

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9574 of 2017

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Kamlanand Thakur, Son of late Surya Narain Thakur, Resident of Village & Post-Chhachha Via Raiyam, P.S.-Raiyam, District-Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Irrigation Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Irrigation Department, Govt. of Bihar, Patna,
4. The Chief Engineer, Irrigation Department, Darbhanga.
5. The Superintending Engineer, Western Koshi Canal Circle, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.

For the Respondent/s : Mr. Vinay Kr. Pandey, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-08-2017

Heard Mr. Prashant Sinha, learned counsel appearing for the petitioner and Mr. Vinay Kumar Pandey, learned Assisting Counsel to Government Advocate No.2 for the State.

The petitioner has prayed for quashing of the decision of the screening committee dated 26.12.2016 as contained in Annexure 3(B) chaired by the Chief Engineer, *Sinchai Srijan*, Water Resources Department, Darbhanga, whereby the cases of grant of Assured Career Progression/Modified Career Progression (hereinafter referred to as the 'ACP/MACP') to the employees of the Water Resources Department have been reviewed and modified accordingly. The order is put to challenge in so far as it modifies the order granting 'ACP/MACP' of the petitioner whose names appears



at serial no.7 of the decision of the committee which has been communicated by the Chief Engineer, *Sinchai Srijan*, Water Resources Department, Darbhanga to all the Superintending Engineer and the Executive Engineers under his control vide letter bearing No.855 dated 27.12.2016 placed at Annexure 3(A) to the writ petition.

It is the argument of Mr. Prashant Sinha, learned counsel appearing for the petitioner that the petitioner joined as a Work Sarkar in 1973 and was absorbed as a Correspondence Clerk in Western Koshi Canal Division, Darbhanga on 1.10.1981. It is stated that the petitioner has passed the Hindi Noting and Drafting examination in 1983 and was granted exemption from appearing in the Accounts examination on the advisory of the Personnel and Administrative Department dated 15.5.1992 and 28.8.2009 on attaining 50 years of age vide Annexure-1. Learned counsel has referred to Annexure-2 to submit that vide office order dated 18.6.2014 the petitioner was granted the benefit of 'ACP/MACP' with effect from 30.4.2012 as manifest from the list appended to Annexure-2 where the name of the petitioner appears at the bottom of the 1st page of the list. The said benefit has been modified vide decision taken by the Screening Committee chaired by the Chief Engineer. *Sinchai Srijan*, Water Resources Department, Darbhanga



held on 26.12.2016 present at Annexure 3(B) which has been communicated vide Annexure 3(A) and feeling aggrieved the petitioner is before this Court.

Mr. Sinha, learned counsel appearing for the petitioner while admitting that some kind of infirmity does exist in the order granting 'ACP/MACP' inasmuch as the 1st, 2nd and 3rd 'MACP' could not have been given on the same day, submits that while the petitioner was entitled to 1st and 2nd 'MACP' with effect from 9.8.1999 and 1.10.2005 respectively, he was entitled to the 3rd 'MACP'; with effect from 1.10.2011 i.e. on completion of 30 years of service.

Learned counsel with regard to withdrawal of the benefit of the petitioner vide Annexure 3(C) which is the list appended to the decision of the Committee present at Annexure 3(B) submits that while the benefit of 'ACP/MACP' has been taken away, in so far as the grant of 'ACP' is concerned it has been given with effect from 30.4.2012 with reduced grade pay of Rs.2800/-. He submits that the decision is contrary to the stipulations present in the 'ACP/MACP' scheme and since it has been passed in violation of the principles of natural justice it is unsustainable.

Mr. Pandey, learned counsel appearing for the State while supporting the impugned action submits that it is in the light



of the order passed by this Court in the case of **Ram Narain Prasad Vs. The State of Bihar** arising from **CWJC No.7905 of 2014** and when certain discrepancies were noticed for grant of 'ACP/MACP' to the employees of the Water Resources Department which has resulted in the order impugned at Annexures 3(B) and 3(C). He has however, failed to satisfy that the order has been passed after opportunity of hearing to the petitioner.

I have heard learned counsel for the parties and I have perused the materials on record and for the present I am not persuaded to enter into the merits of the contest because in view of the uncontested position that the order of modification of grant of 'ACP/MACP' has been passed without opportunity of hearing to the petitioner, the order has become unsustainable for any benefit granted to any employee even if erroneously, requires that the employee concerned is provided an opportunity to defend himself before any action is taken to withdraw the benefit or to modify the same. Admittedly this has not been done by the Committee headed by the Chief Engineer, *Sinchai Srijan*, Water Resources Department, Darbhanga which has held its meeting on 26.12.2016 and which has resulted grant of benefit of 'ACP/MACP' vide Annexure-2.

In the uncontested circumstances discussed, the order of modification of grant of 'ACP/MACP' as taken in the meeting dated



26.12.2016 present at Annexure 3(B) in so far as it concerns the petitioner is held illegal and in violation of the principles of natural justice and the said decision in so far as the petitioner is concerned, is quashed and set aside.

The matter is remitted back to the Chief Engineer, *Sinchai Srijan*, Water Resources Department, Darbhanga to consider the matter afresh and for its disposal after providing due opportunity of hearing to the petitioner but until such time, let no recovery be made from the salary of the petitioner.

Let the petitioner appear before the Chief Engineer, *Sinchai Srijan*, Water Resources Department, Darbhanga on 29th of August, 2017 at 11.00 AM and when he shall proceed to dispose of the matter in the light of direction aforementioned.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24-08-2017
Transmission Date	NA

