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**(2009) 07 JH CK 0105**  
**In the Jharkhand High Court**

Md. Habibullah Ansari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 09-07-2009

**Acts Referred:**

**Citation :** (2009) 07 JH CK 0105

**Hon'ble Judges :** Dabbiru Ganeshrao Patnaik, J

**Bench :** Single Bench

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### Judgement

D.G.R. Patnaik, J.—Heard Sri Rohit Roy, learned Counsel for the petitioner and J.C. to G.P.-III for respondent State.

2. The petitioner in this writ application has challenged the order dated 20.12.2007 (Annexure-12) issued by the Respondent No. 5 whereby the A.C.P. which was conferred upon the petitioner has been rescinded and a direction has been given to the Respondent No. 3 to recover the amount paid to the petitioner by way of excess payment on account of alleged benefit of the A.C.P. given wrongly to the petitioner. A further prayer has been made to direct the concerned authorities of the respondents to approve the service book of the petitioner and to restore to him the benefit of the A.C.P. Scheme.

3. The petitioner had joined in the services of the respondent State Government in the Rural Engineering Organization Department on 01.05.1971 and superannuated from service on the post of Correspondence Clerk in the office of R.E.O. Dumka Works Division on 31.01.2007.

During the tenure of his service, by order dated 13.03.2003 (Annexure-2) he was granted the benefit of A.C.P. provisionally.

By the impugned order, the Respondent No. 5 has rescinded the A.C.P. benefit given to the petitioner and has further directed for recovery of the purported excess amount paid to the petitioner by way of wrong extension of the benefit of A.C.P. to him.

4. Learned Counsel for the petitioner submits that the basic ground on which the Respondent No. 5 has sought to invoke the benefit of the A.C.P. to the petitioner is itself misconceived in as much as, the impugned order was issued on the plea that the petitioner, having not passed the Departmental Accounting Examination, was not entitled to the benefits of A.C.P. when it was extended to him. The Respondent No. 5, according to the learned Counsel, appeals to have ignored the notification issued by the Water Resources Department, Government of Jharkhand (Annexure-3) as also the policy decision and the similar notification issued by the State Government (Annexure-5) and also by the Finance Department of the State Government (Annexure-6) whereby the Clerks, who were promoted prior to 01.09.1983, were exempted from passing the departmental examination and as such, the petitioner to whom the benefit of Time Bound Promotion was given much prior to cut of date of 01.09.1983, was not required to pass the departmental examination and as such, this could not have been any ground for the Respondent No. 5 to withdraw the benefits of the A.C.P. given to the petitioner.

Learned counsel adds further that from the counter affidavit filed on behalf of the Respondent No. 2 to 4, the above facts have not only been acknowledged but a declaratory statement appears therein in support of the petitioner's claim that withdrawal of the benefits of the A.C.P. on the ground stated in the impugned order is improper and incorrect.

5. Learned Counsel for the respondent State submits that the matter was examined at the level of the Respondent No. 2 namely the Secretary, Rural Development Department, Government of Jharkhand and the petitioner's claim has been found to be fair and genuine and the benefits of the A.C.P. which was earlier extended to him, in the month of March, 1983, could not have been withdrawn and neither could any amount be recovered from him on the ground of excess payment.

6. Though the Respondent No. 5 has neither appeared nor filed a separate counter affidavit, but considering the fact that the learned Counsel for the Respondent Nos. 2 to 4 also represents the Respondent No. 5, the submissions made on behalf of the Respondent Nos. 2 to 4 by him, would also be deemed as submission made on behalf of the Respondent No. 5.

7. In the light of the above facts and circumstances, I find merit in this application. Accordingly, the same is allowed. The impugned order (Annexure-12) is hereby set aside. The Respondent No. 5 shall consider the petitioner's claim for approval of the petitioner's service book and take a decision on the same by passing a reasoned and speaking order and shall effectively communicate such decision to the petitioner within one month from the date of receipt/production of a copy of this order.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent State.