

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12830 of 2014

=====

Md Qamaruddin, son of Late Md Shamshuddin, resident of Garhitir, Police Station - Bhagwan Bazar, Chapra, District - Saran at Chapra

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Transport Department, Government of Bihar, Vishwashariah Bhavan, Bailey Road, Patna - 800001
2. The Principal Secretary, Transport Department, Government of Bihar, Vishwashariah Bhavan, Bailey Road, Patna - 800001
3. The Joint Commissioner 1, State Transport, Transport Department, Government of Bihar, Vishwashariah Bhavan, Bailey Road, Patna - 800001
4. The State Transport Commissioner, Transport Department, Government of Bihar, Vishwashariah Bhavan, Bailey Road, Patna - 800001
5. The District Transport Officer, Saran, Chapra
6. The Motor Vehicle Inspector, Saran at Chapra

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : M/s Sanjay Kr Verma, Abhishek Kr, Ajit Kr Singh,
Advocates

For the Respondent/s : Mr Gyan Prakash Ojha, GA VII
Mr Avishek Kr Singh, AC to GA VII

=====

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 24-06-2019

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

2 Petitioner, in the instant proceedings, has made his claim for grant of Assured Career Progression (for brevity, ACP).

3 Stand of the respondents is that the exemption earlier granted from passing the departmental examination was granted to the petitioner at the Divisional Level. Cadre of the petitioner,



being State Cadre, the Divisional Commissioner was not competent to grant the exemption and exemption could only be granted at the level of the Department. By raising such an objection, respondents have denied the petitioner's claim for benefits under Second Time Bound Promotion and consequent benefits under ACP Scheme. Claim of the petitioner has been rejected by order dated 30.01.2012 issued by the State Transport Commissioner. The same is impugned in the instant proceedings. Petitioner's claim for grant of benefits under First Time Bound Promotion had arisen between 01.05.1980 – 29.03.1982. This Court, in the earlier writ proceedings at the instance of the petitioner, had held as follows:

“The counter affidavit of the respondents only urges that the petitioner belongs to the State cadre of clerk of the Transport department and not the Mufassil cadre. Any exemption therefore granted to him by the Divisional Commissioner was not sufficient as the Divisional Commissioner was competent to grant exemption only to persons of the Mufassil cadre.

This Court in the case of Maheshwar Prasad Singh (Supra) has held that correction in rule 157 (3) (J) of the Board's Miscellaneous Rules by executive instructions came to be made on 29.03.1982 requiring passing of the departmental examination as a condition for promotion to selection grade. With regard to the period in between 01.05.1980 and 29.03.1982, it has been held that in view of amalgamation of the posts of LD and UD Clerk creating a unified cadre of clerks only and in the absence of any provision requiring the clerks to pass Accounts



examination for promotion to selection grade, there was no impediment to the grant of promotion to those acquiring eligibility between the aforesaid dates. The petitioner's claim for time bound promotion from 01.04.1981 falls within the dates 01.5.1980 and 29.03.1982. The court, therefore, holds that he is entitled to the benefit of first time bound promotion inclusive of the revised scale and entitled to full monetary benefit of the same."

4 The order of the Writ Court is dated 29.07.2008 passed in CWJC No 13222 of 2000. For grant of benefits under Second Time Bound Promotion and MACP Scheme to the petitioner, the matter was left open for the authorities to consider.

5 Raising the same objection, which has been overruled by this Court in the petitioner's earlier writ proceedings, benefits under Second Time Bound Promotion and ACP Scheme have been denied to the petitioner.

6 Learned counsel for the State has placed reliance on judgment of Division Bench of this Court in the case of State of Bihar & Others -Versus- Anjani Kumar, reported in 2013 (2) PLJR 643. The said judgment does not cover the matter in issue in the instant proceedings. The said judgment of the Division Bench is regarding the manner in which exemption can be granted from passing the departmental examination and the requirements thereof. That is not the issue in the instant proceedings.



7 The judgment on the petitioner's earlier writ petition bearing CWJC No 13222 of 2000 is binding inter parties as neither of the parties have preferred appeal against the same.

8 The issue whether the petitioner was required to pass the departmental examination has already been laid to rest in the petitioner's earlier writ proceedings having regard to the fact that the claim of the petitioner for First Time Bound Promotion arose between 01.05.1980 – 29.03.1982. Benefits under the First Time Bound Promotion Scheme has, accordingly, been directed to be paid to the petitioner. In the circumstances, the State cannot be heard to raise the same objection again while considering the petitioner's claim for benefits under the Second Time Bound Promotion and Second ACP Scheme.

9 Once the petitioner has been granted the benefits of first time Bound Promotion without imposing the requirement of passing the departmental examination, in view of the judgment relied upon by the petitioner in the case of *Ram Yash Rai -Versus- State of Bihar & Others, 2005 (1) PLJR 267* as well as the Division Bench in the case of *Avinash Chandra Singh -Versus- State of Bihar & Ors, 2012 (1) PLJR 663*, this Court would observe that the same objection cannot be raised while considering



the petitioner's claim for further benefits under the Second Time Bound Promotion and ACP Scheme.

10 In the circumstances, the order of the Transport Commissioner dated 30.01.2012 raising such objection is unsustainable and the same is quashed.

11 Respondent-authorities are, therefore, directed to consider the petitioner's case without raising the requirement of passing the departmental examination or the issue regarding exemption not being granted by the competent authority.

12 If the petitioner is found otherwise entitled, ignoring these objections, the same should be granted to the petitioner expeditiously without any undue delay and preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

13 Writ petition is allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2019
Transmission Date	NA

