

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5434 of 2015

Sanjay Priyadarshi S/o Nareshwar Prasad R/o Matri Sukh , Dadi Ji kane, P.O.-
Boring Road, P.S.- S.K. Puri, Patna, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, General Administration Department , Bihar, Patna.
3. The principal Secretary, Agriculture, Department , Govt. of Bihar, Patna.
4. The Principal Secretary, Finance Department , Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rakesh Kumar Singh, Advocate
For the Respondent/s : Mr.Rajiv Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 26-03-2019

Heard counsel for the petitioner and the respondent State.

2. The claim of the petitioner in the instant writ petition is for grant of benefits of second ACP with effect from 16.05.2009. It is submitted that in 2009 there was nothing standing in the way of grant of benefits under second ACP to the petitioner.

3. State counsel on the other hand, has submitted that the petitioner's case was considered by DPC on 18.07.2012 and 24.08.2012. Because the ACP for requisite period of 36 months was not available and ACP only for 34 months was available, his claim was kept pending. Subsequently on 16.07.2013 a charge memo bearing letter no. 4481 was issued against the



petitioner and has resulted in order of punishment dated 04.10.2018 (Annexure E to the supplementary counter affidavit). Relying upon the charge memo and order of punishment the claim of the petitioner has vehemently been opposed by the State counsel laying emphasis on judgement in the case of **Union of India v. K.V Jankiraman** reported in **AIR 1991 SC 2010** as well as a decision of the Division Bench of this Court in **LPA No. 758 of 2015 (The State of Bihar & Ors. v. Dhirendra Prasad Shrivastava)**.

4. Counsel for the petitioner, however, relying upon the judgment of the Supreme Court in the case of **K.V Jankiraman**(supra) submits that the date of initiation of proceedings is 16.07.2013, as it is on that date that charge memo was issued against the petitioner leading to the order of punishment dated 04.10.2015.

5. Prior to 16.07.2013 there was no impediment in considering the petitioner's claim for grant of benefit of second ACP with effect from 16.05.2009. Had the respondents compiled the ACP for 36 months petitioner's claim would have been allowed favourably on 18.07.2012 or 24.08.2012 in the two DPCs, as on those dates there was no charge memo nor there was any proceedings pending against the petitioner.



6. This Court finds substance in the submissions made by the counsel for the petitioner relying upon the judgment in the case of **K.V. Jankiraman** (supra). The petitioner cannot be made to suffer, because when the DPC was convened on 18.07.2012 and 24.08.2012, the respondents failed to compile the entire ACP of the petitioner and because the ACP was short by two months of the requisite period of 36 months.

7. Respondent authorities therefore, are directed to consider the petitioner's claim for grant of ACP with effect from 16.05.2009 without taking into consideration the effect of charge memo dated 16.07.2013, which has come much later and cannot be made the basis of denying the petitioner's consideration for grant of second ACP.

8. Let the consideration be done and if there is no other impediment, benefits of ACP should be allowed to the petitioner expeditiously and without any undue delay.

9. Writ petition is allowed with the aforesaid observation.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

