

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.160 of 2018

In
Civil Writ Jurisdiction Case No.7216 of 2017

-
1. The State Of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
 2. The Principal Secretary, Rural Works Department Government of Bihar, Patna.
 3. The Deputy Secretary, Rural Works Department Government of Bihar, Patna.
 4. The Superintending Engineer, Karj Pramandal 1, Motihari.
 5. The Executive Engineer, Karj Pramandal, Motihari.

... .. Appellant/s

Versus

Baban Sharma, Son of Late Ram Kishun Sharma, resident of Village-Banjari,
Police Station-Rohtas, District-Rohtas.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Ranjan, Advocate

For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 22-03-2023

Perusal of order-sheets, it is evident that there is no representation on behalf of Respondent-Baban Sharma and the matter is of the year 2018. Therefore, we are compelled to pass order in absence of counsel for the Respondent-Baban Sharma.

02. In the instant L.P.A., Appellant-State of Bihar has assailed the order of the learned Single Judge dated 15.05.2017 passed in C.W.J.C. No. 7216 of 2017.



03. In the writ petition, the Respondent-Baban Sharma has sought for the following relief(s):-

“(A) A writ in the nature of ceritorari or any other appropriate writ/writs, order/order, direction/ directions quashing the order dated 07.10.2016 passed in Letter No. 11736 whereby the petitioner has been granted promotion (ACP) without counting the period spend by the petitioner in the parent department and the same has been referred to in Annexure-3 of the present writ application.

(B) A writ in the nature of a mandamus or any other appropriate writs, order/orders, direction/directions commanding the respondents not to give effect to the orders as contained in Anneuxre-3.

(C) To any other relief/reliefs to which the petitioner may be found to be legally entitled too.”

04. In the light of relief(s) sought in the present *lis*, the issue is whether the respondent is entitled to have the benefit of Assured Career Promotion (ACP) with reference to service rendered as a Conductor in BSRTC with effect from 08.02.1989 while counting 12 years of service or is he entitled to have the benefit of ACP benefit with reference to absorption of his service in the post of Junior Accounts Clerk in the District



Collectorate, Motihari under the State Government Service with effect from 13.08.1993 or not?

05. Brief facts of the case are that Respondent-Baban Sharma was appointed as Conductor in BSRTC on 08.02.1989 and his services were absorbed against Junior Accounts Clerk in the District Collectorate, Motihari under the State Government Service on 13.08.1993. He had filed CWJC No. 18523 of 2011 for the purpose of counting past service for pension and promotion. He has attained the age of superannuation and retired from service on 31.01.2016. He had been extended ACP benefit on 07.10.2016 while counting the service with effect from 13.08.1993 as and when he entered the post of Junior Accounts Clerk in the District Collectorate, Motihari under the State Government Service, while ignoring the service rendered by him as a Conductor in BSRTC during the intervening period from 08.02.1989 to 12.08.1993. Thus, he was aggrieved and filed representations on 13.01.2017 and 01.03.2017, respectively. In not considering the grievance of the respondent, he has filed C.W.J.C. No. 7216 of 2017 and it was allowed. Feeling aggrieved by the order of the learned Single Judge, the appellant-State presented the L.P.A.

06. Learned counsel for the appellant-State



vehemently contended that the learned Single Judge has committed error in not noticing the criteria for the purpose of extending ACP benefit to the respondent. In other words, service rendered by the respondent in the post of Conductor in BSRTC during the intervening period from 08.02.1989 to 12.08.1993, cannot be counted for the purpose of extending ACP benefit in the light of the criteria laid down.

07. Facts are not disputed. The State Government evolved Rules called 'The Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003' (for short 'Rules, 2003'). These Rules, 2003 has been given effect from 09.08.1999. Rule 2(i) of Rules, 2003 is relating to definition of 'Cadre':

'Cadre' means a service or group of posts as a separate unit'.

Further, it is necessary to take note of the fact that 1st ACP is required to be extended to such of those employees who have fulfilled 12 years of service as a regular employees of Group 'B', 'C' and 'D' of the State Government, who have not got the benefit of any financial progression during their career, in such circumstances, 1st and 2nd financial progression would be extended as and when an employee completes 12 years and 24



years, respectively. Further, eligibility and condition prescribed under the Scheme stipulates that concerned employee has been working in the pay scale of pay, including the revised scale, for the prescribed period of 12/24 years. It is necessary to reproduce Rule 4 of Rules, 2003, which reads as under:-

“(4) Only regular service, which is counted for the purpose of regular promotion, shall be counted for the purpose of financial progression under ACPS. Consequently, the period of service rendered on ad-hoc basis, even if subsequently it has been regularised and sanction of increment have been given, shall not be counted for the sanction of benefits of financial progression under the Scheme.

EXPLANATION: (i) *Service rendered on casual or daily wages basis/ contract/ work charge basis or temporary basis shall not be counted for the purpose of benefit of financial progression under the Scheme*

(ii) *If an employee working under temporary service or work-charge establishment enters into regular service, the period starting from the date of such regularisation or the period of regular service alone shall be counted for the purpose of sanction of benefits of financial progression under the Scheme.*



(iii) If an employee of a Public Sector Undertaking or an autonomous body enters into regular service of State Government, the period of his service rendered from the date of his entry into government service alone shall be counted for the purpose of sanction of financial progression under the Scheme.”

08. Rule 4 read with ‘Explanation-(iii)’, suffice to hold that 12 years of service is required to be counted in a particular cadre and in a department. Therefore, services of the respondent as a Conductor in BSRTC cannot be counted for the purpose of extending 1st ACP benefit as and when he completes 12 years with reference to service rendered as a Conductor in BSRTC. On the other hand, 12 years’ service is required to be counted only as and when he joined as a Junior Accounts Clerk in the Collectorate of Motihari i.e. on 13.08.1993. These material information have not been taken note of by the learned Single Judge while passing order on 15.05.2017 passed in C.W.J.C. No. 7216 of 2017.

09. In the light of these facts and circumstances, we hold that the learned Single Judge has committed error in allowing the CWJC No. 7216 of 2017. Accordingly, order of the learned Single Judge dated 15.05.2017 passed in CWJC



No. 7216 of 2017 stands set aside and the L.P.A. is allowed.

In the result, C.W.J.C. No. 7216 of 2017 filed by the
Respondent-Baban Sharma stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Himanshu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2023
Transmission Date	NA

