

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18298 of 2019

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Bharat Lall Son of Late Mahabir Prasad Resident of Mill Road, Nawada,
Jawahar Tola, South of D.A.V. School, Ara, P.S.- Nawada, District- Bhojpur.
... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Sinchai Bhawan, Patna.
2. The Under Secretary (Management), Water Resources Department, Sinchai Bhawan, Patna.
3. The Principal Secretary, Finance Department, Bihar, Patna.
4. The Under Secretary, Finance (P.C.F.C.) Department, Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Darbhanga, District-Darbhangha.
6. The Superintending Engineer, Western Kosi Canal Circle, Nirmali, Camp at Madhubani.
7. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 19-09-2019 This writ application has been filed seeking quashing of an order dated 24.01.2019 by the Water Resources Department, Government of Bihar, whereby the petitioner's claim for first Assured Career Progresssaion (ACP) has been turned down apparently on the ground that the petitioner was given regular promotion before the date on which he would have otherwise become entitled to grant of first ACP.

I have heard Mr. Ajay Kumar, learned counsel appearing on behalf of the petitioner and learned Standing



Counsel No.11 for the State of Bihar and learned counsel representing the Accountant General, Bihar.

It transpires from the pleadings on record that the petitioner was initially appointed as Junior Engineer on 14.10.1965. He was promoted to the rank of Assistant Engineer with effect from 11.04.1992. He superannuated from service with effect from 31.01.2001. He has been granted benefit of second ACP with effect from 08.08.1999. As has already been noticed, he was promoted to the rank of Assistant Engineer on 11.04.1992, which is why first ACP has not been allowed to him.

Mr. Ajay Kumar, learned counsel appearing on behalf of the petitioner, has submitted that the grant of first ACP could not have been denied to the petitioner on the ground that he had not passed departmental examination. He has relied on a Division Bench decision of this Court dated 20.04.2015 in L.P.A. No. 1260 of 2012 to submit that ACP is a personal enhancement of pay scale to overcome stagnation and it is not a promotion.

The petitioner had earlier approached this Court by filing a writ application seeking reliefs including the relief of grant of ACP, giving rise to C.W.J.C. No. 17908 of 2010,



which was disposed of by order dated 29.10.2010, allowing the petitioner a liberty to file a representation before the authorities. After having considered the petitioner's claim for ACP, order dated 24.01.2019 has been passed, which is under challenge.

This cannot be disputed that grant of Assured Career Progression is governed by Bihar State Government Servants Condition of Service (Assured Career Progression Scheme) Rules, 2003. The Rules came into force with effect from 09.08.1999. Under the Scheme of grant of ACP, as stated under Rule 3 of the said Rules, such regular State Government employees, who had not been allowed any financial up-gradation, shall be entitled to first ACP after completion of 12 years of service and second ACP on completion of 24 years of service. Had the petitioner been not allowed any promotion from the date of his initial appointment as Junior Engineer, he would have been entitled to first ACP and second ACP with effect from 09.08.1999 as the benefits under the Scheme are admissible with effect from the said date, i.e. 09.08.1999. The language of the Explanation (II) of Rule 4 of the Rules is clear and states that if a Junior Engineer is promoted to the rank of Assistant Engineer, he will be treated to have been promoted for the purpose of the Scheme, despite cadre of the two posts being



separate. It clearly lays down that such employee shall be treated to have gained first financial progression.

In such view of the matter, I do not find any illegality in the decision of the State Government allowing the petitioner second ACP only, as question of grant of first ACP would not have arisen since he was already granted promotion to higher post before the date when he would have become entitled to first ACP.

This application has no merit. It is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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