

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9451 of 2013

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Brajesh Kumar Son Of Late Ramdhani Singh Resident Of Village, Post Office-
Hathiwan, Police Station And District- Sheikhpura At Present Posted At Panchayat
Secretary At Shekhopur Sarai, Block And District- Sheikhpura

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Finance, Government Of Bihar, Patna
3. The Joint Secretary, Department Of Finance, Government Of Bihar, Patna
4. The Director/Joint Director, Department Of Panchayati Raj Government Of Bihar, Patna
5. The District Magistrate Sheikhpura
6. The District Panchayat Officer Sheikhpura
7. The District Accounts Officer Sheikhpura
8. The Block Development Officer Shekhopur Sarai, District- Sheikhpura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Adv.
Mr. Nikki Singh, Adv.

For the Respondent/s : Mr. Rakesh Prabhat, AC to SC-21

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 05-08-2016

Learned counsel for the petitioner is allowed to make
necessary correction in the writ application.

Heard learned counsel for the petitioner and counsel for the
State.

In this writ application, the petitioner is seeking a relief of
grant of modified ACP (MACP) in grade pay of Rs. 4200/- in the pay
band of Rs. 9300-34800/- to corresponding grade pay as per the grade

defined in the definition column Rule-4 of Resolution of the Finance Department issued vide memo no. 630 dated 21.1.2010.

The brief fact of this case is that the petitioner was appointed as a Panchayat Sevak in the district of Sheikhpura on 15.3.2000 and since then he has been discharging the duty on the said post of Panchayat Sevak. Now it has been designated as a post of Panchayat Secretary. Before enforcement of ACP scheme, as an anti stagnation measure, the Government introduced two time bound promotions, 1st time bound promotion after ten years and 2nd time bound promotion after twenty-five years and, later on, the said time bound promotion scheme after acceptance of 5th Pay Commission Report, the said scheme was withdrawn since since 1.1.1996 and decided to give promotion after identifying the post on need based basis. As it again became stagnant, as there was no scheme of the State Government by way of anti stagnation measure and, as such, the Government has come forward with an anti stagnation scheme in the name and style of Bihar State Employees Conditions of Service (Assured Career Prorogation Scheme) Rules, 2003 which was made effective from 9.8.1999 by publishing in the extraordinary gazette dated 27.6.2003. The 2003 ACP Scheme, the employees were made entitled to the benefit of 1st ACP after completion of twelve years and 2nd ACP after completion of twenty-four years. There was no



provision for the 3rd ACP. After 5th Pay Revision, the Government brought fixation of pay in the shape of pay band and corresponding grade pay. The corresponding pay band was fixed and variable was the corresponding grade pay. The pay-scale of the 5th Pay Revision has divided the employees in different pay bands and, according to the pay-scale of an employee, benefit of ACP was given in terms of ACP Scheme, 2003. There is no promotional post for the Panchayat Secretary but, the Government came forward with a notification was issued by the Panchayati Raj Department dated 18.5.2009 wherein it has been mentioned that as there was no promotional post for the Panchayat Secretary, in such circumstances, those who are holding the post of Panchayat Secretary will be entitled to the benefit of 1st ACP on the pay-scale of 5000-8000/- and 2nd ACP on the pay-scale of Rs. 5500-9000/-. While the scheme of ACP, 2003 was in operation, the Government came forward with MACP Scheme and it was made effective from 1.1.2009 and in the MACP, the Government has conferred the benefit of 1st ACP after ten years, 2nd ACP after twenty years and 3rd ACP after thirty years.

The petitioner has completed his 10 years of service on 15.3.2010 and till date, the Government has not granted the benefit of ACP to the petitioner. The petitioner is apprehending that he will wrongly be given the grade pay of Rs. 2400/- when he is



entitled to the grade pay of Rs. 4200/-. As till date the petitioner has not been given any ACP, what will happen in the future cannot be a cause of action for the purpose of deciding the issue of entitlement of a grade pay. As the respondent has not granted the benefit of ACP to the petitioner after ten years which was the bounden duty of the respondents to give him the benefit of 1st ACP and while giving the benefit of ACP, the respondents will keep in mind the notification issued by the Panchayati Raj where the scale of pay has been mentioned for ACP though the State has taken a plea that it will be applicable only for the persons who are entitled for the 2003 ACP not for the MACP as, the reason cannot be said to be a sound reason but this Court, at this stage, is not intending to go into the merit of the claim of the petitioner on account of the act that the petitioner has not been given the 1st ACP but, this Court hopes that the petitioner would be given proper ACP taking into account the notification dated 18.5.2009. The Government will also consider the case of the petitioner and decide the entitlement in accordance with law.

Thus, this Court directs the respondent State to grant 1st ACP to the petitioner without unnecessary delay preferably within a period of one month from the date of receipt/production of a copy of this order.

With the aforementioned observations and direction, this

application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.8.2016
Transmission Date	NA