

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18727 of 2017

=====

Kamlanand Thakur, Son of Late Surya Narain Thakur, resident of Village and Post- Chandra Via Raiyam, P.S.- Raiyam, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Irrigation Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Irrigation Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Irrigation Department, Darbhanga.
5. The Superintending Engineer, Western Koshi Canal Circle, Madhubani.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

=====

with
Letters Patent Appeal No. 1788 of 2017
In
Civil Writ Jurisdiction Case No.18372 of 2016

=====

1. The State of Bihar.
2. The Principal Secretary, Department of Industry, Bihar, Patna.
3. The Principle Secretary, Department of Finance Government of Bihar, Patna.
4. The Director, Handloom and Sericulture, Department of Industry, Bihar, Patna.
5. The Additional Director of Industry, Department of Industry, Bihar, Patna.

... .. Appellant/s

Versus

1. Jai Prakash Prasad, Son of late Hira Lal Prasad, Resident of Village and P.O.-Islampur, District-Nalanda.
2. Upendra Prasad Singh, Son of late Ram Lakhan Singh, Resident of Village- Hasanpur, P.O.-Kolawan, P.S.-Harnaut, District-Nalanda at Biharsharif.

... .. Respondent/s

=====

with
Civil Writ Jurisdiction Case No. 2376 of 2018

=====



Wasi Ahmad Ansari, Son of Late Md. Qurban Ansari, Resident of Village-Pachakesar, P.S.-Terra, Karpi, District-Arwal, presently residing at Road No.15-A, Sector-II, Haroon Nagar Colony, P.S.-Phulwarisarif, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The State of Jharkhand through Principal Chief Conservator of Forest, Government of Jharkhand, Ranchi.
3. The Principal Chief Conservator of Forest, Government of Bihar, Patna.
4. The Chief Conservator of Forest (Headquarters), Patna.
5. The Regional Chief Conservator of Forest, Patna.
6. The Divisional Forest Officer, Gaya.
7. The Divisional Forest Officer, Munger.
8. The Divisional Forest Officer, Aurangabad.
9. The Divisional Forest Officer, Gopalganj.
10. The Forest Research Officer, Ranchi, Jharkhand.

... .. Respondent/s

with
Letters Patent Appeal No. 1609 of 2019
In
Civil Writ Jurisdiction Case No.7751 of 2016

1. The State of Bihar through Executive Engineer, Road Construction Department, Road Division, Jamui.
2. Principal Secretary, Road Construction Department, Visheshwaraiya Bhawan, Patna.
3. The Secretary, Road Construction Department, Visheshwaraiya Bhawan, Patna.
4. Engineer-in-Chief-cum-Special Secretary, Road Construction Department, Visheshwaraiya Bhawan, Patna.
5. Commissioner, Munger Division.
6. Chief Engineer, Road Construction Department, South Bihar, Patna.
7. District Magistrate, Jamui.
8. Superintending Engineer, Road Circle, Munger.
9. Executive Engineer, Road Division, Road Construction Department, Jamui.

... .. Appellant/s

Versus



Manzar Hassan, Son of Late Md. Manzoor Ahmad, Resident of Village-
Hassan Manzil, Pashchim Tola, Ward No.18, Khaira Road, P.S. and District-
Jamui.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6245 of 2020

Ram Naresh Choudhary, gender – Male, aged about 65 years, Son of Late
Satyadev Choudhary, Resident of Village-Sonbarsha, P.S.-Bihpur, District-
Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Finance Department,
Government of Bihar, Old Secretariat, Bailey Road, Patna.
2. The District Magistrate, Bhagalpur.
3. The District Accounts Officer, Bhagalpur.
4. The District and Sessions Judge, Civil Court, Bhagalpur.
5. The Judge in Charge, Civil Courts, Bhagalpur.
6. The Judge in Charge, Civil Courts, Naugachia.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 18727 of 2017)

For the Petitioner/s : Mr. Prashant Sinha, Adv.
Mr. Kunal Kumar, Adv.
Mr. Rishi Raj Raman, Adv.
For the Respondent/s : Mr. Anjani Kumar, AAG-4
Mr. Alok Kr. Rahi, AC to AAG-4
Mr. Shailendra Kr. Singh, AC to AAG-4
Mr. Amit Kr. Jha, AC to AAG-4

(In Letters Patent Appeal No. 1788 of 2017)

For the Appellant/s : Mr. Abbas Haider, SC-6
Mr. Wasi Mohammad, AC to SC-6
For the Respondent/s : Mr. Rajesh Dayal, Adv.

(In Civil Writ Jurisdiction Case No. 2376 of 2018)

For the Petitioner/s : Mr. Sanjay Prakash Verma, Adv.
For the Respondent/s : Mr. A.N. Sinha, GP-21
For the State of Jharkhand: Mr. Sanjay Kr. Pandey, Adv.

(In Letters Patent Appeal No. 1609 of 2019)

For the Appellant/s : Mr. Ajay, GA-5
Mr. Pratik Kumar Sinha, AC to GA-5
For the Respondent/s : Mr. Amit Shrivastava, Sr. Adv.



Mr. Prabhat Ranjan Singh, Adv.

Mr. Girish Pandey, Adv.

(In Civil Writ Jurisdiction Case No. 6245 of 2020)

For the Petitioner/s : Mr. Sunil Kumar Singh, Adv.

For the Respondent/s : Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

For the High Court : Mr. Satyabir Bharti, Adv.

Mr. Kanupriya, Adv.

Mr. Abhishek Anand, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 28-06-2024

A Single Judge of this Court in ***Kamlanand***

Thakur vs. State of Bihar & Ors. (C.W.J.C. No. 18727

of 2017), while dealing with the issue, viz., whether

passing of Departmental Accounts Examination is a

condition precedent for grant of benefits under the Bihar

State Employees Condition of Service (Assured Career

Progression Scheme) Rules, 2003 (***hereinafter referred***

to as the A.C.P. Rules), referred the matter to a larger

Bench, formulating the following questions to be

decided :

(I) *Whether Clause [J] of sub-*

Rule (3) of Rule 157 of the Bihar Board's



Miscellaneous Rules, 1958 applies for grant of Assured Career Progression under the Bihar State Employees Condition of Service (Assured Career Progression Scheme) Rules, 2003?

(II) Whether Clause [J] of sub-Rule (3) of Rule 157 of the Bihar Board's Miscellaneous Rules, 1958 is confined to passing of preliminary examination in accounts/final examination in accounts for the purposes of confirmation, crossing the efficiency bar and promotion to selection grade only and not for regular promotion.

(III) Any other ancillary question(s) arising out of the above-mentioned issues/questions.

2. Similarly, a Division Bench of this Court in ***The State of Bihar & Ors. vs. Manzar Hassan (L.P.A. No. 1609 of 2019 arising out of C.W.J.C. No. 7751 of 2016)***, noting the divergence of opinion on the issue, again made a referral to a larger Bench for deciding whether Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958, stipulating passing of Accounts Examination, would be deemed necessary for



availing the monetary benefit under the A.C.P. Rules, 2003, particularly Rule 4(5), as time-bound promotion is a substitute of selection grade and A.C.P. is the substitute of time-bound promotion, particularly in the view of the fact that the purpose behind introduction of Selection Grade and A.C.P. is one and same.

3. In the Division Bench referral (**LPA No. 1609 of 2019**), the Bench had noted that in some of the cases, viz., **State of Bihar & Ors. v. Anjani Kumar (D.B.) : 2013 (2) PLJR 643; State of Bihar & Ors. v. Mahendra Baitha (D.B.) : 2018 (3) PLJR 173; The State of Bihar v. Md. Naisruddin (D.B.) : 2016 (3) PLJR 861; State of Bihar & Ors. v. Kusheshwar Nath Pandey and Anr. (D.B.) : 2013 (1) PLJR 939; Maheshwar Pd. Singh (F.B.) : 2000 (4) PLJR 262; and Daya Shankar Singh v. State of Bihar & Ors., 2010 (3) PLJR 220 (S.J.)**, it had been decided that there would be no need to pass the Accounts Examination under Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958 or for getting benefits of A.C.P., which is



only a financial progression, and such examination is a must only if it is provided in the specific Service Rules for crossing the efficiency bar and for being given Selection Grade.

4. On the other hand, the judgments rendered in ***Ramadhar Thakur v. State of Bihar & Ors.*** [L.P.A. No. 599 of 2015 (D.B.)]; ***Uday Shankar Pd. v. State of Bihar & Ors. (D.B.) : 2017 (3) PLJR 824;*** ***State of Bihar & Ors. v. Sri Ram Subhag Singh : 2022 (2) PLJR 773;*** ***State of Bihar & Ors. v. Smt. Jivachi Devi : 2020 (2) BLJ 471*** and in ***Indu Devi v. State of Bihar & Ors. : 2019 (2) BLJ 330***, clarified that for getting the benefits of A.C.P., there would be no particular need for passing the Accounts Examination as provided under the Bihar Board's Miscellaneous Rules, 1958.

5. The case of ***Uday Shankar Prasad*** (*supra*) was taken to Supreme Court at the instance of the State of Bihar, in which, though the S.L.P. was dismissed, but



it was observed by the Supreme Court that the Division Bench of the High Court did not address itself to the issue that there would be far-reaching consequences in the service condition, as people who claim A.C.P. may not take any efforts to improve their performance by passing the Accounts test.

6. The S.L.P., referred to above, was dismissed only for the reason of Uday Shankar Prasad/respondent therein, being at the fag end of his service career and that he had litigated for quite long. However, it was clarified that the decision in ***Uday Shankar Prasad*** (*supra*) by the High Court would not be taken as a precedent.

7. Similarly, it was also noticed that in cases where it was decided by the High Court that there is a requirement of passing the examination for availing the benefit of A.C.P., the Supreme Court though had dismissed the S.L.Ps, but the question of law had been kept open.



8. The afore-noted issues, therefore, came up for consideration before this Full Bench.

9. Before commencing with the discussion over the issue, we deem it appropriate to cull out the provisions contained in Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958 as also Rule 4 of the A.C.P. Rules, 2003 for ready reference and completeness.

**157. Rules for the
Examination in Accounts**

.....

(3.) [J] (a) Any clerk, who has not passed I the preliminary examination in Accounts, will be neither confirmed nor be allowed to cross-the efficiency bar;

(b) A clerk, who has not passed the final examination, will not be promoted to the selection grade;

(c) In case of non-availability of senior clerk, finally passed in Accounts Examination, any junior clerk, having passed the final Accounts Examination may be temporarily promoted to the Selection Grade:



Provided that the junior clerk temporarily promoted to the Selection grade shall be reverted to the post of clerk if the clerk senior to him passes the final Accounts examination within two years from the date of his first supersession and is promoted with effect from any date within the said two years, otherwise the senior clerk would be treated junior to all the clerks promoted to the Selection grade prior to him.

Explanation.-Under proviso to (c), the date of passing the examination of Accounts would be the date on which the examination was held and the post of selection grade held by the junior clerk shall be deemed to be vacant from that very date for the purpose of promoting senior clerk. But, for the fixation of pay etc. the junior clerk shall be deemed to have been reverted from the date with effect from which the senior clerk will be promoted. The seniority of the reverted junior clerk shall be effective from the date on which he will again be promoted as permanent to the Selection grade.



4. Eligibility and Condition

(A.C.P. Rules, 2003) : *The eligibility under this scheme shall be Regulated by the following conditions :-*

(1) The basic criterion for the sanction of "Financial Progression under the ACP scheme is whether the concerned employee has been working in the same scale of pay, including the revised scale, for the prescribed period of 12/24 years. In such a situation, higher scales of pay shall be sanctioned irrespective of the fact that the person has worked on different posts in the same scale.

Provided that if appointment on a post, different from the post on original appointment, is made in the higher scale of pay, then it shall be treated as direct recruitment and previous service shall not be counted for the purpose of sanction of the benefits of financial progression under the Scheme.

Example : *(i) If a person working as Sweeper is recruited on the post of orderly, the scale of pay of which is the same, previous service shall be counted.*



(ii) In case of recruitment from the post of orderly to the post of driver, which has a higher scale of pay the service rendered on the post of orderly shall not be counted.

(2) Appointment made to higher post on the basis of selection made through Limited Competitive Examination, shall be treated as direct recruitment for the purpose of sanction of financial progression under the Scheme and service rendered in the lower scale of pay shall not be counted if there is provision for direct recruitment in the relevant Recruitment Rules :

Provided that if the relevant recruitment rules, a promotion quota has been fixed for the employees in the lower scale of pay, then such appointment shall be treated as promotion for the purpose of benefit of financial progression under the Scheme and the past service shall be counted for the sanction of benefits of financial progression.

Explanation : *(i) For example, if the relevant Recruitment Rules provide for filling up of vacancies of*



Deputy Collectors cadre only by direct recruitment and any secretariat Assistant is recruited in the said grade, through. Limited Competitive Examination, then it shall be treated as direct recruitment for the purpose of sanction of benefit under the Scheme. In such cases, period of service rendered in a lower pay scale shall not be counted for the purpose of benefit of financial progression under the Scheme. On the other hand relevant Recruitment Rules for appointment to LDC prescribe a promotion quota for group 'D' employee so the service rendered as group 'D' shall be counted for sanction of financial progression under the scheme subject to the promotional quota and they would be treated as having obtained one financial progression.

(ii) A promotion quota is fixed for Junior Engineers in the Assistant Engineers cadre, though there is no provision for Competitive Examination for this promotion. However there is provision for Junior Engineer, on acquiring an engineering degree, to get promotion into the cadre of Assistant Engineers.



Therefore, a Junior Engineer, shall be treated as having got a promotion for the purpose of sanction of benefits of financial progression under the Scheme, even though both the cadres are separate. Such employees shall be deemed to have got the first financial progression.

[(ii.a) For granting ACP promotion to regularised work charged employee their tenure as workcharged will be counted.

(3) For determining whether the benefit of financial progression is due or not or how many progression is due under the Scheme, a scrutiny of the service history of the employee concerned, including pay scales sanctioned after each pay revision is absolutely essential so that it can be verified as to whether benefit of financial progression has been granted after the initial appointment and if so, how much?

Explanation : *If an employee is appointed in Scale-1 and now he is in Scale-2 then he shall be granted one more financial progression in Scale-3 under ACPS. Thus if an employee is*



appointed in Scale-1 and now placed in Scale-3, then he not be granted any financial progression.

(4) Only regular service, which is counted for the purpose of regular promotion, shall be counted for the purpose of financial progression under ACPS. Consequently, the period of service rendered on ad-hoc basis, even if subsequently it has been regularized and sanction of increment have been given shall not be counted for the sanction of benefits of financial progression under the Scheme.

Explanation : *(i) Service rendered on casual or daily wages basis/ contract '[x x x]' basis or temporary basis shall not be counted for the purpose of benefit of financial progression under the Scheme.*

(ii) If an employee working under temporary service '[x x x]' enters into regular service, the period starting from the date of such regularization or the period of regular service alone shall be counted for the purpose of sanction of benefits of financial progression under the



Scheme.

[(ii.a) - The tenure of service as workcharged shall be counted for ACP for these employees who have been regularised from workcharged.

(iii) If an employee of a Public Sector Undertaking or an autonomous body enters into regular service of State government, the period of his service rendered from the date of his entry into government-service alone shall be counted for the purpose of sanction of financial progression under the Scheme.

(5) The prescribed requirements and mode of sanction of financial progression under the scheme shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies. If the Rules/Resolutions prescribe passing of the departmental examination or any qualification for promotion that shall also be an essential condition for sanction of benefit under the scheme, provided that after completion of 12/24 years of service, the financial progression shall become due and for this, there shall be



no bar of period prescribed for regular promotion.

Explanation: (i)

Notwithstanding any provision for relaxation in the period of service for regular promotion to certain categories of employees contained in any Rules, no relaxation of conditions in the period of 12/24 to eligibility years shall be granted for the benefits of financial progression under the Scheme.

(ii) If the first financial progression, granted to a Govt. servant, is delayed beyond 12 years of regular service due to disciplinary proceedings etc. or due to the government servant being found unfit for promotion, then the second financial progression under the Scheme shall be granted after 12 years for the date of the first financial progression.

[(6) The competent authority to grant promotion to the higher post of any cadre/hierarchy shall be the competent authority to grant financial progression under the scheme on the recommendation or the screening committee.



(emphasis provided)

10. A brief detour of the case law on the subject would, in our estimation, be necessary to spell out as to how the law has been interpreted and developed in this regard.

11. In ***Md. Shamsuddin & Ors. vs. State of Bihar and Ors. : 1983 PLJR 347***, the writ petitioners had challenged the orders of promotion of respondents from Lower Division Clerk to Upper Division Clerk on the ground that the promotion would amount to their supersession. The petitioners therein had joined as temporary Lower Division Clerks and had been confirmed. Their cases for promotion to the Upper Division Clerk or Selection Grade Clerk post was not considered on the ground that they had not passed the final examination in Accounts as prescribed by the Bihar Board's Miscellaneous Rules, 1958. It was their contention that Bihar Board's Miscellaneous Rules, 1958 came into existence in the year 1947 before



independence. After the independence, under the Constitution, the Rules were adopted by the Statute. The Rules, therefore, became Statutory Rules.

12. Subsequently, in the year 1958, revised edition of Board's Miscellaneous Rules was published with some amendments. However, the Board's Miscellaneous Rules of 1958 had been promulgated by an executive order and not by any Statute. It was, therefore, argued that the Board's Miscellaneous Rules, 1958 could not override any provision of Bihar Board's Miscellaneous Rules of 1947. It was also urged that in the year 1910, the posts of Lower Division Clerks and Upper Division Clerks were amalgamated and a new Cadre of Assistants had been created. In the changed circumstances, therefore, the question of passing the departmental examination for the promotion to Upper Division Clerk or Selection Grade would not arise.

13. Acceding to such submission, the Division Bench in ***Md. Shamsuddin*** (*supra*) held that the



post of Selection Grade Clerks had been created much after the Board's Miscellaneous Rules, 1947 came into existence and which Rules became Statutory. Since it did not provide or lay down that for promotion to Selection Grade posts, passing of examination in Accounts is a must, the writ petitioners would not be allowed to suffer, if otherwise they are found fit for promotion.

14. The Bench took note of the fact that the Legislature had not framed any rule to regulate the recruitment and condition of service of persons appointed to the public service and post in connection with affairs of the State. Precisely for this reason, it was held that the provisions of the Board's Miscellaneous Rules, 1947, which was adopted after independence and which became Statutory, could not be amended by any executive order in contravention of the provisions contained in the Rules.

15. This interpretation had created confusion



in the matter and, ultimately, the issue travelled to the Full Bench in ***Maheshwar Prasad Singh vs. State of Bihar (F.B.) : 2000 (4) PLJR 262.*** The core issue before the Full Bench was whether the Clerks working in the *muffasil* offices were required to pass the departmental examination in Accounts for promotion to Selection Grades.

16. Before the Full Bench, it was the case of the aggrieved petitioners that even though there was a requirement for promotion from Lower Division Clerk to Upper Division Clerks under Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1947, but after amalgamation of posts of Lower Division Clerk and Upper Division Clerks and creation of a common Cadre of Clerks with effect from 01.05.1980, the provision became inapplicable and the amendments made subsequently to the Rule purporting to create similar bar with respect to promotion to Selection Grade by executive orders in the shape of "Correction Slips",



inserted in the Board's Miscellaneous Rules would not have any legal effect as Rule 157(3)[J], as it originally stood in the 1947 Rules, had statutory force, which could not have been modified by any executive order.

17. Thus, there being no requirement of passing the Accounts examination after amalgamation of the posts of Lower Division Clerks/Upper Division Clerks, the aggrieved petitioners could not be denied promotion on the Selection Grade, which was created in 1964 or the Senior Selection Grade, created in 1981, on the ground of non-passing of the Accounts Examination.

18. The relevant Rule of the Bihar Board's Miscellaneous Rules, quoted-above, was by virtue of "Correction Slip No. 30", dated 29.03.1982, which was again amended; this time under *proviso* to Article 309 of the Constitution *vide* "Statutory Order No. 431", dated 29.04.1985.

19. The Full Bench noted that the Board's Miscellaneous Rules were framed by the Board of



Revenue and made applicable to all the subordinate offices under the State Government to the extent that they were not inconsistent with any particular instructions, especially issued by the department concerned in relation to any particular office. The Rules were originally framed in 1947, which became Statutory under the Notification dated 26.04.1950 as it was a Rule existing prior to 26.01.1950.

20. This was the basis for the argument of the aggrieved petitioners, who were not given promotion to Selection Grade only on the ground of their having not passed the Accounts Examination. The Full Bench, however, opined that the 1958 Rules had to be read in continuum of the 1947 Rules; notwithstanding the fact that the executive amendments after the Rule became Statutory could not be regarded as Statutory in nature. However, the Full Bench relied on the judgment of the Supreme Court in ***Sant Ram Sharma vs. State of Rajasthan : AIR 1967 SC 1910***, where it was held that



in the absence of statutory rule, the Government is competent to issue administrative instructions and, thus, if the Statutory Rule in force is silent on a particular subject, it would be open to the Government to make orders and issue administrative instructions in order to supplement the Rules with the condition that such orders/instructions are not inconsistent or repugnant to those rules.

21. While examining the issue whether the later amendments in the Rules requiring the passing of departmental Accounts Examination for promotion to the higher post of the Selection Grade was inconsistent with the statutory Rules {Rule 157(3)[J]}, as it originally stood in the 1947 Rules, or as it stood later by virtue of Correction Slips in 1963 and 1982, it was found that passing of the Accounts Examination was always treated as a must for either crossing the efficiency bar or confirmation or for the purposes of promotion. The only difference was that while earlier, as regards promotion,



the requirement was applicable to promotion from Lower Division Clerks to Upper Division Clerks, but after the amendment by "Correction Slip No. 30", dated 29.03.1982, it was made applicable to promotion to the Selection Grade.

22. The Full Bench, thus, was of the view that in ***Md. Shamsuddin*** (*supra*), the amendments brought in the Rule *vide* "Correction Slip No. 30", dated 29.03.1982, was not brought to its notice. The Full Bench also took note of the judgment in ***Lalit Mohan Dev vs. Union of India: AIR 1972 SC 995*** that :-

"It is true that there are no statutory rules regulating the selection of assistants to the Selection Grade. But the absence of such rules is not a bar to the administration giving instructions regarding promotion to the higher grade as long as such instructions are not inconsistent with any rule on the subject."

23. The Full Bench also pointed out the distinction between promotion to higher posts and



promotion to Selection Grade. Promotion normally implies promotion to higher post with a higher pay. The concept of Selection Grade was evolved by the Central Pay Commission with the object of providing incentive to employees who had no outlet for promotion to higher posts, carrying a higher scale of pay, but without change in the duties. Such posts which were normally not to exceed 10% of the total posts were described as Selection Grade as distinct from higher posts in hierarchy.

24. Thus, for the period between 01.05.1980 to 29.03.1982, the Full Bench was of the view that the aggrieved petitioners would not be required to pass the departmental Account Examination after the amalgamation of the Lower Division Clerks and Upper Division Clerks posts, in the absence of any provision requiring the Clerks to pass Accounts Examination for promotion. The promotion could not be denied to them on account of non-passing of the Accounts Examination



during that period as the amendment dated 29.03.1982 was the result of administrative instruction and could not have had any retrospective effect. But for the period commencing from 29.04.1985, with the amendment having been brought under Article 309 of the Constitution, the Clerks could be promoted to the Selection Grade post only on their passing the Accounts Examination.

25. In ***State of Bihar & Ors. vs. Kusheshwar Nath Pandey : 2013 (1) PLJR 939***, the question again arose as to whether passing of Departmental Accounts Examination was an essential condition precedent for grant of time-bound promotion. It was held that all along, the Rules required passing of Accounts Examination as a condition precedent for promotion to a higher post including the promotion to a higher grade under the time-bound promotion scheme.

26. In ***State of Bihar & Ors. vs. Anjani Kumar : 2013 (2) PLJR 643***, the question which the



Bench was confronted with was whether there would be any requirement of passing the Departmental Accounts Examination as an essential condition precedent for grant of Assured Career Progression under the ACP Rules, 2003. The Division Bench, after noticing the Full Bench decision in ***Maheshwar Prasad Singh*** (*supra*) and in the Division Bench judgment in ***Kusheshwar Nath Pandey*** (*supra*) held as follows:

"It is not in dispute that the promotion in question is governed by the Bihar Board's Miscellaneous Rules, 1958. Rule 157 of the said Rule provides for passing of the departmental Account examination, a condition precedent for further promotion. The writ petitioner had not passed the departmental Accounts examination. He was, therefore, not eligible for promotion. Consequently, he was not entitled to the financial progression under the ACP."

27. It may be noted that in this case, the aggrieved petitioner had sought exemption from passing



of Departmental Examination on the ground that he had attained the age of 50 years and in accordance with the Government Circular dated 15.05.1992, such exemptions could be granted. But considering the Full Bench judgment in ***Maheshwar Prasad Singh*** (*supra*), namely, that the Government cannot amend, modify or supersede the Statutory Rules by administrative instructions and the judgment of the Division Bench in ***Kusheshwar Nath Pandey*** (*supra*), the prayer was rejected.

28. It may, however, be noted that in this case, the Division Bench proceeded on the premise that the promotion in question (ACP) was governed by Board's Miscellaneous Rules.

29. One ***Avinash Chandra Singh*** had been denied the benefit of second time-bound promotion and two ACPs under the ACP Rules on the ground that he had not passed the departmental Accounts examination. In this instance ***[Avinash Chandra Singh vs. State of***



Bihar and Ors. : 2012 (1) PLJR 663], it was held that in view of the Government letter dated 12.08.1992, where it was clearly mentioned that persons who had been granted promotion prior to 01.09.1983 would not be reverted only on the ground that he had not passed such Departmental Examination and promotion already granted prior to 01.09.1983 would not be withdrawn on the ground of non-passing of the said examination, found the grievance of the petitioner to be genuine and directed the Government to consider his case for re-promotion as well as ACPs in accordance with law.

30. Several years later, in ***Uday Shankar Prasad (L.P.A. No. 1871 of 2016 in C.W.J.C. No. 6326 of 2016)***, a Division Bench of this High Court was faced with the situation where the petitioner, who was appointed as Compilation Clerk in the Road Construction Department, Govt. of Bihar, was granted two promotions after completing twelve and twenty four years of service under the ACP Rules, 2003; which benefit was sought to



be withdrawn by the Government and the amount given to him recovered on the premise that the aggrieved person had passed the Departmental Accounts Examination only after the benefit under the ACP was given to him, which was beyond the provision contained in Rule 4(5) of the ACP Rules, 2003.

31. After going through the provisions of the ACP Rules, 2003 and Bihar Board's Miscellaneous Rules, 1958, the Bench tried to find out whether there were any promotion rules or recruitment rules for higher post to which a Compilation Clerk is promoted. Finding none, it was found that a Compilation Clerk had no further avenue for further promotion and recruitment to higher post.

32. The question faced by the Bench was whether the principles/law laid down in case of ***Kusheshwar Nath Pandey*** (*supra*) and the ACP Rules, 2003, the State decision to withdraw the promotion and monetary benefit was justified or not.



33. The ACP Rules clearly provided that the prescribed requirement and mode of sanction of financial progression under the ACP scheme would be same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies. It was found to be clear and unambiguous to the Division Bench that for getting benefit under the scheme in question, an employee had to fulfill all the conditions stipulated in the Recruitment or the Service Rules, which is prescribed for the regular promotion from the post held to the next higher post.

34. However, since there was no service rules for Compilation Clerks and no further avenue to such Clerks for being promoted to any higher post, Rule 4(5) ACP Rules, 2003 was held to be inapplicable.

35. It was also found by the Division Bench that since ACP Rules of 2003 have been framed under Article 309 of the Constitution of India, in which there is no stipulation that the Rules under the Bihar Board's



Miscellaneous Rules, 1958 would be applicable for grant of ACP, the State would not be within its powers to withdraw the benefits already given to the aggrieved petitioner under the scheme.

36. In ***Ramadhar Thakur Vs. The State of Bihar and Ors. (L.P.A. No. 599 of 2015 arising out of C.W.J.C. No. 486 of 2014)***, a similar question arose. In that case also, no rule governing the service of the aggrieved petitioner was brought to the notice of the Court. It was argued before the Bench that the provisions contained in Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958 prescribed the condition of passing the Departmental Examination for promotion to selection grade, but not regular promotion. The Bench found that in view of Rule 4(5) of the ACP Rules, 2003, the requirement for grant of regular promotion will be applicable by considering cases for grant of ACP, but since there is no provision prescribed in passing of Accounts Examination for regular



promotion, the aggrieved petitioner could not have been denied the grant of ACP.

37. However, in ***The State of Bihar & Ors. Vs. Mahendra Baitha (L.P.A. No. 332 of 2017 arising out of C.W.J.C. No. 13975 of 2011)***, the Division Bench of this Court found that even though the sum-essence of the ACP Rules, 2003 was an anti-stagnation measure, but the broad framework to the policy laid down in 2003 Rules is that the person must have remained on his post without promotion for twelve years and, thereafter, another twelve years, which makes it twenty four years for grant of ACP and the benefit would accrue only if an employee fulfills all the requirements which are needed for substantive promotion and if it includes passing of certain departmental examination etc., it must be read as integral to the scheme of the ACP.

38. Another Division Bench of this Court in ***The State of Bihar & Ors. Vs. Smt. Jivachi Devi***



(L.P.A. No. 833 of 2017 arising out of C.W.J.C. No. 679 of 2015), relying upon **Ramadhar Thakur** (*supra*), held that passing of Accounts Examination or Departmental Examination, as the case may be, under Bihar Board's Miscellaneous Rules, 1958 would only be necessary for crossing efficiency bar, confirmation and for promotion to selection grade, but not for general promotion.

39. A single Bench of this Court in **Masomat Indu Devi Vs. State of Bihar & Ors. : 2019 (2) PLJR 241** has also held that :-

(A.) The ACP Rules of 2003 do not provide an avenue of promotion, but only financial progression in case of no promotion having been given to an employee;

(B.) The recipient/beneficiary of such scheme has to be an employee who is otherwise eligible for being promoted to the higher post;

(C.) Passing of Accounts Examination or Departmental



Examination, as the case may be, under the Bihar Board Miscellaneous Rules, 1958 would be necessary for crossing efficiency bar, confirmation and for promotion to selection grade, but not general promotion; and

(D.) The requirement of passing the examination can only be thrust upon and made applicable to an employee in view of the Service Rules of the Department and such ACP Rules of 2003 is applicable when there are no promotional avenues available in the Cadre.

40. Be it further noted that the Division Bench judgment in **Ramadhar Thakur** (*supra*) is in conflict with Division Bench decision in **Kusheshwar Nath Pandey** (*supra*) and **Anjani Kumar** (*supra*), which two decisions were not noticed in **Ramadhar Thakur** (*supra*). This was also one of the reasons for the learned Single Judge in **Kamlanand Thakur (C.W.J.C. No. 18727 of 2017)** to refer the issue before a larger Bench.



41. The dispute now stands settled in view of the Supreme Court judgment ***in Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors. : 2023 (2) PLJR (SC) 423*** in which a very liberal and expansive interpretation to the law in question has been given. In that case, the appellants were appointed as Accounts Clerk where the minimum qualification was Intermediate. The Cadre of Junior Accounts Clerk and Senior Accounts Clerk, which existed prior to 1980, had merged with effect from 01st of May, 1980 and a common Cadre of Accounts Clerk had come into existence. In 1999, the demerger of Cadre took place and Clerks came to be retained in their respective Cadres without any promotional avenues. Those Clerks were extended the benefit of ACP by the Writ-Court; but in Appeal, the contention of State was accepted by the Division Bench that for the purposes of grant of ACPs, as per the Rules, the qualification of Graduation was *sin qua non*, which was not possessed by the appellants. The order of the



Writ-Court extending the benefit of ACP to the appellants, thus, was set aside.

42. The Supreme Court, after reviewing the Bihar Accounts Service Rules, 2000 as modified on 28th of March, 2000, which provided for minimum Graduation qualification for promotion to Bihar Accounts Service as also the ACP Rules of 2003, which spelled out that the beneficiary ought to fulfill the same conditions as would be required for promotion, held that "fulfillment of the educational qualifications prescribed under the Recruitment Rules for the purposes of promotion are not necessary for non-functional *in situ* promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of *in situ* promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated".

43. While coming to such conclusion, the Supreme Court has noted that the ACP scheme was



enforced on the recommendations of the 5th Central Pay Commission in the context of Group C and D employees and it provided monetary benefits to the employees on completion of twelve years and twenty four years of regular service, who were not able to get promotion. The scheme as such was anti-stagnation and envisaged merely placement of the employees in the higher pay-scale for the grant of financial up-gradation only, without grant of actual promotion.

44. The benefit of ACP as such is like granting non-functional *in situ* promotion.

45. The Supreme Court, after referring to ***Union of India & Ors. vs. C.R. Madhava Murthy and Anr. : (2022) 6 SCC 183*** and ***Union of India and Anr. vs. G. Ranjanna & Ors. : (2008) 14 SCC 721*** has held that the ACP/MACP scheme is only to relieve the frustration on account of stagnation and it does not involve actual grant of promotional post, but merely monetary benefits in the form of next higher grade,



subject to fulfillment of qualifications and eligibility criteria.

46. These are incentive schemes for the employees to complete a particular period of service but without getting promotion for lack of promotional avenues.

47. The effect of scheme, the Supreme Court went on, must be judged keeping in view the object and purport of the scheme. In that context, 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 ACP.

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.

49. The cases listed under the Reference are now remitted to the respective Benches for deciding the respective *lis*.

50. The Reference is answered accordingly.

(Ashutosh Kumar, J)

Nani Tagia, J : I agree

(Nani Tagia, J)

Partha Sarthy, J : I agree

(Partha Sarthy, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	18.04.2024
Uploading Date	28.06.2024
Transmission Date	N/A

