

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.765 of 2023

Vasant Kumar Son of Late Upendra Jha Resident of Village- Kiran Menson
New By-Pass Road Subhash Nagar Khemani Chak, P.S.- Sampatchak,
District- Patna, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Industry Department, Govt. of Bihar, Patna.
2. The State of Bihar through Deputy Secretary, In-Charge, Establishment Branch, Handloom and Sericulture, Industry Department, Govt. of Bihar, Patna.
3. The Secretary, Personnel and Administrative Reforms Department, Govt. of Bihar, Patna.
4. The Chief Secretary, Department of Industries, Bihar, Patna.
5. The Director, Handloom and Sericulture, Industry Department, Govt. of Bihar, Patna.
6. The Joint Director (Technical), Handloom and Sericulture, Industry Department, Govt. of Bihar, Patna.
7. The Assistant Director, Sericulture, Tirhut Division, Combined Building, Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Vishwajeet Kumar Mishra, Advocate
Mr.Aakash, Advocate
For the Respondent/s : Mr.Wasi Mohammad, AC to SC-6

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 11-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner, in this case, is aggrieved by and
dissatisfied with the order as contained in letter no. 2170 dated
25.11.2022 whereby and whereunder he has been informed by
the Deputy Secretary, Incharge, Establishment Department
Branch, Handloom and Sericulture, Industry Department,
Government of Bihar, Patna that he would not be entitled for the



third Modified Assured Career Progression (MACP) under the Assured Career Progression (ACP) Rules, 2003.

Learned counsel for the petitioner has, in course of his oral submissions tried to improve upon his case by making a submission that the petitioner should have been granted his first ACP w.e.f. 09.08.1999 instead of 09.08.2004. Learned counsel does not dispute that the petitioner was granted his first ACP on 09.08.2004 which he never questioned. He was granted his second ACP w.e.f. 09.08.2014 and the same was also not questioned.

A perusal of the writ application would show that the only grievance of the petitioner is that he has not been granted his third MACP. It is his submission in the writ application that it would be wrong to say that the petitioner would not be entitled of his third MACP. In the writ application, however, the petitioner admits that he had cleared his Accounts examination Paper-II in 1989 and 2005 and Computer Examination in 2019.

Learned counsel relies upon a judgment of the Hon'ble Division Bench of this Court in the case of **Uday Shankar Prasad Vs. State of Bihar & Others** reported in **2017(3) PLJR 824** to submit that in the said case the Hon'ble Division Bench has held that the prescribed requirement and



mode of sanction of financial progression under the scheme shall be the same which are prescribed under the recruitment/service rules for regular promotion against the vacancy. The Hon'ble court held that for getting benefit under the scheme in question an employee has to fulfill all the conditions stipulated in the recruitment or the service rules which is prescribed for regular promotion from the post held to the next higher post. It is submitted that in this case the petitioner should have been granted his first ACP on 09.08.1999 itself and the requirement of passing of Accounts examination could not have been imposed upon him.

On the other hand, learned counsel for the State has opposed this writ application. It is submitted that the petitioner never questioned the grant of his first ACP and second ACP w.e.f. 09.08.2004 and 09.08.2014 respectively. At this stage, when he was on the verge of his retirement on 31.03.2023, he is raising an issue which he had never raised at the relevant time. Learned counsel further submits that so far as the reliance placed on the judgment of the Hon'ble Division Bench in the case of **Uday Shankar Prasad** (supra) is concerned, the said judgment was rendered by the Hon'ble Division Bench, in the facts of the said wherein the admitted position was that for



further promotion of the appellant of the said case from the post of compilation clerk to a higher post, no service rules was prescribed and it was found that there was no further avenue for promotion for the post of compilation clerk to any other higher post. In the given facts of the said case, the Hon'ble Division Bench distinguished the case of **Uday Shankar Prasad** (supra) from that of **Kusheshwar Nath Pandey Vs. The State of Bihar** reported in **2013 (1) PLJR 939**.

Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court finds that for the first time, the petitioner is raising an issue as to the date of grant of his first and second ACP. It is being submitted at this stage that in the year 1999 he should have been granted his first ACP but the fact remains that he never questioned his grant of first and second ACP in the year 1999 and 2004 respectively. There is no pleading to that effect and this Court agrees with the submissions of learned counsel for the State that the judgment of the Hon'ble Division Bench in the case of **Uday Shankar Prasad** (supra) was rendered in a completely different fact situation. The writ petition does not contain any pleading to support the oral submissions.

In the circumstances, this Court is of the considered



opinion that the extraordinary writ jurisdiction of this Court need not be invoked to unsettle something which has already settled down over decades.

This Writ Application is, thus, dismissed.

(Rajeev Ranjan Prasad, J.)

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