

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 833 of 2017
In
Civil Writ Jurisdiction Case No. 679 of 2015

1. The State Of Bihar
 2. The Principal Secretary, Water Resources Development Department, Government of Bihar, Patna.
 3. The Chief Engineer, Water Resources Department, Samastipur.
 4. The Superintending Engineer, Flood Control Division, Darbhanga.
 5. The Executive Engineer, Flood Control Division No. 2, Jhanjharpur, Madhubani
- Appellants**

Versus

Smt. Jivachi Devi, wife of Jagdev Das, Resident of Village- Lakshminia, P.S.-
Laukahi, District- Madhubani

... Respondent

Appearance :

For the Appellants : Mr. Syed Hussain Majeed, AC to SC 6
For the Respondents : Mr. Manoj Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH)

Date : 4th February, 2020.

Heard learned counsel for the appellants as well as
learned counsel for the sole respondent.

2. The instant Letters Patent Appeal is preferred against the judgment dated 2.2.2017, passed by the learned Single Judge in C.W.J.C.No. 679 of 2015, whereby he has allowed the writ application and directed the State authorities to examine the case of the writ petitioner Jagdev Das, since deceased, and pass the order for all consequential benefits. In the present case, the husband of the respondent was appointed as 'Van Mazdoor' in the year 1973 and later on his post was converted as 'Karyadarshak' from the date of his appointment. In the year 1985, he was brought to regular establishment and he was made Correspondence Clerk.



He was granted the first time bound promotion w.e.f. 21.12.1983 and was granted monetary benefit from 1987. The husband of the respondent, in order to clear the departmental examination in Accounts, appeared in the year 1999, but he failed to do. After reaching the age of 50 years, he applied for exemption from passing the departmental examination in the year 2005, which remained pending with the authority concerned and, ultimately, he superannuated from service on 31.10.2011. When he was not granted the benefit of A.C.P., he approached this Court by filing CWJC No.13402 of 2013, which was disposed of on 13.08.2013 directing the writ petitioner to file a representation with the Principal Secretary, Water Resources Department, Government of Bihar, Patna, who will be obliged to consider his case and take a decision in accordance with law. In pursuance thereof, the representation of the writ-petitioner has been rejected on 19.05.2014 giving reasons that the writ-petitioner failed to pass the Accounts Examination.

3. Learned counsel for the appellant has assailed the impugned judgment on the ground that the writ Court has failed to appreciate that as per Circular contained in Notification no. 10770 dated 30.12.1981 issued by the Finance Department, Government of Bihar, Patna, the writ petitioner was duty bound to pass the



departmental accounts examination. Further, the Finance Department vide Memo no. 4592 dated 21.6.2003 had made it clear that after passing of the departmental accounts examination, the ACP benefits will be admissible. It is the further case of the appellants that in view of Rule 157(J) of Board Miscellaneous Rules 1958, the Government is duty bound to deny benefits of time bound promotion or selection grade to the employees who had not passed final accounts examination and this is also applicable in the case of grant of ACP benefits. Appellants have also stated in the Letters Patent Appeal that a full bench of this Court in the case of **Maheswar Prasad Singh vs the State of Bihar and others**, reported in **2000(4) PLJR 262** has held that this condition will be applicable to all the employees in case of grant of time bound promotion or selection grade promotions prospectively. Learned counsel submits that it is admitted fact that the respondent's husband had neither passed the departmental accounts examination nor exemption from passing of said examination had been granted to him. In view of a condition laid down in Rule 4(5) of the ACP Rules, 2003, writ petitioner is not entitled to receive the benefits of the promotion of ACP as he had neither passed the examination nor exemption had been granted to



him. In support of these contentions, following decisions are being relied upon:-

(i). **Maheshwar Prasad Singh and ors Vs. The State of Bihar**, reported in **2000(4) PLJR 262**

(ii). **State of Bihar Vs. Kusheshwar Nath Pandey**, reported in **2013(1) PLJR 939**

(iii). **State of Bihar and ors Vs. Anjani Kumar**, reported in **2013(2) PLJR 643**.

4. During pendency of the appeal, learned counsel appearing for the appellants has also brought on record the Bihar Water Resources Department Field Steno Typist's Cadre (Recruitment and Service Condition) Rules, 2014. The aforesaid Cadre Rules, 2014 defines the cadre as the employees already appointed on regular basis and working at present on the post of Steno-typist/Stenographer in the field offices of the Department. Sub clause (5) of Rule 3 of the Cadre Rules, 2014 further provides three tiers in the cadre of Steno typist cadre, namely Grade I, II & III. Rule 7 of the Cadre Rules, 2014 further indicates that for promotion, it will be compulsory for all the employees to pass the Hindi Noting and Drafting Examination.

5. On the other hand, learned counsel appearing for the respondent submits that the issue involved in the appeal is no more



res integra as the same has already been decided by the Division Benches of this Court in the following decisions:-

(i). **Bishwanath Prasad Vs. The State of Bihar**, reported in **2011(2) PLJR 136**

(ii). **Avinash Chandra Singh Vs. The State of Bihar & others**, reported in **2012(1) PLJR 663**.

(iii). **Uday Shankar Prasad Vs. The State of Bihar and others**, reported in **2017(3) PLJR 824**.

(iv). **Judgment dated 19.3.2018, passed in LPA No. 599/2015 (Ramadhar Thakur vs The State of Bihar and Ors.)**

6. Having heard learned counsel for the parties and on going through the records, it appears that the facts are not in dispute between the parties. The only issue involved in the appeal is as to whether passing of departmental accounts examination would be necessary for grant of benefits of Assured Career Progression, provided under the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 read with Clause (J) of Sub-rule (3) of Rule 157 of the Bihar Boards Miscellaneous Rules, 1958. I am in agreement with the submissions advanced by learned counsel appearing on behalf of the respondent that the issue, in hand, is no more *res integra* as the



same has already been decided by different Division Benches of this Court in a catena of similar cases, mentioned herein below:-

(i). **State of Bihar and others Vs. Anjani Kumar**, reported in **2013(2) PLJR 643**

(ii). **Uday Shankar Prasad Vs. The State of Bihar and others**, reported in **2017(3) PLJR 824** and

(iii). **Ramadhar Thakur Vs. State of Bihar and others**, reported in **LPA No. 599 of 2015**.

7. Recently, a Division Bench of this Court in case of **Ramadhar Thakur (supra)**, after extensive analysis and discussion of the provision of rule 157(3) (J) of the Bihar Boards Miscellaneous Rules 1958 and Rule 4 (clause 5) of the Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003, conclusively held after referring to various judgments, viz., **Mithilesh Kumar Sinha Vs. The State of Bihar & Ors.**[2006(1) PLJR 282]; **Syed Mozammil Ashraf Vs. The State of Bihar & Ors.** [2007(1) PLJR 438]; **Shashi Shekhar Ambasta Vs. The State of Bihar & Ors.** [2011(3) PLJR 474]; **Maheshwar Prasad Singh & Ors. Vs. The State of Bihar** [2000(4) PLJR 262]; **Rameshwar Roy Vs. The State of Bihar & Ors.** [2017(2) PLJR 127]; **Daya Shankar Singh Vs. The State of Bihar & Ors.** [2010(3) PLJR 220] and **Md.Shamsuddin & Ors.**



Vs. The State of Bihar [1983 PLJR 347] that Rule 157 (3) (J) of the Bihar Boards Miscellaneous Rules 1958 makes the passing of the departmental accounts examination a condition precedent for promotion to the selection grade, but not for general promotion and for not passing such exam, the benefits of the A.C.P. Rules, 2003, also cannot be withheld, unless there is a departmental rule for promotion. In other words, the Bench held that passing of departmental accounts examination is not a condition precedent for grant of A.C.P. Rules nor does Rule 157 (3) (J) of the Bihar Boards Miscellaneous Rules, 1958 conceive of such a requirement. The same issue is also been involved in the case of **Masomat Indu Devi Vs. State of Bihar and others**, reported in **2019(2) PLJR 241** in which the learned Single Judge of this Court has reiterated the same view and held that 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. I also find that the provisions of the Bihar Water Resources Department Field Steno Typist's Cadre (Recruitment and Service Condition) Rules, 2014 does not apply in the respondent's case as respondent's husband superannuated from service in the year 2011. I do not find any



reason to differ with the decision passed by co-ordinate benches of this Court.

8. In the facts and circumstances of the case and taking into account the law laid down by the successive Division Benches of this Court as discussed above, I am of the considered view that the appellants are not justified in refusing benefits of the financial progression to the husband of the respondent on the ground that he did not pass the account or departmental examination. In view of the law pronounced by the courts in the similar cases as discussed above, I do not find any infirmity in the judgment of the writ court, as such, the instant appeal, being devoid of merit, is accordingly dismissed.

9. Consequently, appellants are directed to consider the case of the respondent’s husband for grant of ACP within eight weeks from the date of receipt/production of a copy of this order.

(Prabhat Kumar Singh, J)

Hemant Kumar Srivastava, J:- I agree.

(Hemant Kumar Srivastava, J)

Shashi

AFR/NAFR	AFR
CAV DATE	21 st January, 2020.
Uploading Date	04.02.2020.
Transmission Date	Not applicable

