

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21000 of 2018

1. Bhagya Narayan Tiwary Son of late Asheshwar Tiwary, Resident of village- Madhubani Tiwary Tola , P.O. Dariyapur , P.S. Sangrampur , District - East Champaran at Motihari, the retired Senior Accounts Clerk, office of the Executive Engineer Water Resources Department, Drainage Division, Motihari .
2. Nagendra Kumar Singh, Son of late Tajan Singh, Resident of Mohalla- Chhota Bariyarpur , Soniya Nagar, P.O. Motihari Court, P.S. Chhatauni, District -East Champaran at Motihari , the retired Senior Accounts Clerk, office of the Executive Engineer , Water Resources Department, Sikrahana Embankment Division, Motihari.
3. Rajendra Prasad Sinha, Son of late Bhagwat Prasad Srivastava, Resident of village- Bijbanni , Tola - Jagiraha, P.O. Ghorasahan, P.S. Jitana ,District -East Champaran at Motihari, the retired Senior Accounts Clerk, office of the Executive Engineer , Water Resources Department, Sikrahana Embankment Division, Motihari.
4. Srikant Prasad Singh, Son of late Chitrakut Sharan Singh, Resident of Mohalla- Purshottam Nagar, near Ram Nagar, P.O. Sarha , P.S. Chapra Muffasil , District - Saran at Chapra, the retired Senior Accounts Clerk, office of the Executive Engineer , Water Resources Department, Sikrahana Embankment Division, Motihari.
5. Raj Kumar Ram, Son of late Ram Awatar Das, Resident of Mohalla- Chhota Bariyarpur , Ward No.38 , P.O. Motihari Court, P.S. Chhatauni, District - East Champaran at Motihari , the retired Senior Accounts Clerk, office of the Executive Engineer , Water Resources Department, Tirhut Canal Division -1 , Motihari.
6. Mohd. Zainuddin, Son of late Mohd. Sayeed Ansari, Resident of Officer Colony, Chakiya , P.O. Bara Chakiya , P.S. Chakiya , District - East Champaran at Motihari, the retired Senior Accounts Clerk, office of the Executive Engineer, Water Resources Department, Drainage Division, Motihari.
7. Ram Pravesh Tiwary, Son of late Nand Lal Tiwary, Resident of village- Sripur, P.O. Ekdarhi ,P.S. Chhauradano ,District- East Champaran at Motihari ,the retired Senior Accounts Clerk, office of the Executive Engineer , Water Resources Department, Tirhut Canal Division, Motihari.
8. Surendra Thakur, Son of late Basudeo Thakur, Resident of Mohalla- Bhawanipur Jirat ,near Robij Club, P.S. Motihari ,District - East Champaran at Motihari ,the retired Senior Accounts Clerk, office of the Executive Engineer , Water Resources Department , Tirhut Canal Division , Chakiya, District - East Champaran.

... .. Petitioners

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Finance Secretary, Finance Department, Government of Bihar, Patna.



3. The Secretary(Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Engineer-in-Chief-Cum-Additional Secretary-Cum-Special Secretary, Water Resources Department, Government of Bihar, Patna.
6. The Chief Engineer, Water Resources Department, Flood Control and Drainage, Muzaffarpur.
7. The Chief Engineer, Water Resources Department, Irrigation Creation, Motihari.
8. The Superintendent Engineer, Water Resources Department, Flood Control and Drainage Circle, Motihari.
9. The Superintending Engineer, Water Resources Department, Tirhut Canal Circle, Motihari.
10. The Executive Engineer, Water Resources Department, Drainage Division, Motihari.
11. The Executive Engineer, Water Resources Department, Sikrahana Embankment Division Motihari.
12. The Executive Engineer, Water Resources Department, Tirhut Canal Division-1, Motihari.
13. The Executive Engineer, Water Resources Department, Tirhut Canal Division, Chakiya District- East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate
Ms. Anita Kumari, Advocate
For the Respondent/s : Mr. Rewati Kant Raman, AC to SC 11

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date : 17-05-2023

Heard Mr. S. B. K. Manglam, learned counsel for the petitioner and Mr. Rewati Kant Raman, learned AC to SC 11 for the State.

2. The petitioners in the present case are seeking the following reliefs:-



“(I) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for grant of basic scale of Accounts Officer Grade by way of benefits of first A.C.P. to the petitioners in view of the judgment of this Hon’ble Court in the case of other similarly situated Accounts Clerk of different contained under paragraph no.4 (c)(i) of the Bihar State Litigation Policy.

(II) For a declaration that if after a detail adjudication regarding entitlement of Senior Accounts Clerk for grant of pay-scale of Accounts Officer Grade by way of benefits of their first A.C.P. , this Hon’ble Court has passed the judgment in number of cases, in view of litigation policy of the State, the Respondent Authorities are obliged to grant some pay-scale to the petitioners also by way of benefits of first A.C.P. modifying their earlier orders by which the petitioners were granted the benefits of the first A.C.P. in the pay-scale of Rs. 5000-8000.

(III) For issuance of any other appropriate writ-writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

Brief Facts of the Case

3. All the eight petitioners in this writ application were absorbed against the sanctioned and vacant post of Accounts Clerk/Junior Accounts Clerk/Senior Accounts Clerk. They retired from service between the period 31.08.2009 and 30.09.2015. It is



their own case that they were working as Senior Accounts Clerk in the office of the Executive Engineer of the different Divisions.

4. It is the case of the petitioners that they were entitled to get the benefit of the Bihar State Employees Condition (Assured Career Progression Scheme) Rules 2003 (hereinafter referred to as the 'Scheme of 2003'). They claimed their first Financial Progression after completion of 12 years of service and second Financial Progression after completion of 24 years of service.

5. Learned counsel for the petitioners submits that under the aforesaid Scheme of 2003 which was amended in the year 2008, if there is a promotional avenue for a cadre, by way of benefits of first Assured Career Progression (in short 'ACP'), the basic pay-scale of promotional cadre would be granted to the employees. The petitioners had a promotional avenue from the post of Accounts Clerk to the Accounts Officer Grade by way of a limited examination.

6. The persons similarly situated to the petitioners moved this Court in C.W.J.C. No. 7439 of 2010 (Shashi Shekhar Ambasta & Ors. Vs. The State of Bihar & Ors) with analogous matter C.W.J.C. No. 6746 of 2010 (Pramod Kumar & Anr. Vs. The State of Bihar & Ors.) which were disposed of vide order dated 23.06.2011 (Annexure 'P2' to the writ application). This Court



directed the Principal Secretary, Finance Department, Government of Bihar to pass a reasoned order whereupon the Principal Secretary, Department of Finance issued Memo No. 8120 dated 30.08.2011 (Annexure 'P3' to the writ application) by which the claim of the persons similarly situated were rejected. The said order (Annexure 'P3') was challenged in C.W.J.C. No. 18015 of 2011 (Pramod kumar Vs. The State of Bihar & Ors.) and C.W.J.C. No. 16346 of 2011 (Ashok Kumar & Ors. Vs. The State of Bihar & Ors.) which were heard and disposed of by a Bench of this Court vide judgment and order dated 16.02.2012 as contained in Annexure 'P-4' to the writ application. The State of Bihar being aggrieved by the said order moved in appeal being LPA No. 1260 of 2012 which was dismissed by the Hon'ble Division Bench of this Court vide order dated 20.04.2015. A special leave petition preferred against the same vide SLP No. 21329 of 2015 was dismissed vide order dated 07.12.2015 by the Hon'ble Apex Court. Under these circumstances the State Government granted the benefit of pay-scale of Accounts Officer Grade to the writ petitioners of the aforesaid two writ applications.

7. Learned counsel for the petitioners submits that the State of Bihar has its own litigation policy but they are not following it as a result of which the cases are multiplying. Referring to the



judgment and order dated 28.11.2017 passed by this Court in C.W.J.C. No. 18433 of 2016 (Shashi Shekhar Ambastha & Ors. Vs. The State of Bihar & Ors) (Annexure 'P 6' to the writ application), learned counsel submits that by this order once again similar benefits were granted to the petitioners of those two cases.

8. The petitioners are claiming the similar benefits which have been granted to other similarly situated Accounts Clerk by this Court and by the respondents.

Stand of the State

9. A counter affidavit has been filed on behalf of the respondents. It is stated that a resolution vide Memo No. 3111 dated 25.03.2015 has been issued by the Finance Department wherein it has been resolved that the candidates who have been appointed from 01.05.1980 to 27.09.1999 shall be treated in merged post of Sr. Accounts Clerk, however, those appointed after 27.09.1999 i.e. from 28.09.1999 will be treated in the demerged post of Junior Accounts Clerk. Again vide resolution contained in Memo No. 163 dated 08.01.2016 as per direction of this Court in C.W.J.C. No. 18015 of 2011, it has been resolved that First and Second ACP is to be paid to the Accounts Clerk, First ACP will be Rs. 6500-10500/- with pay band 2-4800/- and the Second ACP will be Rs. 10000-15200/- with pay band 3 + 6600/-. It is stated



that the petitioners have been paid ACPs in accordance with the resolution of the Finance Department. A bare reading of this resolution would show that the benefits of the Scheme of 2003 came to an end with the repeal of the 2003 Scheme w.e.f. 13.07.2010.

10. It is further stated that the Finance Department vide Memo No. 6589 dated 19.08.2016 has stated that as per resolution no. 163 dated 08.01.2016 the ACP will be given only to those Account Officers who are Graduate and the Junior Account Accountant appointed on or after 28.09.1999 are not eligible for their ACPs.

11. It is further stated that the Finance Department vide Memo No. 8083 dated 07.10.2016 has specifically stated that the aforesaid resolution will be applicable on the Accounts Officer who are direct recruits and will not be applicable to the Accounts Officer who are appointed on compassionate grounds. Since the petitioners are not graduate hence, they are not eligible for the ACP in the light of Memo No. 163 dated 08.01.2016. It is stated that they do not possess the minimum qualification of graduation for their consideration and they are not eligible for the same as has been categorically held by the Hon'ble Division Bench of this Court in LPA No. 408 of 2018 (State of Bihar and Ors. vs. Krishna



Murari Gupta) and other analogous cases vide order dated 05.02.2019. Copy of the judgment dated 05.02.2019 in LPA No. 408 of 2018 has been brought on record as Annexure 'E' to the counter affidavit filed on behalf of the respondent nos. 1 and 2.

Consideration

12. Having heard learned counsel for the petitioners and learned counsel representing the respondents as also on perusal of the judgments on which reliance has been placed by learned counsel for the parties, this Court finds that these petitioners are the appointees of the period 1979 to 1981 when they came to be absorbed against the sanctioned and vacant post of the Accounts Clerk/Junior Accounts Clerk. They have retired while serving as Senior Accounts Clerk. They are claiming parity on the line of the judgment of this Court in the case of **Pramod Kumar** (C.W.J.C. No. 18015 of 2011) and **Ashok Kumar** (Annexure 'P 4') . The judgment as contained in Annexure 'P4' was affirmed by the Hon'ble Division Bench in LPA No. 1260 of 2012 (Annexure 'P 5'). Thereafter in the case of Shashi Shekhar Ambastha & Ors Vs. The State of Bihar & Ors. (C.W.J.C. No. 18433 of 2016 and other analogous matters (Annexure 'P 6' to the writ application) once again a learned writ court considered the case of the petitioners, some of them were graduate while some of them were non-



graduates. They were aggrieved by the resolution of the State Government as contained in Memo No. 163 dated 08.01.2016 whereby in purported compliance of the judgment and order of this Court in C.W.J.C. No. 18015 of 2011 affirmed by the Hon'ble Division Bench in LPA No. 1260 of 2012, while extending the benefits of first ACP to the employees in the Accounts Clerk Cadre, it was restricted to those who possessed graduation qualification. The petitioners were also aggrieved by the resolution of the State Government in its Finance Department bearing No. 5276 dated 30.06.2016 whereby in reference to resolution no. 163 dated 08.01.2016 it was resolved that the benefit of ACP would be restricted exclusively to the petitioners in C.W.J.C. No. 18015 of 2011 and 16346 of 2011.

13. The further grievance of those petitioners was that a letter no. 8083 dated 07.10.2016 was issued by the Secretary, Expenditure whereby he intimated the Accountant General that the resolution no. 163 dated 08.01.2016 and resolution no. 5276 dated 30.06.2016 would be applicable only in the case of direct recruits and would not cover those appointed on compassionate grounds or by way of absorption or on account of upgradation of post in the Accounts Clerk Cadre.



14. The learned Writ Court , in its operative part of the judgment directed as under:-

“For the discussions aforementioned, the resolutions of the State Government in its Finance Department bearing No. 163 dated 8.1.2016 in so far as it restricts the benefit of Assured Career Progression to the Graduates exclusively together with its resolution bearing No. 5276 dated 30.06.2016 in so far as it restricts the benefit of Assured Career Progression to only petitioners in C.W.J.C. No. 18015/2011 and C.W.J.C. No. 16346/2011 as well as the opinion of the Secretary (Expenditure), Department of Finance, contained in his letter bearing No. 8083 dated 7.10.2016 at Annexure P-11 to restrict the benefit under resolution dated 8.1.2016 and 30.6.2016 to direct recruits exclusively and to outclass compassionate appointees, those appointed by absorption as well as the Accounts Clerks holding the post by upgradation, from its applicability, are patently discriminatory and are accordingly quashed and set aside.

As a result, all consequential actions taken by the controlling department against these petitioners are quashed and set aside. The State in its Finance Department together with the controlling departments of the petitioners are directed to accord the benefit of Assured Career Progression to these petitioners as extended to the petitioners in C.W.J.C. No. 18015/2011 and C.W.J.C. No. 16346/2011 from the due date in accordance with law within a period of three months from the date of receipt/production of a copy of this order together with all consequential benefits.”

15. It appears that the judgment of the learned Writ Court fell for consideration before the Hon’ble Division Bench in LPA No. 408 of 2018 and other analogous appeals (Annexure ‘E’ to the counter affidavit filed by Respondent nos. 1 and 2). The Hon’ble



Division considered the common question raised in the letters patent appeals keeping in view the earlier decisions in C.W.J.C. No. 18015 of 2011 and C.W.J.C. No. 16346 of 2011 (Annexure 'P 4').

16. It was the contention of the State that the respondents-petitioners cannot be extended the benefit of the ACP as they do not possess the minimum eligibility qualification of graduation, which is the qualification prescribed for promotion to the next higher post of Accounts Officer which is required to be compulsorily possessed keeping in view Rule 4(5) of the Scheme of 2003. Rule 4(5) of the Scheme of 2003 is quoted hereunder for a ready reference:-

“4(5) The prescribed requirements and mode of sanction of financial progression under the scheme shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies. If the Rules/Resolutions prescribe passing of the departmental examinations or any qualifications for promotion that shall also be an essential condition for sanction of benefit under the scheme, provided that after completion of 12/24 years of service, the financial progression shall become due and for this, there shall be no bar o period prescribed for regular promotion.”

17. The Hon'ble Division bench noticed the various judgments which were cited at the Bar and opined in the following words:-

“Thus, in view of what has been discussed hereinabove, the aforesaid judgments nowhere relate to the controversy relating to the possession of the minimum eligibility qualification of Graduation, which has been made the basis for denying the A.C.P. to the respondent petitioners under the orders that were impugned before the learned Single Judge.



The learned Single Judge does not appear to have examined the aforesaid aspects and assumed the applicability of the judgments on the ground that the denial appears to be discriminatory. On the other hand, the State has made a valid classification of allowing the A.C.P. to all those who possess the minimum eligibility qualification. It is not in dispute by the State that they have extended the benefit of A.C.P. to those who possessed the minimum eligibility qualification of graduation. The aforesaid distinction on the basis of basic qualification of Graduation in order to avail A.C.P., therefore, was neither an issue raised nor decided in any of the decisions referred to hereinabove. The reliance, therefore, placed by the learned Single Judge to draw an analogy that the State Government had deliberately committed contempt does not appear to be correct. With due respect, we are unable to agree with the conclusions drawn by the learned Single Judge for all the reasons recorded hereinabove.

The respondent-petitioners could have claimed the benefit at par with others had they possessed the minimum qualification of a Graduate. It is not the case of the respondent- petitioners that the State has discriminated by allowing such A.C.P. to non-Graduates as well who stand at par in the Accounts Services in any other department of the Government. We are, therefore, unable to sustain this part of the conclusion drawn by the learned Single Judge.”

18. Mr. S.B.K. Manglam, learned Advocate appearing for the petitioners in the present writ applications had occasion to defend the impugned judgment of the learned writ court before the Hon’ble Division Bench. The Hon’ble Division Bench however, upturned the judgment of the learned writ court. The stand of the State-respondents in counter affidavit has not been controverted by filing a rejoinder.

19. This Court finds that the Hon’ble Division Bench Judgment in LPA No. 408 of 2018 and other analogous matters



would squarely cover the case of the petitioners. This writ application has no merit. It is accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

avin/-
21000

AFR/NAFR	
CAV DATE	10.05.2023
Uploading Date	17.05.2023
Transmission Date	

