

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.23553 of 2018**

Ashok Kumar Singh son of Late Raghav Prasad Singh, Resident of Market Flat No. 39, Dalmiya Nagar (New Market), P.O. and P.S. Dalmiya Nagar, District- Rohtas, the retired Senior Accounts Clerk, Minor Irrigation Division, Kaimur at Mohania.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Chief Engineer, Minor Water Resources Department, Government of Bihar, Patna.
5. The Executive Engineer, Minor Irrigation Division, Kaimur at Mohania.

... .. Respondents

**Appearance :**

|                    |   |                              |
|--------------------|---|------------------------------|
| For the Petitioner | : | Mr. Mrigank Maulli, Sr. Adv. |
| For the State      | : | Mr.Sita Ram Yadav- GP16      |

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 12-08-2022**

The matter has been taken up for consideration online.

2. Heard learned senior counsel for the petitioner and the State.

3. The parties are ad idem that the issue regarding grant of benefit under the ACP Scheme being subject to passing of the Departmental Examination stand settled by series of judgment, including the latest one being of the Division Bench in LPA No. 372 of 2019 dated 25-04-2022. The Division Bench, referring to the various judgment, has concluded as follows:-

*5. We have heard the learned counsel for the appellant and find that the issue under consideration in the present appeal is no longer*



*res integra* in as much as the view taken by the learned Single Judge in the impugned judgment stands fortified by the 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 herein below:-

“5. We have heard the learned counsel for the appellant and find that the issue under consideration in the present appeal is no longer *res integra* in as much as the view taken by the learned Single Judge in the impugned judgment stands fortified by the 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 herein below:-

“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) *Bihswanath 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 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 of 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 of 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."*

*6. Having regard to the issue involved in the present case having been conclusively settled by the aforesaid judgments rendered by the learned Division Bench of this Court in the case of **Smt. Jivachi Devi** (supra) as also in the case of **Uday Shankar Prasad** (supra), we do not find any infirmity in the impugned judgment dated 20.12.2017, whereby and where under the writ petitioner has been held entitled for consideration for grant of ACP under the Scheme.*

*7. Consequently, the present appeal stand dismissed, with a further direction to the*



*appellants to grant benefit under the ACP scheme to the writ petitioner within a period of four weeks from today, failing which the Secretary, Water Resources Department, Government of Bihar, Patna and the Executive Engineer, Water Resources Department, Kaimur at Bhabua shall not draw their salary.”*

4. This Court would also observe that in view of the provisions contained in Clause 4(C) (1) of the Bihar State Litigation Policy, 2011, the Court appreciate the stand taken by the State counsel that the petitioner’s case is “covered matters”.

5. In view of the settled position, being admitted, the instant writ proceedings need not be kept pending as there is no adjudication called for. The Authorities would be obliged to extend the benefit to the petitioner under the ACP/MACP Scheme due and admissible, without raising an objection regarding non-passing of the Departmental Examination. The amounts, found due and admissible, after such consideration, is required to be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

6.The writ application is allowed in the aforesaid terms.

**(Madhuresh Prasad, J)**

shyambihari/-

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