

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4449 of 2021

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Choudhary Bimal Kumar Roy Son of Choudhary Suresh Chandra Roy,
Resident of Ward No.09, Usha Niwas, Teachers Coloney, Kharajpur Road,
Kharajpur, Darbhanga, Bihar, 846003. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Additional Chief Secretary, Social Welfare Department, Government of Bihar, Patna.
3. The Additional Secretary, General Administration Department, Government of Bihar, Patna.
4. The Director, Integrated Child Development Services Directorate (I.C.D.S.), Bihar, Patna.
5. The Collector, Samastipur.
6. The Child Development Project Officer, Ujiyarpur, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shambhu Nath Jha
For the Respondent/s : Mr. Mithilesh Kr. Upadhyay (AC to GP 3)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 13-04-2021

1. The present writ petition has been filed for directing the respondent-authorities to grant the benefits of A.C.P./ M.A.C.P. to the petitioner herein from the due date, after granting exemption from passing the departmental examination.

2. The learned counsel for the petitioner has submitted that the petitioner had joined the services of the respondent-State as Clerk-cum-Cashier in the Office of District Adult Education, Bhagalpur on 22.04.1985 and thereafter, he had been transferred from one place to another and lastly, he has retired while working on the post of Clerk-cum-Typist in the Office of Child



Development Project, Ujiyarpur (Samastipur), on 31.03.2021 but he has not been given the benefits of A.C.P./M.A.C.P. It is submitted that according to the resolution of the Personnel and Administrative Reforms Department, Government of Bihar, Patna dated 15.05.1992, the Gazetted and Non-Gazetted employees of the State Government, who have attained the age of 50 years, are exempted from passing the departmental examination for the purposes of grant of the benefits of A.C.P./M.A.C.P.

3. The learned counsel appearing for the respondent-State has submitted that the issue in question is no longer *res integra*, inasmuch as the same has already been adjudged by the learned Division Bench of this Court in a judgment rendered in the case of ***State of Bihar & Ors. vs. Smt. Jivachi Devi***, reported in ***2020(2) BLJ 471***, paragraphs no. 5 to 9 whereof are reproduced hereinbelow:-

“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 v. The State of Bihar, reported in (2011) 2 PLJR 136

(ii). Avinash Chandra Singh v. The State of Bihar, reported in (2012) 1



PLJR 663.

(iii). Uday Shankar Prasad v. The State of Bihar, reported in (2017) 3 PLJR 824.

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

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 v. Anjani Kumar, re-



ported in (2013) 2 PLJR 643

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

(iii). Ramadhar Thakur v. State of Bihar, 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 v. The State of Bihar [(2006) 1 PLJR 282]; Syed Mozammil Ashraf v. The State of Bihar [(2007) 1 PLJR 438]; Shashi Shekhar Ambasta v. The State of Bihar [(2011) 3 PLJR 474]; Maheshwar Prasad Singh v. The State of Bihar [(2000) 4 PLJR 262]; Rameshwar Roy v. The State of Bihar [(2017) 2 PLJR 127]; Daya Shankar Singh v. The State of Bihar [(2010) 3 PLJR 220] and Md. Shamsuddin v. 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 v. State of Bihar, 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.”

4. Having regard to the judgment rendered by the learned Division Bench of this Court in the case of **Smt. Jivachi Devi (supra)**, this Court finds that the case of the petitioner is required to be considered for the purposes of grant of benefits of A.C.P./M.A.C.P., *de hors* the fact that he has not passed the



departmental examination.

Accordingly, the Collector, Samastipur is directed to consider the case of the petitioner for grant of the benefits of A.C.P./M.A.C.P. in light of the judgment rendered by the learned Division Bench of this Court in the case of *Smt. Jivachi Devi (supra)* and pass appropriate orders within a period of six weeks of receipt/ production of a copy of this order.

5. The writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.04.2021
Transmission Date	NA

