

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1468 of 2018

In

Civil Writ Jurisdiction Case No.5099 of 2013

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1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
 2. The Principal Secretary, Personnel And Administrative Reforms Department, Government of Bihar, Patna.
 3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
 4. The Grievance Redressal Committee Through Its Principal Secretary, Water Resources Development Department, Government of Bihar, Patna.
 5. The Under Secretary, Water Resources Department, Government of Bihar, Patna.
 6. The Chief Engineer, (Mechanical), Water Resources Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

Yogendra Choudhary, Son of Late Gayanchand Coudhary, Resident of Mohalla- Raghunath Tola, P.S.- Gardanibagh, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Deepak Sahay Jamuar AC TO AAG 4.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 21-09-2022

The appellant State of Bihar has preferred the present appeal against the order dated 22.02.2016 passed by the learned Single Judge in CWJC No.5099 of 2013 by which the Appellant Chief Engineer, Water Resources Department (*henceforth for short* 'the Department') was directed to examine the case of the respondent-petitioner and pass an order on his entitlement of financial benefits with effect from 03.02.1998 and pensionary



benefits and the decision was to be taken within a period of two months.

2. The respondent-petitioner had preferred CWJC No.5099 of 2013 with a prayer that he is entitled to financial benefits as Head Clerk effective from the date of vacancy in the backdrop of the fact that the letter of promotion was issued on 15.02.2011 while he retired on 31.05.2010 itself.

3. The matrix of facts giving rise to present appeal is/are as follows:

4. The respondent-petitioner was provisionally appointed on Class-IV post as Peon by the Executive Engineer, Flood Control, Patna on 23.08.1974 and was regularised on 24.11.1977.

5. Vide Letter No.2158 dated 28.08.1984, he was promoted as Correspondence Clerk. The respondent-petitioner thereafter passed his Hindi Typing examination on 15.11.1985. He further cleared his Departmental Accounts examination on 15.02.1987.

6. As he remained stagnated as Correspondence Clerk, was extended the first and second ACP benefits effective 19.09.2005 in the pay scale of (5000-8000) and 01.01.2009 (9300-34800) respectively.



7. On 31.05.2010, the respondent-petitioner retired from the office of Executive Engineer, Ganga Sone Command, Digha, Patna. Subsequently, he was promoted as Head Clerk on 15.02.2011 with the rider that it will be effective from the date of the order.

8. On 20.07.2011, the Principal Secretary of 'the Department' constituted General Redressal Committee for settlement of the grievances of its employees. Accordingly, on 12.04.2012, the respondent-petitioner preferred his representation before the Chief Engineer which remained pending. As no decision was forthcoming, he preferred CWJC No.5099 of 2013 with the following prayer:

“That this Writ application is being filed for a direction to rectify the Para 4 of the office order no. 21 dated 15.02.2011 to the extent that the Petitioner should get financial benefits from the date of vacancy the aforesaid order has been issued under the signature of Chief Engineer (Mechanical), Water Resources Deptt. Patna, in respect to the petitioner, whom by concerned Chief Engineer (Respondent no. 6) has promoted the 10 (ten) correspondence clerks including the petitioner to the post of Head Clerk from the date of vacancy and Petitioner's name is figured at serial no. 2, and the petitioner is affected from Para .4 of the said office order; in as much, it has been written in the said para that financial



benefits will be given from the date of joining the post of Head Clerk, while the date of issue of the said order is 15.02.2011 and date of retirement of the petitioner is 31.05.2010 or to pass any other appropriate writ, direction/directions, order/orders for the ends of justice.”

9. The Department filed its counter affidavit stating therein that:

(i) in the light of Letter No.2074 dated 04.04.1985 issued by the Finance Department, financial benefits cannot be given retrospective effect.

(ii) ‘the Department’ had too issued corrigendum no.239 dated 30.01.2013 stating that in lieu of the conditions mentioned in para-4 of letter no.459 dated 15.02.2011, the financial benefits to all the promoted staffs, whose names are there in the list, will be paid from the date of their joining to their respective post and so far as the retired employees are concerned, they will be deemed promoted only on principle.

10. The matter was taken up on 22.02.2016 by the learned Single Judge and after hearing the parties, the following order was passed:



“Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner is seeking relief that he should be given financial benefit with effect from 3.2.1998 in view of office order dated 15.2.2011 by which the Chief Engineer, Water Resources Department, Patna has granted promotion to the petitioner in the pay- scale of Rs. 5000-8000 with effect from 3.2.1998. By another order dated 15.2.2011, in paragraph no.4, it has been stated that the financial benefit will be given from the date of joining. When the petitioner was given promotion with effect from 3.2.1998, it does not stand to a reason why the financial benefit will not be given to him.

This Court is of the view that when he has been given the benefit of promotion from particular date, he cannot be deprived of the financial benefit specially in view of the fact that as per the claim of the petitioner, he was never given any benefit of promotion save and except the benefit of promotion on 15.2.2011.

Let the petitioner file an application before the Chief Engineer, Water Resources



Department who will examine the case of the petitioner and pass an order with regard to the entitlement of the petitioner. The aforesaid authority will also consider with regard to granting financial benefit including pensionary benefit to the petitioner with effect from 3.2.1998 ignoring the letter dated 15.2.2011. The Chief Engineer will take a decision within a period of two months from the date of filing of a representation along with a copy of this order.

With the aforementioned observation and direction, this application is disposed of.”

11. From the aforesaid fact, it is clear that the learned Single Judge directed the Chief Engineer of ‘the Department’ to take a decision.

12. Instead, the State of Bihar preferred the present appeal against the aforesaid order dated 22.02.2016 in CWJC No.5099 of 2013.

13. While going through the appeal it came to the notice of this Court that the respondent-petitioner was appointed as Correspondence Clerk on 28.08.1984 and as he stagnated for certain period, was granted benefits of the first ACP and second A.C.P. effective 19.09.2005 and 01.01.2009 respectively.



Subsequently, he retired on 31.05.2010 and thereafter came the letter dated 15.02.2011 by which he was given the promotion to the post of Head Clerk assigning promotional date as 03.02.1998.

14. This Court thus on 25.07.2022 directed the appellant-State to file additional affidavit stating how the respondent-petitioner is entitled to both the promotion to the post of Head Clerk as also the two ACP benefits. The Chief Engineer was further directed to pass speaking order in terms of the order passed by the learned Single Judge and prepare a chart relating to the pay scale attached to the various posts (which the petitioner held).

15. The matter was heard on 21.09.2022 when the supplementary affidavit was filed by 'the Department' and it is essential to bring on record paras-3 to 6 of the said affidavit:

“3. That instead of giving paragraph wise reply in detail, this supplementary affidavit is confined to the material facts of the case necessary for its adjudication at this stage. However, the answering respondent craves leave his right to file supplementary affidavit if and when required and order passed by this Hon'ble Court.



4. That the averments made in the instant writ application which are not specifically admitted and are beyond/contrary to the records of the case are hereby denied.

5. That the present supplementary affidavit is being in compliance of the order dated 23.08.2022 passed in the present Letters Patent Appeal by this Hon'ble Court. Vide order dated 23.08.2022 the Hon'ble Court directed the Chief Engineer (Mechanical), Water Resource Department, Patna to pass a speaking order and place it on record in terms of the order of the learned Single Judge and simultaneously to prepare a chart relating to pay-scale attached to the various posts, like Clerk, Correspondence Clerk and Head Clerk. In the event respondent is entitled to ACP benefit between the post of Correspondence Clerk and Head Clerk, in that event what would be the fitment of pay-scale (First and Second ACP) and scheme or rules of extending 1st and 2nd ACP in order to ascertain whether



appellant fulfill the criteria or not? These material information be made available.

6. That in compliance of the order of the Hon'ble Court the Chief Engineer (Mechanical), Water Resource Department, Patna had considered all aspects of the matter and passed the reasoned order contained in Letter No.1619 dated 09.09.2022. In compliance of the order of the Hon'ble Court the Chief Engineer (Mechanical), Water Resource Department Patna had also made the chart relating to the pay-scale of clerk/correspondence clerk, Head Clerk & Head Assistant/Assistant Administrative Officer. The same is evident from the reasoned order contained in Letter No.1619 dated 09.09.2022. The Chief Engineer (Mechanical), Water Resource Department, Patna had observed that the writ petitioner was initially appointed (provisionally) on the post of peon on 23.08.1974. Accordingly he joined the post of peon on 27.08.1974. He was regularized



from the date of joining i.e. 24.11.1977. Later on the writ petitioner was provisionally appointed on the post of Correspondence Clerk in the pay scale of Rs.580-860 and he had joined on 30.08.1984. The pay scale of the writ petitioner was revised in the pay-scale of Rs.1200-1800/- & Rs.4000-6000 w.e.f. 01.01.1986 and 01.01.1996 respectively in the light of Pay Revisions Commissions. The benefits of ACP had been granted to the writ petitioner in the pay scale of Rs.5000-8000 w.e.f. 09.08.1999 in the light of ACP Rules 2003 which was the pay scale of Head Clerk. Again the pay scale of the Writ Petitioner was revised from Rs.5000-8000 to Pay band of Rs.9300-34800 +grade pay 4200 w.e.f. 01.01.2006 in the light of Pay Revision. The benefits of 2nd MACP had been granted to the Writ Petitioner w.e.f. 01.01.2009 in the pay band of 9300-34800 +grade pay 4600.”

16. The summary of the supplementary affidavit by the appellant-respondent is/are that the pay band of first ACP is



at par with Head Clerk and as such the first ACP got merged with the said order. If the case is so simple what prompted 'the Department' to prefer this appeal.

17. Further a bare perusal of the speaking order vide letter no.51 dated 09.09.2022 would show that the appellant Chief Engineer merely incorporated the facts relating to the respondent-petitioner. Further,

(i) it failed to answer to the queries of the court as to how the respondent-petitioner is not entitled to get the financial benefits arising out of order dated 15.02.2011 when the same was passed belatedly after his retirement on 31.05.2010;

(ii) further, when the order of promotion was passed why the second ACP was not withdrawn;

(iii) if the pay-scale of Head Clerk is equivalent to first ACP (5000-8000) how the respondent-petitioner is not entitled to the said benefit effective 03.02.1998.

18. Heard counsel for the parties.



19. Mr. Anjani Kumar, learned A.A.G. representing the appellants-respondents insisted that the pay-scale of Head Clerk and the first ACP are the same so no financial benefits need to be extended thus ignoring the fact that upon his promotion as Head Clerk he is entitled to get the financial benefits effective 03.02.1998.

20. Further, the learned A.A.G. insisted on letter no.239 dated 30.01.2013 issued by the Chief Engineer (Mechanical), Water Resources Department, stating that the financial benefits has to be given from the date of issuance of letter. However, no such letter was brought to the attention of this Court. From the aforesaid facts, it is clear that the learned Single Judge rightly held that when he has been granted the benefit of promotion from a particular date, it cannot be deprived of the financial benefits specially in view of the fact that he was never given any benefit of promotion save and except the aforesaid letter no.459 dated 15.02.2011.

21. Here it is also important to mention that the order was passed by the learned Single Judge on 22.02.2016 and the direction was to the Chief Engineer to take a decision within a period of two months. However, instead of taking a decision in



two months, 'the Department' took 2 years and 191 days to file this present appeal which clearly shows how it functions.

22. From the aforesaid facts, it is clear that there is no error in the order passed by the learned Single Judge dated 22.02.2016.

23. Thus, this Court holds that the State has failed to made out a case warranting interference in the order dated 22.02.2016 passed by the learned Single Judge and the appeal preferred herein is dismissed both on merit as well as on the ground of delay and laches.

24. The appellants are directed to take necessary steps and extend the financial benefits to the respondent-petitioner in the light of the order passed by the learned Single Judge dated 22.02.2016 within a period of three months from the receipt of a copy of the present order.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.10.2022
Transmission Date	NA

