

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3444 of 2013

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Ramsriy Yadav S/O Late Ram Pd. Yadav Correspondence Clerk, Irrigation
Electrical-Cum-Mechanical Division, Balmi, Patna, R/O Vill. & P.O.-Bari
Khanjarpur, P.S.- Mayaganj, Distt.-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 Principal Secretary, Water Resources Department, Govt. Of Bihar, Patna
3. The Chief Engineer (Mechanical), Water Resources Department, Bihar, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Jayant Ray Choudhary
Mr. Binay Kumar

For the Respondent/s : Mr. Gyan Shankar Ojha, G.P.22.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-02-2016

1. In the present case, the petitioner is seeking relief for the benefit of 2nd Modified Assured Career Progression Scheme with effect from 27.01.2010 and to pay him arrears thereof along with interest by modifying the Office order vide Memo No.750 dated 10.03.2011 of Chief Engineer (Mechanical), Balmi Division of Water Resources Department, Government of Bihar, whereby and whereunder the petitioner has been given the benefit of 1st Modified Assured Career Progression with effect from 10.01.2010 instead of giving second Modified Assured Career Progression as he is entitled

for the same, having served as a Correspondence Clerk since 27.1.1990 i.e. more 20 years and so much so that he has cleared his Departmental Accounts Examination on 10.7.2010, which was communicated to him vide letter No.1/18-06/2009-925 dated 10.07.2010.

2. The short facts of the case are that the petitioner was appointed as Chaukidar on 05.04.1978, later on, promoted as Correspondence Clerk on 27.1.1990. The petitioner has passed the Departmental Accounts Examination on 16.01.2010. The petitioner has been granted 1st M.A.C.P. with effect from 30.03.2011, but claim has been made to grant 2nd MACP with effect from 27.01.2010.

3. Learned counsel for the petitioner submits that for granting 1st and 2nd A.C.P. the passing of the Departmental Examination is essential element as provided under 2003 A.C.P. Rule, which was made applicable from 09.08.1999. The M.A.C.P. Rule, 2010 has been made effective from 01.01.2009; in the said scheme there is no requirement for passing any such Departmental Examination for entitlement of progression in scale of pay, as the petitioner was promoted as Correspondence Clerk on 27.01.1990, he will be entitled to the 1st A.C.P. after 10 years i.e. in the year 2000 and will be entitled to the 2nd M.A.C.P. after completion of 20 years. He

has further submitted that one similarly situated female candidate Smt. Kalpana Kumari, has been granted 1st A.C.P. with effect from 01.01.2006 and 2nd M.A.C.P. on 03.05.2010 and therefore, similar treatment should be given to the petitioner.

4. Whereas the learned counsel for the State has submitted that the petitioner was granted first MACP in the year 2011. The stand of the learned counsel for the State is that as the petitioner has not completed further 10 years of service after getting 1st M.A.C.P., he is not entitled to 2nd M.A.C.P. as in terms of 2010 M.A.C.P. Rule, which has been made effect from 01.01.2009, provides that the persons will be entitled to second M.A.C.P. after completion of 10 years of service from the date of completion of first M.A.C.P.

5. Learned counsel for the State has relied on Rules 14 and 17 of M.A.C.P. Rule, 2010. As per Rule-14, if an employee has not been granted benefit under A.C.P. Scheme on account of incompetency or for pendency of departmental inquiry and later on he was granted, the time taken in 1st M.A.C.P., subsequent benefit of M.A.C.P. will be delayed by equal period of time. Rule-17 provides that in the matter of pendency of departmental inquiry the benefit of M.A.C.P. will be governed similar manner as like the regular promotion is granted.



6. Having considered the rival contentions of the parties, 2003 A.C.P. Rule was governing the field before enforcement of 2010 M.A.C.P. Rule, which has been made effective from 01.01.2009, altogether brought a new scheme, providing different mode, manner and conditions for entitlement of benefit, thereby repealed the A.C.P. Rule-2003, is apparently clear from Rule-28 provides repeal and saving clause, where it mentions repealing of 2003 ACP Rule, but save any action taken under ACP Rule, 2003 will be treated to have been taken under the new Modified Assured Career Progression Scheme, 2010. This provision indicates that 2010 A.C.P. Rule is separate and distinct provision.

7. It is a fact that the petitioner has passed the Departmental Examination on 06.01.2010, on account of non passing of examination the benefit of ACP under 2003 ACP Rule, was not granted. The new scheme of A.C.P. 2010 has been made effective from 01.01.2009, wherein the passing of Departmental Examination has been deleted. Hence, there is no requirement for passing the Departmental Examination for the person being given the benefit of MACP.

8. It is also an admitted fact that the petitioner was promoted to the post of Correspondence Clerk on 27.1.1990,



admittedly up to the date of enforcement of MACP Rule, 2010, the petition did not pass the Departmental Examination as per Rule 4(5) of A.C.P. Rule, 2003, prescribes requirement and mode of sanction of financial progression under the scheme shall be same which are prescribed under the recruitment / service Rule for regular promotion against the vacancies.

9. The claim of the petitioner for identical treatment alike Kalpana Kumari, who has been given the benefit of 1st A.C.P. from 01.01.2006 and 2nd A.C.P. from 03.05.2010 cannot be entertained on account of fact that there is no pleading in the entire writ petition of granting the benefit of 2nd A.C.P. without passing the Departmental Examination.

10. Before dealing with issue of entitlement of 2nd M.A.C.P., it is necessary to examine the contour and effect of Rule-14 M.A.C.P. Rule, 2010 in considering the entitlement of petitioner to 2nd M.A.C.P. Admittedly, the petitioner has passed the Departmental Examination in the year 2010 and it is also a fact that Rule 5(4) of 2003 A.C.P Rule provides the condition meant for the regular promotion will equally applicable for granting benefit of A.C.P. as for promotion passing the Departmental Examination is a prerequisite which the petitioner could not clear it up to the year 2010.

11. In such view of the matter, the petitioner is not entitled to 1st ACP during operation of A.C.P. Rule, 2003. Though there is no such provision in M.A.C.P. Rule, 2010 but in terms of Rule-14 of M.A.C.P. Rule, 2010, entitlement of 2nd MACP 2010 will shift forward for the same period the benefit of 1st ACP was delayed on account of non passing of departmental examination. M.A.C.P. Rule, 2010 has come into operation with effect from 01.01.2009, there is no provision of passing of Departmental Examination in the said Rule, even an employee has not cleared the Departmental Examination, has completed 10 years of service will become entitle for 1st M.A.C.P. The petitioner has already completed altogether 19 years of service, the benefit of 1st MACP that has been to the petitioner with effect from 10.03.2011 is not approved but it would shift on the date when M.A.C.P. Rule, 2010 has been enforced, but the claim of the petitioner for the 2nd M.A.C.P. cannot be entertained in view of Rule 14 as delay has been caused on account of non passing the Departmental Examination, in that circumstances, the delay will effect the subsequent MACP and as such the petitioner cannot be granted the 2nd MACP, the petitioner is certainly, entitled to the benefit of 1st MACP from 01.01.2009 from the date of enforcement of M.A.C.P. Rule, 2010.

12. This Court directs the respondents to make necessary correction in the order dated 10.03.2011 make him entitled the 1st M.A.C.P. from the date of enforcement of MACP Rule, 2010.

13. Accordingly, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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