

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.731 of 2017

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Smt. Kusum Devi, Wife of Sri Sarvanand Singh, Resident of Mohalla-New
Atwarpur, P.S. - Parsa Bazar, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health Services, New Secretariat, Bihar, Patna.
2. The Director in Chief, Health Services, Govt. of Bihar, New Secretariat, Patna.
3. The Regional Deputy Director, Health Services, Saran Division, Chhapra.
4. The Civil Surgeon, Gopalgang, Sadar Hospital, Gopalganj.
5. The Medical Officer in-Charge, Primary Health Centre, Baikunthpur, Gopalganj.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Deonath Prasad

For the Respondent/s : Mr. NAGENDRA PD. YADAV, SC-23

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 18-05-2018

The petitioner herein by the present writ petition seeks quashing of Letter No. 86 dated 17.02.2016 issued by the Regional Deputy Director, Health Services, Saran Division, Chapra (respondent no. 3 herein), whereby and whereunder the claim of the petitioner for grant of the benefit of second A.C.P. to the petitioner has been denied. It has been further prayed for providing the benefits of second A.C.P. to the petitioner in the scale of Rs. 5500/- to 9000/- with effect from 09.08.1999 as also the difference of salary and other consequential benefits.

The short facts of the case are that the petitioner was



initially appointed on the post of A.N.M. by the Directorate of Health Services, Bihar, Patna vide letter dated 30.10.1970 in the pay-scale of Rs. 580/- to 860/- whereafter she joined her first assignment on the post of A.N.M. on 21.11.1970. Thereafter the petitioner was granted first time bound promotion with effect from 01.04.1981, after completion of 10 years of service vide order dated 30.09.1995. The petitioner was then appointed on the post of Lady Health Visitors (hereinafter referred to as the 'L.H.V.') by the Additional Director, Health Services, Bihar, Patna vide Memo dated 28.01.1983 and the petitioner had submitted her joining on 24.02.1983. The pay was fixed at Rs. 695/- with effect from 24.02.1983. Finally the petitioner superannuated from her services with effect from 30.11.2004.

The petitioner herein, being aggrieved, by non-grant of the benefits of second A.C.P. had represented before the respondent no. 3 whereafter the respondent no. 3 by the impugned order dated 17.02.2016 has rejected her claim for grant of the benefits of second A.C.P. In the said impugned order dated 17.02.2016 it has been stated that the petitioner was initially appointed on the post of A.N.M. on 30.10.1970 and thereafter she was promoted to the post of L.H.V., where she joined on 24.02.1983. It has been further stated that under the A.C.P. Rules, 2003, the first A.C.P. is to be given upon completion of 12 years and second A.C.P. is to be given upon



completion of 24 years and the said Rules have been made applicable with effect from 09.08.1999. Accordingly, the petitioner was given the benefit of the first A.C.P. on the post of L.H.V. with effect from 09.08.1999 and as far as her second A.C.P. is concerned, the same had to be granted to the petitioner upon completion of 24 years of service from the date of joining on the post of L.H.V. i.e. from 24.02.1983, to which the petitioner becomes eligible in the year 2007, however, since the petitioner had retired on 30.11.2004, she could not be granted the benefits of second A.C.P. inasmuch as on the date of her retirement, she was not eligible for grant of the benefits of the second A.C.P.

The learned counsel for the petitioner has submitted that the petitioner had already been granted the pay scale of Rs. 680/- to 965/- on the post of A.N.M. after being provided the benefit of first time bound promotion with effect from 01.04.1983 and her pay was fixed at Rs. 695/-. Later on, upon promotion to the post of L.H.V. on 24.02.1983, her pay was fixed at Rs. 695/-, the pay which the petitioner was drawing since 01.04.1980, hence no benefit had devolved upon the petitioner herein on the post of L.H.V., thus the petitioner was liable to be granted the benefits of second A.C.P. since she had rendered 34 years of service.

I have heard the learned counsel for the parties and I find that the petitioner herein was promoted and reappointed on the post



of L.H.V. in the scale of Rs. 680/- to 965/- vide letter dated 18.01.1993 pursuant whereof the petitioner had joined her new assignment on 24.02.1983. The relevant Rules in this regard is the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as the 'A.C.P. Rules, 2003'), which have been framed in order to mitigate stagnation of the State Government employees and the said Rules, 2003 came into effect from 09.08.1999. The said A.C.P. Rules, 2003 clearly provide that upon completion of 12 years of service, an employee would be granted the benefits of first A.C.P. and upon completion of 24 years, such employee would be granted the benefit of second A.C.P. provided such employees have not been granted any financial progression in course of their services.

In the present case the petitioner herein was granted the benefits of first A.C.P. with effect from 09.08.1999 vide Memo dated 27.02.2008 on completion of 12 years plus service on the post of L.H.V. In this regard, it may be relevant to refer to clause 4(i) of the A.C.P. Rules, 2003 which provide that according to the Scheme the benefit of A.C.P. is to be granted to the concerned employee if the said employee has been working from 12/24 years in the same pay-scale and in which cases the benefit of the higher scale would be provided though such employee had worked on various posts in one



pay-scale but in case of re-appointment of the concerned employee on the post of higher pay-scale, the said re-appointment would be considered as direct recruitment and for the purposes of grant of the benefits of A.C.P. the services rendered in the past would not be counted.

In view of the aforesaid provisions as also the Scheme of the A.C.P. Rules, 2003, it is clear that once the concerned employee is promoted or re-appointed on a post carrying higher pay-scale the benefits of the past services shall not be counted for the purposes of calculating the number of years of services for granting the benefit of first and second A.C.P.

In the present case, the petitioner was initially appointed as A.N.M., in the pay-scale of Rs. 580/- to 860 and thereafter she was re-appointed on the promotional post of L.H.V. in the pay-scale of Rs. 680/- to 865/-. It is also apparent that the petitioner had already availed the benefit of first time bound promotion while posted on the post of A.N.M. and was again granted the benefit of first A.C.P. on the post of L.H.V. It is equally manifest from the materials on record that since the petitioner had been re-appointed on the post of L.H.V. with effect from 24.02.1983 in a higher pay-scale, she was entitled to first A.C.P. upon completion of 12 years of service or more, which has also been admittedly granted to the petitioner and thereafter she



was entitled to the benefits of second A.C.P. only in the year 2007 after completion of 24 years of service from the date of her joining the post of L.H.V. i.e. 24.02.1983, however, in the meanwhile, before she became eligible for grant of benefits of the second A.C.P., she superannuated from her services on 30.11.2004, hence there was no occasion for grant of second A.C.P. to the petitioner herein.

Having regard to the facts and circumstances of the case and in view of the provisions contained in A.C.P. Rules, 2003 as also the discussion made hereinabove, I find that there is no infirmity in the impugned order dated 17.02.2016, passed by the respondent no. 3 herein, hence the present writ petition is devoid of any merit.

Accordingly, the writ petition is dismissed, however, without any order as to cost.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	07.02.2018
Uploading Date	
Transmission Date	

