

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17668 of 2011

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Anandi Prasad Singh, son of late Triloki Singh, resident of Village – Kapashi,
P.O.-Karandey, PS- Karandey, District-Sheikhpura.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Industries, Government of Bihar,
Patna.
3. The Director, Handlum And Sericulture, Department of Industries, Vikash
Bhawan, Patna.
4. The General Manager, District Industries Centre Vaishali At Hajipur.
5. The Project Officer, Malvari Extension-Cum-Training Centre, Ranipur
Hat, Vaishali At Hajipur.
6. The General Manager, District Industries Centre, Gopalganj.
7. Andi Sheed Supply Centre Sirsa, Gopalganj.
8. The Accountant General, Bihar (A & E) Birchand Patel Path, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Advocate Mr. Ram Vinay Pd. Singh, Advocate
For the Respondent/s	:	Mr. Raghwanand, G.A.-XI Mr. Prabhat Kumar, A.C. to G.A.-XI

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 12-04-2019

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

2. In the present case, the question has been raised
with regard to entitlement of A.C.P. to the petitioner. The A.C.P.



Rules provides that the conditions attached to the promotion will equally be applicable to the Government servant entitled to the A.C.P. In the present case, specific statement has been made by the petitioner that there is no avenue for promotion to the petitioner, so deprivation of A.C.P. on account of non-passing of accounts examination does not arise as it is applicable in the event of availability of promotional post. At the same time, the petitioner has superannuated from the service on 30.06.2003 and the A.C.P. Rules has been enforced with effect from 27.06.2003 i.e. three days prior to retirement of the petitioner.

3. The question in the present case is to be considered as to whether the petitioner was obliged to pass the accounts examination as there is no dispute that the petitioner has already passed the departmental examination, save and except the accounts examination and the promotional avenue is not available to the petitioner, in such circumstance, the question of passing of accounts examination would not arise.

4. The benefit of A.C.P. is available when the Government servant has not been promoted either in absence of promotional avenue or on account of non-availability of post for promotion. The A.C.P. is anti stagnation measure in the sense that the person, who has joined the service must have



opportunity of enhancement of scale of pay atleast for two times after introduction of A.C.P. Rules, 2003, which has been enforced with effect from 1999. When there is no requirement for passing the accounts examination, then deprivation of the petitioner for the benefit of A.C.P. is not a proper exercise of power by the respondents. Furthermore, learned counsel for the State has not disputed the claim of the petitioner that next level post of promotion is not available in the clerical grade of the Industries Department. A person can only be given up-gradation of scale under the A.C.P. Rules. Hence, this Court is of the view that deprivation of the petitioner for the benefit of enhancement of pay scale under the scheme of A.C.P. is completely not sustainable.

5. Accordingly, this Court issue writ of *mandamus* to the respondents to consider the case of the petitioner and if it is found that he has completed 24 years of service and has not been granted promotion in scale in terms of the A.C.P. Rules, in such circumstance, the respondents will be obliged to extend the benefit of A.C.P. in terms of the A.C.P. Rules without unnecessary delay. As the petitioners has superannuated from the service, needless to say that he will be entitled to the consequential benefits.



6. With the aforesaid observations and directions, this writ petition is allowed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	16.04.2019
Transmission Date	

