

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.288 of 2020

1. Tarkeshwar Prasad, aged about 68 years male, S/o Late Sharda Prasad Sinha Resident of Village and P.O.- Bahadurpur, P.S.- Govindganj, District- East Champaran.
2. Surendra Prasad aged about 75 years, male, S/o Late Ram Chandra Prasad Resident of Mohalla- New Colony, Dak Bungla Road, P.S.- Bettiah, District- West Champaran.
3. Hari Shankar Prasad aged about 72 years male, S/o Late Braj Nandan Prasad Resident of Mohalla- Suratganj Ward No.8, P.S.- Madhubani, District- Madhubani.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Secretary, Water Resources Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
4. The Engineer-in-Chief, Water Resources Department, Govt. of Bihar, Patna.
5. The Chief Engineer, Water Resources Department, Balmiki Nagar, Govt. of Bihar, West Champaran, Motihari.
6. The Chief Engineer, Water Resources Department, Irrigation, Motihari.
7. The Chief Engineer, Flood Control and Water Discharge, Water Resources Department, Muzaffarpur.
8. The Superintending Engineer, Gandak Design Circle, Motihari.
9. The Superintending Engineer, Rupankan, Ayojan and Monitoring Circle, Motihari.
10. The Superintending Engineer, Tirhut Canal Circle, Bettiah.
11. The Executive Engineer, Planning and Quality Control Division, Motihari.
12. The Executive Engineer, Flood Control Division, Motihari.

... .. Respondents

Appearance :

For the Petitioners : Mr. Siyaram Pandey, Adv.

For the State : Mr. Amit Kumar Jha AC to AAG-4

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 07-07-2022

Heard learned counsel for the petitioners and learned



counsel for State.

2. Hard copy of the counter affidavit has been placed on record. Copy of which has already been served on the petitioners' counsel.

3. Interlocutory Application No. 1 of 2020 has been filed for substituting the name of the son of the petitioner No.2 in the instant proceedings on account of unfortunate demise of petitioner No.2 during pendency of the instant proceedings. Without objection, that substitution application is allowed.

4. Let the name of the petitioner of I.A. No. 1 of 2020 be substituted in place of the petitioner No.2 in the cause title as per details contained in the Interlocutory Application.

5. The claim of the petitioners for grant of benefits under the ACP and MACP Scheme has been rejected by the Authorities. The rejection order is dated 30-08-2019.

6. Learned counsel for the petitioners submits that due to non-passing of the accounts examination, the authorities rejected the petitioners' claim to benefits under the ACP/ MACP Scheme. He submits that non-passing of the accounts examination cannot be made a ground to deprive the petitioners of the said benefits since the repeated decisions of this Court make it clear that there is no requirement of passing of such



examination for being considered or for being granted benefits under the ACP/ MACP Scheme.

7. The Respondent State counsel, relying upon the Rule 157(J) of the Boards Miscellaneous Rules, has made some submission opposing the prayer. However, he is not in a position to dispute that the issue now stands settled in view of the recent decision of the Division Bench in the case of ***the State of Bihar & Ors. vs. Sri Ram Subhag Singh*** arising out of ***LPA No. 4 of 2021***. The Division Bench, after taking into consideration the earlier pronouncements, in this regard, including the decision in the case of ***State of Bihar and others vs. Smt. Jivachi Devi*** reported in ***2020 (2) BLJ 471*** which had unsuccessfully been assailed by the State Government before the Hon'ble Apex Court, has held that for non-passing of the accounts examination; consideration, or grant of ACP / MACP cannot be refused. The relevant extract of decision in the case of ***Sri Ram Subhag Singh*** (Supra) is being reproduced:-

“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 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."

8. Two counter affidavits have been filed on behalf of the State. However, the State counsel has not been able to point out that there was any requirement of passing the examination/s in question for regular promotions, in case of the petitioners.

9. In view of the settled legal position, the Court would quash the rejection of the petitioners' claim for ACP/ MACP, under order dated 30-08-2019 and remit the matter for



consideration and grant of said benefit without raising any objection regarding non-passing of the accounts examination. The entire exercise of consideration and grant of due and admissible benefits should be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20-07-2022
Transmission Date	

