

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21519 of 2012

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1. Atiqur Rahman S/O Late Abdul Ghafoor Resident Of Baswaria, Mical Colony, Near Masjid, Post- Bettiah, District- West Champaran.
 2. Bikramaditya Singh S/O Late Ram Raj Singh Resident Of New Chandmari Near Durga Mandir, Post Motihari, District- East Champaran.
 3. Yogendra Prasad Singh S/O Late Ram Sakal Singh Resident Of Rajiv Nagar, Road No. 6, Post Keshari Nagar, District- Patna.
 4. Balram Prasad Singh S/O Late Ayodhya Prasad Singh Resident Of Road No. 3, Friend Colony, Post, Ashiana, Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board, through its Chairman, Vidyut Bhawan, Bailey Road, Patna
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan Bailey Road, Patna.
3. The Secretary, Bihar State Electricity Board Vidyut Bhawan Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shravan Kumar, Sr. Advocate Mr. Satish Kumar Singh, Advocate Mr. Rajiv Nayan Singh, Advocate Mr. Dinesh Maharaj, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Akhileshwar Singh, Advocate Mr. Venkatesh Kirti, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 02-08-2024

Heard Mr. Shravan Kumar, learned Senior Counsel

along with Mr. Satish Kumar Singh, Mr. Rajiv Nayan Singh

and Mr. Dinesh Maharaj, learned counsels appearing on behalf

of the petitioners and Mr. Vinay Kirti Singh, learned Senior

Counsel along with Mr. Akhileshwar Singh and Mr. Venkatesh

Kirti, learned counsels for the respondents.



2. The Petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

(i) The respondent be directed to grant benefit of ACP as per ACP Scheme 2003, to the petitioners.

(ii) The impugned decision as contained in letter no 106 dated 25.6.2012 as contained in Annexure-10 be quashed.

(iii) The Hon'ble Court may hold that the resolution of the board as contained in Annexure-10, superseding earlier decisions in regard to ACP entitles the petitioners to get benefit of ACP Scheme 2003 or in the alternative quash Boards resolution contained in Annexure-3 dated 7.10.2005.

(iv) Any other relief/reliefs for which the Petitioners are held entitled too.”

Brief Facts:

3. Brief facts of the case are that the petitioners were appointed on 31.05.1969, 09.01.1973, 16.02.1973 and 01.12.1973 as Junior Electrical Engineer by the erstwhile Bihar State Electricity Board. Petitioner no.1 was promoted to the post of Assistant Electrical Engineer in December 2000, and rest of the petitioners were promoted to the post of Assistant Electrical Engineer in May, 2004. The petitioners were superannuated on 31.05.2008, 31.03.2007, 31.12.2007 and 30.11.2008



respectively after competing total service of 34-39 years while working as Electrical Executive Engineer. The respondent Board surprisingly issued another notification No.108 dated 07.10.2005 which provided ACP scheme 2003 would apply to the staff appointed after issuance of the Board Notification No.25 dated 05.04.2005. Subsequently, modified Assured Career Progression Scheme, 2010 was notified by the State Government in Bihar Gazette on 16th July 2010 as per recommendation of the 6th Central Pay Commission recommendation effective from 01.01.2009. Clause 8 provides that ACP Scheme 2003 would apply to the employees till 31.12.2008; beginning from 09.08.1999 and the petitioners having qualified service and retired in between March 2007 to November 2008 are entitled to the grant of benefits of ACP as per Scheme 2003. After the said adoption of the modified ACP scheme 2010, ACP scheme 2003 will be effective for the period 09.08.1999 to 31.12.2008. Thereafter, the petitioners had earlier filed a writ bearing C.W.J.C. No- 5454/2012 for direction to the respondents to grant the benefits of Bihar State Employees Services Conditions ACP Scheme, 2003 within a fixed prescribed period of time. The aforesaid C.W.J.C. No. 5454/2012 was disposed of *vide* order dated 26.03.2012, with a



liberty to the petitioners to approach the Respondent Chairman of the Bihar Electricity Board, Patna by filling a fresh application/representation with detailing their claim along with a copy of the order within 15 days and the authorities concerned were directed to consider the same in accordance with law and pass speaking order considering the various notifications and their effect upon the claim of the petitioners within 3 months. Thereafter, the petitioners filed detailed representation dated 04.04.2012 before the Chairman of the Board. However, the petitioners' representation was rejected by order dated 25.06.2012 (Annexure 10) on the ground that time bound promotion was availed and the petitioners retired before 01.01.2009 and, as such, they are not entitled for ACP 2003). Aggrieved by the same, the petitioners have approached this Court.

Submission on behalf of the petitioner:

4. Learned senior counsel appearing on behalf of the petitioners submitted that the Government of Bihar *vide* Finance Department Notification dated 25.06.2003 framed rules to regulate the procedure and condition for granting benefits of Assured Career Progression to the Regular Employees Service Condition (Assured Career Progression Scheme) Rule, 2003,



which came into effect from 09.08.1999. The scheme provided the first financial progression on the completion of 12 years of service and second financial progression on completion of further 12 years of service, i.e., after completion of 24 years of regular service. The Board adopted the said resolution vide Notification No.25 dated 05.04.2005 with immediate effect. Subsequently, Modified Assured Career Progression Scheme, 2010 was notified by the State Government on 14.07.2010, which came into effect from 01.01.2009 onwards. Under ACP scheme, it was required to be adopted by the public undertakings or the autonomous institutions. Rule 3(1) provides the financial progression availed under selection grade/time bound promotion scheme applicable prior to 01.01.1996 shall not be treated as financial progression for ACP scheme. Considering their claim for financial up-gradation, the petitioners had approached this Court for the similar relief by filing CWJC No.5454 of 2012 and this Court *vide* order dated 26.03.2012 had relegated the petitioners to the forum of respondents by filing fresh representation and authorities were directed to consider the same in accordance with law within three months. The petitioners' representation was rejected by order dated 25.06.2012 (Annexure 10).



5. Learned senior counsel further submitted that MACP scheme became operational from 01.01.2009, whereas ACP scheme was operational for the period 09.08.1999 to 31.12.2008. The petitioners were in service on 09.08.1999 and retired during 2007-08. The petitioners claim is for ACP and not for MACP. Though ACP scheme was allowed by notification No.25 dated 05.04.2005 (Annexure 2) but the same was made applicable to appointees after 05.04.2005 *vide* notification No.108 dated 07.10.2005 (Annexure 3). The notification dated 05.04.2005 (Annexure 2) reveals that the decision to allow ACP across Board was taken on the basis of recommendations of the committee, which recommended replacement of scheme of selection grade and time bound promotion with ACP Scheme. No reason was assigned *vide* Annexure 3 that decided ACP scheme would apply to new appointees after 05.04.2005. He further submitted that the erstwhile Board adopted MACP scheme with effect from 01.01.2009 dated 20.08.2010 (Annexure 5), while superseding earlier decisions in regard to time bound promotion/ACP scheme. The consequence is that decision in regard to ACP *vide* Annexure 2 dated 05.04.2005 and Annexure 3 dated 07.10.2005 stood superseded and MACP scheme involves grant of benefit of MACP 2003 for the period



09.08.1999 to 31.12.2008, which provides that ACP scheme 2003 (Annexure 4) shall be applicable for financial progression upto 31.12.2008. On account of supersession of Annexure 2 dated 05.04.2005 and Annexure 3 dated 07.10.2005, there is no decision to bar grant of relief under ACP scheme, which the petitioners claim on financial progression for having completed 24 years of service on 09.08.1999. On 09.08.1999 the petitioners were drawing salary in the pay scale of Rs.7850-275-1050-300-13650/- and as such, they are entitled to one scale higher i.e., Rs.10500-325-12450-375-16575 with all consequential benefits.

6. *Per contra*, Mr. Vinay Kirti Singh, learned senior counsel appearing on behalf of the the respondents submitted that ACP scheme came into effect from 05.04.2005 and the petitioners no.1 to 4 were appointed on 31.05.1969, 09.01.1973, 16.02.1973 and 01.12.1973 respectively and they superannuated on 31.05.2008, 31.03.2007, 31.12.2007 and 30.11.2008 respectively. The Respondents rejected the claim of the petitioners for grant of the benefits of the said ACP Scheme 2003 on the ground hereinafter mentioned:

“(i) Since time bound promotion scheme was applicable to the Engineering Cadre before 01.01.2009 and the same were given to the eligible persons and the petitioners had already retired before 01.01.2009 and hence they were not entitled for benefit of the said ACP Scheme-2003.



(ii) The other ground taken by the Respondent Chairman of the Bihar Electricity Board was that in view of the Notification dated 05.04.2005 and Notification dated 07.10.2005 the benefit of the said ACP Scheme was made applicable for the Staffs appointed after issuance of Board Notification No. 25 dated 05.04.2005 and the same was not applicable in the case of the petitioners, because petitioner retired before 01.01.2009 and the first benefit as per the said notification would be granted after lapse of 12 years in case of employment after 05.04.2005.”

Analysis

7. Having heard the rival submissions made on behalf of the the parties, the record reveals that the respondent-Board in order to implement the ACP scheme had constituted a Committee which recommended for the implementation of the ACP scheme as applicable to Government employees. Accordingly agreeing with the recommendations of the said committee, the Board under section 79 (c) of the Electricity Supply Act, 1948 adopted the ACP scheme as notified by the Government vide Notification No.3M-2-5-PR- 28/99-4685-F(2)-O Finance Department, Government of Bihar. The Notification No.- 25 contained in Annexure-2 was made part of the cadre regulations and was further made effective in its operation with immediate effect i.e 05.04.2005. The Notification as contained in Annexure-2 as modified by another notification/resolution bearing no.- 108 dated 07.10.2005 as contained in Annexure-3 to the extent that the ACP scheme adopted by Annexure-2 was to apply for the staff appointed after



the notification dated 05.04.2005. Though earlier the Board vide its Notification No. 108 dated 07.10.2005 had taken decision that ACP Scheme 2003 would apply to the appointees after 05.04.2005, the same stood superseded by Resolution No. 134 dated 20.08.2010. The ACP Scheme 2010, under clause 8 provides that ACP Scheme 2003 would apply to the employees till 31.12.2008; beginning from 09.08.1999 and the petitioners having qualified service and retired in between March 2007 to November 2008 are entitled to the grant of benefits of ACP as per Scheme 2003. It is the case of the petitioners that the ACP scheme applies irrespective of earlier grant of time bound promotions and insistence in the impugned order that the petitioners having availed time bound promotion were not entitled to ACP Scheme, is not tenable.

8. Petitioners rendered more than 24 years of qualifying service before their respective superannuation and being aggrieved, they had earlier filed a writ bearing C.W.J.C. No- 5454/2012 for direction to the Respondents to grant the benefits of Bihar State Employees Services Conditions ACP Scheme, 2003 within a fixed prescribed period of time. The aforesaid C.W.J.C. No. 5454/2012 was disposed of vide order dated 26.03.2012, with a liberty to the petitioners to approach



the Respondent Chairman of the Bihar Electricity Board, Patna by filling a fresh application/representation with detailing their claim along with the order of this Hon'ble Court within 15 days from the date of order i.e. 26.03.2012, and the authority concern were directed to consider the same in accordance with law and pass speaking order considering the various notifications and their effect upon the claim of the petitioners within 3 months thereafter.

9. The relevant provision under **The Assured Career Progression Scheme for The Central Government Civilian Employees in Office Memorandum No. 35034/1/97 Estt. (D)**, dated, August 9, 1999, Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide Reference: Office Memorandum No. 35034/1/97-Estt(D)(Vol.IV) in Annexure dated 18.7.2001 is reproduced hereinafter:

S.No.	Point of doubt	Clarification
34.	An employee has superannuated after 9.8.1999, i.e. the date from which ACPS was introduced. He had completed the required eligibility service as on 9.8.1999 for grant of financial upgradation but he retired on superannuation before the Screening Committee could meet to assess his suitability for grant of benefits under ACPS. Will he be entitled	In terms of condition no. 3 of the ACP Scheme introduced <i>vide</i> O.M. dated 9.8.1999, the financial benefit under the ACPS shall be granted from the date of completion of the eligibility period prescribed under the ACPS or from the date of issue of the instructions whichever is later. Therefore, in respect of employees who had completed eligibility service as on 9.8.1999 but retired prior to



	for financial upgradation under ACPS?	meeting of the first Screening Committee meeting, if the assessment to decide grant of financial upgradation is based on ACRs and other service records, the employees who retired after 9.8.1999 may also be considered by the Screening Committee and, if recommended for grant of financial upgradation, such employees may be allowed the benefit of ACPS from the due date. If, however, the assessment also includes passing of a trade test/skill test/written examination (as prescribed for regular promotion) under ACPS and the employee had not qualified in such tests already, then it may not be possible to consider the retired persons, as assessment based on such tests is not possible after the date of superannuation.
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10. Considering the aforesaid facts and the scheme of the ACP, I find it proper to direct the petitioners to file their individual representation for considering their case by the appropriate authorities in accordance with law in respect of claim for their entitlement for the reliefs, as sought for in the present writ petition.

11. The writ petition is, accordingly, disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2024
Transmission Date	NA

