Rules, no relaxation of conditions in the period of 12/24 to eligibility years shall be granted for the benefits of financial progression under the Scheme.

(ii) If the first financial progression, granted to a Govt. servant, is delayed beyond 12 years of regular service due to disciplinary proceedings etc. or due to the government servant being found unfit for promotion, then the second financial progression under the Scheme shall be granted after 12 years for the date of the first financial progression.

[(6) the competent authority to grant promotion to the higher post of any cadre/hierarity shall be the competent authority to grant financial progression under the scheme on the recommendation or the screening committee]"

3. This appeal was admitted for hearing by order dated 04.08.2017 and has accordingly been placed for final hearing. We have heard learned counsel for the parties.

4. The facts are not at all in dispute: The appellant was appointed on 10.3.1965 as temporary typist in the office of Superintending Engineer, Mechanical Circle, River Valley Project Department, Gandak & Sone Wing, Patna. He retired on attaining the age of superannuation with effect from 31.01.2008, while serving as Head Clerk in super time selection grade scale of 1800-3330, from the office of the District Provident Fund Officer, Samastipur. In the meanwhile, he was granted promotion as Head Clerk from the post of Typist, with effect from 01.03.1973 provisionally, which was subsequently approved on 8.10.1974. The appellant's services, along with other similarly situated persons were placed under the Provident Fund Directorate on 10.03.1986. While serving in the Provident Fund Directorate he was given promotion to the post of senior selection grade Head Clerk with effect from 01.04.1981 and super time selection grade, Head Clerk with effect from 01.01.1981. He thereafter superannuated, as has already been indicated, with effect from 31.01.2008.

5. Aggrieved by the fixation of his pay in terms of 5th Pay Revision in corresponding scale of Rs. 5500/- to 9000, the appellant

had approached this Court by filing a writ application, giving rise to C.W.J.C.No.11985 of 2008 which came to be disposed of on 18.03.2009. While disposing of the writ application, the Court directed the respondents to consider the petitioner's claim for grant of A.C.P. The appellant had represented the department in terms of this Court's order dated 18.03.2009 for grant of A.C.P. The appellant's claim was rejected by an order dated 29.07.2009. The respondents had preferred an appeal under the Letters Patent of this Court against the order dated 18.03.2009, giving rise to L.P.A. No. 751 of 2009. The Letters Patent Appeal was partly allowed and the matter was remanded back to the learned Single Judge. Upon remand, the learned Single Judge passed an order dated 08.03.2013, allowing the petitioner's claim on the question of fixation of pay and again giving the appellant the liberty to move the department for grant of Assured Career Progression. The appellant again approached the Department for grant of 'ACP', which remained pending. This compelled the appellant to file yet another writ application before this Court again, giving rise to C.W.J.C.No.486 of 2014, seeking direction for grant of 'ACP', which has been rejected by the learned Single Judge by the impugned order.

6. In the course of hearing of the present appeal, it transpired that the direction of learned Single Judge dated 08.03.2013, passed on

remand in C.W.J.C.No.11985 of 2008, for considering grant of ACP to the petitioner was not complied with and no decision was taken by the State respondents in this regard. During the pendency of this appeal, in purported compliance of this Court's order dated 08.03.2013, the Director, Provident Fund Directorate, Government of Bihar has passed a reasoned order dated 27.02.2018, rejecting the appellant's claim for grant of 'ACP', mainly on the ground that he had not passed the departmental Account's Examination. The legality of the said order dated 27.02.2018 is sought to be challenged by seeking amendment through I.A.No.1922 of 2018. Considering the fact that passing of the order dated 27.02.2018 is integrally connected with the controversy in question, I.A.No.1922 of 2018 is hereby allowed, thus allowing the appellant to question the legality of the said order dated 27.02.2018.

7. We need now to examine relevant provisions under the 'ACP Rules', which lay down, *inter alia,* the eligibility conditions for grant of 'ACP'. In most unambiguous terms, Sub rule (1) of Rule 4 states that the basic criterion for the sanction of financial progression under the ACP scheme is whether the concerned employees has been working in the same scale of pay, including the revised scale for the prescribed period of 12/24 years. It stipulates that in such circumstance, the higher scale of pay shall be sanctioned irrespective

of the fact that the person has worked on different posts in the same scale. No dispute is being raised on behalf of the respondent, State of Bihar, that the appellant had been working in the same scale of pay for more than 12 years after he was granted senior selection grade Head clerk with effect from 01.04.1981. There is, thus, no dispute that the appellant fulfills the eligibility condition under Sub rule (1) of Rule 4 of 'the A.C.P. Rules'.

8. As has already been noticed, the sole plea which is being taken by the respondents, State of Bihar, to deny the appellant's claim for grant of Assured Career Progression is that the provision under Sub rule (5) of Rule 4, which has already been quoted above, has not been satisfied. It is clear from the language of Sub rule (5) that the requirements for sanction of financial progression under the scheme of rules is the same as prescribed under the recruitment/service rules for regular promotion against the vacancies. It is the plea of the respondents that for grant of regular promotion, passing of the departmental Accounts Examination is a condition precedent. However, no rule governing the service of the appellant nor any notification has been brought to our notice to show that for grant of regular promotion against the vacancies, in the service/cadre to which the appellant belonged, passing of departmental Accounts Examination was a condition precedent.

9. Mr. Sidhendra Narayan Singh, learned counsel for the appellant, referring to Clause (J) of Sub rule (3) of Rule 157 of the Board Miscellaneous Rules, submits that the said provision prescribes for passing of departmental examination for promotion to selection grade. According to him, there is no such bar for grant of regular promotion under the said Clause (J) of Sub rule (3) of Rule 157. He has placed reliance on following decisions of this Court to buttress his contention.

(i) **Mithilesh Kumar Sinha versus the State of Bihar & Ors.** reported in **2006 (1) PLJR 282**,

(ii) **Syed Mozammil Ashraf Versus the State of Bihar & Ors.** reported in **2007(1)PLJR 438** and

(iii) **Shashi Shekhar Ambasta versus the State of Bihar & Ors.** reported in **2011(3)PLJR 474**.

10. Mr. Amit Bhushan, learned A.C. to G.P.17, while making his submissions in support of the impugned order of the learned Single Judge, has relied on a full bench decision of this Court in the case of **Maheshwar Prasad Singh & Ors. versus the State of Bihar** reported in **2000(4)PLJR 262** and has submitted that the petitioner has rightly been denied the benefit of ACP, since, he had not passed the Accounts Examination. The reliance has also been placed by him on a division bench decision of this Court in the case of **Rameshwar**

Roy vs. the State of Bihar & Ors. reported in **2017 (2) PLJR 127** and another Single Bench decision of this Court in the case of **Daya Shankar Singh versus the State of Bihar & Ors.** reported in **2010 (3) PLJR 220.**

11. Since we are of the view that the Clause (J) of Sub rule (3) of Rule 157, interpretation of which is at the core of the controversy, has been discussed threadbare in case of **Maheshwar Prasad Singh** (supra), we shall be referring to the said decision, first. The full bench in the said case had the occasion to consider the interpretation of Rule 157(3)(J), with reference to certain State Government resolutions, to determine the question as to whether the Clerks of the mufassil offices could/can be promoted to selection grade post without passing the final examination in accounts, except during the period between 01.05.1980 and 29.03.1982, since correctness of the law laid down in the case of **Md. Shamsuddin & Ors. Versus State of Bihar** reported in **1983 PLJR 347** was doubted. Considering the said Rule 157 (3) (J) and the correction slip No.30 dated 29.3.1982, which had the effect of amending rule 157(3)(J)(C) of the Rules, the full bench of this Court noticed in paragraph 6 that accounts examination had been treated as an essential qualification at all times, whether for the purpose of crossing the efficiency bar or for confirmation or for the purpose of promotion. The Court held, however, referring to the

correction slip No. 30 dated 29.3.1982, that whereas earlier, the requirement of passing of accounts examination was applicable to promotion from lower division to upper division posts, after the amendment through the said correction slip, it was made applicable to promotion to the selection grade only. In substance, the full bench held that in view of the amendment in Rule 157 (3)(J)(c) of 'the Rules', through correction slip dated 29.3.1982, the requirement of passing accounts examination was confined to promotion to selection grade. Paragraph 13 of the full bench decision in case of **Maheshwar Prasad Singh** (supra) is relevant for the present purpose and is being quoted hereinbelow:

> "13. On the basis of the above discussion, I have no hesitation in holding that the State Government was fully competent to amend rule 153(3)(J) of the Board's Miscellaneous Rules by executive instructions and the amendment made vide correction slip no.30 dated 29.3.82 was a valid amendment. Thus, clerks were required to pass the final examination in Accounts as a condition for promotion to the selection grades after 29.3.1982."

12. In our view, thus, the full bench does not support the case of the respondents rather it helps the Appellant's case as it is clear from what has been laid down by the Full Bench that Rule 157(3)(J) requires passing of accounts examination for promotion to selection grade only.

13. Reliance placed by Mr. Amit Bhushan on the decision of

this Court in the case of **Rameshwar Roy (**supra) is also of no help to him for the reason that in the said decision learned Single Judge has not noticed the Full Bench decision of this Court in case of **Maheshwar Prasad Singh** (supra), which clearly lays down that the requirement of passing of Accounts Examination under Rule 157(3)(J) of the Bihar Boards Miscellaneous Rules is in respect of grant of promotion to selection grade and not for regular promotion. In our view, learned counsel for the appellant has rightly relied on this Court's decision in case of **Mithilesh Kumar Sinha** (supra) where the Court held that there was no requirement of passing departmental examination for becoming eligible for promotion from the post of Head clerk to Head assistant. The court held in the said decision that passing of Accounts Examination is necessary for earning selection grade and had no application for grant of substantive promotion. Similar view has been taken by a learned Single Judge of this Court in case of **Syed Mozammil Ashraf** (supra).

14. In the case of **Shashi Sekhar Ambasta**, (supra) reliance on which has been placed by the learned counsel for the appellant, the Court laid down the distinction between the substantive promotion and grant of ACP. The distinction between ACP and regular promotion has been noticed also by a Division Bench of this Court in the decision rendered on 20.04.2015 in **L.P.A. No. 1260 of 2012**

(**State of Bihar and Ors. Vs. Pramod Kumar**) holding that the ACP is not a promotion, rather it is merely a financial progression.

15. Let's now consider another Division Bench decision of this Court in the case of **Rameshwar Roy** (supra)**,** reliance on which has been placed by Mr. Amit Bhushan. As is evident from the said decision, it does not lay down a law that passing of Accounts Examination is a condition precedent for grant of ACP under 'the ACP Rules, 2003'. In that case, the benefit of ACP was denied in view of an order of punishment against the Government servant of denying him regular promotion for a period of 10 years. In that background, referring to Sub rule 5 of Rule (4) ACP Rules, the Division Bench held that the Rules of promotion could not be said to be not applicable, while granting the benefits under the ACP Scheme. There is rather no controversy over this proposition. We are also of the considered view that the rules of regular promotion may be made applicable for grant of ACP under the ACP scheme.

16. The question however, in the present case, which has already been noticed, is, as to whether for grant of a regular promotion, passing of Accounts examination is a condition precedent or not and in the absence of any such bar for grant of regular promotion under any statutory provision, by invoking rule 157(J)(3) of 'the ACP Rules', the respondents can deny the benefit of Assured

Career Progression. We need not reiterate the fact that the respondents have not brought to our notice any statutory provision or executive instruction specifically providing that passing of departmental Accounts Examination is a *sine qua non* for grant of regular promotion. As a matter of fact, for the first time in the year 2015, the State Government of Bihar, in exercise of the powers conferred under Article 309 of the Constitution of India, appears to have made the rules for appointment and service condition of Clerical Cadre of General Provident fund Directorate and its subordinate offices with effect from 18.5.2015, Rule 12 (1) thereof stipulates 'passing in Hindi noting and drafting examination and in both papers of departmental Accounts Examination at higher level as conditions for grant of promotion to the post of Upper Division Clerk'. No provision in the rules, on which reliance is being placed, deals with promotion from the post of Lower Division Clerk to Upper Division Clerk. Though another set of rules namely, Bihar Secretariat Service Rules 2010 has no application in the present facts and circumstances of the case, yet for the purpose of drawing inference, the provisions under the said rules need to be noticed. The said 2010 Rules deal with the Bihar Secretariat Service, consisting of various posts, as referred to in Rule 3(4), including the post of Assistant. Rule 6 of the said 2010 Rules deals with appointment in Assistant cadre through two modes i.e; by way of the Direct recruitment and by promotion from the Upper Division Clerks of the Bihar Secretariat Clerk service. The Rules do not provide for passing of the departmental Accounts Examination as a condition precedent for regular promotion from the grade of Upper Division Clerk of Bihar Secretariat Clerical Service to Assistant Grade. Further, Rule 10 of the said rules also deals with promotion from lower grade to higher grade. Nowhere the rules specify the requirement passing of accounts examination as a condition for grant of regular promotion.

17. Situated thus, and in view of the discussions, as above, there is no gainsaying that in view of Sub rule 5 of Rule 4 of 'the ACP Rules', the requirements for grant of regular promotion shall be applicable while considering cases for grant of ACP. Since, there is no provision prescribing passing of accounts examination for regular promotion, the appellant could not have been denied grant of ACP. We are of the clear view that the decisions in case of **Rameshwar Roy** (supra) and **Daya Shanker Singh** (supra) do not lay down the correct law and the same cannot be made applicable.

18. The impugned judgment and order of the learned Single Judge, in the aforesaid background, requires interference. Accordingly, the judgment and order dated 10.02.2015 is set aside. The order dated 27.02.2018 brought on record by way of Annexure-7

to I.A.No.1922 of 2018 is also hereby set aside. Consequently, the writ application bearing C.W.J.C. No. 486 of 2014 is allowed. The respondents, particularly the Director, Provident Fund Directorate, Bihar are directed to consider the appellant's case for grant of ACP, in the light of discussion as above, since we have clearly held that passing of departmental Accounts Examination is not a condition precedent for grant of Assured Career Progression under 'the ACP Rules' nor does Rule 157 (J)(3) of the Bihar Boards Miscellaneous Rules conceive of such a requirement. The decision must be taken within a period of two months from the date of receipt/production of a copy of this order. It is held that the appellants shall be entitled for all consequential benefits arising out of the grant of ACP which also must be released within two months thereafter.

19. The appeal is allowed. As a consequence thereof, C.W.J.C No. 486 of 2014 stands allowed.

20. There shall be no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Bibhash

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	01.06.2018
Transmission Date	NA