

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14275 of 2018

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Satendra Kumar Srivastva Son of Late Ram Narayan Prasad, Resident of
Raksha Rahimpur, P.S.-Dhaka, District-East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Water Resources Department Irrigation,
Government of Bihar, Sichai Bhawan, Patna.
3. The Engineer-in-Chief, Water Resources Department Irrigation, Government
of Bihar, Sichai Bhawan, Patna.
4. The Chief Engineer, Water Resources Department, Irrigation, Government
of Bihar, Sichai Bhawan, Patna.
5. The Executive Engineer, Sone Canal Division Bhojpur, Ara.
6. The District Accounts Officer, Bhojpur, Ara.
7. The Treasury Officer, Bhojpur, Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Advocate.
	:	Mr. Sushil Kumar Jha, Advocate.
For the Respondent/s	:	Mr. Rewti Kant Raman, AC to SC 11.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 14-11-2022

Heard Mr. Gajendra Kumar Jha, learned counsel for the
petitioner duly assisted by Mr. Sushil Kumar Jha and Mr. Rewti
Kant Raman, learned AC to SC 11 for the State.

By filing the present writ application the petitioner is
assailing the office order as contained in Memo No. 927 dated
18.05.2018 (Annexure 1 to the writ application), whereby, it has
been ordered that since the petitioner has failed to pass
Departmental Accounts Examination, no benefits under the
ACP/MACP scheme would be applicable to him and further
direction has been given for recovery of excess amount already



paid to the petitioner. The petitioner further seeks a direction upon the respondents to grant the pension and gratuity on the revised pay scale, after granting the benefit under the ACP/MACP scheme.

The short facts of the case which led to the filing of the present application is, that the petitioner was initially appointed on compassionate ground vide memo no. 584 dated 15.01.1988, in the pay scale of Rs.580-860/-. The petitioner passed Hindi Noting and Drafting Examination and after serving so many places, he was sent to the office of the respondent, Executive Engineer, Ara. It is next contended that in view of the decision taken by the State Government, the Lower Division Clerk and the Upper Division Clerk were merged in a single cadre of Lower Division Clerk (LDC). It is also submitted that after implementation of 5th Pay Revision Commission, the salary of the petitioner was revised in the pay scale of Rs.4,000-6,000/- and on being found entitled, the petitioner was allowed the benefits of 1st and 2nd ACPs and regular salary on the revised pay scale have been paid till the date of his retirement. However, on being superannuated from his service on 31st of January 2018, the respondent authority came out with the impugned order as contained in memo no. 927 dated 18.05.2018, whereby it has been ordered that as the petitioner failed to pass Departmental Accounts Examination, he is not entitled for the



benefits of ACP/MACP scheme and accordingly, the order of recovery has been passed.

On the other hand, learned counsel for the State referring to the averments made in the counter affidavit submitted that as the petitioner has not passed the Departmental Accounts Examination, as is required under the ACP scheme, he has not been found entitled to the benefits of 1st and 2nd ACP. He further submits that since the petitioner does not fulfill the eligibility for the benefits under the ACP/MACP scheme, no order could be passed in his favour.

At this juncture, learned counsel for the petitioner drawn the attention of this court towards the letter no. 539 dated 18.03.2019 (Annexure 6 to the interlocutory application), issued by the respondent Chief Engineer, Irrigation Creation, Water Resources Department, Dihari, clarified the position with regard to extending the benefits of ACP/MACP to the employees, who have not passed departmental examination.

The learned counsel for the petitioner further harping upon the notification issued by General Administration Department, Government of Bihar, as contained in Memo No. 6315 dated 29.06.2020, submits that the aforesaid notification clearly postulates no necessity of passing Computer Eligibility



Test for the Muffasil Clerk in spite of that those post fall within the category of group D class. While concluding his submission, he also submits that various judgments have been passed by learned Division Benches of this Court in identical matters holding that the passing of departmental examination is not a condition precedent for benefits under the ACP/MACP scheme.

So far the issue involved in the present case, with regard to grant of ACP/MACP to the employees who have not passed the Departmental Accounts Examination, the same is no longer *res integra*, and it has been settled by various Division Benches of this court including in the case of **Uday Sankar Prasad Vs. State of Bihar and others**, reported in **2017 (3) PLJR 824**. Subsequently, that has been reiterated in the case of **State of Bihar and others Vs. Smt. Jivachi Devi**, reported in **2020 (2) BLJ 471**, paragraph nos. 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, reported 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 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 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."

Further, coming to the materials available on record, especially from bare perusal of the letter issued by the Chief Engineer, Irrigation Creation, Water Resources Department, Dihari, wrote to the Executive Engineer, Sone Canal Division, Ara (as contained in Annexure-6), it appears that on a query made by the Executive Engineer, a clarification has been made by the Chief Engineer that passing of Department Accounts Examination is not necessarily required for getting the benefits under ACP/MACP scheme. Further the notification issued by the General Administration Department, Government of Bihar, as contained in Memo No. 6315 dated 29.06.2020 also postulates, no necessity of passing Computer Eligibility Test for the Muffasil Clerks, in spite of that those post fall within the category of Group D class.

In view of the aforesaid factual and settled legal position, the impugned order as contained in Annexure 1 is hereby



set aside, and the writ application is disposed of with a direction to the respondents to consider the case of the petitioner afresh in the light of judgment rendered by the learned Division Benches of this Court mentioned in the aforesaid paragraphs as also in the light of clarification letter dated 18.03.2019 issued by the Chief Engineer, Irrigation Creation, Water Resources Department, Dihari and the letter issued by the General Administration Department contained in Memo No. 6315 dated 29.06.2020.

Accordingly, the matter is remitted to the respondent no.3 to pass a reasoned and speaking order preferably within a period of eight weeks from the date of receipt/production of a copy of this judgment.

It is needless to observe that if the case of the petitioner is found favorable, the necessary consequential order for monetary benefits would be passed in the aforesaid period after restoring the benefits of financial progression under ACP/MACP scheme.

Accordingly, the present writ application stands disposed of with the aforesaid observations and direction.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2022.
Transmission Date	NA

