

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18967 of 2014

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Krishnadeo Mishra Son of Late Sukhdeo Mishra Resident of Village - Mishra
Bigha, P.S. - Atri, District - Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. Dy. Secretary, Water Resources Department, Government of Bihar, Patna.
3. Chief Engineer, Water Resources Department, Government of Bihar, Patna.
4. Executive Engineer, Water Resources Department, Ways Division, Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ram Prawesh Kumar, Advocate
For the Respondent/s	:	Mr.P.K. Verma, AAG 3
	:	Mr. Saroj Kr. Sharma, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 03-08-2023

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

“(i) For issuance of a writ in the nature of mandamus for giving direction to grant benefits of 2nd and 3rd A.C.P. along with its arrear of salary to the petitioner and further direct the authorities to fix the pension and other retiral benefits after grant of 2nd and 3rd A.C.P. benefits and pay its arrear. ”

2. The learned counsel for the petitioner submits that non-passing of the Accounts/ Departmental Examination cannot



be an impediment for grant of benefits of A.C.P./ M.A.C.P. Scheme. In this regard, the learned counsel has referred to a judgment rendered by the learned Division Bench of this Court ***dated 25.04.2022***, passed in ***L.P.A. no. 372 of 2019 (The State of Bihar and others v. Sri Krishna Singh and another)***, paragraphs no. 2 to 7 whereof, are reproduced hereinbelow :-

“ 2. The brief facts giving rise to the present Appeal are that the writ petitioner had been denied benefit of Assured Career Progression (hereinafter referred to as "ACP") on account of non-passing of the departmental accounts examination vide letter dated 22.02.2011 issued by the Executive Engineer, Water Resources Department, Kaimur, Bhabua, which was challenged by the writ petitioner in the aforesaid writ petition bearing CWJC No. 19307 of 2013. The learned Single Judge, by the impugned judgment dated 20.12.2017, has referred to the authorities on the subject matter and has held that the writ petitioner was not required to pass any departmental examination for consideration of his case for grant of ACP especially in view of the fact that his case is squarely covered by a Division Bench judgment of this Court rendered in the case of Uday Shankar Prasad vs. The State of Bihar & Ors., reported in 2017(3) PLJR 824.



3. At this juncture it would be relevant to reproduce the relevant portion of the impugned judgment dated 20.12.2017 passed in CWJC No. 19307 of 2013 herein below:- Patna High Court L.P.A No.372 of 2019 dt.25-04-2022 "3. The petitioner is aggrieved by non-grant of ACP which has been denied on the ground that he has not cleared the Departmental Examination. With regard to non-consideration of his total working days as 1719 as a seasonal employee, the authorities have restricted it to only 431 days on the ground that no records are available in the Department. Learned counsel for the petitioner submitted that with regard to ACP, the stand of the respondents is totally erroneous. It was submitted that passing of Departmental Examination is required as per the conditions of promotion only where the promotional post is existing. It was submitted that ACP Rules only talk about the person being otherwise eligible for regular promotion and also fulfilling the conditions of passing the Departmental Examination, if such condition exists for granting of promotion. Learned counsel submitted that in the present case, the petitioner was appointed as Seasonal Clerk and there is no promotional avenue available from that post. It was submitted that once there is no



promotional post available, there cannot be any condition of any requirement or eligibility criteria, much less, any requirement for passing any Departmental Examination. Learned counsel submitted that the issue has finally been settled by a Division Bench in the case of [Uday Shankar Prasad vs. The State of Bihar and others](#) reported as 2017(3) PLJR 824 in which it has been held Patna High Court L.P.A No.372 of 2019 dt.25-04-2022 that if there is a post without any promotional avenue, there cannot be any requirement for passing any Departmental Examination. He further submitted that the petitioner has given sufficient proof of him having worked from 1719 days as a seasonal employee but due to laches of the authorities, who are not looking into their own records, the benefit due to the petitioner is illegally being denied.

4. Learned counsel for the State submitted that the order passed in the case of Uday Shankar Prasad (supra) has not taken into consideration the earlier Division Bench judgment in the case of [Gorakh Nath Choudhary vs. The State of Bihar and others](#) in C.W.J.C. No.11713 of 2010 dated 27.09.2012 by which it has been held that all eligibility criteria required for regular promotion also applies for giving benefit of



ACP, including passing of Departmental Examination. Learned counsel submitted that in such view of the matter, the judgment in the case of Uday Shankar Prasad (supra) without noticing the judgment in the case of Gorakh Nath Choudhary (supra) is per incuriam. With respect to the number of days for having worked as seasonal employee, it was submitted that the same has been duly considered as per the available official records as well as materials submitted by the petitioner.

5. Having considered the matter, the Court finds that the petitioner is entitled for consideration of Patna High Court L.P.A No.372 of 2019 dt.25-04-2022 grant of ACP. The ACP Rules provide that all eligibility criteria, which may otherwise be prescribed for promotion, have to be adhered to and further, if, for regular promotion, passing of any Departmental Examination is required, then that shall also be a requirement for grant of ACP. The scheme itself is in contemplation of there being stagnation on account of lack of vacancies or want of promotional avenues. In the present case, it is not denied that there is no promotional post from the post of seasonal clerk and, thus, to that extent, any further promotion to the petitioner was not available in the



existing scheme. Therefore, the requirement under the ACP Rules is satisfied to the extent that in the case of the petitioner, the scheme would be applicable for want of promotional avenue. Coming to the second aspect for grant of ACP, which relates to the person satisfying all the eligibility criteria provided for grant of regular promotion, the same is not a blanket term for the reason, that only when there is any promotional post available, the question of fixing eligibility criteria for such promotion would arise. In the present case, there being no promotional post available, there is no question of there being any Rules or eligibility criteria prescribed for such promotion. Moreover, the ACP Rules itself contemplate that if in the promotional Rules, passing of Departmental Examination is necessary, the same shall also Patna High Court L.P.A No.372 of 2019 dt.25-04-2022 apply while giving benefit of ACP. In the present case, when there are no promotional posts available and thus no promotional Rules in the matter, obviously there cannot be any prescription or eligibility for passing any Departmental Examination. Thus, in that context, the petitioner was not required to pass any Departmental Examination for considering his case for grant of ACP. The



Court is fortified in its view by the order of the Division Bench of this Court in the case of Uday Shanker Prasad (supra). As far as the stand of the learned counsel for the State, that the same has not considered the earlier Division Bench judgment in the case of Gorakh Nath Choudhary (supra) is concerned, the Court would only note the fact that the same was passed under a different factual background. In the case of Gorakh Nath Choudhary (supra), he was a Lower Division Clerk which clearly indicates that there were promotional avenues available to him and in that background, the Court had held, that all requirements for grant of regular promotion, passing of Departmental Examination being one of them, were required to be fulfilled before grant of ACP. In the present case and in the case of Uday Shankar Prasad (supra), the person did not have any promotional avenue and in that background, it has been clarified that there being no promotional avenue, the question of there being any promotional Rules lying down any eligibility Patna High Court L.P.A No.372 of 2019 dt. 25-04-2022 criteria, passing of any Departmental Examination could not be a condition precedent for considering grant of benefit under the ACP Scheme. Such view



has been reiterated in a subsequent judgment of a Division Bench dated 20.09.2017 in L.P.A. No.1138 of 2014 in the case of Shio Chand Gupta vs. The State of Bihar and others.

6. Accordingly, the Court holds the petitioner entitled for consideration for grant of ACP under the scheme. The same shall be done within two months from the date of receipt of a copy of this order by the respondents no.3, 4 and 5.

7. Coming to the issue of the counting of the number of days the petitioner has claimed to have worked as seasonal employee, he shall be at liberty to file a detailed representation enclosing all supporting documents/materials available with him in support of his contention before the respondents no.3, 4 and 5 within four weeks from today. Upon the same being done, the authorities shall look into the matter and verify it with the official records. If the contention of the petitioner is found to be correct, necessary orders shall be passed and benefit granted to him within two months thereafter."

3. Having regard to the facts and circumstances of the case, I deem it fit and proper to dispose off the present writ



petition with a direction to the Chief Engineer, Water Resources Department, Government of Bihar, Patna to consider the case of the petitioner for grant of benefits of the A.C.P./M.A.C.P., without being impeded by the issue of non-passing of the Accounts/ Departmental Examination, as has been held by the learned Division Bench of this Court in the case of *Sri Krishna Singh (supra)* and pass a reasoned and a speaking order, within a period of four weeks of receipt/ production of a copy of this order.

4. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.08.2023
Transmission Date	NA

