

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1076 of 2016

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1. Anil Kumar Sharma, son of Shri Gopal Prasad Sharma, resident of A/238, A.G. Colony, P.S. - Shastri Nagar, District - Patna.
 2. Neyaz Ahmad, son of Late Abdul Sattar, resident of Block No. 16, Flat No. 5, High Court Colony, Budh Marg, District - Patna.
 3. Ram Subhag Singh, son of Late Ram Sabad Singh, resident of Flat No. 202, J.N. Apartment, Road No. 15, Indrapuri, P.S.- Patliputra, District - Patna.
 4. Nirbhay Kumar Singh, son of Late Indra Mohan Singh, resident of Block No. 14, Flat No. 01, P.S. - Kotwali, District - Patna.
 5. Shailendra Kumar Labh, son of Late Rama Nand Labh, resident of House No. 7, Road No. 10, New Alka Puri, P.O. - Anisabad, P.S. - Gardanibagh, District - Patna.
 6. Uday Shankar, son of Late Akhauri Kedar Nath, resident of House No. 4, Bishwamitra Marg, North S.K. Puri, P.O. Krishnapuri, District - Patna.
 7. Sunil Kumar, son of Late B.D. Sahu, resident of near Training College, Mahendra, P.S. - Sultanganj, District - Patna.
 8. Arvind Kumar II, son of Govind Jha, resident of 104, Sati Chitkut Apartment, Ganga Path, West Patel, P.S. - Shastri Nagar, District - Patna.
 9. Md. Arif Zafar, son of Late Md. Ilyas, resident of Flat No. 240, P.O. & P.S. - Kankerbagh Colony, District - Patna.

.... Petitioners Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, General Administration Department, Bihar, Patna.
2. The Secretary, Department of Law, Government of Bihar, Patna.
3. The Secretary, Finance Department, Government of Bihar, Patna.
4. The Patna High Court, Patna through the Registrar General.

..... Respondents Respondent 1st Set.

5. Navin Kumar Sinha, son of Late Bharat Prasad, resident of Block No. 13, Flat No. 04, Adalatganj, P.S. - Kotwali, District - Patna.

.... Petitioner Respondent 2nd Set.

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Appearance :

For the Appellant/s : Mr. Abhinav Srivastava, Adv.
For the Respondent-State : Mr. Samir Kumar, AC to SC-16
For the Respondent-PHC : Mr. Piyush Lall, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 01-11-2018

Heard Mr. Abhinav Srivastava, learned counsel appearing
for the petitioner, Mr. Samir Kumar, learned Assisting Counsel to



Standing Counsel No.16 for the State and Mr. Piyush Lall, learned counsel appearing for the High Court.

This intra Court appeal arises from the judgment and order passed by a learned Single Judge in CWJC No.8691 of 2014, whereby the prayer made in the writ petition for grant of benefits under the Assured Career Progression Rules, 2003 (hereinafter referred to as the 'ACP Rules, 2003') has been disallowed and the writ petition has been dismissed.

The appellant-writ petitioners are working against different posts of Section Officer in the administrative jurisdiction of the Patna High Court and are aggrieved by the implementation of the Rules in question on its repeal by the Modified Assured Career Progression Rules, 2010 (hereinafter referred to as the 'MACP Rules, 2010').

In the nature of the judgment that we propose to pass we would not be required to delve deep into the matter. Suffice it to say that it is to crease out the stagnation in the chain of promotion that the State Government came up with the scheme in question i.e. 'ACP Rules, 2003' made effective from 09.08.1999. The scheme provided for assured career progression to the next higher scale and/or the minimum scale of promoted post as the case may be, on completion of 12 years and 24 years of satisfactory service.



The appellant- writ petitioners were appointed in between the period 22.07.1986 to 20.11.1986 and have been granted the first assured career progression on completion of 12 years of satisfactory service. The 'ACP Rules, 2003' was modified and repealed by the Bihar State Employees Condition of Service (Modified Assured Career Progression Scheme) Rules, 2010 which was made effective from 01.01.2009 (hereinafter referred to as the 'MACP Rules'). By virtue of implementation of the new scheme the 'ACP Rules, 2003' was repealed vide notification dated 13.07.2010, a copy of which is annexed at Annexure 2 to the writ petition. Clause (ii) of the repeal notification dated 13.07.2010, inter alia, provided that such of the employees who were entitled to progression in between the period that the 'ACP Rules, 2003' stood repealed i.e. on 31.12.2008 and the implementation of the 'MACP Rules, 2010' would be entitled to the benefits under the 'ACP Rules, 2003'.

Some confusion arose on this changeover and to remove such confusion that vide notification dated 13.06.2013, the State Government in its Finance Department, came up with a notification amending Clause (ii) of the Bihar State Employees Conditions of Service (Modified Assured Career Progression Scheme) Repeal Rules, 2010 (Annexure-2) whereby the eligibility of an employee to draw the benefit under the repealed scheme was clarified as under:



“Further more the pay promotion under repealed A.C.P. rules will be available in between 31.12.2008 and the date of notification (13.07.2010) of this repeal Rules.”

Since these petitioners missed out on the second assured career progression under the ‘ACP Rules, 2003’ by a few days, by virtue of this notification prescribing the cut off date for grant of such benefits under the repealed ‘ACP Rules, 2003’ that they approached this Court through the writ petition in question and in our opinion in view of the expression recorded by the learned Single Judge at paragraphs 18, 19 and 20 which we are persuaded to reproduce hereinbelow, the writ petitioners had no case for indulgence because they had not completed 24 years of service as on the cut-off date of 13.07.2010 which is the date on which the ‘ACP Rules, 2003’ got repealed.

Paragraphs 18, 19 and 20 of the judgment of the learned Single Judge is being reproduced hereinbelow:

18. In view of the above, the whole edifice of discrimination which has been built by the petitioners in the present writ application is totally misplaced and incongruous. The Court is satisfied that Annexure-4 was required to be issued to cover up the period or the gap between the date of repeal indicated as 01.01.2009 and the date of the notification which was 13.07.2010. If certain employees had completed 24 years of service between 01.01.2009 and 13.07.2010, their right could not be extinguished due to the anomaly and gap between date of repeal and date of notification. Such grant of 2nd ACP was by virtue of completion of 24 years of service in the interregnum and not due to



element of luck and providence, as was sought to be impressed upon the Court, by learned senior counsel for the petitioners.

19. Since these petitioners have not completed 24 years of service by virtue of the fact that they came to be appointed in the year 1986 between July, 1986 to November, 1986 and they do not have 24 years of service in their hands, they cannot derive benefit of second financial progression on a contrived reason of discrimination.

20. In view of the above, no mandamus or direction can be issued in favour of the petitioners for grant of benefit of second financial progression by extending the cut off date beyond 13.07.2010 so as to make them entitled to cover up the short-fall in the number of days, months and years which do not add up to 24 years of service for them.”

Mr. Srivastava, learned counsel appearing for the appellant-writ petitioners does not dispute this position save and except he submits that in the same batch of appointees those, who got appointment on a date earlier than 13.07.1986, were entitled to the benefits and it is in fortuitous circumstance where the appointment of these appellant-writ petitioners came in between the period 22.07.1986 and 20.11.1986 that they do not complete 24 years of service for grant of second assured career progression under the repealed ‘ACP Rules, 2003’ as per the repealed amendment notification dated 13.06.2013 at Annexure 4 to the writ petition.

May be, the petitioners have their reasons for grievance for



while some of the batchmates have received their second assured career progression under the ‘ACP Rules, 2003’ the same eludes these appellant-writ petitioners because they do not complete 24 years of satisfactory service as on the cut-off date fixed under the notification dated 13.06.2013. The issue is when in the undisputed circumstances existing where there are justified reasons for fixation of cut-off date of 13.07.2010 for grant of benefit under the repealed ‘ACP Rules, 2003’, no error can be found in the impugned decision to deny the 2nd progression.

We can only render sympathy for the appellant-writ petitioners herein but no relief can be granted. Finding no infirmity with the opinion expressed by the learned Single Judge we dismiss this appeal.

(Jyoti Saran, J)

(Nilu Agrawal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14-12-2018
Transmission Date	NA

