IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.408 of 2018

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1. The State of Bihar
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Executive Engineer, Rural Works Department, Rural Development Division, Rajgir, District - Nalanda
7. The Executive Engineer, Water Resources Department, Canal Division No. 3, Anishabad, Patna.
8. The Executive Engineer, Water Resources Department, Ganga Sone Floor Protection Division, Digha, Patna
9. The Executive Engineer, Water Resources Department, Dam Gate Design Division No. 4, Anishabad, Patna
10. The Executive Engineer, Water Resources Department, Irrigation Mechanical Monitoring Division, Patna

... ... Appellant/s

Versus

1. Krishna Murari Gupta and Ors son of Late Tek Narayan Lal Resident of Mohalla - Panchshil Nagar, P.O. Digha, P.S. Danapur, District - Patna, the retired Senior Accounts Clerk, Rural Works Department, Rural Development Division, Rajgir, District - Nalanda.
2. Vinod Krishna Jamuar son of Late Jai Krishna Jamuar Resident of L.I.G., 14, Lohiya Nagar, P.O. and P.S. Kankarbag, District - Patna, the retires Senior Accounts Clerk, Water Resources Department, Ganga Sone Flood Protection Division, Digha, Patna.
3. Raj Kishore Sharma son of Late Jagdeo Prasad Sharma Resident of village and P.O. - Tilak Tajpur, P.S. Runnisadipur, District - Sitamarhi, the retired Senior Accounts Clerk, Water Resources Department, Dam Gate Design Division No. 4, Anishabad, Patna.
4. Bishnudutt Pandey son of Late Banshidhar Pandey Resident of Village and P.O. Sultanpur, P.S. - Derni District - Saran at Chapra, the retired Senior Accounts Clerk, Water Resources Department, Irrigation Mechanical Monitoring Division, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 474 of 2018

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1. The State Of Bihar and Ors
2. The Principal Secretary, Finance Department, Government of BIhar,Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.

5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Water Resources Department, G
6. The Chief Engineer, Water Resource Department, Gaya.
7. The Superintendent Engineer, Water Resources Department, Water Ways Circle, Ghoshi, District-Jehana
8. The Executive Engineer, Water Resources Department, Water Ways Division, Ghoshi, District-Jehanabad

... ... Appellant/s

Versus

Vijay Narain Sinha Son of Late Nritya Narain Singh, Resident of Mohalla-F/17, P.C. Colony, Kankarbagh, P.O. and P.S. Kankarbag, District-Patna, The Retired Accounts Clerk, Water Resources Department, Water Ways Division, Ghoshi, District-Jehanabad.

... ... Respondent/s

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with

Letters Patent Appeal No. 475 of 2018

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1. The State Of Bihar and Ors
2. The Finance Secretary, Finance Department, Government of BIhar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Building Construction Department, Govenment of Bihar, Patna.
5. The Engineer-In-Chief-Cum-Additional Secretary-Cum-Special Secretary, Building Construction Departm
6. The Superintendent Engineer, Construction Circle, Building Construction Department, Vishweshwaraiya

... ... Appellant/s

Versus

Anjani Kumar Sinha Son of Late Bindhyachal Prasad Sinha, Resident of Mohalla-Gaurakshani, Sasaram, P.O. and P.S. Sasaram, District-Rohtas at Sasaram, PresentlyResiding at C/o Dr. N.P. Srivastava, House No.31/6, Hanuman Nagar, P.O. and P.S. Shastri Nagar, District-Patna the Retired Senior Accounts Clerk, Office of Superintending Engineer, Construction Circle, Building Construction Department, Vishweshwaraiya Bhawan , Bailey Road, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 472 of 2018

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1. The State Of Bihar and Ors
2. The Finance Department, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.

5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Road Construction Department,
6. The Executive Engineer, Road Construction Department, Mechanical Division, Ara.

... ... Appellant/s

Versus

Panch Deo Singh son of Late Ramji Singh, Resident of Village - Hansrajpur, P.O. and P.S. Ekma, District - Saran at Chapra, the retried Senior Accounts Clerk, Road Construction Department, Mechanical Division, Ara, District - Bhojpur at Ara.

... ... Respondent/s

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with

Letters Patent Appeal No. 471 of 2018

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1. The State Of Bihar and Ors
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Water Resources Department, Gaya
6. The Executive Engineer, Water Resources Department, Minor Irrigation Division, Khagaria.
7. The Executive Engineer, Water Resources Department, Flood Control Division No. 2, Khagaria.

... ... Appellant/s

Versus

1. Umesh Prasad Sinha and Ors Son of Late Ram Dayal Singh, Resident of Village and P.O. Chanpur, P.S. Bidupur, District- Vaishali at Hajipur the retired Senior Accounts Clerk, Minor Irrigation Division, Khagaria.
2. Anil Prasad, Son of Late Vishnudeo Prasad, Resident of village and P.O. Tetri, P.S. Dandrai, District- Begusarai, the retired Senior Accounts Clerk, Flood Control Division No. 2, Khagaria.
3. Abul Kalam Azad, Son of late Abul Hashim, Resident of Village- Ahmedganj, P.O. Bakaddu, P.S.- Sahebpur Kamal, District- Begusarai, the retired Senior Accounts Clerk, Minor Irrigation Division, Khagaria.

... ... Respondent/s

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with

Letters Patent Appeal No. 431 of 2018

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The State Of Bihar and Ors

... ... Appellant/s

Versus

Amresh Kumar Sinha and Ors

... ... Respondent/s

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with

Letters Patent Appeal No. 409 of 2018

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1. The State Of Bihar and Ors
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer, Central Design Research and Quality Control, Water Resources Department, Anishabad, Patna
6. The Executive Engineer, Gate Design Division-3, Water Resources Department, Anishabad, Patna.
7. The Executive Engineer, Flood Control Design Division-2, Water Resources Department, Anishabad, Patna
8. The Executive Engineer, Flood Control Design Division-1, Water Resources Department, Anishabad, Patna

... ... Appellant/s

Versus

1. Abhay Shankar Sharan and Ors Son of Sri Rama Shankar Sharan Resident of Flat No. 205, Vijay Apartment, P.O.- G.P.O., P.S. Gardanibag, District- Patna, presently posted as Senior Accounts Clerk, Dam gate Design Division-3, Water Resources Department, Anishabad, Patna.
2. Neelam Gupta Wife of Sri Santosh Kumar Resident of Mohalla- Shivpur Khas Mahal, P.O. Mahendru, P.S. Sultanganj, District- Patna, presently posted as Senior Accounts Clerk, Flood Control Design Division-2, Water Resources Department, Anishabad, Patna.
3. Veena Devi Wife of Late Kamla Thakur Resident of Flat No. 229, Road No. 5, Rajbanshi Nagar, P.O. and P.S. Shastri Nagar, District- Patna, presently posted as Senior Accounts Clerk, Flood Control Design Division-1, Water Resources Department, Anishabad, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 430 of 2018

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The State Of Bihar and Ors

... ... Appellant/s

Versus

Krishna Kumar Sinha and Ors

... ... Respondent/s

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with

Letters Patent Appeal No. 546 of 2018

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1. The State Of Bihar and Ors
2. The Principal Secretary, Finance Department, Govt. of Bihar Patna.
3. The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
4. The Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Kishanganj Circle, Kishanganj.
6. The Executive Engineer, Rural Works Department, Works Division, Forbesganj, Araria.

... ... Appellant/s

Versus

Pankaj Sinha Son of Late Shashi Bhushan Prasad Sinha, resident of Flat No. 403A, R.K. Villa, Mahesh Nagar, P.S.- Patliputra, District- Patna, presently working as Senior Accounts Clerk, Works Division, Rural Works Department, Forbesganj, District- Araria, presently deputed in the office of the Engineer-in-Chief, Rural Works Department, Bihar, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 547 of 2018

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1. The State Of Bihar and Ors
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Water Resources Department, Gaya
6. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Muzaffarpur.
7. The Executive Engineer, Water Resources Department, Flood Control Division, East Champaran at Motihari
8. The Executive Engineer, Water Resources Department, Sikrahana Embankment Division, District- East Champaran

... ... Appellant/s

Versus

1. Ram Babu Singh and Ors son of Late Sri Ram Ayodhya Singh, Resident of Village- Banjhia, P.O.- Bhopatpur, P.S.- Kotwa, District- East Champaran at Motihari, the retired Senior Accounts Clerk, Water Resources Department, Food Control Division, East Champaran at Motihari.
2. Chandra Kishore Singh, son of Late Sukhdeo Singh, Resident of Village and P.O.- Pardesia, P.S.- Sheohar, District- Sheohar, the retired Senior Accounts Clerk, Water Resources Department, Flood Control Division, East Champaran at Motihari.
3. Harendra Narayan Singh, son of Late Laxmi Singh, Resident of Village- Ausanpur, P.O.- Gauchari, P.S.- Balthar, District- West Champaran at Bettiah,

the retired Senior Accounts Clerk, Water Resources Department, Flood Control Division, East Champaran at Motihari.

4. Rameshwar Prasad Sinha, son of Late Sheo Nandan Prasad, Resident of Village- Agarwa, Motihari, P.O. Motihari, P.S.- Motihari Town, District- East Champaran at Motihari, the retired Senior Accounts Clerk, Water Resources Department, Flood Control Division, East Champaran at Motihari.
5. Om Prakash Prasad Sinha, son of Late Rameshwar Prasad, Resident of Village- Jhaur, P.O.- Warsaliganj, P.S.- Warsaliganj, District- Nawada, the retired Senior Accounts Clerk, Water Resources Department, Flood Control Division, East Champaran at Motihari.
6. Kapileshwar Mishra, son of Late Sahdeo Mishra, Resident of Village and P.O. Marukiya, P.S.- Khajauli, District- Madhubani, the retired Senior Accounts Clerk, Water Resources Department, Sikrahana Embankment Division, District- East Champaran at Motihari.
7. Devendra Jha, son of Late Kusheshwar Jha, Resident of Village- Pindauta Khurd, P.O. and P.S. Tisiauta, District- Vaishali at Hajipur, the retired Senior Accounts Clerk, Water Resources Department, Flood Control Division, East Champaran at Motihari.

... ... Respondent/s

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with

Letters Patent Appeal No. 711 of 2018

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1. The State Of Bihar and Ors
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Public Health Engineering Department, Govt. of Bihar, Patna.
4. The Superintending Engineer, Public Health Engineering Department, Munger Circle, Munger.
5. The Executive Engineer, Public Health Engineering Division, Jamui.

... ... Appellant/s

Versus

1. Suchitra Singh and Anr Wife of Late Parshuram Singh Resident of Village and PO - Torni, Via - Sheo Sagar, P.S. - Sheo Sagar, District - Rohtas.
2. The Accountant General, Bihar, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 429 of 2018

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The State Of Bihar and Ors

... ... Appellant/s

Versus

Nand Kishore Singh and Ors

... ... Respondent/s

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with

Letters Patent Appeal No. 548 of 2018

==

1. The State Of Bihar and Ors
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Minor Water Resources Department
6. The Executive Engineer, Water Resources Department, Irrigation Division, Baunsi, District- Bhagalpur
7. The Executive Engineer, Water Resources Department, Ganga Pump Canal Division, Kahalgaon, Bhagalpur
8. The Executive Engineer, Water Resources Department, Electrical-cum-Mechanical Division, Balmi, Patna

... ... Appellant/s

Versus

1. Nakul Kumar Mishra and Ors son of Late Bhagwat Mishra, Resident of Village- Ekoria, P.O. Kunaini, P.S. Banka, District- Banka, the retired Senior Accounts Clerk, Irrigation Division, Baunsi, District- Banka.
2. Surendra Prasad Yadav, son of Late Kamli Prasad Yadav, Resident of Village- Belu Tikar, P.O. Jogdiha, P.S. Banka, District- Banka, the retired Senior Accounts Clerk, Irrigation Division, Baunsi, District- Banka.
3. Sanjay Kumar Singh, son of Sri Ram Sharan Singh, Resident of Village- Dogachchi, P.O. Tarar, P.S. Sanhaullah, District- Bhagalpur, the retired Senior Accounts Clerk, Office of the Executive Engineer, Ganga Pump Canal Division, Kahalgaon, Bhagalpur, District- Bhagalpur.
4. Manikant Jha, son of Late Kulanand Jha, Resident of Village and P.O. Bhan, P.S. Madhepura, District- Madhepura, the retired Senior Accounts Clerk, Electrical-cum-Mechanical Division, Balmi, Patna, District- Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 545 of 2018

==

1. The State Of Bihar and Ors
2. The Finance Secretary, Finance Department, Government of Bihar, Patna
3. The Secretary Expenditure , Finance Department, Government of Bihar, Patna
4. The Principal Secretary, Water Resource Department, Government of Bihar, Patna
5. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
6. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna
7. The Executive Engineer, Flood Control Division, Water Resources Department, Dalsingsarai

8. The Executive Engineer, Flood Control Division - 2, Water Resources Department, Khagaria
9. The Executive Engineer, Road Division, Road Construction Department, Vaishali
10. The Executive Engineer, Public Health Mechanical Division, Public Health Engineering Department, Ga

... ... Appellant/s

Versus

1. Prem Chandra Thakur and Ors Son of Late Ram Swarath Thakur Resident of village - Jhahuri, P.O. Bishinpur, P.S. Kalyanpur, District - Samastipur, Presently Posted as Senior Accounts Clerk, Flood Control Division, Water Resources Department, Dalsingsarai, District Samastipur
2. Tej Narayan Jha Son of Late Posan Jha Resident of village and P.O. Logunia Suryakanth, P.S. Samastipur Muffasil, District - Samastipur, Presently Posted as Senior Accounts Clerk, Flood Control Division - 2, Water Resources Department, Khagaria, District Khagaria
3. Harendra Prasad Yadav Son of Late Ram Pravesh Prasad Resident of village - Chhitar Chak, P.O. and P.S. Sonepur, District - Saran at Chapra, Presently Posted as Senior Accounts Clerk Road Division, Road Construction Department, Vaishali
4. Ajay Kumar Singh Son of Sri Ram Janak Singh Resident of village - Bhojpur, P.O. Bishunpur, P.S. Wazirganj, District - Gaya Presently Posted as Accounts Clerk, Public Health Mechanical Division, Public Health Engineering Department, Gaya

... ... Respondent/s

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with

Letters Patent Appeal No. 473 of 2018

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1. The State Of Bihar and Ors
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary Expenditure, Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Bihar Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Water Resources Department, G
6. The Chief Engineer, Central Design Research and Quality Control, Water Resources Department, Govern
7. The Executive Engineer, Water Resources Department, Canal Design Division No.3, Water Resources Department

... ... Appellant/s

Versus

Ashok Kumar Verma Son of Late Sidheshwar Prasad Verma, Resident of Mohalla-Indira Nagar, Road No.4, Postal Park, P.O.-G.P.O., P.S. Kankarbagh, District-Patna the Retired Senior Accounts Clerk, Officer of Executive Engineer, Canal Design Division No.3, Water Resources Department, Anishabad, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 428 of 2018

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The State Of Bihar and Ors

... ... Appellant/s

Versus

Rajeev Ranjan and Anr

... ... Respondent/s

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Appearance :

(In Letters Patent Appeal No. 408 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mr. Parijat Saurav Ac To AAG 10
For the Respondent/s	:	Mr. S.B. Mangalam, Advocate
		Mr. Ravi Ranjan, Advocate
(In Letters Patent Appeal No. 474 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mr. Parijat Saurav Ac To AAG 10
For the Respondent/s	:	Mr.
(In Letters Patent Appeal No. 475 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mr. Parijat Saurav AC To AAG 10
For the Respondent/s	:	Mr.
(In Letters Patent Appeal No. 472 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mr. Parijat Saurav AC To AAG 10
For the Respondent/s	:	Mr.
(In Letters Patent Appeal No. 471 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mr. Parijat Saurav AC To AAG 10
For the Respondent/s	:	Mr.
(In Letters Patent Appeal No. 431 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mrs. Shilpi Keshri, Ac To Aag 10
For the Respondent/s	:	Mr. S.B. Mangalam, Advocate
		Mrs. Anita Kumari, Advocate
(In Letters Patent Appeal No. 409 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mr. Rohitab Das, A.C. to A.A.G. 10
For the Respondent/s	:	Mr. S.B. Mangalam, Advocate
(In Letters Patent Appeal No. 430 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mr. Naman Nayak, AC To AAG 10
For the Respondent/s	:	Mr. S.B. Mangalam, Advocate
		Mr. Ravi Ranjan, Advocate
(In Letters Patent Appeal No. 546 of 2018)		
For the Appellant/s	:	Mr. A.K. Rastogi, A.A.G. 10
		Mr. Pankaj Sharma, Advocate
For the Respondent/s	:	Mr. Prashant Sinha, Advocate
(In Letters Patent Appeal No. 547 of 2018)		

For the Appellant/s : Mr. A.K. Rastogi, A.A.G. 10
Mr. Parijat Saurav AC To AAG 10
For the Respondent/s : Mr.
(In Letters Patent Appeal No. 711 of 2018)
For the Appellant/s : Mr. A.K. Rastogi, A.A.G. 10
Mr. Parijat Saurav AC To AAG 10
For the Respondent/s : Mr.
(In Letters Patent Appeal No. 429 of 2018)
For the Appellant/s : Mr. A.K. Rastogi, A.A.G. 10
Ms. Smriti Singh, A.C. to A.A.G. 10
For the Respondent/s : Mr. S.B. Mangalam, Advocate
(In Letters Patent Appeal No. 548 of 2018)
For the Appellant/s : Mr. A.K. Rastogi, A.A.G. 10
Mr. Parijat Saurav AC To AAG 10
For the Respondent/s : Mr.
(In Letters Patent Appeal No. 545 of 2018)
For the Appellant/s : Mr. A.K. Rastogi, A.A.G. 10
Mr. Parijat Saurav AC To AAG 10
For the Respondent/s : Mr.
(In Letters Patent Appeal No. 473 of 2018)
For the Appellant/s : Mr. A.K. Rastogi, A.A.G. 10
Mr. Parijat Saurav AC To AAG 10
For the Respondent/s : Mr. Jainendra Kumar Sinha, Advocate
(In Letters Patent Appeal No. 428 of 2018)
For the Appellant/s : Mr. A.K. Rastogi, A.A.G. 10
Mr. Sushil Kr. Singh, A.C. to A.A.G. 10
For the Respondent/s : Mr. S.B. Mangalam, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-02-2019

These appeals have been filed by the State of Bihar raising a common question while assailing the impugned judgement of the learned Single Judge dated 28th of November, 2017 whereby the benefit of Assured Career Progression (A.C.P.) to the respondent-petitioners has been extended keeping in view the earlier decision in C.W.J.C. Nos. 18015 of 2011 (Pramod Kumar Vs. The State of Bihar & Ors.) and 16346 of 2011 (Ashok Kumar & Ors. Vs. The State of Bihar & Ors.).

The relief prayed for and the minimum bare facts for appreciating the controversy have been set out in extensive detail by the learned Single Judge in the impugned judgement. The stand of the Government has also been noted including the counter affidavits filed by the State.

The contention on behalf of the appellant State is that the respondent petitioners cannot be extended the benefit of the A.C.P. as they do not possess the minimum eligibility qualification of graduation, which is the qualification prescribed for promotion to the next higher post of Accounts Officer, and which is required to be compulsorily possessed keeping in view Rule 4 (5) of the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as the A.C.P. Scheme Rules).

To appreciate the controversy raised, Rule 4(5) of the Rule is extracted hereinbelow:-

> "(5) The prescribed requirements 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 vacancies. If the Rules/Resolutions prescribe passing of the departmental examination **or any qualification for promotion that shall also be an essential condition for sanction of benefit under the scheme**, provided that after completion of 12/24

> years of service, the financial progression shall become due and for this, there shall be no bar of period prescribed for regular promotion."

The respondent-petitioners pleaded that these issues have been thrashed out in the judgements of this Court referred to above where the State took a similar stand and it was held that such benefits of A.C.P. would be admissible that was not interfered with even by the Hon'ble Supreme Court in the Special Leave Petition filed at the instance of the State respondents.

The appellant State has questioned the findings of the learned Single Judge contending that the benefits which were extended by this Court in the case of Pramod Kumar (supra) and Ashok Kumar (supra) would not be attracted on the facts of the present case inasmuch as the said decisions were in relation to the Revenue Service Cadre Rules where the applicability of the Rules as involved herein was neither debated nor considered. It may be mentioned that the State of Bihar had filed Special Leave to Appeal No. 21329 of 2015 in the case of Pramod Kumar (supra) and the same was dismissed on 07.12.2015. The order in the case of Pramod Kumar (supra) was complied with as recorded in the order passed by the learned Single Judge on 22.06.2016 in M.J.C. No. 2783 of 2012 and M.J.C. No. 3243 of 2012.

There is one more decision (in L.P.A. No. 1871 of 2016 Uday Shankar Prasad vs. The State of Bihar & ors.) on 3rd of July, 2017 which deserves notice being closer to the issue raised herein that has been relied upon by the respondent petitioners where the State of Bihar in a matter arising out of the Road Construction Department relating to Compilation Clerks, took the plea that since there is no Rule for promotion or recruitment to a higher post from the post of Compilation Clerk, there were no further avenues and as such the Court proceeded to allow the appeal on the aforesaid premise.

In the instant case, learned counsel for the appellant State of Bihar has advanced submissions mainly on the ground that if the respondent petitioners do not possess the qualification of graduation which is a sine qua non for grant of A.C.P. as per the rules quoted hereinabove, then in that event, the judgement of the learned Single Judge proceeds on an erroneous assumption and the judgements relied on by the learned Single Judge are collectively distinguishable on that count. The aforesaid argument, therefore, is dependent on the fact as to whether the qualification prescribed for promotion to the next higher post i.e. to the post of Accounts Officer from Accounts Clerk is also a necessity for acquiring the benefit of A.C.P.

The argument of the State appellant is to the effect that as per Rule 4(5) of the 2003 Rules quoted above, the same qualification which is required for being promoted is to be necessarily possessed by an Accounts Clerk in order to claim A.C.P. For this, the contention is that the Bihar Accounts Service Rules, 2000 as notified on 28th of March, 2000 provides for recruitment by way of promotion under Rule 17 and Rule 20 and Schedule-I thereof.

Rule 17, Rule 20 and Schedule-I are extracted hereinunder:

"**17. Recruitment by Promotion. -**

(i) All posts **other than those in the basic grade** of the Service (except the post of Commissioner and, by specific decision, of the posts of Internal Financial Advisors) shall be filled by promotion to the members of basic grade of the Service.

(ii) **Promotion to the basic grade of the Service shall be made from amongst the cadres listed in Schedule I.**

(iii) **Promotion from the ministerial staff of the cadres listed in Schedule-I to the basic grade shall be made on the basis of the Limited Competitive Examination** conducted by the Commission and related vacancies shall be filled on this basis.

(iv) For promotion to the basis grade of the Service, candidates must possess qualifications mentioned in Schedule-I.

20. Recruitment by Promotion:- Recruitment by **Promotion to the basic grade of this Service** will be made by selection through the limited competitive examination.

1. The State Government shall determine by 31st January of every calendar year the no. of posts to be filled, separately by direct recruitment and by promotion, **from the**

ministerial officers of Treasury, G.P.F. and employees of accounts cadres.

Provided that the vacancies to be filled up by recruitment through limited competitive examination shall not exceed 25 (twenty five) per cent of the total number of vacancies in the year.

2. Reservation policy of the Govt, shall be applicable in the recruitment against the vacancies decided in Sub-Rule (1).

<u>Schedule-I</u>

Posts from which appointment to Bihar Accounts Service may be made by promotion :

Following are the qualifications for promotion **to the basic grade of Bihar Accounts Service** on the basis of Limited Competitive Examination :-

(1) Ministerial staff working in Treasuries and Provident Fund cells and employees of accounts cadre in other departments having at least 10 years of experience in Government Service.

(2) Their minimum educational qualification shall be graduation.

(3) The applicant must have cleared the final departmental examination in accounts."

The contention of the State is that the promotional avenue in the present case is available through a limited competitive departmental examination provided the candidate possesses the minimum qualification of a graduate. Thus, the respondent-petitioners are not being denied any avenue of promotion as compared to the other cases which have been decided by this Court where there were no avenues of future promotion.

Shri Rastogi, learned A.A.G., has invited the attention of the Court to paragraph 11 and 12 of the counter affidavit filed on behalf of respondent nos. 2 and 3 in C.W.J.C. No. 14203 of 2016. The same are extracted hereinunder:-

> "11. That, it is stated that vide circular no. 769 dated 28.01.2008 the ACP Rules, 2003 were modified so, to also grant ACP upgradation into the basic posts of higher level cadres if there were a provision of recruitment through limited examination from the lower cadre.
>
> 12. That, it is pertinent to mention here that the Cadre Rule of Bihar Account Officer was introduced in the year 2000 and known **'Bihar Account Service Rules, 2000'** in which chapter – 5 Rule 17, 20, 22 and Schedule-I deals recruitment by promotion on basic grade post of Accounts Officer from Ex-cadre employee through the limited competitive examination, who have minimum education qualification of graduation apart from the other conditions mentioned therein. In Schedule-I (2) deals specifically, minimum educational qualification shall be graduate for appearing in the limited competitive examination of the Ex-cadre employee. However, the word **promotion or through the promotion** was deleted vide **Bihar Accounts Service (Amendment) Rule, 2012** issued vide notification dated 23.08.2012. It is evident from Rule – 8 of said Rule, 2012 that the amendment rule was effective from the date of commencement of Rule, 2000."

On the strength of the aforesaid averments, Shri Rastogi has urged that in the present case the 2000 Rules are applicable that has an avenue for promotion as an Accounts Officer which provides for the possession of the qualification of graduation for promotion and, therefore, the very same qualification is required for A.C.P. in terms of Rule 4(5) of the 2003 Rules extracted hereinabove. This aspect according to him has been omitted from consideration by the learned Single Judge.

The said argument has been resisted by the respondent-petitioners that this is clearly discriminatory inasmuch as, firstly the 2000 Rules, namely the Bihar Accounts Service Rules, 2000 are not applicable to the controversy. Shri Mangalam and Shri Thakur, learned counsel for the respondents have urged that the Bihar Accounts Rules, 2000 do not relate to the respondent-petitioners for whom there are no separate rules making a provision for any promotional avenue in their cadres. The Bihar Accounts Rules, 2000 by inference, therefore, cannot be implanted so as to govern the promotional avenues of the respondent-petitioners. In fact, the respondent-petitioners had been appointed as Clerks where the minimum qualification was Intermediate and the cadre of Jr. Accounts Clerk and Sr. Accounts Clerk which was existing prior to 1980 merged with effect from 1st May, 1980 into the cadre of Accounts Clerk. The demerger again took place in 1999 and such Clerks came to be retained in their respective categories without any promotional avenues. The career of such Clerks, therefore, came to an end without any promotion or any benefit which was a discriminatory treatment and in this background the A.C.P. was clearly admissible to them.

It is also argued that even otherwise, assuming for the sake of arguments that there was a promotional avenue, yet it was a mirage inasmuch as no posts for promotion were at all created or were available in the cadre of the respondent-petitioners nor any rules were framed in respect of the cadre of the respondent-petitioners providing for a promotional avenue. Secondly, it is in order to avoid this stagnation that the benefits of A.C.P. deserved to be extended to the respondent-petitioners for whom there was no requirement of possession of the qualification of graduation. Thus, the two pronged argument on behalf of the respondent-petitioners is that, firstly, the 2000 Rules were not applicable to the controversy as urged on behalf of the State of Bihar and, secondly, in the absence of any such promotional posts available, the qualification of graduation required for promotion to avail A.C.P. is meaningless and not applicable to the case of the respondent-petitioners.

We are proceeding to analyze the applicability of the judgments in the cases of Pramod Kumar (supra) and Ashok

Kumar (supra) that have been relied on by the learned Single Judge to extend the benefit of A.C.P. to the respondent-petitioners to quash the resolutions of the State Government dated 8.1.2016, 30.6.2016 and the office Memo. of the Finance Department dated 7.10.2016. It may be mentioned that in the previous round of litigation in respect of other departments relating to the said issue and after the dismissal of the S.L.P. on 7.12.2015, the State Government took decisions which were impugned in the writ petitions giving rise to the present appeals. The learned Single Judge after having discussed the facts proceeded to frame the bone of contention indicated at page Nos.41 to 43 of the impugned judgment as follows:-

> "It is after dismissal of the Special Leave Petition on 7.12.2015 that the State Government in its Finance Department has again issued a resolution bearing No.163 dated 8.1.2016 whereby after taking note of the fact that the basic qualification required to hold the post of Accounts Officer is uncontestingly a Graduate, that in the process of implementation of the judgment and order of this Court as affirmed by the Supreme Court, it has declared that only Graduates would be entitled to the benefit of financial progression since that is the basic qualification to hold the post of Accounts Clerk. A copy of the resolution is impugned at Annexure P/9 and which is followed by the second resolution bearing No.5276 dated 30.6.2016 at Annexure P/10 whereby the benefit has been restricted to the writ petitioners exclusively in

C.W.J.C. No.18015/2011 and C.W.J.C. No.16346/2011.

The Secretary (Expenditure), Finance Department by a third decision bearing Memo No.8083 dated 7.10.2016, a copy of which has been placed on record vide Annexure P-11, has in reference to its earlier resolution dated 8.1.2016 placed at Annexure P-9 and 30.6.2016 placed at Annexure P-10 issued clarification to the Accountant General that the benefit of progression under the Assured Career Progression Rules would only be extended to the direct appointees and not to those who had ben appointed on the post of Accounts Clerk by way of compassionate appointment, absorption or upgradation, which would be guided by the Finance Department Circular No.867 dated 1.1.2015.

Since the order of the Writ Court and the Division Bench, present at Annexures P-7 and P-8, was not being complied that the writ petitioners in the said cases, moved in contempt and while the matter was pending that the order was complied and the contempt application was accordingly disposed of as manifest from Annexure P-10/1 vide order passed on 4.7.2016.

When this batch of writ petition was filed the only issue which required a deliberation was whether the respondent State Government in its Finance Department while issuing the resolution bearing No.163 dated 8.1.2016 at Annexure P-9, Memo No.5276 dated 30.6.2016 at Annexure P/10 and Memo No.8083 dated 7.10.2016 at Annexure P/11 in purported compliance of the judgment and order passed in C.W.J.C. No.18015/2016 and C.W.J.C. No.16346/2011 could deny the relief to these petitioners simply because they were not party to the proceedings.

> The resolutions put to challenge at Annexure P/9 to P/11 proceeds to exclude the non-petitioners on grounds that:
>
> (a) only graduates are entitled to the benefit of Assured Career Progression because that is the minimum qualification for holding the post of Accounts Officer which is the next promotional post from the post of Senior Accounts Clerk held by the petitioners;
>
> (b) it is only the petitioners who are covered by the judgment and order passed in C.W.J.C. No.18015/2016 and C.W.J.C. No.16346/2011, as taken note of in the order, who would be entitled to the benefit of Assured Career Progression even if they are non-graduates and compassionate appointees but this benefit would neither set a precedence for others nor would be extended to similarly situated employees; and
>
> (c) the resolution dated 8.1.2016 and 7.10.2016 at Annexure P/9 and P/11 operate independently and are only applicable to direct employees but those appointed on compassionate ground, absorption or by up-gradation of post in the Accounts Clerical Cadre, would not be entitled to the benefit."

The learned Single Judge found that the issue of grant of pay-scales and other issues which had been raised stood resolved by the resolution dated 25th of March, 2015, but while considering extension of benefit of A.C.P., the rigid stand taken by the Government through fresh resolutions thereafter, particularly by the Finance Department, was wholly unjustified and the State continued to commit an illegality in order to overreach the earlier judicial verdicts which, according to the learned Single Judge, also amounted to a contempt of the earlier judgments. The learned Single Judge also observed that the State remains blind-folded on the legal position and its action was discriminatory being clearly in teeth of the earlier judgments, particularly the judgment in the case of Pramod Kumar (supra) that stood affirmed by the Apex Court and that in the case of Ashok Kumar (supra).

Thus, in order to analyze the arguments, we may first refer to the aforesaid judgments that formed the basis of the impugned judgment. In the case of Pramod Kumar (supra), a learned Single Judge of this Court, in turn, relied on the observations made in an earlier judgment by the same learned Single Judge in the case of Shashi Shekhar Ambasta Vs. The State of Bihar, reported in 2011 (3) P.L.J.R. 474. The judgment in the said case was in relation to an Accounts Clerk in the Road Construction Department claiming A.C.P. The learned Single Judge observed that there was difference between a substantive promotion and grant of A.C.P. and relying on the said observations made in paragraph 8 of the said reported judgment, came to the conclusion that the A.C.P. Scheme did not contain any rider for clearing any examination, much less any other process for promotion to the next higher post in the next cadre. It was held in the said decision that A.C.P. was an anti-stagnation measure that was devised to extend benefits due to non-availability of posts or due to failure of a candidate to qualify in the examinations. On this premise, the Court came to the conclusion that merely because a candidate is unable to clear the examination which is meant for promotion, the same would not apply for the purpose of availing an A.C.P. On the other hand, it nowhere held that an A.C.P. would be available even if the minimum eligibility qualification required for a promotional post is not possessed by a candidate. The issue of minimum eligibility qualification as involved presently was nowhere a bone of contention or decision by the Court in that case.

It is the said decision which was followed by the same learned Single Judge in the case of Pramod Kumar (supra), decided on 16.2.2012 where again it was a matter relating to Junior Revenue Service Cadre Rules, 2004 where it was held that the passing of limited competitive examination both for the purpose of promotion and A.C.P. was counter-productive to the scheme of A.C.P. However, at the same time, the eligibility requirement for 10 years as Accounts Clerk was required to be possessed and the learned Single Judge clarified that an Accounts Clerk cannot lay out a claim for A.C.P. in the basic scale of Accounts Officer till he fulfils the qualification of 10 years of service as an Accounts Clerk. The channel for promotion to the post of Accounts Officer opens only thereafter. Thus, the basic eligibility criteria of 10 years of service was acknowledged in the said decision.

The argument on behalf of the State in the present case rests on the premise that the decision taken by the State Government on 8.1.2016, followed on 30.6.2016 as well as the Finance Department Office Memo. dated 7.10.2016, is in respect of the possession of basic minimum qualification of Graduation. This matter was never thrashed out either in the case of Pramod Kumar (supra) or Ashok Kumar (supra).

On an analysis of the judgments, we find force in the submission of the learned Counsel for the State of Bihar that the decisions relied on by the learned Counsel for the respondent-petitioners have not done away with the provision of the possession of basic eligibility requirements for availing of A.C.P.

It is for this reason that the respondent-petitioners have taken a stand that there are no Cadre Promotion Rules or posts in the cadre of Accounts Clerk in the controlling departments involved herein and in the absence of any such posts or promotional avenue defined in their Service Rules, the qualifications prescribed as per Bihar Accounts Service Rules, 2000 (hereinafter referred to as '2000 Rules') would not be applicable as the said Rules do not apply in relation to the present dispute at all.

We are unable to accept this submission on behalf of the respondent-petitioners for the reason that the applicability of this Rule, namely Bihar Accounts Service Rules, 2000, have nowhere been discussed either in the judgment in the case of Pramod Kumar (supra) or Ashok Kumar (supra). The 2000 Rules along with Schedule-1 extracted hereinabove clearly provides for a promotional avenue to the ministerial staff of all other departments which has nowhere been noticed in either of the judgments cited on behalf of the respondent-petitioners. Promotion to the basic grade of Accounts Officer under the Bihar Accounts Service Rules, 2000 is open for the ministerial staff working in Treasuries, P.F. Cells and employees of Accounts Cadre in other departments having at least 10 years of experience in government service. Thus, a promotional avenue under Rule, 17 read with Rule 20 and Schedule-I of the 2000 Rules is clearly available to the respondent-petitioners. The judgments which have been relied upon by the learned Counsel for the respondent-petitioners at best come to their aid to the extent that they may not have to undergo a limited competitive examination or having failed in the limited competitive examination may be entitled for grant of A.C.P. Failure to clear the limited competitive examination, therefore, may not be an impediment for grant of A.C.P. as held in the decisions relied on by the respondent-petitioners as also in the impugned judgment, but the possession of the basic eligibility criteria of Graduation has nowhere been waived in any of the said judgments. We find that the promotional avenue, even though not provided for separately with regard to the cadre of the respondent-petitioners, the same is clearly available under the 2000 Rules which is a Rule framed under Article 309 of the Constitution of India. As observed above, a careful reading of the said Rule would indicate that the promotional avenue to the basic grade post of the Accounts Officer is available to the ministerial staff of all departments.

It is here that the judgment in the case of Uday Shankar Prasad (supra), decided on 3rd July, 2017 deserves notice. The said Division Bench judgment was in relation to Compilation Clerks in the Road Construction Department and not in relation to Accounts Clerks. In that case, the State had conceded that there was no promotional avenue for Compilation Clerks. This, therefore, clearly distinguishes the said case on facts wherein a concession was made by the State with regard to non-availability of promotional posts and the same would not apply on the facts of the present case. The said Division Bench judgment also nowhere addresses itself to the issue of promotional avenues available in relation to the Accounts Cadre under the 2000 Rules as explained above. Consequently, the ratio of the said decision or the observations made therein would not be attracted on the facts of the present case. Reliance, therefore, placed on the said judgment by the respondent-petitioners is wholly inapplicable for the reasons stated hereinabove.

In view of what has been stated above, the discussion in relation to Bihar Miscellaneous Rules, 1958 is irrelevant.

Thus, in view of what has been discussed hereinabove, the aforesaid judgments nowhere relate to the controversy relating to the possession of the minimum eligibility qualification of Graduation, which has been made the basis for denying the A.C.P. to the respondent petitioners under the orders that were impugned before the learned Single Judge. The learned Single Judge does not appear to have examined the aforesaid aspects and assumed the applicability of the judgments on the ground that the denial appears to be discriminatory. On the other hand, the State has made a valid classification of allowing the A.C.P. to all those who possess the minimum eligibility qualification. It is not in dispute by the State that they have extended the benefit of A.C.P. to those who possessed the minimum eligibility qualification of graduation. The aforesaid distinction on the basis of basic qualification of Graduation in order to avail A.C.P., therefore, was neither an issue raised nor decided in any of the decisions referred to hereinabove. The reliance, therefore, placed by the learned Single Judge to draw an analogy that the State Government had deliberately committed contempt does not appear to be correct. With due respect, we are unable to agree with the conclusions drawn by the learned Single Judge for all the reasons recorded hereinabove.

The respondent-petitioners could have claimed the benefit at par with others had they possessed the minimum qualification of a Graduate. It is not the case of the respondent-petitioners that the State has discriminated by allowing such A.C.P. to non-Graduates as well who stand at par in the Accounts Services in any other department of the Government. We are, therefore, unable to sustain this part of the conclusion drawn by the learned Single Judge.

The appeals, therefore, to the aforesaid extent, are allowed and the impugned judgment is set aside. The other observations and findings of the learned Single Judge with regard to the previous round of litigation also stand disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

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