

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15232 of 2014

Sakaldeo Prasad Son of Late Devan Ram Resident of Village - Sahbajpur,
Ambedkar Colony, P.S. Ahiyapur, District -Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner, Finance Department, Bihar, Patna.
3. The Director, General Provident Fund G.P.F., Directorate, Government of Bihar, Patna.
4. The Deputy Director, Provident Fund Directorate, Finance Department, Government of Bihar, Patna.
5. The Joint Commissioner, Lekha Prasasan, Finance Department Directorate Provident Fund, Patna.
6. District Provident Fund Officer, Madhubani.
7. District Provident Fund Officer, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Tara Nath Jha, Advocate Mr. Murlidhar Mishra, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7 Mr. Sudhir Kr. Upadhayay, AC to GP-7

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 13-07-2023

1. The present writ petition has been filed seeking the following reliefs:-

"1. That this is an application for issuance of a writ in the nature of certiorari for quashing of the office order No.63 dated 17.10.2007 which was issued to the concerned vide its memo no.2472 dated 17.10.2007 under the signature of respondent no.4 under which the date of granting the 1st time bound Promotion was amended to



5.11.1991 and further observed that the excess payment made to the petitioner shall be recovered from the salary of the petitioner and further for issuance of a writ/order/direction directing the respondents not to interfere with the date of granting of the 1st time bound Promotion of the petitioner and the pay fixation of the petitioner as made w.e.f. 6.12.88 in Rs. 680-965 and further for issuance of a direction directing the respondents to refund the amount as recovered from the petitioner vide Bill No. 07 dated 30.5.2009, and to grant the consequential benefits."

2. The learned counsel for the petitioner has submitted that the petitioner joined the services of the respondents as a Correspondence Clerk in the Minor Irrigation Department (Tubewell Division) at Bettiah on 06.12.1973, whereafter he was transferred to various places from time to time and finally he retired on 30.04.2009. It is the further case of the petitioner that though the petitioner was granted first time bound promotion



with effect from 06.01.1988, however, the same was shifted to 05.11.1991 inasmuch as the petitioner passed the first paper of the departmental examination in the year 1991.

3. The learned counsel for the petitioner has further submitted that the law in this regard is no longer *res integra* inasmuch as this aspect of the matter is squarely covered by a judgment rendered by the learned Division Bench of this Court in the case of ***The State of Bihar & Ors. vs. Sri Ram Subhag Singh*** reported in **2022(2) PLJR 773**, relevant paragraphs whereof are reproduced herein below:-

*“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.”

4. Per contra, the learned counsel for the respondent-State has though submitted that the aforesaid judgment pertains to grant of the benefits of A.C.P., however, the present case pertains to grant of time bound promotion and as per the rules of the Department, time bound promotion cannot be granted without passing the departmental examination, however, he has not denied the fact that grant of time bound promotion is not a substantive promotion and there is no fundamental difference in the scheme of grant of A.C.P./time bound promotion.

5. Having regard to the facts and circumstances of the case and considering the fact



that grant of time bound promotion is also not a substantive promotion, the principles laid down by the learned Division Bench of this Court in the case of ***The State of Bihar & Ors. vs. Sri Ram Subhag Singh*** (supra), would squarely cover the present case.

6. Yet another aspect of the matter is that though the first time bound promotion was granted to the petitioner with effect from 06.12.1988, however, subsequently after a huge delay the said date of grant of first time bound promotion was shifted to 05.11.1991, by an order dated 17.10.2007 and the excess amount paid to the petitioner, as a consequence thereof, has been deducted from the provident fund amount payable to the petitioner, after his superannuation on 30.04.2009. The law in this regard is no longer *res integra* inasmuch as the Hon'ble Apex Court in a catena of cases has held that recovery can be permitted only in cases where the employee concerned is guilty of obtaining some benefits on account of misrepresentation by him, however, in



the present case there is no allegation that the petitioner had misrepresented so as to derive the benefit of first time bound promotion, hence the order dated 17.10.2007, shifting the date of first time bound promotion from 06.12.1988 to 05.11.1991 is unjustified. In this regard, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Kusheswar Nath Pandey v. State of Bihar, (2013) 12 SCC 580***, paragraphs no. 3, 6 and 9 whereof are reproduced herein below:-

“3. The facts leading to this case are as under. The appellant herein joined the service under the State of Bihar on 5-5-1979 and on 29-8-1981, he was promoted as a correspondence clerk. An order was subsequently issued by the Finance Department on 13-11-1998 granting him promotion with effect from 1-9-1991 which was a time-bound promotion. Subsequently it was found that this promotion was irregular for not passing a promotional examination prior thereto and therefore the orders were issued on 16-9-2009 and 5-10-2009 for cancelling this time-bound promotion.

6. Mr Rai, learned Senior Counsel for the appellant points out that there was no fraud or misrepresentation on the



part of the appellant. The appellant was given a time-bound promotion by the Department concerned. If at all the examination was required to be passed, he had passed it subsequently in 2007 much before the cancellation orders were issued in 2009. Mr Rai relied upon two judgments of this Court in Bihar SEB v. Bijay Bhadur [(2000) 10 SCC 99 : 2000 SCC (L&S) 394] and Purshottam Lal Das v. State of Bihar [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508] wherein it has been held that recovery can be permitted only in such cases where the employee concerned is guilty of producing forged certificate for the appointment or got the benefit due to misrepresentation.

9. *In our view, the facts of the present case are clearly covered under the two judgments referred to and relied upon by Mr Rai. The appellant was not at all in any way at fault. It was a time-bound promotion which was given to him and some eleven years thereafter, the authorities of the Bihar Government woke up and according to them the time-bound promotion was wrongly given and that the relevant rules are being relied upon and that too after the appellant had passed the required examination.”*

7. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, this Court finds that the



order dated 17.10.2007 passed by the Deputy Director, Provident Fund Directorate, Finance Department, Government of Bihar, Patna, whereby and whereunder the date of first time bound promotion has been shifted from 06.12.1988 to 05.11.1991, is illegal and unjustified, hence is quashed and the respondents are directed to refund the amount recovered from the petitioner, i.e. to the tune of Rs. 50,442/-, within a period of four weeks from today.

8. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	24.07.2023
Transmission Date	N/A

