

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4160 of 2023

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Deonath Prasad Son of Shiv Narayan Choudhary, Resident of Village-
Kanchanpur, P.O.- Rajasan, P.S.- Bidupur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Water Resource Department, Government of Bihar, Patna.
3. The Chief Engineer (Mechanical), Water Resource Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resource Department, Samastipur.
5. The Accountant General, Veerchand Patel Path, Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Kumar Kaushik, Advocate
For the Respondent/s : Mr.Vijay Kumar Verma, A.C. to G.A.-2
For the Accountant General: Mr. Arun Kumar Arun, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

4 05-10-2023 Heard learned counsel for the petitioner and the

learned State counsel.

2. The petitioner has approached this Court for grant of benefits under the A.C.P. scheme. The same has been rejected on 06.08.2021 by the Chief Engineer (Mechanical), Water Resources Department, Government of Bihar, Patna. Three grounds formed the basis of rejection of petitioner's claim. As per plain reading of the order, the Chief Engineer has held the petitioner dis-entitled in view of the fact that he has not passed Hindi Noting and Drafting Examination and, therefore, was



ineligible for promotion. The other aspect is that his services have not been confirmed. He has also taken into consideration at least 17 instances of the petitioner's unauthorized absence during entire service career.

3. Learned counsel for the petitioner submits that no proceeding whatsoever was conducted against the petitioner with reference to the alleged periods of unauthorized absence. The ground urged to this effect in the impugned order, therefore, is clearly unsustainable. The petitioner attained the age of superannuation on 31.05.2016. From the impugned order, it is also obvious that he has been sanctioned his post-retiral dues, which also have been paid. In view thereof, the objection regarding break in service, at this belated stage, when the same is not based on any finding to this effect in a duly constituted proceeding is unsustainable. Moreso, as now the same cannot be made the basis of proceeding against the petitioner in view of the embargo on proceedings under Rule 43(b)(a)(ii) of the Bihar Pension Rules for allegations more than 4 years old, the objection in this regard is thus unsustainable.

4. Insofar as the non-passing of Hindi Noting and Drafting Examination is concerned, learned counsel for the petitioner has placed reliance on a recent judgment of the



Hon'ble Apex Court in the case of *Amresh Kumar Singh and Others vs. The State of Bihar and Ors* reported in *2023 SCC Online SC 496*. The Hon'ble Apex Court considering the provisions of A.C.P. scheme from this State only in the case of **Amresh Kumar Singh** (supra) has held that the grant of progression under the A.C.P. is nothing more than *in situ* financial progression. Neither it grants any seniority nor entails giving of any functional promotion to the employee. The same, therefore, is to be extended to the employee on completion of the periods specified in the scheme without raising objection of passing of examination, required for regular promotion.

5. Insofar as third ground is concerned, learned counsel for the petitioner submits that the same is factually incorrect which is evident from the office order dated 11.09.2003 issued by the Engineer-in-chief, North in the Water Resources Department. The office order contains a list of persons whose services have been confirmed. The petitioner's name appears in the said list at Sl. No. 346 showing his confirmation on 25.02.1985.

6. The learned State counsel, on the other hand, submits that the petitioner is not entitled to the claimed benefits. The entitlement has been considered by a reasoned and speaking



order pursuant to the order passed on the petitioner's earlier writ proceeding arising out of C.W.J.C. No. 7267 of 2017. The objections recorded in the order are sufficient to dis-entitle the petitioner for grant of A.C.P. He has also placed reliance on paragraph 9 of the counter affidavit wherein the department has raised an issue regarding some damages caused to the department due to some missing material worth Rs. 70,564/-.

7. Considering the rival submissions of the parties, this Court would first deal with the objections raised in paragraph 9 of the counter affidavit. The same has been noted only to be rejected as no such reason has been assigned in the impugned order for rejecting the petitioner's claim. The department has already recovered the said amount from the petitioner and, therefore, the Court would only consider it as having been given a quietus.

8. The objection regarding non-passing of Hindi Noting and Drafting examination is unsustainable in view of the decision of the Hon'ble Apex Court in the case of ***Amresh Kumar Singh*** (supra), paragraphs 18 and 19 of the same is relevant for the purposes of objection raised by the respondents. The same is being extracted hereinbelow:

“18. In the aforesaid case, the employees were working as malis (Gardeners) and had



claimed promotion in the higher pay scale. The Central Administrative Tribunal seized of the original applications observed that the employees cannot claim the scale of the next higher post by way of *in situ* promotion. On the matter being taken to the High Court by way of a writ petition, the contention of the employees was accepted and it was observed that the object of *in situ* promotion on non-functional posts, is to ensure that the group C and D employees are not stagnated in the same cadre/pay scale and that they should be provided with certain monetary benefits. Therefore, the rejection of the claim for such nonfunctional *in situ* promotion on the ground that the employees do not possess the necessary minimum qualification of matriculation as per the rules is not justified and renders the order erroneous in law. The view so taken by the Division Bench of the High Court was affirmed by this Court in the above referred Civil Appeals holding that the High Court has correctly analysed the object of the *in situ* promotion and fixation of pay scales to Group C and D employees to avoid stagnation.

19. In view of the aforesaid legal position coupled with the fact that the qualification of graduation prescribed is for the promotion to the post of Accounts Officer rather than for the grant of *in situ* promotion on the non-functional post or for extending the benefit of ACP which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, we are of the opinion that the judgment and order of the Division Bench



of the High Court impugned in the appeals cannot be sustained. It is accordingly hereby set aside and that the judgment of the writ court dated 28.11.2017 is restored. The appellants are extended the benefit of ACP, as directed by the writ court.

9. The other objection regarding the petitioner's unauthorized absence or break in service, this Court is in agreement with the submissions advanced by learned counsel for the petitioner for the simple reason that no such finding has been arrived at in any duly constituted proceeding regarding his unauthorized absence or break in service. The authorities, on the contrary, have admittedly sanctioned his post retiral dues also. In view of the time limit in Proviso (a)(ii) to Rule 43(b) of the Bihar Pension Rules, now the authorities cannot proceed against the petitioner for this allegation. In view of these facts as noted, the authorities would now be estopped from raising such plea so as to deprive the petitioner of his benefits under the A.C.P. scheme.

10. The writ application is, therefore, allowed. The respondents should pass appropriate order in respect of the petitioner's claim for A.C.P. as per his entitlement otherwise; and make payment of the financial dues found admissible as a result thereof along with a chart showing calculation of the



amount being paid, within three months from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

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