

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.948 of 2021

Vijay Kumar Mishra Son of Late Indra Narayan Mishra Resident of -Ward
No. 08, Dharampur, District-Samatipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Chief Engineer-3, Rural Works Department, Government of Bihar, Patna.
3. The Superintendent Engineer, Rural Works Department, Works Circle, Samastipur
4. The Executive Engineer, Rural Works Department, Works Division, Patori, Samastipur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kundan Kumar
For the Respondent/s : Mr.Lalit Kishore (Ag)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 24-03-2021

The present writ petition has been filed for grant of the benefits of ACP w.e.f. 09.08.1999 to the deceased father of the petitioner and for payment of all the consequential benefits thereof.

2. The brief facts of the case are that the deceased father of the petitioner joined service on 01.04.1970 and died in harness on 16.10.2005 while working on the post of Correspondence Clerk at Rural Development Department, Division-I, Samastipur. It is submitted that earlier also a writ petition bearing CWJC No. 12832 of 2013 was filed before this Court by the mother of the petitioner, however, during the



course of arguments, it transpired that the services of the deceased father of the petitioner has not been confirmed, hence, the said writ petition was permitted to be withdrawn by an order dated 14.12.2016. Subsequently, upon enquiry it transpired that the services of the deceased father of the petitioner had stood confirmed, however, he has been denied the benefits of ACP on the ground of non-passing of the departmental accounts examination.

3. Per contra, the learned counsel for the respondents, by referring to the counter-affidavit, has submitted that since the deceased father of the petitioner has failed to pass the departmental examination, he has not been granted the benefits of ACP.

4. I have heard the learned counsel for the parties and have gone through the materials on records. The issue in question is no longer res integra inasmuch as the said issue has already stood decided by a learned Division Bench of this Court in the case of **State of Bihar vs. Jivachi Devi**, reported in 2020 (2) BLJ 471, paragraphs No. 5 to 9 are reproduced herein below:-

“5. On the other hand, learned counsel appearing for the respondent submits that the issue involved in the appeal is no more res integra as the same has already been decided



by the Division Benches of this Court in the following decisions:—

(i). Bishwanath Prasad v. The State of Bihar, reported in (2011) 2 PLJR 136

(ii). Avinash Chandra Singh v. The State of Bihar, reported in (2012) 1 PLJR 663.

(iii). Uday Shankar Prasad v. The State of Bihar, reported in (2017) 3 PLJR 824.

(iv). Judgment dated 19.3.2018, passed in LPA No. 599/2015 (Ramadhar Thakur v. The State of Bihar)

6. Having heard learned counsel for the parties and on going through the records, it appears that the facts are not in dispute between the parties. The only issue involved in the appeal is as to whether passing of departmental accounts examination would be necessary for grant of benefits of Assured Career Progression, provided under the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 read with Clause (J) of Sub-rule (3) of Rule 157 of the Bihar Boards Miscellaneous Rules, 1958. I am in agreement with the submissions advanced by learned counsel appearing on behalf of the respondent that the issue, in hand, is no more res integra as the same has already been decided by different Division Benches of this Court in a catena of similar cases, mentioned herein below:—

(i). State of Bihar v. Anjani Kumar, reported in (2013) 2 PLJR 643

(ii). Uday Shankar Prasad v. The State of Bihar, reported in (2017) 3 PLJR 824 and

(iii). Ramadhar Thakur v. State of Bihar, reported in LPA



No. 599 of 2015.

7. Recently, a Division Bench of this Court in case of *Ramadhar Thakur (supra)*, after extensive analysis and discussion of the provision of rule 157(3)(J) of the Bihar Boards Miscellaneous Rules 1958 and Rule 4 (clause 5) of the Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003, conclusively held after referring to various judgments, viz., *Mithilesh Kumar Sinha v. The State of Bihar [(2006) 1 PLJR 282]*; *Syed Mozammil Ashraf v. The State of Bihar [(2007) 1 PLJR 438]*; *Shashi Shekhar Ambasta v. The State of Bihar [(2011) 3 PLJR 474]*; *Maheshwar Prasad Singh v. The State of Bihar [(2000) 4 PLJR 262]*; *Rameshwar Roy v. The State of Bihar [(2017) 2 PLJR 127]*; *Daya Shankar Singh v. The State of Bihar [(2010) 3 PLJR 220]* and *Md. Shamsuddin v. The State of Bihar [1983 PLJR 347]* that Rule 157(3)(J) of the Bihar Boards Miscellaneous Rules 1958 makes the passing of the departmental accounts examination a condition precedent for promotion to the selection grade, but not for general promotion and for not passing such exam, the benefits of the A.C.P. Rules, 2003, also cannot be withheld, unless there is a departmental rule for promotion. In other words, the Bench held that passing of departmental accounts examination is not a condition precedent for grant of A.C.P. Rules nor does Rule 157(3)(J) of the Bihar Boards Miscellaneous Rules, 1958 conceive of such a requirement. The same issue is also been involved in the case of *Masomat Indu Devi v. State of Bihar*, reported in (2019) 2 PLJR 241 in which the learned Single Judge of this Court has reiterated the same view and held that passing of accounts examination or departmental examination, as the case may be, under the Bihar Boards Miscellaneous Rules, 1958 would be necessary for crossing efficiency bar, confirmation and for promotion to selection grade, but not general



promotion. I also find that the provisions of the Bihar Water Resources Department Field Steno Typist's Cadre (Recruitment and Service Condition) Rules, 2014 does not apply in the respondent's case as respondent's husband superannuated from service in the year 2011. I do not find any reason to differ with the decision passed by co-ordinate benches of this Court.

8. In the facts and circumstances of the case and taking into account the law laid down by the successive Division Benches of this Court as discussed above, I am of the considered view that the appellants are not justified in refusing benefits of the financial progression to the husband of the respondent on the ground that he did not pass the account or departmental examination. In view of the law pronounced by the courts in the similar cases as discussed above, I do not find any infirmity in the judgment of the writ court, as such, the instant appeal, being devoid of merit, is accordingly dismissed.

9. Consequently, appellants are directed to consider the case of the respondent's husband for grant of ACP within eight weeks from the date of receipt/production of a copy of this order.”

5. Having regard to the law laid down by the learned Division Bench of this Court in the case of **Jivachi Devi** (supra), this Court finds that the benefits of ACP (Assured Career Progression), to the deceased father of the petitioner, could not have been denied on account of non-passing of the Departmental Accounts Examination, hence, the respondents are directed to grant the benefits of ACP to the deceased father of



the petitioner from the date, the same became due and, accordingly, make payment of the consequential monetary benefits to the legal heirs of the deceased father of the petitioner within a period of eight weeks from today.

6. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.03.2021
Transmission Date	N/A

