

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12074 of 2012

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Avinash Kumar Sinha, son of Late Rajeshwari Prasad Verma,
resident of Mohalla-Bajrangbali Colony, P.S.-Phulwari, District-
Patna, at present working as Correspondence Clerk in the Office of
Executive Engineer, Mechanical Division, Road Construction
Department, Sheikhpura, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Superintending Engineer, Mechanical, Mechanical Circle, Road
Construction Department, Vishwasaraiya Bhawan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma, Adv
For the Respondent/s : Mr. Abhay Shankar Jha

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 07-12-2018

The petitioner has preferred the present writ
petition seeking a direction to the respondent authorities to
grant him the benefit of First ACP from 27.11.2002.

2. It appears that the petitioner had joined as
Correspondence Clerk in the Mechanical Division of Road
Construction Department on 28.11.1990 in the pay scale of
1200-1800, which was revised and he was given the pay
scale of 4000-6000 with effect from 01.01.1996. Again, the
pay of the petitioner was revised in the scale of 5200 with



Grade Pay of 2400 from 01.01.2006.

3. The petitioner had represented before the authorities under the RTI for being intimated as to why the benefit of ACP scheme is not being accorded to him since 2002 in which year he became entitled for the same after having completing twelve years of service.

4. On the aforesaid query made by the petitioner, he has been intimated that though the petitioner claims to be an Upper Division Clerk because he was put in the pay scale of 4000-6000 but in the Cadre of Correspondence Clerk, there is provision for promotion to the post of Correspondence Clerk Grade-II (Chief Correspondence and Chief Oath/Correspondence Clerk (Grade-I).

5. In that view of the matter, the Department was of the view that without the petitioner having passed the examination for his promotion, he could not have been given the benefit of financial progression.

6. Mr. Naresh Chandra Verma, learned counsel for the petitioner, however has drawn the attention of this Court to Annexure-4, an order delivered on 06.01.2011 in



C.W.J.C. No. 6500 of 2010 wherein, in the case of one Surendra Prasad Singh, it was held that he was entitled to be paid the financial progression despite the fact that he had not passed the Account Examination.

7. The learned counsel appearing for the State has however submitted that the contention of the petitioner is absolutely incorrect in as much as the order passed by this Court in C.W.J.C. No. 6500 of 2010 was on different set of facts, viz. that the petitioner therein was more than fifty years of age and there was no promotional avenue in the Cadre of the petitioner therein.

8. The law with respect to payment of ACP is too well settled for it to be recounted. The benefit of financial progression is given under Bihar State Employees Service Conditions (Assured Career Progression Scheme), 2003. The aforesaid scheme has been extended to all the regular employees of Group B, C, and D of the State of Bihar. Rule 4 thereof clearly stipulates the eligibility and condition under which the scheme shall be regulated. The basic criterion for the sanction of financial progression under the ACP scheme



is that the concerned employee must be working in the same scale of pay including the revised scale for 12/24 years. However, this is subject to a rider that if the appointment on the post which is different from the post or original appointment and is in the higher scale of pay, then it shall be treated as direct recruitment and previous service shall not be counted for the purpose of sanction of the benefits of financial progression rule. Rule 5 further indicates that the prescribed requirement and mode of sanction of financial progression under the same scheme shall be the same which are prescribed under the recruitment/service rules for regular promotion against vacancies. If the rules/resolutions prescribed passing of departmental examination or any qualification for promotion, that shall also be an essential condition for sanction of benefit under the scheme after the completion of 12/24 years of service. It is to be understood clearly that grant of ACP cannot be likened to grant of promotion but only financial progression because of stagnation in the service. The petitioner has been debarred from availing the beneficial provisions of the scheme only on



the ground that there is a promotional post in the Cadre of Correspondence Clerk and for the promotion to the higher post, an employee is required to pass an examination. In the aforesaid context, it would be relevant to refer to rules 156 and 157 of the Bihar Board's Miscellaneous Rules, 1958 which indicate that for promotion to the higher post, all Ministerial Officers under the administrative control of the Government will be eligible to appear and the rules also provide what would be the qualifying marks for passing the exam. The Board of Revenue conducts such written exam and vide Circular dated 01.04.1980 of the Board of Revenue, it has been clarified that no Clerk be given the benefit of ACP unless he has passed the examination in terms of Rules 156 and 157 of the Bihar Board's Miscellaneous Rules, 1958.

9. The petitioner submits that even though the Department has responded to the query made by him that there is a promotional post in the Cadre of Correspondence Clerk but the fact remains that the petitioner for his pay scale was always treated as Upper Division Clerk who was



not required to appear in any examination for any further promotion. He has further submitted that the demerger of the Cadre of Lower Division Clerk and Upper Division Clerk came only in the year 2000 and therefore, perforce the petitioner ought to be held to be working on the post of Upper Division Clerk. It has also been submitted that since the ACP scheme provides for giving financial progression and not promotion, the same cannot be denied to the petitioner only on the ground of his having not passed the examination.

10. From the records, it is also very clear that the petitioner has not obtained any exemption from the concerned Department for not appearing in any examination and was also not fifty years of age at the time when his case had become due, according to him, for the benefit of ACP to accrue to him.

11. Thus, *prima facie*, the claim of the petitioner does not appear to be correct.

12. However, Mr. Verma, learned counsel appearing for the petitioner has drawn the attention of this



Court to the Annexure-3, the reply of the Department which has been referred to above and has stated that in the first paragraph of the letter, the Department has conceded that because of his being in the pay scale of 4000-6000, it was rightful for him to claim that he was working on the post of Upper Division Clerk.

13. Under such circumstances, this Court directs the petitioner to make a representation before the respondent No. 2 along with a copy of this order within a period of four weeks from today. On receipt of such representation, respondent No. 2 shall, after looking into the rules in that regard, the actual status of the petitioner and whether any promotional avenue is available in the Clerk Cadre in which the petitioner was appointed and whether the petitioner who claims to be an Upper Division Clerk is required to pass the examination for the purposes of extension of benefit of ACP Scheme, 2003, shall pass a reasoned order within six weeks thereafter. If the respondent No. 2 finds that there is a promotional post in the Clerk Cadre and for obtaining of which, appearing in written



examination was necessary, no such benefit of ACP would be given to the petitioner.

14. With the aforesaid observations and directions, the present writ petition is disposed off.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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