

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3019 of 2018**

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Manohar Kumar Son of Late Ghanshyam Singh, resident of Mohalla-  
Dahiyawan- Jagdamba Road, Chapra, P.S.- Chapra Town, District- Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate, Saran at Chapra.
3. The Deputy Collector, Establishment, Saran at Chapra.
4. The Senior Deputy Collector, District Legal Section, Saran at Chapra.
5. The Block Development Officer, Sonepur, Saran.

... .. Respondent/s

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**Appearance :**

|                      |   |                                  |
|----------------------|---|----------------------------------|
| For the Petitioner/s | : | Mr. Sanjay Kumar Singh, Advocate |
| For the State        | : | Mr. Sheo Shankar Prasad (SC-8)   |

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**

**ORAL JUDGMENT**

**Date : 17-04-2025**

Heard Learned Counsel for the petitioner and  
Learned Counsel for the State.

2. The present writ petition has been filed for the  
following relief/s:-

*“I. For directing the Respondent no.2 to  
grant the 1<sup>st</sup> and 2<sup>nd</sup> time bound promotion  
as well as benefits of A.C.P which came in  
the year 2003 w.e.f 09.08.1999 with all  
consequential benefits to the father of the  
petitioner who died in harness in the year  
2000.*

*II. For quashing of the letter dated*



*15.04.2017 contained in Memo No.465 (annexed as Annexure-9) issued by Respondent no.3 whereby the claim of the petitioner has not been allowed stating that father of the petitioner not fulfill the condition stipulated in Letter No.3/R-1-101-91-Ka-4674 dated 15.05.1992 which is without application of mind and cannot be sustained in the eyes of law.*

*III. For grant of any other relief or reliefs for which petitioner is entitled.”*

3. Learned Counsel for the petitioner submits that the petitioner's father was initially appointed as Lower Division Clerk and joined the post on 10.05.1965 in the office of Block Development Officer, Siwan and he served in the department with full devotion, honesty and integrity to the satisfaction of the authority. Counsel submits that when petitioner's father was posted as Assistant under Sonepur prakhand of Saran District, he died on 07.10.2000 during course of his service. Petitioner's father rendered his service for more than 35 years in the aforesaid department of the State Government. Counsel submits that the service condition applicable upon the petitioner's father is Bihar State Employees Conditions of Service Condition (Assured Career Progression Scheme) Rules, 2003 and the said



scheme came into existence w.e.f 09.08.1999. Counsel submits that though, petitioner's father died in the year 2000, but being the son, he filed representation before the District Magistrate, Saran on 22.12.2010 stating that his father had passed Hindi Noting & Drafting examination as per law and therefore, he was entitled for 1<sup>st</sup> time bound promotion w.e.f. 01.04.1981 and 2<sup>nd</sup> time bound promotion w.e.f. 10.05.1990 after completion of 25 years of his service which has not been granted to him. Counsel further submits that when the claim of petitioner's father was not settled by the respondent authorities, then the petitioner moved before this Hon'ble Court in Civil Writ Jurisdiction Case No.20801 of 2012 (Manohar Kumar Vs. The State of Bihar & Ors.) in which *vide* order dated 26.11.2012, the writ petition was dismissed in view of inordinate delay in approaching the Court and it was also observed that the Court has not expressed any opinion on the merits of the case but liberty was granted to the petitioner to pursue his representation, if so advised, and if done, the concerned authority may dispose of the same in accordance with law on its own merits.

4. Learned Counsel for the petitioner further submits that the petitioner has filed several representations before Respondent no.2 for redressal of his grievances *vide*



Annexure-4 series and thereafter, petitioner has filed legal notice. Counsel submits that subsequently, in the year 2017 *vide* letter dated 15.04.2017 contained in Memo No.465 (annexed as Annexure-9), claim of the petitioner has not been considered and rejected without application of mind and the petitioner has challenged the said letter in this writ petition. Counsel submits that the said letter is basically a non-jurisdictional error, as it has been passed by the Deputy Collector, Establishment, Saran at Chapra and it ought to be passed by the District Magistrate, Saran only. Counsel further submits that this Hon'ble Court *vide* order dated 16.04.2003 passed in Civil Writ Jurisdiction Case No.1453 of 2003 has allowed the benefit of promotion to one other employee namely, Md. Shamsul Hoda. Counsel submits that petitioner's father has entitlement to receive the ACP and therefore, relief may be granted to the petitioner by setting aside Annexure-9 which is a letter dated 15.04.2017 contained in Memo No.465.

5. Learned Counsel for the State on the other hand submits that it is a clear cut stand of the petitioner that his father was initially appointed as Lower Division Clerk and joined the post in the year 1965 and after completion of 35 years, he died on 07.10.2000 during course of his service. Counsel submits



that this Hon'ble Court has not considered the petitioner's application in CWJC No.20801 of 2012 on merit but, liberty was granted to the petitioner to pursue the representation before the authority concerned. Counsel further submits that according to the then rule, petitioner's father has to appear repeatedly in the departmental examination, but become unsuccessful or due to Government reason, he could not appear in the examination or after completion of 50 years of age particularly when, examination could not be completed for earlier 5 years, then only exemption has been provided to the State employee and petitioner's father was entitled for the benefit. Counsel further submits that the petitioner's father did not fulfill the said criteria which was available at that very period of time and as such, his case was not considered for promotion. Counsel relied on Annexure-E to the counter affidavit which categorically indicates that for exemption from departmental examination, no letter was present. It could not be ascertained that whether in the departmental examination, the father of the petitioner appeared continuously. It has also been mentioned that during service, 50 years of age was completed by petitioner's father on 04.01.1994. Counsel submits that it has also come that there was no restriction from the Government's side due to which he has



been stopped for appearing in the examination and it has been acknowledged that the departmental examination used to take place every year.

6. In the light of the submission made and after hearing the parties as well as perusal of the documents, it transpires to this Court that the cause of action for the petitioner to sue has arisen after death of his father, as the said scheme i.e. Bihar State Employees Conditions of Service Condition (Assured Career Progression Scheme) has come in the year 2003 w.e.f 1999. It also transpires to this Court that the petitioner after his father's death, has moved before this Hon'ble Court in the year 2012 and this Hon'ble Court has refused to interfere on merit of the case and only liberty was granted to the petitioner to pursue the representation before the authority concerned. Petitioner thereafter, filed representation before the authority concerned and they verified and rejected the claim of the petitioner with reasons assigned in the counter affidavit.

7. This Court hereby acknowledge the order no.3 dated 19.09.2023 passed in this case in which it was directed that the matter be taken up after disposal of L.P.A No.1609 of 2019 (State of Bihar & Ors. Vs. Manzar Hassan) which was to be decided by the Hon'ble Full Bench of this Court. The said



judgment has been decided by the Hon'ble Full Bench of this Court on 28.06.2024 in case of Kamlanand Thakur Vs. The State of Bihar & Ors. in Civil Writ Jurisdiction Case No.18727 of 2017 with other analogous cases in which, the question was answered whose relevant paragraph is 48 which states as follows:-

*“48. Thus, the questions stand answered as follows:-*

*(A.) Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958, requiring passing of Departmental Accounts Examination for promotion, is not applicable in case of grant of A.C.P. benefits under the A.C.P. Rules, 2003;*

*(B.) Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958 is confined to passing of preliminary examination/final examination in Accounts only for the purposes of confirmation, crossing the efficiency bar and promotion to Selection Grade only and not for regular promotion;*

*(C.) Rule 4(5) of the A.C.P. Rules, 2003 even though provides that the prescribed requirements and mode of sanction of financial progression under the scheme (A.C.P. scheme) shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against*



*vacancies and if the Rules/Resolutions prescribe passing of Departmental Examination or any qualification for promotion, that shall also be an essential condition for sanction of benefit under the scheme will not affect the claim for grant of A.C.P. after completion of twelve/twenty four years of service for the reason that such financial progression under the A.C.P. scheme is only in situ promotion and nothing more. This is even notwithstanding any such requirement of passing any Departmental Examination or acquiring any educational qualification for promotion under the Service/Recruitment/Promotion Rules.”*

8. It transpires to this Court that on any earlier occasion, the authorities have no opportunity to go through the aforesaid judgment decided by the Hon’ble Full Bench of this Court and without consideration by the authority of the aforesaid judgment, it shall not be appropriate for this Court to pass any order.

9. As such, this writ petition is hereby disposed off granting liberty to the petitioner to file a fresh representation before the District Magistrate, Saran at Chapra (Respondent no.2) and the Respondent no.2 shall decide the petitioner’s



representation afresh within 90 days thereafter in the light of the decision of Hon’ble Full Bench of this Court in case of Kamlanand Thakur Vs. The State of Bihar & Ors. (*supra*).

10. It is made clear this Court has not decided anything on merit, rather, referring this issue to decide completely in accordance with law with the applicability of the General Clauses Act, 1897 (Act no.10 of 1897) as well as the decision rendered by the Hon’ble Full Bench of this Court in case of Kamlanand Thakur Vs. The State of Bihar & Ors. (*supra*).

**(Dr. Anshuman, J)**

Divyansh/-

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| AFR/NAFR          |            |
| CAV DATE          | NA         |
| Uploading Date    | 23/04/2025 |
| Transmission Date | NA         |

