

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12321 of 2014

=====

Birendra Kumar Singh, Son of Late Sachidanand Singh, at present Incharge Head Clerk, Circle Office Koeilwar, P.O and P.S.- Koeilwar, District Bhojpur, permanent Resident of Village and P.O.- Thakuri, Via- Piro, Police Station- Charpokhari, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna
2. The Collector, Bhojpur.
3. The Deputy Collector, Establishment, Bhojpur.
4. The Circle Officer, Koeilwar, Bhojpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr Ashok Kumar Singh, Advocate
For the Respondent/s : Mr Sushil Kumar Singh, AC to AAG X

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 22-04-2019

Heard learned counsel for the petitioner and the respondent-State.

2 Petitioner has sought a direction upon the respondents for granting him the promotion on account of benefits under Assured Career Progression Scheme (for brevity, *ACP Scheme*).

3 Petitioner was Lower Division Clerk. His benefits have been denied by assigning a reason that he had not passed the requisite examination for promotion to the higher position as



contemplated under the Notification dated 23.04.1985 issued by the Revenue and Land Reforms Department, Government of Bihar.

4 Learned counsel for the petitioner has placed reliance on judgment of the Division Bench in the case of *State of Bihar & Others -Versus- Pramod Kumar* in the proceedings arising out of *LPA No 1260 of 2012*. He submits that since ACP is a personal benefit, the same cannot be equated with the grant of promotion.

5 Learned counsel for the State, on the other hand, relies on a subsequent decision of the Division Bench dated 03.07.2017 passed in the case of *Uday Shankar Prasad -Versus- State of Bihar & Others* in the proceedings arising out of *LPA No 1871 of 2016*. The Division Bench, in the case of *Uday Shankar Prasad (supra)* has considered the relevant provision under the ACP Scheme which requires passing of examination, which is otherwise requisite for grant of promotion to the next higher post, having regard to the provisions of the ACP Scheme as well as the Bihar Board Miscellaneous Rules.

6 In the instant case, it is observed that under Notification dated 23.04.1985, in case of the petitioner, passing of Accounts Examination is a pre requisite for promotion to the next higher post. The facts of the instant case is, therefore, different. Promotional avenue as well as requirement of passing the



examination for promotion to the next higher grade is obvious from Notification dated 23.04.1985. The case of the petitioner, therefore, on the basis of the facts, is different from facts in the case of *State of Bihar -Versus- Pramod Kumar (supra)*. Petitioner's case is covered by the subsequent decision of the Division Bench in the case of *Uday Shankar Prasad (supra)*.

7 In the circumstances, since the Rule requires passing of the examination for promotion to the next higher post, having regard to the provisions contained in sub-rule (5) of Rule 4 of the ACP Scheme, benefits of ACP cannot be granted unless the petitioner passes the examination or is granted exemption from passing the same under the extant Rules.

8 Since, neither the petitioner has passed the examination nor has been granted exemption, claim for grant of benefits under ACP Scheme is untenable.

9 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2019
Transmission Date	NA

