

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16954 of 2014

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Bharat Prasad Singh Son of Late Panch Deo Singh Resident of Village -
Sihauta Nai Basti, P.S. - Maharajganj, District- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Bihar, Patna.
2. The Joint Secretary Jan Shikayat Koshang, Water Resources Department, Bihar, Patna.
3. The Deputy Secretary (Adm) Water Resources Department, Bihar, Patna.
4. The Chief Engineer, Water Resources Department Siwan.
5. The Superintending Engineer, Nahar Anchal, Water Resources Department, Siwan.
6. The Executive Engineer, Nahar Pramandal, water Resources Department, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar, Advocate
For the Respondent/s : Mr.Arvind Kumar-1, Sc13

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 26-07-2023

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

“(i) For quashing and setting aside the letter bearing no.307 dated 11.08.2014 read with letter no.1051 dated 02.07.2014 issued under the seal and signature of the respondent department thereby



communicating the petitioner that the benefit of second A.C.P. is not admissible to him due to his being unsuccessful in Departmental survey examination which as a matter of fact has never been held by the respondents during the entire service period of the petitioner.

(ii) For consequently issuance of writ of Mandamus commanding and directing the respondents to forthwith pay the petitioner his monetary benefits of second ACP with effect from the date the other similarly situated persons have been granted as per the provision of Bihar State Employee Service Condition (Acquired Career Progression) Rules 2003 read with Finance Department. Notification no. 1802 (vi) (2) dated 23.02.2006 and Deputy Secretary Water Resources Department Bihar Patna letter no. 835 dated 27.11.2006.

(iii) For directing the respondents to pay statutory as well as penal interest on the arrears of second ACP which has been denied on arbitrary and erroneous reasons by



the respondents.”

2. The respondents have filed a counter affidavit, wherein they have stated that since the petitioner has not passed the departmental examination, he has not been granted the benefits of ACP/MACP scheme.

3. This Court finds 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 already held that passing of any departmental examination cannot be a condition precedent for considering the grant of benefit under the ACP scheme. In this regard, it would be relevant to refer to paragraph nos. 5 to 7 of the aforesaid judgment passed in the case of **Shri Krishna Singh** (supra) 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 PLIR 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. Having regard to the facts and circumstances of this case, this Court holds that the petitioner cannot be precluded from grant of the benefits of ACP/MACP scheme, in the event of non-passing of the departmental examination, hence the respondents are directed to immediately consider the case of the petitioner for grant of benefits of ACP/MACP scheme and pass appropriate order, within a period of eight weeks from today, whereupon the actual monetary benefits shall also be paid within the same time frame.



5. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.08.2023
Transmission Date	NA

