

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6782 of 2021

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Ashutosh Kumar Thakur S/o Late Rabindra Nath Thakur R/o village and PO-
Kadrachak, PS-Shambhuganj, District-Banka

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary Education Department, Government of Bihar, Patna
3. The Principal Secretary Finance Department, Government of Bihar, Patna.
4. The Director Higher Education Department, Government of Bihar, Patna
5. L.N. Mishra Institute of Economic Development and Social Change through
its Director, 1 Bailey Road, Patna
6. The Director, L.N. Mishra Institute of Economic Development and Social
Change, 1 Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Adv. Mr. Roshan Kumar Mishra, Adv.
For the State	:	Mr. Madhukar Mishra, AC to SC16
For the Institution	:	Mr. Ravindra Kumar Shukla, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 22-08-2024

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Institution.

2. The present writ petition has been filed seeking the
following reliefs:

*“(i) For issuance of an appropriate writ/writs or
order/orders in the nature of mandamus for
granting and commanding the respondents to
grant promotion under A.C.P. scheme to the
petitioner who has been working since 1987 in
the Institution in question on the same post and
calculate the pay-scale by giving revised pay
scale and further also direct the respondent to
pay the arrear of salary after giving benefit of
A.C.P. and after calculation of revised pay-scale
to the petitioner.*

(ii) Further, for any other relief or reliefs for



which the petitioner is entitled in the facts and circumstances of the instant case.”

3. The short fact of the present case is that the petitioner was appointed to the post of ‘Routine Clerk’ after due process against the sanctioned post in Lalit Narayan Mishra Institute of Economic Development and Social Change (hereinafter referred to as ‘Institute’) on 08.07.1987 and since then he has been working in the said Institute to the best of his ability and the satisfaction of the higher authority without any break.

4. Learned counsel for the petitioner submits that in view of the inquiry report submitted by the then Chairman of the Institute and in compliance with the order dated 07.05.2002 passed in C.W.J.C. No. 13417/2000 and order dated 21.12.2004 passed in M.J.C. No. 2202/2002 by this Court the service of the petitioner and other seven non-teaching employees of the Institute were absorbed by the letter issued by the Higher Education, Human Resources Development Department, Government of Bihar, Patna vide letter dated 08.01.2005. In this letter, the name of the petitioner appears at Serial. No. 5 on the post of Routine Clerk (Annexure-1 to the writ application). The respondent Institute wrote a letter to the Respondent Higher Education, H.R.D., Bihar, Patna requesting to grant the benefit



of A.C.P. under the Bihar State Employees Service Condition Rule (A.C.P. Scheme) 2003 to the employees of the Institute in question by the letter No. 314/08 dated 23.04.2008 and in response of that the Deputy Director, Higher Education, H.R.D., Patna wrote a letter to the Registrar of the said Institution informing that the Institution is itself competent to grant the said benefit to its employees and requested to decide with regard to the grant of A.C.P. to its employees vide letter dated 13.05.2009 (Annexure-2 of the writ application). The teaching employees of the said Institution were granted promotion in view of the decision taken by the departmental promotion committee of the Institution in question vide letter No.18/10 dated 01.01.2010.

5. Learned counsel for the petitioner further submits that one of the non-teaching staff namely, Sri Bholanand Thakur, working on the post of Senior Assistant has been granted promotion to the post of office superintendent vide letter bearing memo no.809/12 dated 12.11.2012 and Sri Baidyanath Jha working on the post of "Adeshpal" has been granted promotion on the post of computer typist vide letter bearing memo No.46/14 dated 12.02.2014, but the petitioner was doing extra work as Admission Account Section due to vacant post has not been promoted. It is a clear case of



discrimination (Annexures-4 and 5 of the writ application).

6. Learned counsel for the petitioner further submits that the petitioner has been working as a Routine Clerk in the said Institute since 1987. In the year 2012, the petitioner was doing extra work in the Account Section. Due to the retirement of an employee working on the post of Assistant, which was vacant. The petitioner is the competent person having the required qualification requested from the authority to be promoted on the vacant post. The petitioner was working on same post for about 25 years without any promotion or promotional financial benefit (Annexure-6 to the writ application). He further submits that from a perusal of the Annexure-2 & 3 of this writ petition it manifests that with regard to the A.C.P. benefit under Bihar State Employee condition of Service Conditions (Assured Career Progression Scheme) Rules, 2003 to the employees of the Institute, the Institute is itself competent to decide the same and Higher Education Department also directed to the Institute to take appropriate step according to the law and Rule. But the Respondent authorities without considering the case of the petitioner and other similarly situated some of the non-teaching employees, granted promotional benefit to the teaching



employees in the year 2010.

7. Learned counsel for the petitioner further submits that, however, the State Government in the exercise of the powers conferred under the provision of taking over Act 1987 framed a Rule regulating the appointment and service condition of teaching/non-teaching employees of the said Institute, the said rule was notified in the Bihar Gazette on 10th July 2017, notification dated 28.06.2017 wherein the Section 8 Sub-Section 1 & 2 deals with promotion. Further, Sub Section-2 stipulates that with the permission of the Managing Committee the non-teaching employees of the Institute would be promoted according to the provision of the concerned Rule of State Government (Annexure-7 of the writ application). In view of the provision of Section 8(2) of the said notification (Annexure-5) the Managing Committee has already approved, which is clear to see the proceeding of the Managing Committee of the said Institute held on 25.06.2018 (Annexure-8 of the writ application).

8. Learned counsel for the petitioner further submits that the petitioner has been continuously working on the post of routine clerk since 1987, hence the petitioner is entitled to get the benefit of the A.C.P. scheme. The notification dated



28.06.2017 also provides for the said benefit to the non-teaching employees of the Institute by the permission of the Managing Committee and the Managing Committee has also approved it, but the A.C.P. benefits have not been granted to the petitioner till date. He further submits that the petitioner along with other similarly situated employees submitted representation before the concerned authorities stating all the facts with a request to provide promotion (Annexure-9 series of the writ application). In view of the said Niyamawali 2017 the Education Department, Bihar directed the Respondent Institute to take appropriate steps and informed the Department about taking steps vide letter dated 03.01.2018 (Annexure-10 of the writ application).

9. Learned counsel for the petitioner further submits that the petitioner has worked in the Institute for thirty three years of dedicated service and has retired on 31.03.2021, since the inception of service, he has been still at the initial grade pay of the pay scale. The services of the petitioner merged/adjusted in the Institute service by the letter dated 08.01.2005. The State of Bihar already directed to grant pay up-gradation facility to its employees under A.C.P. scheme through its letters contained in Annexure-10 of this writ petition. The teaching staff and some of the non-teaching staff has been



granted promotions in the Institute, but the same has not been granted to the petitioner which is a case of discrimination. In view of the facts as stated above it is clear that the action of the Respondent authority by not granting facility of A.C.P. is illegal, arbitrary, and contrary to law.

10. Learned counsel for the respondents no. 5 and 6 submits that the State Government, in the exercise of powers conferred under the provision of the Private Educational Institution (Taking Over) Act, 1987 framed a Rule regularizing the appointment and service condition of teaching and non-teaching employees of the said "Institute", the Rule is commonly known as 2017 Rule and the same was came into effect through Gazette on 10th July, 2017. The State Government in the exercise of powers conferred under Sub-Section (1) of Section II of the Private Educational Institution (Taking Over) Act, 1987 (Bihar Act II 1987) the Governor of Bihar is pleased to make the following rules to amend the Institute Service Condition Rules, 2017. The said Rule has been notified vide memo no.1466 dated 19.12.2017. The State Government has amended Rule 9 of the 2017 Rules. Under Rule 9 the employees of the "Institute" shall be entitled only for the Employees Provident Fund Scheme (Annexure-R-5 & 6/A to the



counter affidavit).

11. Learned counsel for the respondents no. 5 and 6 further submits that the petitioner was appointed on 08.07.1987 and after completing thirty four years of service superannuated on 31.03.2021. The relief sought for by the petitioner regarding the grant of promotion i.e. Assured Career Progression is in contravention of the relevant Rules. He further submits that the cumulative Assured Career Progression (Scheme) 2010, Rule 3 clearly stipulates that this scheme will not apply to those institutions which receive grants from the State Government. So far, Institute is concerned, no doubt receiving a grant every year from the State Government (Annexure-R-5&6/B to the counter affidavit). Even, the Institute Service Condition Rules, 2017 as amended does not provide any scope for promotion to the petitioner under the A.C.P. Scheme. It is not out of place to mention here that the State Government by amending Rule 9 of the 2017 Rule, withdrew all the benefits at par with Government Servants and in this regard a Notification contained in memo no. 1466 dated 19.12.2017 was also issued.

12. Learned counsel for the respondents no. 5 and 6 further submits that the petitioner has relied upon the decision of the Board of Management contained in Annexure -8 of the writ



petition but from a bare perusal of the minutes of the meeting of Board of Management dated 25.06.2018 item no.8 (Kha), it is crystal clear that there is no clear cut decision over promotion under A.C.P. He further submits that the petitioner was not given any promotion due to non-sanction of the post on which the petitioner is working and the "पद सोपान" hierarchy. However, the "Institute" has already requested the Government in the Education Department vide letter no.1228/21 dated 10.12.2021 to accord sanction of the post.

13. Learned counsel for the respondents no. 5 and 6 lastly submits with regard to the assertion regarding absorption of the services of seven non-teaching employees in the "Institute", it is to be noted that though their services have been absorbed in the absence of necessary approval by the State in respect to post and hierarchy "पद सोपान" their services have not been confirmed. The writ petition under reply is devoid of any substance and fit to be rejected on the sole ground that A.C.P. Scheme is not applicable in the said "Institute".

14. Having heard the arguments advanced on behalf of the parties and from perusal of records and Annexure-2 of the writ application, it manifests that the Deputy Director, Higher Education, H.R.D., Patna wrote a letter to the Registrar of the



said Institution informing that the Institution is itself competent to grant the said benefit to its employees and requested to decide with regard to the grant of A.C.P. to its employees vide letter dated 13.05.2009 and further in view of the provision of Section 8(2) of the said notification (Annexure-5) the Managing Committee has already approved the grant of A.C.P. in its meeting held on 25.06.2018. Further, similarly situated persons have already been granted benefits of A.C.P. (Annexure-4 and 5).

15. Considering the facts and circumstances of the case and the fact that the Managing Committee has already approved grants of A.C.P., this Court deems it fit and proper to direct the Institute to grant benefit of A.C.P. scheme to the petitioner within two months from the date of receipt/production of a copy of this order.

16. With the aforesaid direction, the writ application stands disposed of.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2024
Transmission Date	NA

