

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21457 of 2018

1. Om Prakash Singh, Son of Late Ramayan Singh, resident of Mohalla- Block Colony Dighi Kalan, P.S.- Hajipur Sadar, District- Vaishali.
2. Gautam Kumar, Son of Late Ramdevan Pandit, resident of Mohalla- Babu Tola Lane, P.S.- Pirbahore, District- Patna.
3. Asutosh Sharma, Son of Late Kashinath Sharma, resident of Ganga Bridge Colony, Hajipur, P.S.- Hajipur Sadar, District- Vaishali.
4. Biran Kuzoor, Wife of Jenga Oraon, resident of Ganga Bridge Colony, Hajipur, P.S.- Hajipur Sadar, District- Vaishali.
5. Paras Kumar, Son of Late Ramji Prasad, resident of Ganga Bridge Colony, Hajipur, P.S.- Hajipur Sadar, District- Vaishali.
6. Sudhir Kumar Rai, Son of Late Ram Pravesh Rai, resident of Village- Chitarchak, P.S.- Sonapur, District- Chapra.
7. Smt. Lakhpati Devi, Wife of Paras Kumar, resident of Ganga Bridge Colony, Hajipur, P.S.- Hajipur Sadar, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary, Road Construction Department Vishweshwariya Bhawan, Baily Road, Patna.
2. The Engineer-in-Chief-cum-Special Secretary, Road Construction Department, Vishweshwariya Bhawna Baily Road, Patna.
3. The Chief Engineer (Communication) North Bihar Wing Road Construction Department, Vishweshwariya Bhawna, Baily Road, Patna.
4. The Superintending Engineer, Saran Road Circle Road Construction Department, Hajipur.
5. The Executive Engineer, Vaishali Road Division Road Construction Department, Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kishore Kumar Thakur, Adv.
For the Respondent/s : Mr.Uday Shankar Sharan Singh, G.P.19

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

6 21-10-2020 Heard both sides through video conferencing.

The petitioners in this writ petition seek following
reliefs:



(i) For a direction to the respondents to grant 1st Assured Career Progression to the petitioner no.1, counting 12 years of his qualified service with effect from the date of his entry in service on 05.09.1983 as Routine Clerk. Thereby the petitioner no.1 prays for granting him the benefit of the 1st Assured Career Progression(hereinafter referred to as ACP for short) with effect from 09.08.1999, taking into account that the petitioner has already passed the Departmental Accounts Examination.

(ii) For a further direction to the respondents to grant 2nd MACP to petitioner no.1 from due date by counting 20 years of service from the date of his initial entry in service dated 05.09.1983. Thereby the petitioner no.1 prays for a direction to the respondents to make payments of arrears of salary on grant of such ACP & MACP to him, which benefit was in fact granted to him earlier but subsequently withdrawn without assigning any reason.

(iii) To set aside the office order no.34, communicated vide Memo No.173 dated 19.02.2018, issued under the signature of respondent Superintending Engineer, Saran Road Circle, Hajipur, by which the A.C.P./M.A.C.P. granted to the petitioners earlier, has been withdrawn and amended and thereby the petitioners, except petitioner no.3 have been granted only 1st



ACP, that too with effect from 17.01.2010, without assigning any reason.

(iv) For a further direction to the respondents to grant 1st A.C.P. to the petitioner no.1 with effect from 09.08.1999, taking into account his initial date of entry in service, i.e., 05.09.1983 with all consequential benefits.

(v) For a further direction to the respondents to grant 1st ACP as well as 2nd MACP and 3rd MACP to the remaining petitioners from due dates by counting their total length of service with effect from their initial date of entry in service, i.e., 04.08.1992, 06.08.1992 and 12.08.1992 respectively, taking into account the fact that all the petitioners including petitioner no.3 have already passed the departmental Examination. Thereby the petitioners pray that all the consequential monetary benefits of such ACP/MACP be extended to the petitioners from due dates.

The sole question arises “whether the petitioners are entitled for grant of Assured Career Progression under the Bihar State Employees Service Conditions(Assured Career Progression Scheme) Rules, 2003(hereinafter referred to as the ACP Rules) or the petitioners can be declined on the ground that they had not passed the departmental Accounts examination in view of Rule 4(5) of Bihar State Employees Service



Conditions(Assured Career Progression Scheme) Rules, 2003 and Rule 157(3)(J) of Bihar Boards Miscellaneous Rules?”

Mr. Kishore Kumar Thakur, learned counsel for the petitioners submits that this question came up for consideration before the Division Bench of this Court in LPA No.599 of 2015 arising out of CWJC No.486 of 2014 and Division Bench of this Court relying on different judgments of this Court held in para 17 as follows:

“17. Situated thus, and in view of the discussions, as above, there is no gainsaying that in view of sub-rule 5 of Rule 4 of ‘the ACP Rules’, the requirements for grant of regular promotion shall be applicable while considering cases for grant of ACP. Since, there is no provision prescribing passing of accounts examination for regular promotion, the appellant could not have been denied grant of ACP.”

Similar view has been taken by a Single Bench of this Court in the case of Most. Indu Devi v. State of Bihar & Ors. in CWJC No.15647 of 2017, 2019(2) PLJR 241. In para 20 of the aforesaid judgment, it has been held as follows:

“20. A bare reading of the three judgments, referred to above, makes the following propositions absolutely clear, leaving no scope of any confusion, unless the judgments are



viewed and analyzed with a myopic vision. The common thread running in all the three judgments, referred to above, is as follows:

(A) The A.C.P. Rules of 2003 do not provide an avenue of promotion, but only financial progression in case of no promotion having been given to an employee;

(B) The recipient/beneficiary of such scheme has to be an employee who is otherwise eligible for being promoted to the higher post;

(C) Passing of Accounts Examination or Departmental Examination, as the case may be, under the Bihar Boards Miscellaneous Rules, 1958 would be necessary for crossing efficiency bar, confirmation and for promotion to selection grade, but not general promotion;

(D) The requirement of passing the exam can only be thrust upon and made applicable to an employee in view of the Service Rules of the Department.”

As per contra, Mr. Uday Shankar Sharan Singh, learned counsel for the State with reference to the counter-affidavit resisted the claim of the petitioners that in view of sub-rule 5 of Rule 4 of A.C.P. Rules, 2003 and Rule 157(3)(J) of Bihar Boards Miscellaneous Rules, 1958, an employee can only



be promoted to the next level of his ladder after passing of the accounts examination but at the same time, when his attention was drawn to the law laid down by this Court in the case of Ramadhar Thakur(supra) and Most. Indu Devi(supra), Mr. Uday Shankar Sharan Singh, learned counsel for the State very fairly submitted that let this matter be remanded to the authority concerned.

Having considered the facts and the law laid down by this Court in the case of Ramadhar Thakur(supra), I find that the order dated 19.02.2018 vide Memo No.173, as contained in Annexure-1, is not sustainable. Accordingly, the same is quashed. The matter is remitted to the Superintending Engineer, Saran Road Circle, Road Construction Department, Hajipur to consider the matter afresh and decide the same within three months from the date of receipt of this order in view of the law laid down by this Court in the case of Ramadhar Thakur.

In the result, this writ petition is allowed.

(Prabhat Kumar Jha, J)

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