

**IN THE HIGH COURT OF JUDICATURE AT PATNA
C.W.J.C. No. 7165 of 2017**

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Sudhir Kumar Pandey, son of Late Shital Prasad Pandey, resident of village-
Lalmatia, P.S.-Bounsi, District-Banka.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna.
2. The Chief Engineer (Mechanical), Water Resources Department, 70/84, New Punai Chak, Patna.
3. The Superintending Engineer, Irrigation Mechanical Circle, Mithapur, Patna.
4. The Executive Engineer, Irrigation Mechanical Division, Bounsi, District-Banka.
5. The Accountant General, Bihar, Birchand Patel Path, Patna.

.. ... Respondents

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar, Advocate
		Mr. Vishwa Nath Ram, Advocate
For the Respondent State:		Mr. Harish Kumar, G.P.-8

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6. 07-09-2020 The short question, which the present writ application involves, is as to whether the petitioner could be validly denied grant of 1st 2nd and 3rd Assured Career Progression/Modified Assured Career Progression on the ground that he had not passed departmental examination.

2. The petitioner has sought for a direction to the respondents to revise his pension, gratuity and the amount of cash equivalent to unutilized earned leave after granting him 1st, 2nd and 3rd Assured Career Progression/Modified Assured Career Progression from the dates with effect from which the same had



become due. The petitioner has also sought for payment of differential amount of death-cum-retiral gratuity in the light of Finance Department's resolution dated 27.05.2013 (Annexure-2). He has further prayed for a direction to the Accountant General, Bihar, to revise his death-cum-retiral gratuity in the light of Finance Department's resolution dated 12.05.2016. He has claimed payment of interest upon his admissible dues for inordinate delay in payment of the aforesaid amount.

3. Facts are not much in dispute. The petitioner was engaged in the work-charged establishment in the office of the Executive Engineer, Irrigation, Mechanical Division, Bounsi (Banka). His service was regularised with effect from 01.08.1981. His pay was revised from time to time. It is his case that on account of implementation of 6th Pay Revision, he was placed in the Pay Band of Rs.5200-20200 with Grade Pay of Rs.2400. He superannuated with effect from 31.03.2012, while working as a Compilation Clerk. He was, however, not allowed the benefits of Assured Career Progressions despite his repeated requests and reminders. He was allowed pensionary benefits on the basis of pay which he was drawing on the date of superannuation. Had he been granted Assured Career Progressions with due dates, his pension and other retiral benefits would have been determined accordingly at higher rate,



he contends. He has relied on a resolution of the Finance Department, Government of Bihar, dated 12.05.2016, which provides grade pay of Rs.2400 and 2800 to Class-IV employees under Pay Band-1 of Rs.5200-20200.

4. In the counter affidavit filed on behalf of respondent No.5, while resisting the petitioner's claim for grant of revised pay scale and consequent pension on that basis with arrears, after granting him Assured Career Progressions, it has been stated that passing of departmental accounts examination is one of the essential criteria for grant of Assured Career Progression. It has been averred in the counter affidavit that since petitioner failed to clear the departmental accounts examination, he was not eligible for grant of Assured Career Progression.

5. Mr. Ajay Kumar, learned counsel appearing on behalf of the petitioner has heavily relied on Division Bench decision of this Court in case of *Uday Shankar Prasad Vs. The State of Bihar through the Chief Secretary & Ors.*, reported in **2017(3) PLJR 824**. He has submitted that in similar circumstance, others have been allowed benefit of Assured Career Progression though they had not passed the said departmental accounts examination.

6. Learned counsel representing the State of Bihar,



while disputing the petitioner's claim of grant of Assured Career Progression, has submitted that an employee is required to fulfil all requirements, for grant of Assured Career Progression, which are essential for grant of regular promotion to the next higher post. He has accordingly submitted that the respondents have rightly denied the petitioner's claim for grant of Assured Career Progression.

7. On careful consideration of rival pleadings and submissions made on behalf of the parties, in my opinion, the petitioner's case is squarely covered by the Division Bench decision of this Court in case of *Uday Shankar Prasad* (supra), which has been rendered after examining the Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003 (in short the ACP Rules of 2003). The Division Bench held in paragraphs 8 and 9 as under : -

“8. A perusal of the aforesaid rules clearly stipulates that the prescribed requirement and mode of sanction of financial progression under the scheme shall be the same which are prescribed under the Recruitment/Service Rule for regular promotion against the vacancy. It is, therefore, clear that for getting benefit under the scheme in question, an employee has to fulfill all the conditions stipulated in the Recruitment or the Service Rules which is prescribed for regular promotion from the post held to the next higher post. Admittedly, in the case in hand, for further promotion from the post of Compilation



clerk to a higher post, no Service Rules are prescribed as there is no further avenue for promotion from post of Compilation clerk to any other higher post. That being so, sub rule 5 of Rule 4 and its interpretation would clearly show that for grant of ACP from the post of Compilation Clerk no rules of promotion or recruitment being prescribed, this rule will not apply, i.e. 4(5). Thus, there are no prescribed statutory rules for recruitment or promotion from the post of compilation clerk to any other post. That apart, we find that the rules of 2003 are the rules framed under Article 309 of the Constitution of India and there is no stipulation in these rules that the rules contemplated under the Bihar Board Miscellaneous Rules, 1958 would be applicable for grant of ACP. That being the position, the contention of the respondents that the appellant is not entitled to the benefit under the scheme, is wholly misconceived and while rejecting the claim of the appellant the learned Writ Court has not taken note of this factual or legal aspect of the matter. On going through the judgment referred to by the State in the case of Kusheshwar Nath Pandey (supra), we find that it was a case pertaining to grant of time bound promotion under a particular scheme and the said case was pertaining to promotion of a Tracer to some higher post and is not applicable to this appellant.

9. A perusal of the Rule, which is reproduced in para 10 of the judgment in the case of Kusheshwar Nath Pandey (supra), goes to show that the rule is applicable for the purpose of crossing the efficiency bar, confirmation and for promotion to the selection grade. There is nothing in the said rule to show that it pertains to promotion of Compilation Clerk to any other higher post. Rules of 2003 is the rule framed under Article 309 of the constitution and the aims and objects of the



scheme is to grant higher pay scale or grade to the employees who stagnate in particular post without any promotion, may be because no promotional posts are available or vacancies are not available and the scheme has been envisaged to grant only benefit of higher pay scale or grade to an employee who stagnates for 12 years or 24 years. Once we are convinced that there are no rules for promotion from the post of Compilation Clerk and the Boards Miscellaneous Rules of 1958 are not applicable, in the case in hand, there is no reason why the benefit claimed by the appellant cannot be granted. That being the position, the benefit of ACP was rightly granted to the appellant and there was no justification in withdrawing the same.”

8. Further, in case of *Ramadhar Thakur Vs. The State of Bihar*, in its judgment rendered on 19.03.2018 in L.P.A. No. 599 of 2015, a Division Bench of this Court has specifically ruled that passing of departmental accounts examination is a condition precedent for promotion to selection grade, but not for general promotion and for not passing such examination, benefits of Assured Career Progression Rules of 2003 could not be withheld unless there was any departmental rule for promotion. The Division Bench in case of *Ramadhar Thakur* (supra) conclusively held that passing of departmental accounts examination is not a condition precedent for grant of Assured Career Progression under ACP Rules nor does Rule 157(J)(3) of Bihar Boards Miscellaneous Rules, 1958, stipulate



such condition. Paragraph 16 and 17 of the judgment rendered in *Ramadhar Thakur* (supra), needs to be usefully reproduced, which reads as under : -

“16. The question however, in the present case, which has already been noticed, is, as to whether for grant of a regular promotion, passing of Accounts examination is a condition precedent or not and in the absence of any such bar for grant of regular promotion under any statutory provision, by invoking rule 157(J)(3) of “the ACP Rules”, the respondents can deny the benefit of Assured Career Progression. We need not reiterate the fact that the respondents have not brought to our notice any statutory provision or executive instruction specifically providing that passing of departmental Accounts Examination is a sine qua non for grant of regular promotion. As a matter of fact, for the first time in the year 2015, the State Government of Bihar, in exercise of the powers conferred under Article 309 of the Constitution of India, appears to have made the rules for appointment and service condition of Clerical Cadre of General Provident fund Directorate and its subordinate offices with effect from 18.5.2015, Rule 12 (1) thereof stipulates “passing in Hindi noting and drafting examination and in both papers of departmental Accounts Examination at higher level as conditions for grant of promotion to the post of Upper Division Clerk”. No provision in the rules, on which reliance is being placed, deals with promotion from the post of Lower Division Clerk to Upper Division Clerk. Though another set of rules namely, Bihar Secretariat Service Rules 2010 has no application in the present facts and circumstances of the case, yet for the



purpose of drawing inference, the provisions under the said rules need to be noticed. The said 2010 Rules deal with the Bihar Secretariat Service, consisting of various posts, as referred to in Rule 3(4), including the post of Assistant. Rule 6 of the said 2010 Rules deals with appointment in Assistant cadre through two modes i.e; by way of the Direct recruitment and by promotion from the Upper Division Clerks of the Bihar Secretariat Clerk service. The Rules do not provide for passing of the departmental Accounts Examination as a condition precedent for regular promotion from the grade of Upper Division Clerk of Bihar Secretariat Clerical Service to Assistant Grade. Further, Rule 10 of the said rules also deals with promotion from lower grade to higher grade. Nowhere the rules specify the requirement passing of accounts examination as a condition for grant of regular promotion.

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. We are of the clear view that the decisions in case of Rameshwar Roy (supra) and Daya Shanker Singh (supra) do not lay down the correct law and the same cannot be made applicable.”

(Emphasis supplied)

9. After taking note of the Division Bench decisions in case of *Uday Shankar Prasad* (supra) and *Ramadhar*



Thakur (supra) and the extant statutory rules, in a subsequent decision a coordinate Bench of this Court in case of *Masomat Indu Devi Vs. State of Bihar and Ors.*, reported in 2019(2) PLJR 241, has succinctly laid down in paragraph 20 as under : -

“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.”

10. In view of the law clearly laid down by this Court in the decisions noted above, the sole question framed in the very beginning of this judgment stands answered in negative.



This writ application accordingly deserves to be allowed.

11. The respondents are accordingly directed to consider the petitioner's claim for grant of Assured Career Progression/Modified Assured Career Progression with effect from the respective dates the petitioner became entitled to such benefits and take a final decision within two months from the date of receipt/production of a copy of this order. Consequences of grant of such benefit shall follow in terms of revision of pay, payment of arrears of salary and pensionary dues, which must be computed and paid to the petitioner within two months thereafter.

12. The petitioner shall be at liberty to make a representation before the competent authority for taking into account higher grade pay for determination of his pensionary benefits. If he does so within a period of one month from today, the respondents shall consider the same and dispose it of within two months thereafter.

13. This writ application is allowed.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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