

Non-reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2023
[Arising out of SLP(C)NOS.8219-8226 of 2019]

AMRESH KUMAR SINGH & ORS.ETC.ETC. ... APPELLANTS

VERSUS

THE STATE OF BIHAR & ORS.ETC.ETC. ... RESPONDENTS

WITH

CIVIL APPEAL NO. OF 2023
[Arising out of SLP(C)NO.9666 of 2019]

WITH

CIVIL APPEAL NOS. OF 2023
[Arising out of SLP(C)NOS.11772-11773 of 2019]

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.
2. Heard Shri Navniti Prasad Singh, learned Senior Advocate leading the arguments on behalf of the

appellants, Mr. Saket Singh and Mr. Samir Ali Khan, learned counsel appearing for the State of Bihar.

3. These appeals have been preferred by the appellants as against the common judgment and order dated 05.02.2019 of the Division Bench of the High Court of Judicature at Patna whereby the Letter Patent Appeals (LPAs) of the respondents have been allowed and the judgment and order of the learned Single Judge dated 28.11.2017 allowing the writ petitions has been set aside.
4. The appellants were appointed as Accounts Clerks where the minimum qualification was intermediate. The cadre of Junior Accounts Clerk and Senior Accounts Clerk which existed prior to 1980 merged with effect from 1st May, 1980 and a common cadre of Accounts Clerk came into existence. In 1999, the demerger of the cadre took place and the Clerks came to be retained in their respective cadres without any promotional avenues.

5. The appellants invoked the writ jurisdiction of the court seeking benefit of Assured Career Progression (ACP) on completion of 12 years of service to avoid stagnation.
6. The writ court extended the benefit of ACP to the appellants keeping in view the earlier decisions of the High Court in CWJC Nos.18015/2011 Pramod Kumar vs. The State of Bihar and Others and 16346/2011 Ashok Kumar & Ors. Vs. State of Bihar and Ors.
7. In appeals, the Division Bench accepted the contention of the State of Bihar that for the purposes of grant of ACP as per the rules, the qualification of graduation is *sine qua non* which is not possessed by the appellants. Therefore, it held that the writ court committed an error in extending the benefit of ACP to the appellants who were not eligible and qualified for the purpose.
8. Upon hearing the rival contentions of the parties, the sole question which arises for our reconsideration in these appeals is whether the

qualification of graduation prescribed for promotion to the next higher post of Accounts Officer from that of Accounts Clerk is necessary even for the purpose of extending the benefit of ACP.

9. The Bihar Accounts Service Rules, 2000 as notified on 28th March, 2000 vide Rules 17 and 20 read with Schedule I thereof provides for recruitment by way of promotion. The aforesaid Rule 17, *inter alia*, provides that for promotion on the basis of grade of service, candidates must possess qualifications mentioned in Schedule I which, *inter alia*, provides that for promotion to Bihar Accounts Service, the minimum educational qualification shall be graduation.

10. At the same time Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003 vide sub-Rule (5) of Rule 4 lays down that if the rules 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. In other words, possession of essential qualification prescribed under the rules is necessary for grant of benefit under the scheme, i.e., ACP.

11. It is in view of the above rules, the contention of the State is that until and unless the Accountant Clerks possess the minimum educational qualifications of graduation, they are not entitled to promotion in the grade of Bihar Accounts Service that is the Accounts Officer.
12. It may be worth noting that the ACP scheme was enforced on the recommendation of the Fifth Central Pay Commission in context with Group C and D employees and it provided monetary benefit to the employees on completion of 12 years and 24 years of regular service who were not able to get promotion. The scheme as such was anti-stagnation and envisages merely placement of the employees in the higher pay scale for the grant of financial upgradation only without grant of actual promotion. The benefit of

the ACP as such is like granting non-functional *in situ* promotion.

13. At the cost of repetition, it must be borne in mind that the object of ACP is to avoid stagnation where no promotional avenues are available. The grant of ACP is not technically a grant of promotion but increase in the pay scale to the next higher grade retaining the employee on the post held by him. This is only to accord monetary benefit without disturbing any seniority or actually effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.
14. The object and purpose of ACP/MACP Scheme has been reiterated by this Court in Union of India & Others Vs. C.R. Madhava Murthy & Anr. (2022) 6 SCC 183, as one 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 fulfilment of qualifications and eligibility criteria.

15. In sum and substance, both ACP and MACP Schemes are schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief in the form of financial benefits. Accordingly, the schemes provide for regular financial upgradation on completion of 12-24 years and 10-20-30 years of service without promotion. They are incentive schemes for the employees who complete a particular period of service but without getting promotion for lack of promotional avenues. The effect of the schemes must be judged keeping in view the object and the purport of the scheme.
16. In Union of India and Anr. Vs. G.Ranjanna and Ors. reported in (2008) 14 SCC 721, the three-Judges Bench of this Court held that *in situ* promotions are made to remove stagnation of grade C and grade D employees by giving them certain monetary benefits.
17. It was further observed that fulfilment of 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.

18. In the aforesaid case, the employees were working as malis (Gardeners) and had claimed promotion in the higher pay scale. The Central Administrative Tribunal seized of the original applications observed that the employees cannot claim the scale of the next higher post by way of *in situ* promotion. On the matter being taken to the High Court by way of a writ petition, the contention of the employees was accepted and it was observed that the object of *in situ* promotion on non-functional posts, is to ensure that the group C and D employees are not stagnated in the same cadre/pay scale and that they

should be provided with certain monetary benefits. Therefore, the rejection of the claim for such non-functional *in situ* promotion on the ground that the employees do not possess the necessary minimum qualification of matriculation as per the rules is not justified and renders the order erroneous in law. The view so taken by the Division Bench of the High Court was affirmed by this Court in the above referred Civil Appeals holding that the High Court has correctly analysed the object of the *in situ* promotion and fixation of pay scales to Group C and D employees to avoid stagnation.

19. In view of the aforesaid legal position coupled with the fact that the qualification of graduation prescribed is for the promotion to the post of Accounts Officer rather than for the grant of *in situ* promotion on the non-functional post or for extending the benefit of ACP which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, we

are of the opinion that the judgment and order of the Division Bench of the High Court impugned in the appeals cannot be sustained. It is accordingly hereby set aside and that the judgment of the writ court dated 28.11.2017 is restored. The appellants are extended the benefit of ACP, as directed by the writ court.

20. We have not considered it necessary to deal with the two cases on the basis of which the Single Judge has allowed the writ petitions and granted the benefit of the ACP to the appellants, as we have independently of those two decisions have considered and held that the appellants are entitled to financial upgradation under the ACP Scheme on completion of requisite regular service ignoring the higher qualification prescribed for the next higher post as grant of such benefit is not actually a promotion but only financial upgradation and if the higher qualification is insisted it would frustrate the purpose of the entire scheme.

21. The appeals are allowed in the above terms. There shall be no order as to costs.

.....J.
[B.R. Gavai]

.....J.
[Pankaj Mithal]

New Delhi;
April 25, 2023.