

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22516 of 2013

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Ram Snehi Prasad Singh S/O Late Thakur Jagdish Prasad Singh, resident Of
Mohalla- Miscout Late No. 6, P.O.- Ramna, P.S- Mithanpura, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Industry Department, Government Of Bihar, Patna.
3. Industrial Development Commissioner, Directorate Of Industries
Government Of Bihar, Patna.
4. The Additional Secretary, Industry Department, Government Of Bihar,
Patna.
5. The Director, Industry Department, Government Of Bihar, Patna.
6. The Deputy Director, Industry Department, Government Of Bihar, Patna.
7. The District Magistrate, District Muzaffarpur.
8. The Managing Director, District Industries Centre, Muzaffarpur, District-
Muzaffarpur.
9. The Accountant General, Govt. Of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Md. Anis Akhtar, Advocate
For the State	:	Mr. Nilotpal Sharma, AC to GP-21
For AG	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 22-06-2023

The present writ petition has been filed for quashing
the Memo dated 25.09.2013 issued by the Deputy Director
Industry, Government of Bihar, Patna, whereby and whereunder
the claim of the petitioner for grant of first assured career
progression (for short 'ACP') has been rejected merely on the
ground of non-passing of the departmental accounts



examination.

2. The learned counsel for the petitioner has submitted that the petitioner was absorbed in the services of Department of Industry, Government of Bihar, Patna with effect from 28.02.1994 and after rendering continuous service of ten years, he became entitled for grant of first ACP and finally superannuated from service on 14.04.2012, while working on the post of Upper Division Clerk at District Industries Centre, Muzaffapur. It is also submitted that the Managing Director, District Industries Centre, Muzaffarpur, vide letter dated 27.11.2012 recommended for grant of the benefits of ACP to the petitioner, however, the Deputy Director, Department of Industry, Government of Bihar, Patna, by the impugned order dated 25.09.2013, has been pleased to reject the case of the petitioner for grant of first ACP/MACP on account of the petitioner having not passed the departmental accounts examination.

3. The learned counsel for the petitioner has submitted that the law in this regard is no longer *res integra* inasmuch as the learned Division Bench of this Court, vide judgment dated 25.04.2022, passed in LPA No.372 of 2019 (**State of Bihar & Ors. vs. Shri Krishna Singh & Anr.**) has



held that passing of departmental examination/departmental accounts examination is not a condition precedent for grant of the benefits of ACP. In this regard, it would be relevant to reproduce paragraph nos. 5 to 7 of the said judgment, hereinbelow:-

*“5. We have heard the learned counsel for the appellant and find that the issue under consideration in the present appeal is no longer res integra inasmuch as the view taken by the learned Single Judge in the impugned judgment stands fortified by the judgment rendered 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 v. 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."

*6. Having regard to the issue involved in the present case having been conclusively settled by the aforesaid judgments rendered by the learned Division Bench of this Court in the case of **Smt. Jivachi Devi** (supra) as also in the case of **Uday Shankar Prasad** (supra), we do not find any infirmity in the impugned judgment dated 20.12.2017, whereby and whereunder the writ petitioner has been held entitled for consideration for grant of ACP under the*



scheme.

7. Consequently, the present appeal stands dismissed, with a further direction to the appellants to grant benefit under the ACP scheme to the writ petitioner within a period of four weeks from today, failing which the Secretary, Water Resources Department, Government of Bihar, Patna and the Executive Engineer, Water Resources Department, Kaimur at Bhabua shall not draw their salary.”

4. *Per contra*, the learned counsel for the respondents has though supported the impugned order dated 25.09.2013, but has not been able to rebut the law laid down by the learned Division Bench of this Court in the case of ***Shri Krishna Singh*** (supra).

5. Having regard to the facts and circumstances of this case, this Court finds that the present case is squarely covered by the judgment rendered by the learned Division Bench of this Court in the case of ***Shri Krishna Singh*** (supra). Consequently, the impugned order dated 25.09.2013, passed by the Deputy Director Industry, Government of Bihar, Patna, being illegal and contrary to law, as aforesaid, is quashed and the Director, Industry Department, Government of Bihar, is directed to grant the benefits of the ACP scheme to the petitioner, within



a period of eight weeks from today, failing which he shall not draw his salary.

6. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2023
Transmission Date	NA

