

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3815 of 2016

Indu Devi, Wife of late Bhairav Chandra Pathak, Resident of Village and
P.O.- Kharauna Dih, P.S. Kudhani, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Engineer-in-Chief-Cum-Special Secretary, Water Resources
Department, Government of Bihar, Patna
3. The Divisional Commissioner, Irrigation, Gandhi Maidan, Patna.
4. The Deputy Secretary, Water Resources Department, Government of Bihar,
Patna.
5. The Chief Engineer, Water Resources Department, Government of Bihar,
Patna.
6. The Superintending Engineer, Sone Canal, Modernization Circle Dehri,
Rohtas, Bihar.
7. The Executive Engineer, Irrigation Division, Nawanagar, Buxar, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha, Advocate
For the Respondent/s : Mr. P.N.Shahi, AAG10

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 29-11-2019

Heard the learned counsel for the parties.

The petitioner/Indu Devi is the widow of the
original petitioner Bhairav Chandra Pathak, who died
during the pendency of the present writ petition.

This writ petition has been filed for a direction to
the concerned respondents to make available the benefits
of ACP to the late husband of the petitioner who retired



from service on 30.06.2009. The details of the service tenure of the husband of the petitioner has been provided in the writ petition and it has been urged that despite him having served for approximately 39 years, he has not been provided the benefit of first and second ACP.

The counter affidavit indicates that the benefits of ACP has not been provided only on the ground of the husband of the petitioner not having passed the departmental examination, which is a necessary pre-requisite for grant of ACP under the ACP Rules, 2003 by virtue of Sub-Clause IV and V thereof.

Contesting the aforesaid stand of the State, learned counsel for the petitioner submits that the requirement of passing the departmental examination under Clause 157 of the Bihar Board's Miscellaneous Rules, 1958 is only for the purposes of promotion to the super/selection grade and not for general promotion. Apart from this, it has also been asserted by the learned counsel for the petitioner that during the service tenure of the



employee, there were no departmental rules for promotion, requiring the passing of any examination.

In that view of the matter, it is argued that it is absolutely unjust for the respondents to have withheld the benefit of ACP to an employee.

In support of the aforesaid contention, learned advocate for the petitioner has drawn the attention of this Court to a judgment delivered in *Masomat Indu Devi vs. State of Bihar & Ors.* reported in *2019(2) PLJR, Page 241* wherein it has categorically been held that the Bihar State Employees Services Condition (Assured Career Progression Scheme), Rule, 2003 do not provide an avenue of promotion but only financial progression in case of no promotion having been given to an employee. The beneficiary of such scheme is required to be an employee who is otherwise eligible for being promoted to the higher post.

In the aforesaid judgment, it has also been held that passing of accounts examination or departmental



examination as the case may be under the Bihar Board's Miscellaneous Rules, 1958 would be necessary for crossing the efficiency bar, confirmation and for promotion to selection grade but not for general promotion. The requirement of passing the exam can only be made applicable to an employee if there are service rules of the department for the same. If there are no service rules, it would be presumed that there were no promotional avenues available in the cadre.

In that view of the matter, this Court is of the *prima facie* view, unless rebutted, that the late husband of the petitioner is entitled to the benefits of ACP.

Under the aforesaid circumstances, this Court deems it appropriate to direct the respondents no. 5 to, in the event a detailed representation being filed by the petitioner, dispose of the same and if the claim of the petitioner is found to be tenable on the grounds which have been aforestated, necessary sequel/consequential order shall also be passed within the stipulated time frame



of four months to be counted from the date of filing of such representation.

With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.12.2019
Transmission Date	

