

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18848 of 2012

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Md. Karim S/o Late Md. Wali R/o Village-Kurtha Bazar, P.S.- Makhdumpur,
Distt.- Gaya, At Present Modi Button Store, Station Road Giridih, P.O.-
Giridih, P.S. Giridih, Distt.- Giridih, Jharkhand

... .. Petitioner/s

Versus

1. The State of Bihar Irrigation Department, Aurangabad, At And P.O.-
Aurangabad, Distt.- Aurangabad, Bihar
2. The Chief Engineer Irrigation Department, Aurangabad, At And P.O.-
Aurangabad, Distt.- Aurangabad
3. The Executive Engineer East Sone High Level Cannal Division, Tikari,
Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Uma Shankar Singh, Advocate
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 26-09-2022

None appears for the State.

The petitioner has attained age of superannuation and retired from service on 31.07.2007. While he was working as Karamchari he is stated to have been extended the benefit of first and second ACP. It was sought to be withdrawn on 16.08.2012, thus, feeling aggrieved by the communication dated 16.08.2012 petitioner has presented this petition.

Learned counsel for the petitioner submitted that reasons for cancellation of first and second ACP benefit granted to the petitioner is that he has not passed certain departmental examination.



It is submitted that in identical situation this Court held that passing of departmental examination for the purpose of first and second ACP is not mandatory. In this regard, he cited the following two decisions namely, LPA No. 372 of 2019 arising out of CWJC No. 19307 of 2013 and LPA No. 4 of 2021 arising out of CWJC No. 8087 of 2015.

It is further submitted that the official respondents have taken five years to pass impugned order on 16.08.2012 (five years from the date of petitioner's retirement).

Heard learned counsel for the petitioner.

Perusal of the impugned order dated 16.08.2012, it is crystal clear that petitioner was not provided show cause notice for the reasons that impugned action has civil consequences. In other words, certain monetary benefits which was extended to the petitioner is sought to be rectified in the form of re-fixation of his pay and recovery.

Apex Court in the case of **State of Punjab & Others vs. Jagjit Singh & Others** reported in **(2017) 1 SCC 148** held that re-fixation and recovery cannot be ordered insofar as class-III persons and retired employees. Further, this Court has adjudicated the matter that passing of a departmental examination for the



purpose of extending first and second ACP is not mandatory in the cited decision (supra).

In the light of these facts and circumstances, the petitioner has made out prima facie case so as to interfere with the impugned order dated 16.08.2012. Accordingly, it is set aside. In the result, the present petition stands allowed.

The concerned respondent is hereby directed to settle all monetary benefits which is due to the petitioner even in the event of any recovery has been effected pursuant to order dated 16.08.2012. Such monetary benefits shall be calculated and disbursed in favour of the petitioner within a period of three months from the date of receipt of this order along with interest @ 6% per annum. Petitioner is entitled to litigation cost and it is quantified at Rs.20,000/-. Cost shall be paid to the petitioner.

(P. B. Bajanthri, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

