

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12517 of 2014

Birendra Kumar, aged about 62 years, Son of Late Harihar Prasad, resident of Das Kutir, East Lohanipur, Police Station - Kadamkuan, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Minor Water Resources Department, New Secretariat, Vikas Bhawan, Patna
2. The Chief Engineer, Minor Water Resources Department, New Secretariat, Vikas Bhawan, Patna.
3. The Executive Engineer, Minor Irrigation Design Division, Riding Road, Sheikhpura, Police Station – Shastrinagar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Rupak Kumar, Advocate
For the Respondent/s : Mr Anuj Kumar, AC to GP XXIV

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 19-11-2019

Heard learned counsel for the petitioner and the respondent-State.

2 The grievance, in the instant proceeding, is that the petitioner has not been granted second Assured Career Progression (for brevity, ACP) on the due date, i e, 24 years from his date of joining dated 25.03.1983. Petitioner's counsel submits that he completed 24 years of service on 25.04.2007. Grant of benefits under second ACP with effect from 02.05.2011 is without any basis and contrary to the scheme of ACP.



3 Learned State Counsel, however, submits that the benefit has been granted in terms of the order passed by this Court on the petitioner's earlier writ proceedings arising out of CWJC No 15700 of 2012. It is further submitted that the due date for grant of the benefit would be on completing the requisite length of service of 12 years from the date of his passing the Departmental Examination, i e, 02.05.2001.

4 On going through the pleadings and hearing the parties, this Court would find that the petitioner had preferred a contempt petition for non-compliance of order dated 07.03.2013 passed in his earlier writ petition. It is in the said contempt proceedings that the order dated 06.11.2013 was issued granting the petitioner benefit of second ACP with effect from 02.05.2011. This Court, in the contempt proceedings, had clearly allowed opportunity to the petitioner that he may represent his case or take action in accordance with law if he is aggrieved by the order granting second ACP. Thereafter, the petitioner has also represented before the Authorities by a detailed representation which is Annexure 10 to the writ petition and the same is dated 30.06.2014. Till date, Authorities have taken no decision on the said representation. The order dated 06.11.2013, which is assailed in the instant proceedings, was, therefore, very much open to



challenge to the petitioner and stand of the State that it is in compliance of the orders of the Writ Court is fully unjustified.

5 The second submission with regard to date of acquiring qualification is prima facie unsustainable as even if that was the stand of the State, the same is not manifest in the order dated 06.11.2013. It grants second ACP with effect from 02.05.2011, which date also is not 12 years after acquiring the qualification.

6 The petitioner's counsel has placed reliance on the ACP Scheme of 2003. Clause 3 (1) (1क) (II) of the same reads as follows:

“(II) यदि इस योजना के लागू होने की तिथि को किसी कर्मी की सेवा 12 वर्षों से अधिक हो चुकी हो और उसे प्रथम वित्तीय उन्नयन मंजूर किया जाता है तो द्वितीय वित्तीय उन्नयन 24 वर्षों की सेवावधि पूर्ण होने पर मंजूर किया जायेगा और इस प्रयोजनार्थ प्रथम वित्तीय उन्नयन की तिथि से 12 वर्षों की अतिरिक्त अवधि को पूरा किये जाने की शर्त लागू नहीं होगी।”

7 From bare perusal of the Scheme, it is apparent that in a case where the employee has completed 12 years at the time of implementation of the Scheme and is granted the benefits of the first ACP, the second ACP was to be granted to him on completing 24 years of total length of service. This Rule specifically clarifies that for the said purpose, the 12 years period for grant of second ACP would not be counted from the date on which date the first



ACP has been granted. Rule is that the second ACP is to be granted after 24 years of service, irrespective of the date on which first ACP has been sanctioned/granted to the employee.

8 The Authorities, therefore, are not in any way justified in granting the benefit of second ACP with effect from 02.05.2011. The same is neither a date on which the petitioner completed 24 years of service nor a date of 12 years from grant of first ACP, i e, 02.05.2001. The date on which he has been granted the second ACP is without any basis.

9 In the circumstances, this Court would direct the Authorities to grant the petitioner benefit of second ACP by calculating 24 years from his joining being 25.03.1983.

10 With the aforesaid direction, the writ petition is allowed.

11 Authorities would be obliged to issue necessary order granting the benefit of second ACP and the consequential monetary benefits arising therefrom within a period of three months from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.11.2019
Transmission Date	NA

