

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.372 of 2019

In
Civil Writ Jurisdiction Case No.19307 of 2013

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1. The State Of Bihar
 2. The Secretary, Water Resources Department, Government of Bihar, Patna
 3. The Superintending Engineer, Water Resources Department, Dehri-on-Sone, Rohtas
 4. The Superintending Engineer, Water Resources Department, Bhojpur, Ara
 5. The Superintending Engineer, Water Resources Department, Kaimur, Bhabhua.
 6. The Executive Engineer, Revenue Division, Water Resources Department at Ara.
 7. The Executive Engineer, West Sone High Level Canal Division, Water Resources Department, Kaimur, Bhabhua.
 8. The Deputy Collector, Revenue Division, Sone Nahar, Pramandal, Ara, Bhojpur

... .. Appellant/s

Versus

1. Shri Krishna Singh S/o-Late Radha Singh, R/o-Mohalla, Yadav Nagar, Ward No.22, P.O.-P.S.- Bikramganj, District-Rohtas
2. The Accountant General, Bihar Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S.Raza Ahmad, AAG-5 Mr. Anisul Haque, AC to AAG-5
For the Respondent/s	:	Mr. Mritunjay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 25-04-2022

The present appeal has been filed against the
judgment dated 20.12.2017 passed by a learned Single Judge of



this Court in CWJC No. 19307 of 2013 whereby and where under the writ petitioner has been held entitled for consideration for grant of ACP under the scheme.

2. The brief facts giving rise to the present Appeal are that the writ petitioner had been denied benefit of Assured Career Progression (hereinafter referred to as “ACP”) on account of non-passing of the departmental accounts examination vide letter dated 22.02.2011 issued by the Executive Engineer, Water Resources Department, Kaimur, Bhabua, which was challenged by the writ petitioner in the aforesaid writ petition bearing CWJC No. 19307 of 2013. The learned Single Judge, by the impugned judgment dated 20.12.2017, has referred to the authorities on the subject matter and has held that the writ petitioner was not required to pass any departmental examination for consideration of his case for grant of ACP especially in view of the fact that his case is squarely covered by a Division Bench judgment of this Court rendered in the case of **Uday Shankar Prasad vs. The State of Bihar & Ors.**, reported in 2017(3) PLJR 824.

3. At this juncture it would be relevant to reproduce the relevant portion of the impugned judgment dated 20.12.2017 passed in CWJC No. 19307 of 2013 herein below:-



*“3. The petitioner is aggrieved by non-grant of ACP which has been denied on the ground that he has not cleared the Departmental Examination. With regard to non-consideration of his total working days as 1719 as a seasonal employee, the authorities have restricted it to only 431 days on the ground that no records are available in the Department. Learned counsel for the petitioner submitted that with regard to ACP, the stand of the respondents is totally erroneous. It was submitted that passing of Departmental Examination is required as per the conditions of promotion only where the promotional post is existing. It was submitted that ACP Rules only talk about the person being otherwise eligible for regular promotion and also fulfilling the conditions of passing the Departmental Examination, if such condition exists for granting of promotion. Learned counsel submitted that in the present case, the petitioner was appointed as Seasonal Clerk and there is no promotional avenue available from that post. It was submitted that once there is no promotional post available, there cannot be any condition of any requirement or eligibility criteria, much less, any requirement for passing any Departmental Examination. Learned counsel submitted that the issue has finally been settled by a Division Bench in the case of **Uday Shankar Prasad vs. The State of Bihar and others** reported as 2017(3) PLJR 824 in which it has been held*



that if there is a post without any promotional avenue, there cannot be any requirement for passing any Departmental Examination. He further submitted that the petitioner has given sufficient proof of him having worked from 1719 days as a seasonal employee but due to laches of the authorities, who are not looking into their own records, the benefit due to the petitioner is illegally being denied.

*4. Learned counsel for the State submitted that the order passed in the case of **Uday Shankar Prasad** (supra) has not taken into consideration the earlier Division Bench judgment in the case of **Gorakh Nath Choudhary vs. The State of Bihar and others** in C.W.J.C. No.11713 of 2010 dated 27.09.2012 by which it has been held that all eligibility criteria required for regular promotion also applies for giving benefit of ACP, including passing of Departmental Examination. Learned counsel submitted that in such view of the matter, the judgment in the case of **Uday Shankar Prasad** (supra) without noticing the judgment in the case of **Gorakh Nath Choudhary** (supra) is per incuriam. With respect to the number of days for having worked as seasonal employee, it was submitted that the same has been duly considered as per the available official records as well as materials submitted by the petitioner.*

5. Having considered the matter, the Court finds that the petitioner is entitled for consideration of



grant of ACP. The ACP Rules provide that all eligibility criteria, which may otherwise be prescribed for promotion, have to be adhered to and further, if, for regular promotion, passing of any Departmental Examination is required, then that shall also be a requirement for grant of ACP. The scheme itself is in contemplation of there being stagnation on account of lack of vacancies or want of promotional avenues. In the present case, it is not denied that there is no promotional post from the post of seasonal clerk and, thus, to that extent, any further promotion to the petitioner was not available in the existing scheme. Therefore, the requirement under the ACP Rules is satisfied to the extent that in the case of the petitioner, the scheme would be applicable for want of promotional avenue. Coming to the second aspect for grant of ACP, which relates to the person satisfying all the eligibility criteria provided for grant of regular promotion, the same is not a blanket term for the reason, that only when there is any promotional post available, the question of fixing eligibility criteria for such promotion would arise. In the present case, there being no promotional post available, there is no question of there being any Rules or eligibility criteria prescribed for such promotion. Moreover, the ACP Rules itself contemplate that if in the promotional Rules, passing of Departmental Examination is necessary, the same shall also



*apply while giving benefit of ACP. In the present case, when there are no promotional posts available and thus no promotional Rules in the matter, obviously there cannot be any prescription or eligibility for passing any Departmental Examination. Thus, in that context, the petitioner was not required to pass any Departmental Examination for considering his case for grant of ACP. The Court is fortified in its view by the order of the Division Bench of this Court in the case of **Uday Shanker Prasad** (supra). As far as the stand of the learned counsel for the State, that the same has not considered the earlier Division Bench judgment in the case of **Gorakh Nath Choudhary** (supra) is concerned, the Court would only note the fact that the same was passed under a different factual background. In the case of **Gorakh Nath Choudhary** (supra), he was a Lower Division Clerk which clearly indicates that there were promotional avenues available to him and in that background, the Court had held, that all requirements for grant of regular promotion, passing of Departmental Examination being one of them, were required to be fulfilled before grant of ACP. In the present case and in the case of **Uday Shankar Prasad** (supra), the person did not have any promotional avenue and in that background, it has been clarified that there being no promotional avenue, the question of there being any promotional Rules lying down any eligibility*



*criteria, passing of any Departmental Examination could not be a condition precedent for considering grant of benefit under the ACP Scheme. Such view has been reiterated in a subsequent judgment of a Division Bench dated 20.09.2017 in L.P.A. No.1138 of 2014 in the case of **Shio Chand Gupta vs. The State of Bihar and others.***

6. Accordingly, the Court holds the petitioner entitled for consideration for grant of ACP under the scheme. The same shall be done within two months from the date of receipt of a copy of this order by the respondents no.3, 4 and 5.

7. Coming to the issue of the counting of the number of days the petitioner has claimed to have worked as seasonal employee, he shall be at liberty to file a detailed representation enclosing all supporting documents/materials available with him in support of his contention before the respondents no.3, 4 and 5 within four weeks from today. Upon the same being done, the authorities shall look into the matter and verify it with the official records. If the contention of the petitioner is found to be correct, necessary orders shall be passed and benefit granted to him within two months thereafter.”

4. The learned counsel for the appellant herein has raised only one issue to effect that the case of the writ petitioner for grant of ACP could not have been directed to be considered



in as much as he has not passed the departmental accounts examination.

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). 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 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.”

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 stands 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.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28-04-2022
Transmission Date	N/A

