

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.488 of 2018

In
Letters Patent Appeal No.1695 of 2016

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1. The State Of Bihar through the Chief Secretary, Govt, of Bihar, Patna.
 2. The Principal Secretary, Road Construction Department, Govt, of Bihar, Patna.
 3. The Engineer-in-Chief-Cum-Additional Secretary-cum-Special Secretary, Road Construction Department, Govt, of Bihar, Patna.
 4. The Superintending Engineer, Road Construction Department, Mechanical Circle, Patna,

... .. Petitioners

Versus

1. Pranav Kant Babban, Son of Late Nand Kishore Prasad, resident of Flat No. 402, A.R.N. Villa, Apartment, Mahatma Gandhi Nagar, Kanti Factory, Road, Patna P.O.- Bahadurpur Housing Colony, P.S- Agamkuan, District- Patna, presently working as Accounts Clerk in the office of Superintending Engineer, Road Construction Department Mechanical Circle, Patna.
2. The Finance Secretary, Finance Department, Govt. of Bihar, Patna.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Dubey, AC to AAG-11
Mr. Dinesh Maharaj AC To AAG-11
For the Opposite Party/s : Mr. S.B.K. Manglam, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

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

Date : 01-05-2024

On 24.04.2024, the following order was passed:

“We find prima facie the review petitioners have no case on merits in the light of Hon'ble Supreme Court decision in the case of Amresh Kumar Singh and Others Vs State of Bihar and others reported in 2023 SCC Online SC 496 in which Hon'ble Supreme Court has distinguished in respect of entitlement of time



bound advancement/ACP to the extent that an employee need not fulfill the requisite criteria for the next higher promotion in other words, promotion and ACP/time bound promotion has been distinguished. In this regard, State counsel, is hereby directed to take note of the aforementioned decision and apprise this Court as to whether the cited decisions is applicable to the present case or not? If there is no assistance on the next date of hearing we will dismiss the present civil review for the reasons that present review petition is pending consideration for the last about six years.

2. Re-list this matter on 01.05.2024.”

2. Today, learned counsel for the review petitioners-State relying on reported decision in the case of ***State of Haryana and Others v. Sita Ram and Others***, reported in ***(2013) 16 SCC 677 (Para-4)***. To distinguish Amresh Kumar Singh decision, para-4 of the aforementioned decision reads as under:-

“4. After 4 years, the Governor of Haryana framed the 1998 Rules. Rules 1, 3(b), 3(d), 3(e), 3(q), 3(r) and 5 of those Rules read as under:

“1.Short title, commencement and objective.—(1) These Rules may be called the Haryana Civil Services (Assured Career Progression) Rules, 1998.

(2) They shall be deemed to have come into



force on the first day of January, 1996, unless otherwise provided by the Government for any class or category of persons.

(3) The objective of these Rules is to provide such of government servants who fall within the scope of these Rules, at least two financial upgradations, including the financial upgradation, if any, availed by such government servants as a consequence of the functional promotion, within the corresponding prescribed period of length of service during his entire career, as may be specified under these Rules or by the Government from time to time within these Rules, with reference to the functional pay scale of the post on which he joined the Government service as a direct recruited fresh entrant.

3. Definitions.— *In these Rules, unless the context otherwise requires—*

(b) ‘direct recruited fresh entrant’ with reference to a post or a government servant means the post on which such government servant was recruited as a regular and direct recruitee in the Government service and is in continuous employment of Government since such recruitment;

(d) ‘functional pay scale’ in relation to a government servant means the pay scale which is prescribed for the post held by the government servant. It does not mean any other pay scale in which the government servant is drawing his pay as a personal measure to him with any other justification like based on length of service, or on higher/additional qualification or on upgradation



of pay scale due to any other reason.

(e) 'first assured career progression scale' with reference to—

(i) government servant means the revised scale as mentioned in Column 3 of Part I of Schedule I against the name of post(s) in Column 2 of Part I of Schedule I, on which the government servant was recruited as a direct recruited fresh entrant in the Government service,

(ii) all other government servants not covered in sub-clause (i) above but on whom these Rules apply, the pay scale as mentioned in Column 3 of Part II of Schedule I against the pay scale mentioned in Column 2 of Part II of Schedule I, as the corresponding existing scale prescribed for the post against which such government servant was recruited as a direct recruited fresh entrant in the Government service:

Provided that the First Assured Career Progression scale may also be referred to as first ACP scale or ACP I scale.

(q) 'second assured career progression scale' with reference to—

(i) government servant means the revised scale as mentioned in Column 4 of Part I of Schedule I against the name of post(s) in Column 2 of Part I of Schedule I, on which the government servant was recruited as a direct recruited fresh entrant in the Government service;

(ii) all other government servants not covered in sub-clause (i) above but on whom these Rules apply, the pay scale as mentioned in Column 4 of Part II of Schedule I against the pay scale mentioned in Column 2 of Part II of Schedule I, as the corresponding existing pay scale prescribed for



the post against which such government servant was recruited as a direct recruited fresh entrant in the Government service:

Provided that the Second Assured Career Progression scale may also be referred to as second ACP scale or ACP II scale.

(r) 'standard pay scale' (as it is or with the prefix 'First' or 'Second', as the case may be) with respect to any government servant means the scale of pay, other than the existing pay scale prescribed for the post on which such government servant is working, in which the government servant was drawing his pay prior to 31-12-1995 and also any pay scale granted to him for the purposes of drawing his pay as 'pay scale as a personal measure to him' as defined under these Rules through any other order/notification of the Government or with any other reason;

5. Eligibility for grant of ACP scales.—(1)

Every government servant who, after a regular satisfactory service for a minimum period of 10 years, if the minimum period is not otherwise prescribed to be different than 10 years either in these Rules or by the Government for any class or categories of government servant from time to time, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31-12-1995, on which he was recruited as a direct recruited fresh entrant—

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay



scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31-12-1995, shall for the purposes of drawal of pay, be eligible for placement into the first ACP scale with reference to him.

(2) Every government servant who, after a regular satisfactory service for a minimum period of 20 years, if the minimum period is not otherwise prescribed to be different than 20 years either in these Rules or by the Government for any class or categories of government servant from time to time, has not got more than one financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31-12-1995 on which he was recruited as a direct recruited fresh entrant—

(a) either as a consequence of his functional promotion in the hierarchy, or

(b) as a consequence of the revision of pay scale for the same post, or

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31-12-1995, shall for the purposes of drawal of pay, be eligible for placement into the second ACP scale with reference to him:

Provided that grant of ACP scale shall also be considered for financial upgradation for the purposes of this Rule.

Note.—For the purposes of these Rules, ‘regular satisfactory service’ would mean



continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government before reorganisation, commencing from the date on which the government servant joined his service after being recruited through the prescribed procedure or rules, etc. for regular recruitment, in the cadre in which he is working at the time of being considered his eligibility for grant of ACP scales under these Rules and further fulfilling all the requirements prescribed for determining the suitability of grant of ACP scales.

Explanation.—The ACP scale upgradation will come into play only if due to functional promotion or upgradation of scale for the same post as specified above, the government servant has not got the benefit of at least one pay scale upgradation within the prescribed period of 10 years or any other prescribed period for the grant of first ACP scale or two such financial upgradations within a period of 20 years or within the period otherwise specified for grant of second ACP scale. If within 10 years of service or within the prescribed period of service for the grant of first ACP, the employee has already got at least one financial upgradation or within 20 years of service, as the case may be, or otherwise prescribed period of service for the grant of second ACP scale, the government servant has already got at least two financial upgradations, benefit of these Rules will not be extended to such employees save if otherwise provided in these Rules.

(3) For determining the eligibility of grant of ACP scale, following conditions must also be fulfilled by the government servant—

(a) After completing the respective prescribed period for eligibility for the grant of ACP scales the government servant should be fit to



be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;

(b) If such promotion involves test of any departmental post or other test, etc. such condition should also be fulfilled by such government servant.

(4) The eligibility for grant of the ACP scales shall further be subject to any other restriction as may be prescribed by the Government from time to time including the restriction of the number of government servant to be granted the respective ACP scales in terms of percentage of posts in the cadre to which such ACP placements shall be limited:

Provided that till the time such restrictions are not imposed by the Government—

(a) there shall be no restriction on the number of government servants to be granted the first or second ACP scales with reference to the government servants covered in sub-rule (2) of Rule 4.

(b) for the government servants covered in sub-rule (1) of Rule 4, there shall be no restriction on the number of government servants for grant of first ACP scale. However, the grant of the second ACP scale for such government servants as covered in sub-rule (1) of Rule 4 shall be limited to 20% of the total posts in the cadre.”

3. In the State of Haryana case (cited supra) is of the year 2013, whereas Amresh Kumar Singh case is of the year 2023 and in Amresh Kumar Singh and Others case, Hon'ble Supreme Court interpreted Rules of the State of Bihar.



Therefore, State of Haryana’s case cited on behalf of review petitioner is not applicable to the case in hand. Accordingly, review petitioners contention that it is a distinguishable is not acceptable.

4. Accordingly, the present Civil Review petition stands dismissed. Pending I.A, if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2024
Transmission Date	NA

