

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1546 of 2021

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Anuj Kumar Son of Late Mahendra Kumar Residen tof A/12 Ashokpuri,
Khajpura, B.V. College P.S.-Shastri Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through he Principal Secretary, Higher Education Department Having his Office at Vikas Bhawan, PS Sachivalaya, District-Patna.
2. The Director, Higher Education Having his Office at Vikas Bhawan, P.S. Sachivalaya, District-Patna.
3. Smt. Vidhu Rani Sahay Singh D/o Triloki Nath Sahay, the Principal Gulzarbagh Womens College having her Office at Gulzarbagh Womes College, P.S. Sultanganj, District-Patna.
4. Sri Reveti Ranjan Prasad S/o Late Manoranjan Prasad the Clerk Gulzarbagh Womens College, having his Office at Gulzarbagh Womens College, P.S. Sultanganj, District-Patna.
5. Sri Bhaskar Jha Fathers Name Not Known the Petitioner, the Assistant Incharge Section XIV, Higher Education, Having his Office at Vikas Bawan, P.S. Sachivalaya, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukeshwar Dayal, Adv., Mr. Vikash Mohan, Adv.
For the State	:	Mr. Madhaw Prasad Yadaw, GP-23, Mr. Rajesh Kumar Sinha, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 25-11-2024

I.A. No. 02 of 2024

At the time of final hearing of the instant writ petition, it is pointed out by the learned Advocate on behalf of the respondents that on Interlocutory Application bearing I.A. No. 02 of 2024 is pending for recalling the order dated 11th November,



2024, imposing costs upon the respondents for failure to file counter affidavit in time.

2. It is submitted by the learned Advocate on behalf of the respondents that the respondents filed the counter affidavit online, but it was not incorporated in the record. Physical file of the counter affidavit was also filed.

3. Under such circumstances, the respondents may be condoned from the responsibility to file costs as imposed vide order dated 11th November, 2024.

4. Having heard the learned counsels for the parties, the prayer is allowed.

5. The order dated 11th November, 2024 is recalled.

6. In the instant writ petition, the petitioner has challenged the legality and propriety of the order dated 30th September, 2019, wherein the petitioner was granted A.C.P. w.e.f. 25th March, 2010 with a rider that though the A.C.P. was granted to be paid w.e.f. 25th March, 2010, but the same would be paid actually from the date of his passing the departmental examination.

7. Subsequent to the institution of the writ petition, by passing another order, the respondents reduced the rate of A.C.P. which was directed to be paid to him @ Rs. 9300-34800/- with



Grade Pay of Rs. 4600/- to Rs. 5200-20200/- with Grade Pay of Rs. 2800/-. Thus, the petitioner has prayed for following reliefs:-

“(a) That writ in the nature of certiorari may be issued partly quashing the Clause 5 of notification vide Memo No. 1694 dated 30.09.2019 by which the respondents have denied the consequential benefit from the date of promotion, rather it is said that consequential benefit will be granted from date of passing the departmental examination.

(b) That the respondent may be further directed to give the consequential benefit w.e.f. 25.3.2008 for 1st A.C.P. and benefit of 2nd A.C.P. w.e.f. 25.3.2018 along with interest at the rate of 15 per annum from the due date till the actual payment is made on the basis of the order passed by the Hon’ble Court in C.W.J.C. No. 12101 of 2013.

(c) That any other releif or reliefs for which the petitioner is entitled may be granted by this Hon’ble Court.”

8. Learned Advocate on behalf of the petitioner submits that in ***Kamlanand Thakur Vrs. The State of Bihar & Ors., passed in C.W.J.C. No. 18727 of 2017*** along with other cases, the Full Bench, relying upon the decision of the Hon’ble Supreme Court in ***Amresh Kumar Singh & Ors. Vrs. The State of Bihar & Ors.***, reported in ***2023 (2) PLJR SC 423***, held in paragraph-47 as hereunder:-



“ The effect of the Scheme, the Supreme Court went on, must be Judged keeping in view the object and purport of the Scheme. In that contest, it was further held that the fulfillment of educational qualifications prescribed under the Recruitment Rules for the purposes of promotion are not necessary for non-functional in situ promotion like grant of A.C.P.”

9. The learned Advocate on behalf of the respondents submits that though the respondents have filed counter affidavit, but the learned counsel is not in a position to contradict the decision passed by the Hon'ble Supreme Court as well as the Full Court of this Bench, wherein the requirement of passing examination, as a condition precedent, to grant A.C.P. is done away with.

10. Considering the above facts and circumstances of the legal position operating in the field, this Court is of the view that in case of the petitioner the Notification No. 14/M7-10/18-1694, dated 30th September, 2019 shall be given effect too.

11. The rider mentioned in Clause-5 of the said Notification in respect of the petitioner regarding the requirement of passing departmental examination is quashed and cancelled.

12. Subsequent order dated 14/M7-10/2018/142, dated 18th February, 2022 is also quashed and cancelled.



13. The respondents are directed to grant A.C.P. @ which has been stated in Annexure-1 from the date of its issue within three months from the date of this order.

14. With the above order, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

