

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22590 of 2013

Bindeshwar Rawat Son Of Late Rangu Rawat Resident Of Village Darhi
Barhi, P.S. Baniapur, Distt. - Saran

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Water Resources Department, Govt. Of Bihar, Patna
3. The Chief Engineer, Mechanical, Water Resources Department, Bihar, Patna
4. The Superintending Engineer, Irrigation, Mechanical Circle, Birpur, Distt. - Supaul
5. The Executive Engineer, Irrigation, Mechanical Division, Darbhanga
6. Joint Secretary, Govt. Of Bihar, Finance Department, Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Tara Nath Jha
For the Respondent/s : Mr.Devendra Kr Sinha

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 22-06-2023

The present writ petition has been filed to quash Sub-Rule 5 of Rule 4 of the Bihar State Employees Condition (Assured Career Progression Scheme) (Amendment) Rules, 2006, whereby and whereunder it has been postulated that it would be mandatorily for the employees to pass the prescribed departmental exam for grant of the benefits of assured career progression / promotion.

2. This Court finds that the law with regard to the aforesaid aspect of the matter is no longer res integra, inasmuch as the learned Division Bench of this Court, by a judgment dated



25.4.2022, passed in Letters Patent Appeal No. 372 of 2019 (The State of Bihar & Ors. vs. Shri Krishna Singh & Anr.), has already held that it is not necessary for an incumbent to pass the departmental examination for the purposes of grant of benefits of ACP / MACP. In this regard, it would be relevant to reproduce paragraphs no. 5 to 7 of the aforesaid 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 in as much 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) 1PLJR 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.”

3. Having regard to the facts and circumstances of the case and considering the fact 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 & Anr. (supra), the Ld. Counsel for the parties fairly submit that the present writ petition be disposed of in similar terms.
4. Accordingly, the present writ petition is disposed off in terms of the judgment rendered by the Ld. Division Bench of this Court in the case of Shri Krishna Singh & Anr. (supra).

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
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