`IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2434 of 2023

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Vijay Kumar Tiwari Son of Sri Dev Narayan Tiwari, Resident of Village-Basdiha, P.O. and P.S.- Koath, District- Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, bihar, Sinchai Bhawan, Secretariat, Patna.
2. The Principal Secretary, Finance Department, Bihar Patna.
3. The Engineer-in-Chief (Middle), Water Resources Department, bihar, Sinchai Bhawan, Secretariat, Patna.
4. The Chief Engineer, Irrigation Creation, Water Resources Department, Dehri, District- Rohtas.
5. The Superintending Engineer, Durgawati Construction Circle, Bhitari Bandh, District- Rohtas.
6. The Principal Accountant General (A and E), Bihar, Birchand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar, Adv.
For the State	:	Mr.Kunal Tiwary AC to GA2
For the AG Bihar	:	Mr.Ram Kinkar Choubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

3 17-07-2023 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Accountant General.

2. The petitioner has prayed for quashing of the order dated 22-07-2022 (Annexure-1) rejecting the petitioner's claim for Assured Career Progression (for brevity 'ACP') due to non-passing of Departmental Accounts Examination

3. The petitioner has also assailed an order dated 24.07.2014 passed by respondent No.5 (Annexure-2) whereby

recovery of excess payment of Rs. 77,613 has been done from post retirement benefits of the petitioner.

4. The petitioner was a Correspondence Clerk, who retired on 31.12.2013, has been visited with an order dated 22.07.2022. The letter communicates that about nine years after he has retired, some Screening Committee has opined that since he had not passed the Department Accounts Examination before 16.01.2010, the benefits of first and second financial progression granted to him under the ACP Scheme in the Grade-Pay of Rs. 2800/- and Rs. 4200/, respectively, were not in accordance with law.

5. The learned counsel for the petitioner submits that the rejection is in teeth of decision of the Division Bench dated 25.04. 2022 passed in L. P. A. No. 372 of 2019 (***The State of Bihar & Ors. vs. Shri Krishna Singh & Anr.***), wherein, the Court, relying upon earlier decision of the Division Bench, in the case of State of ***Bihar & Ors. vs. Smt. Jivachi Devi*** reported in ***2020 (2) BLJ 471,*** as well as in the case of ***Uday Shankar Prasad vs. the State of Bihar & Ors.,*** reported in ***2017 (3) PLJR 824*** has, after taking note of the said decision, held that the authorities are not justified in refusing benefits of financial progression on the ground of non-passing of Accounts

or Departmental Examination.

6. Being faced with decision of the Division Bench, the learned State counsel is not in a position to dispute the settled legal position. He, however, relies upon impugned order dated 22.07.2022 (Annexure-1), to submits that the decision is of the Screening Committee after due consideration.

7. In the circumstances, the law being settled by decision of the Division Bench in ***L.P.A. No. 372 of 2019*** in the case of the ***State of Bihar and Ors. vs. Sri. Krishna Singh & Ors***. The impugned order dated 22.07.2022 is unsustainable, insofar as, it seeks to deny the petitioner's claim for ACP due to non-passing of Departmental Accounts Examination. The order dated 22.07.2022 (Annexure 1) is hereby quashed. If there is no other impediment in grant of benefits of ACP from the date claimed by the petitioner, then the authorities should consider his claim and grant the due an admissible benefits without raising the objection based on his passing of the Departmental Accounts Examination on 16.01.2010, within a period of three (03) months from the date of receipt/production of a copy of this order.

8. With respect Annexure 2, the learned counsel for the petitioner submits that since fresh determination of his

retrial dues will now be done in terms of the present order, he will be approaching the authorities for relief with respect the order dated 24.07.2014, to which this Court is not inclined to make any observation.

9. The writ petition is allowed with observations and directions, above.

(Madhuresh Prasad, J)

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