

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1239 of 2017

In
Civil Writ Jurisdiction Case No.6365 of 2012

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The Deputy Development Commissioner-Cum-Chief Executive Officer, Zila Parishad, Rohtas, Sasaram.

... .. Appellant/s

Versus

1. The State Of Bihar through the Secretary, Panchayat Raj, Government of Bihar, Patna.
2. The Secretary, Panchayat Raj Department, Government of Bihar, Patna.
3. The Director, Panchayat Raj Department, Government of Bihar, Patna.
4. The Zila Parishad Rohtas Karamchari Ekal Singh, Rohtas, Sasaram through its Chairman Rajkishore Sin Son of Late Kamta Singh.
5. Shrawan Ram, Son of Late Shyam Lal Ram, Resident of Village- Simri, P.O.- Sikaria, P.S.- Sheosagar, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashutosh Ranjan Pandey, Advocate
For the Respondent/s : Mr. Nikhil Kumar Agrawal, Advocate
Mr. Yash Sahay, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-04-2023

The present LPA is filed by the State of Bihar, assailing the order of the learned Single Judge dated 19.07.2017 passed in CWJC No. 6865 of 2012.

02. Respondent-Petitioner in the writ petition has prayed for the following relief(s):-

“i) To issue an appropriate writ/order/direction in the nature of



Certiorari for quashing the letter no.54 dated 14.2.2012 by which the respondent no. 4 has stopped the benefit of Assured Carrier Progression Scheme to the ministerial staffs of the Zila Parishad, Rohtas which they were getting pursuant to the order dated 11.3.2008 passed by the respondent no. 4 on the decision of the General Standing Committee of the Zila Parishad, Rohtas and which was approved in the special meeting dated 14.6.2008 of the Zila Parishad. (As contained in Annexure-3).

ii) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to grant the benefit of Assured Carrier Progression Scheme to the employees of Zila Parishad, Rohtas, Sasaram with consequential benefits, as envisaged in the Bihar State Employees Conditions of Service (Assured Carrier Progression Scheme) Rules, 2003 (hereinafter referred to as the 'ACP Rules') in continuity to the earlier orders dated 11.3.2008 passed by the respondent no.4 on the decision of the General Standing Committee of the Zila Parishad, Rohtas, which was later on approved in the special meeting dated 14.6.2008 of the Zila Parishad, Rohtas by which the benefit of Assured Carrier Progression Scheme was made applicable in case of the members of the petitioner no.1 Association and also to the petitioner no.2.

iii) To issue an appropriate writ/order/direction holding that the



ministerial employees of the Zila Parishad Rohtas are entitled to get the benefit of Assured Career Progression Scheme as envisaged in the ACP Rules, which has been made applicable to the ministerial employees of the Zila Parishad Rohtas in terms of Rule 7(7) of the Bihar Panchayat Samiti & Zila Parishad (Conditions of Service) Rules, 1964 (hereinafter referred to as the 'Rules').

iv) To any other relief or reliefs for which the petitioners is entitled.”

03. Respondent- Zila Parishad Rohtas Karamchari Ekai Sang, Sohtas, Sasaram (for short 'Sangh') filed the writ petition quashing the Letter No. 54 dated. 14.02.2012 by which the appellant-District Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Rohtas, Sasaram rejected the benefit of A.C.P. to the ministerial staff of Zila Parishad Rohtas.

04. It is undisputed fact that employees of the Sangh-Petitioner were employees of Zila Parishad, Rohtas at Sasaram. Their service conditions are governed by Rules called 'Bihar Panchayat Samiti and Zila Parishad Services Conditions Rules, 1964 (for short 'Rules 1964'). The A.C.P. Rules, 2003 was introduced by the State of Bihar for its employees. It is relevant to extract relevant provisions of both the statutory enactment.



Rules 7 of Rules 1964 reads as under:-

“7. Ministerial Officers - (1) All Ministerial Officers of the Zila Parishad shall belong to a district cadre under the Zila Parishad and shall be appointed by the District Development Officer. They shall be posted under the Zila Parishad, or transferred from one place to another under the Zila Parishad, by the District Development officer with the approval of the Adhyaksha.

(2) The Ministerial officers of the Zila Parishad shall consist of following four categories, namely:

- (a) Assistants;*
- (b) Stenographers,*
- (c) Typists, and*
- (d) Diarists-cum-Despatchers.*

(3) Appointment to the lower post of each of the four categories mentioned in Sub-rule (2) shall be made by the District Development Officer from amongst the candidates selected for the purpose by the Committee referred to in Sub-rule 94) and appointment to higher posts shall be made by promotion as provided in Sub-rule (5): Provided that all ministerial officers working under the District Board on the date of Zila Parishad takes charge of the office for the first time shall be deemed to have been appointed to the district cadre and to the posts held by them under this sub-rule.

(4) The selection of candidates for appointment to the lowest post of each of the category mentioned in Sub-rule (2), shall be made by a Committee consisting of the Adhvaksha, Upadhyaksha, a member of the Zila Parishad nominated by the Adhyaksha, the District Development Officer and a District Level Officer nominated by the collector of the District.



(5) All appoints by promotion to the posts of ministerial officers shall be made on the recommendation of the Committee referred to in Sub-rule (4):

Provided that the Primary considerations for selection for promotion shall be merit, technical qualification and knowledge and integrity; seniority may be considered only thereafter;

Provided further that where a senior employee is proposed to be superseded, the Committee shall record full reasons for doing so.

(6) Casual leave to ministerial officers shall be given by the immediate superior gazetted officer and leave on average pay by the District Development officer.

(7) subject to the provisions of Sub-rules (3) to (6) of Rule 7 and Rule 9, the service conditions of all ministerial officers shall be governed, mutates mutandis, by the rules in force for the corresponding class of officers of the State Government.

-under line supplied

05. Similarly, Rule 1(2) of A.C.P. Rules, 2003 reads as under:-

“(2) इसका विस्तार बिहार राज्य सरकार के ग्रुप "बी"; "सी" और "डी" के सभी नियमित कर्मचारियों पर होगा। यह राज्य सरकार के विशेष आदेश द्वारा ग्रुप "ए" के एकाकी पद धारकों पर भी लागू की जा सकेगी। यह नियमावली राजकीयकृत विद्यालयों के शिक्षकों एवं राज्य सरकार द्वारा पूर्ण या आंशिक अनुदान प्रदत्त स्वायत्त संस्थाओं या लोक उपक्रमों पर लागू नहीं



होगी।"

06. In this backdrop, extending of A.C.P. to the employees of Zila Parishad, Rohtas is permissible or not?

07. No doubt, Zila Parishad have taken a decision to extend A.C.P. benefits to its Zila Panchyat Employees. However, the same was objected in the light of Rule 1(2) of A.C.P. Rules, 2003, to the extent that A.C.P. Rules, 2003 is not applicable to such of those employees of Zila Parishad. Decision of the Zila Parishad to adopt and extend A.C.P. benefits to its employees would be contrary to Rule 1(2) of A.C.P. Rules, 2003. At the same time, Rule 1(2) of the A.C.P. Rules, 2003 is contrary to Rule 7 of Rules, 1964. In the absence of challenge to the relevant clause under Rule 1(2) of A.C.P. Rules, 2003, employees of the Zila Parishad are not entitled to have the benefit of A.C.P. merely in the light of Rule 7 of the Rules 1964 read with any resolutions of Zila Parishad. This issue has not been taken note of by the learned Single Judge while entertaining the petitioner's writ petition and allowing the same. At this stage, it is necessary to say that Court cannot give directions contrary to Statute or Rules, as held by the Apex Court in the case of *Anurag Kumar Singh Vs. State of*



Uttarakhand, (2016) 9 SCC 426. Thus the learned Single Judge has committed error in direction for extending ACP benefits to Respondents.

08. As long as relevant portion of Rule 1(2) of A.C.P. Rules, 2003 is not amended or struck down by competent forum, the petitioner-employees of Zila Parishad are not entitled to have the benefit of A.C.P. benefit in the light of Rule 7 of Rules, 1964. Therefore, the appellant-State have made out a *prima facie* case, so as to interfere with the order of the learned Single Judge dated. 19.07.2017 passed in CWJC No. 6865 of 2012 and it is set aside.

09. Accordingly, the L.P.A. stands allowed, reserving liberty to the respondent/petitioner-Sangh or any of the employee to assail such portion of Rule 1(2) of A.C.P. Rules, 2003 to the extent that it is contrary to Rule 7 of Rules 1964.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/Daya-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.05.2023
Transmission Date	NA

