

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.4 of 2021
In
Civil Writ Jurisdiction Case No.8087 of 2015

1. The State of Bihar
2. The Engineer-in-Chief-cum-Additional Secretary-cum-Special Secretary, Water Resources Department, Govt. of Bihar.
3. The Chief Engineer, Water Resources Department, Dehri.
4. The Commissioner, Patna Division, Patna.
5. The Superintending Engineer, Water Resources Department, Bhabhua.
6. The Executive Engineer, Water Resources Department, Bhabhua.

... .. Appellant/s

Versus

Sri Ram Subhag Singh S/o Late Chandrama Singh, Resident of Village Dharampur, P.S. Sandesh, District - Bhojpur at Ara.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anjani Kumar, AAG-4 Mr. Deepak Sahay Jamuar, AC to AAG-4 Mr. Sanjay Kumar (AC to AAG-4)
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date: 11.05.2022

The instant appeal has been preferred against the order dated 07.08.2019 passed by the learned Single Judge in CWJC No. 8087 of 2015, whereby and whereunder the claim of the petitioner regarding grant of assured career progression without passing of the departmental examination has been held to be squarely covered by a decision rendered in the case of Ramadhar Thakur vs. The State of Bihar & Ors. passed by the



learned Division Bench of this Court in LPA No. 599 of 2015, and accordingly, the respondents-appellants herein have been directed to consider the claim of the petitioner for grant of the due benefit under the ACP and MACP scheme without raising any objection regarding passing of the departmental exam.

The learned senior counsel for the appellant-State has referred to a judgment rendered by the learned Division Bench of this Court in the case of the State of Bihar & others vs. Anjani Kumar, reported in 2013(2) PLJR 643 to submit that a learned Division Bench of this Court has held that there is no provision for exemption from passing departmental accounts examination for the purposes of grant of promotion/ACP. It is also submitted that the said judgment rendered in the case of Anjani Kumar (supra) has been upheld by the Hon'ble Apex Court by an order dated 10.03.2014 passed in SLP (Civil) No. 19182 of 2013, whereby and whereunder the SLP has been dismissed in limine.

We have heard the learned senior counsel for the appellant and find that much water has flown since the passing of the aforesaid order dated 07.03.2013 in the case of Anjani Kumar (supra) by the learned Division Bench inasmuch the issue under consideration in the present appeal is no longer res



integra since the view taken by the learned Single Judge in the impugned judgment stands fortified by catena of judgments rendered by this Court as also by the Hon'ble Apex Court, as would be apparent from the judgment rendered by learned Division Bench of this Court 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 vs. The State of Bihar [1983 PLJR347] 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.”

This Court has been informed that the aforesaid judgment rendered in the case of Smt. Jivachi Devi (supra) has also been upheld by the Hon'ble Apex Court by an order dated 14.02.2022, whereby and whereunder the Special Leave Petition preferred by the State of Bihar bearing SLP (Civil) No. 782 of 2022, has been dismissed.

In such view of the matter, we do not find any infirmity in the impugned judgment dated 07.08.2019, whereby



and whereunder the writ petitioner has been held entitled for consideration for grant of due benefit under the ACP & MACP scheme without passing the departmental examination. Accordingly, the appeal stands dismissed.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	N/A
CAV DATE	N/A
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