

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14973 of 2014

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Krishna Gopal S/o Late Dhikchan Prasad, R/o- Shahpur Devi Chaur
Mathiapur, P.O.- Daudpur, P.S.- Shahpur via Danapur Cant, Dist.- Patna,
Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Finance Department, Govt. of Bihar, Patna
3. The Joint Secretary Establishment, Finance Department, Govt. of Bihar,
Patna
4. Joint Director cum Deputy Secretary Finance National Savings Department,
Govt. of Bihar, Patna
5. The District Magistrate, Bettiah
6. The National Savings Executive Officer, West Champaran, Bettiah

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amit Pandey
For the Respondent/s : Mr. Manoj Kumar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 19-11-2019

Petitioner's claim in the instant proceeding is for grant of benefit under ACP and MACP taking note of the fact that the petitioner had been exempted from passing departmental account examination on 10.08.2007. Benefit of ACP had been granted by computing requisite length of service for grant of 2nd ACP with effect from 10.08.2007. It is only 12 years thereafter, authorities are considering petitioner's eligibility for grant of 3rd ACP.

Counsel for the petitioner submits that exemption was availed by the petitioner, though the same was not required. He



submits that since petitioner worked as clerk-cum- typist in National Saving Department throughout his career from 02.07.1981 to 31.01.2013 without there being any promotional avenue requirement of requisite qualification cannot be mandatory for the petitioner.

In order to verify the claim of the petitioner, this court by last order afforded opportunity whether petitioner has any promotional avenue from the post of clerk-cum-typist in National Saving Department.

Supplementary counter affidavit has been filed by the State. The issue has been dealt with in para 14 thereof wherein authorities have specifically pleaded that in National Saving Department, clerical cadre has never been constituted and in absence of any constituted Rule/Act, question of promotional avenue does not arise in the present situation.

The fact that there was no promotional avenue available to the petitioner is admitted. It is in this background, petitioner's counsel relies on paras 8 and 9 of the judgment in the case of **Uday Shankar Prasad vs. State of Bihar & ors passed by Division Bench of this court reported in 2017(3) PLJR 824.** This court would consider it appropriate to reproduce paras 8 and 9 of the judgment.



*Para-8 “ A perusal of the aforesaid rules clearly stipulates that the prescribed requirement and mode of sanction of financial progression under the scheme shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against the vacancy. It is, therefore, clear that for getting benefit under the scheme in question, an employee has to fulfill all the conditions stipulated in the Recruitment or the services Rules which is prescribed for regular promotion from the post held to the next higher post. Admittedly, in the case in hand, for further promotion from the post of Compilation Clerk to a higher post, no Service Rules are prescribed as there is no further avenue for promotion from post of Compilation Clerk to any other higher post. That being so, sub-rule 5 of Rule 4 and its interpretation would clearly show that for grant of ACP from the post of Compilation Clerk no rules of promotion or recruitment being prescribed, this rule will not apply, i.e. 4(5). Thus, there are no prescribed statutory rules for recruitment or promotion from the post of compilation clerk to any other post. That apart, we find that the Rules of 2003 are the rules framed under Article 309 of the Constitution of India and there is no stipulation in these rules that the rules contemplated under the Bihar Board Miscellaneous Rules, 1958 would be applicable for grant of ACP. That being the position, the contention of the respondents that the appellant is not entitled to the benefit under the scheme, is wholly misconceived and while rejecting the claim of the appellant the learned Writ Court has not taken note of this factual or legal aspect of the matter. On going through the judgment referred to by the State in the case of **Kusheshwar Nath Pandey** (supra), we find that it was a case pertaining to grant of time bound promotion under a particular scheme and the said case was pertaining to promotion of*



a Tracer to some higher post and is not applicable to this appellant”.

*Para-9 “ A perusal of the Rule, which is reproduced in para 10 of the judgment in the case of **Kusheshwar Nath Pandey** (supra), goes to show that the rule is applicable for the purpose of crossing the efficiency bar, confirmation and for promotion to the selection grade. There is nothing in the said rule to show that it pertains to promotion of Compilation Clerk to any other higher post. Rules of 2003 is the rule framed under Article 309 of the Constitution and the aims and objects of the scheme is to grant higher pay scale or grade to the employees who stagnate in particular post without any promotion, may be because no promotional posts are available or vacancies are not available and the scheme has been envisaged to grant only benefit of higher pay scale or grade to an employee who stagnates for 12 years or 24 years. Once we are convinced that there are no rules for promotion from the post of Compilation Clerk and the Boards Miscellaneous Rules of 1958 are not applicable, in the case in hand, there is no reason why the benefit claimed by the appellant cannot be granted. That being the position, the benefit of ACP was rightly granted to the appellant and there was no justification in withdrawing the same”.*

From perusal of the said judgment, it is apparent that when no promotional post is available and the scheme contemplates grant of benefit of higher pay scale on account of stagnation, then the Bihar Board Miscellaneous Rule, 1958 would not be applicable and there can be no basis for denying claim of the petitioner.



In the circumstance, this court would direct the authorities to consider and grant benefit of ACP/MACP to the petitioner without raising requirement of passing any departmental examination.

Let authorities issue order and pay consequential benefit in accordance with law along with details of calculation of the amount paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

Writ petition stands allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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