

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13316 of 2024

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Birendra Prasad Singh S/o- Majetar Singh Resident of Village- Baluwa,
Police Station- Ara (Mufassil), District- Bhojpur (Ara) Pin- 802312.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Finance, Government of Bihar, Patna.
2. The Joint Secretary, Department of Finance, Government of Bihar, Patna.
3. The Senior Account Officer, Office of the Accountant General (A and E) Bihar Mahalekhakar Bhawan, Birchand Patel Path, Patna- 800001.
4. The District Magistrate, Bhojpur at Ara.
5. The District Panchayat Officer, Bhojpur at Ara.
6. The Block Development Officer, Ara Sadar, District- Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhanesh Shankar Vidyarthi, Advocate
For the State	:	Mr. Ramadhar Singh, GP-25
For the AG	:	Mr. Raj Nandan Prasad, Advocate
		Mr. Vishesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 05-09-2024 Heard Mr. Dhanesh Shankar Vidyarthi, learned counsel appearing on behalf of the petitioner, Mr. Ramadhar Singh, learned GP-25 appearing on behalf of the State and Mr. Raj Nandan Prasad, learned counsel along with Mr. Vishesh Kumar Singh, learned counsel appearing on behalf of the Accountant General, Bihar.

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

"1. That this is an application for a writ in the



nature of mandamus directing and commanding to the respondent authorities especially to the respondent no. 04 and 05 to redress the claim regarding assured career progression scheme i.e. ACP-I & ACP-II which is due with the department and was not given the same without any valid reason. The petitioner joined on 01.07.2000 on the post of Panchayat Secretary in Bhojpur District worked on the said post in different Panchayats of the District and retired from the service on 28.02.2021 from Block Ara Sadar and further be pleased to issue a direction to the respondent No. 04 to dispose of the claim of petitioner expeditiously in the light of the order passed in a similar case bearing C.W.J.C. No. 9093 of 2019 dated 30.05.2019 for that entitlement of the petitioner is legal and legitimate."

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed on 01.07.2000 and had retired from the post of Panchayat Secretary on 28.02.2021, however, the pension of the petitioner was not fixed after giving the benefit of 1st and 2nd A.C.P. Petitioner claims that similarly situated Panchayat Secretaries have been given the benefit from their due date of eligibility and seeks to file a detailed representation before the District Magistrate-cum-Collector, Bhojpur at Ara, in light of the law laid down by the Apex Court in the case of ***Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.*** reported in ***2023 SCC OnLine SC 496*** and the recent judgment dated 28.06.2024 of the Hon'ble Full Bench of this Court passed in ***CWJC No. 18727 of 2017 (Kamlanand Thakur Vs. The State of Bihar)*** and other analogous matter.

4. Per contra, learned counsel appearing on behalf of the State submitted that the pension of the petitioner has been



fixed after giving all the benefits including time bound promotion and benefit of 1st and 2nd ACP to the petitioner as it would appear from the PPO (Annexure P/1) and the petitioner has deliberately not brought on record the entire order to mislead this Court and on these ground he submitted that the present writ petition is fit to be dismissed for suppression of vital fact from the Court, alternatively, learned counsel further submitted that the pension of the petitioner has been fixed in accordance with law and PPO (Annexure P/1) has been issued giving all the retiral benefits to the petitioner.

5. Heard the parties.

6. I have examined Annexure-P/1 and Annexure-P/2. I find force in the submission made on behalf of the learned State counsel to the effect that Annexure P/2 shows that the order has been issued in respect of 16 Panchayat Secretaries to whom 1st ACP and 2nd ACP in pay scale of Rs. 5000-8000 and 5500-9000 has been allowed and the petitioner having not brought on record the entire order, as contained in Annexure P/2, I find it proper to caution learned counsel appearing on behalf of the petitioner to not suppress any vital fact from the Court, however, at the same time, PPO has been issued on the basis of last pay drawn, as it would appear from Annexure P/1 and other retiral



benefits has been granted to the petitioner. However, in absence of proper information and for considering the claim of the petitioner, I find it proper to refer Rule 4 (5) and Explanation (II) thereto of **Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003** is reproduced hereinafter.

(4) Eligibility and conditions

(5) The requirements and manner of grant of financial progression under the Scheme shall be the same which have been prescribed for regular promotion against vacancies under recruitment/ appointment Rules. If for any promotion passing of departmental examination or any other eligibility has been prescribed then the same would also be necessary condition for grant of benefit under the Scheme if such condition is prescribed under Rules/Circulars/Resolutions.

Explanation (II) – If first financial progression under the A.C.P. Scheme is not granted exactly after 12 years but it granted with delay to a government servant on account of departmental proceeding, etc. or on account of not having been found fit for promotion then the second financial progression under the A.C.P. Scheme would be granted after 12 years from the date of first financial progression.



7. The terms and conditions, as per Rule 4(5) of the 2003 Rules, is that the requirement for grant of financial progression would be the same as prescribed for grant of regular promotion under service rules/orders governing grant of regular promotion. Another terms and condition, as per Explanation (II) to the said Rule 4(5), is that if grant of 1st A.C.P. is delayed beyond 12 years due to a departmental proceeding or due to not having been found fit for promotion, then the date of grant of 2nd A.C.P. would be accordingly delayed beyond 12 years thereafter.

8. Considering the provision of the Scheme, the applicable Rule governing grant of regular promotion to the petitioner puts condition that an employee is mandatorily required to be adjudged fit to be promoted before grant of regular promotion i.e. in other words, his service should not be unsatisfactory.

9. In view of the fact that the petitioner has claimed that he has been stagnated on the same post and seeks to file a detailed representation, the District Magistrate, Bhojpur at Ara (respondent no.4) is required to call for the service particulars of the petitioner and verify, as to whether any disciplinary action or any penalty order has been passed against the petitioner and



decide the grievance of the petitioner expeditiously, in light of the law laid down by the Apex Court in the case of **Amresh Kumar Singh (Supra)** and the Full Bench of this Court in the case of **Kamlanand Thakur (Supra)**.

10. It is, however, worth to be noted that ACP scheme is a financial progression given to an employee, which is time-bound scheme, as a result of stagnation of government servant on the same post.

11. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Mantreshwar/-
Ashishsingh/-

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