

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.309 of 2019

In

Civil Writ Jurisdiction Case No.1210 of 2019

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Jagdish Prasad Singh Son of-Late Lal Bihari Singh Resident of Village and
P.O.- Basuhar, Via- Punpun, P.S.- Punpun, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar and Ors Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Health, Governmet of Bihar, Patna.
3. The Director, Health Services (Filaria Control), Government of Bihar Patna.
4. The Deputy Director, Health Services (Filaria Control), Government of Bihar Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Satyendra Rai, Adv

Mr. Shekhar Singh, Adv

For the Respondent/s : Mrs. Shama Sinha, AC to AAG-9

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 19-02-2021

Heard learned counsel for the parties.

This LPA under Clause 10 of Letters Patent Appeal has
been preferred for partly setting aside the judgment and order
dated 21.01.2019 passed by learned Single Judge in CWJC No.
1210 of 2019, by which grant of 2nd & 3rd ACP from 29.03.2004



and 28.03.2012 has been denied by the learned Single Judge.

Briefly stated the facts of the case is that appellant was appointed as tinsmith in the department of Health (Filaria Control) on 21.5.1980 and was granted regular promotion as a clerk-cum-storekeeper on 16.3.1992, earlier he was granted 1st time bound promotion on 21.9.1990. Appellant appeared in the departmental accounts examination but could not qualify and as per circular dated 9.11.1983, he was entitled to get exemption from appearing in departmental examination after 50 years. Appellant was put under suspension on 15.5.2012 which was revoked on 2.9.2013 and he was not found guilty. He retired on 31.03.2014.

Appellant came to know from the information received from the department under the Right to Information Act dated 25.9.2018 that he could not get benefit of ACP, as he had not passed departmental accounts examination. His prayer for grant of ACP was also rejected by order, as impugned, in this LPA.

In order to get benefit of ACP, it is not necessary to pass departmental accounts examination for all the employees, as mandated under the Bihar Board Miscellaneous Rules, 1958 and same depends upon the nature of post held by the employee and promotional avenues in the cadre, as held by the Division



Bench of this Hon'ble Court in case of *Uday Shankar Prasad Vs. The State of Bihar and Ors. since reported in 2017(3)PLJR 824*, paragraph nos. 8 and 9 of said judgment reads as follows:-

“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.

The order passed by the learned Single Judge is partly modified to the extent that appellant shall file a detailed representation before the competent authority for grant of ACP and if the competent authority finds that appellant is entitled for benefit of ACP, same may be granted within three months from the date of filing of such representation and if competent



authority finds that appellant is not entitled for benefit of ACP, same may be rejected by speaking and reasoned order to be passed within said period. As non-grant of ACP is a continuing wrong, resulting in lower salary / pension, as such, the claim of appellant will not be hit by delay and laches. However, he shall not be entitled for any arrears of difference of salary / pension if found entitled to benefit of ACP by competent authority.

The LPA is, accordingly, disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ranjan/- Sanjay

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