

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14098 of 2016

1. Md. Nasimuddin, Son of Md. Nisaruddin, Resident of Harun Nagar, Colony , Sector - 1, P.S Phulwarisharif, District Patna.
2. Chandra Bilas Prasad Yadav, Son of Sri Deo Lagan Prasad, Resident of DI, Anand Vihar, Anisabad, PS Phulwarisharif, District Patna.
3. Krishna Prasad Son of Sri Muniraj Singh, Resident of 101, Laxmi Vatika Apartment, Road no. 4A, Gardanibagh, PS- Gardanibagh, District Patna.
4. Indrajit Kumar, Son of late Kailash Prasad Sinha, resident of near Dwarka High School, North Mandiri, PS Budha Colony, District Patna.
5. Arjun Prasad Sinha, Son of late Rameshwar Mehta, Resident of village- Uttarthu, PS Bind, District Nalanda.
6. Dinesh Choudhary, Son of Sri Srinath Choudhary, Resident of Ashok Nagar, Road No. 8, Ram Lakhon Path, Kankarbagh, P.S.- Kankarbagh, District Patna.
7. Ratnesh Singh, Son of late Rajnath Singh, Resident of Rukanpura, Bailey Road, P.S- B.VCollege, district Patna.
8. Sanjeev Kumar, Son of Sri Hans Kumar, Resident of Shivkunj, Road No. 4, East Indira Nagar, Kankarbagh P.S. Kankarbagh, District Patna.
9. Ram Barun Kumar Singh, Son of Sri Rana Tej Narayan Singh, Resident of Yarpur, Shivajee Path, P.S Gardanibagh, District Patna.
10. Rakesh Ranjan Pandey, Son of Sri Vidya Prasad Pandey, Savitri Vihar, Hanuman Nagar, New Punaichak, P.S Shashrinagar, District Patna.
11. Rajiv Ranjan Kumar, Son of Sri Yogendra Prasad Yadav, Resident of Village- Prithwichak, P.O. Sahora, Via- Tarapur, P.S. Tarapur, District Munger.
12. Yogendra Kumar Bhatia, Son of Sri Bihari Ram, Resident of D/21, Sri Krishna Vihar Colony, Beur, Anisabad, P.S Anisabad, District Patna.
13. Ravi Shankar, Son of M.L. Roy, Resident of Ashok Nagar, Road No. 10, Kankarbagh, P.S. Kankarbagh, District Patna.
14. Vidya Bhushan Kumar, Son of late Bindeshwari Rajak, Resident of Village- Ichhosh, P.S. Islampur, District Nalanda.
15. Anand Prakash, Son of Sri S.B. Mandal, Resident of Jadhua Barai, Tola, Industrial Area, Hazipur, P.S Hazipur, District Vaishali.
16. Ashok Kumar, Son of Sri Mahendra Yadav, Resident of House No. 31, chakyapuri, Raja Bazar, P.S Shastri Nagar, District Patna.
17. Gopal Krishna Thakur, Son of late Indra Mohan Thakur, Resident of 4-1, Jaya Enclave, A.N. Path, North S.K. Puri, P.S. Srikrishnapuri, District Patna.
18. Kumar Rajeev Ranjan, Son of late Bimal Prasad Choudhary, Resident of MIG- 114, Hanuman Nagar, Kankarbagh, P.S- Kankarbagh, District Patna.
19. Ranveer Kumar, Son of late Dukhan Prasad, Resident of Mohalla- Rajopuram Colony, Station Road, Sheikhpura, District Sheikhpura.
20. Bhupesh Kumar, Son of Sri Bulkan Choudhary, Resident of Village- Bishnupur, P.S Nagarnausa, District Nalanda.
21. Thakur Pramod Kumar, Son of Sri Ramdeo Singh, Resident of flat No. 316, Gaura Palace, Road No. 6, East Patel Nagar, P.S Shashtrinagar, District Patna.
22. Ashok Kumar, Son of Sri Ram Dayal Bhagat, Resident of Sobha Chhapra, PS. Rivilganj, District Saran at Chapra.
23. Praveen Kumar Sinha, Son of Sri Suresh Prasad Sinha, Village- Sarwa, P.S Barbigha, District Sheikhpura.
24. Om Prakash Tyagi, Son of Sri Kali Charan Das, resident of village- Nawabganj, P.S.- Suryagarha, District- Lakhisarai.
25. Vinod Kumar Sah, Son of Sri Mohit Sah, Resident of Village- Sultanpur, P.S. Desri, District Vaishali.



26. Subhash Kumar Singh, Son of Sri Jagdish Narayan Singh, resident of Village- Hariharpur, P.S Pupri, District Sitamarhi.
27. Arvind Kumar, son of Buddhinath Prasad Mandal, Resident of Village- Maltola, P.S. Pirpanti, District Bhagalpur.
28. Sandeep Kumar, Son of Baidyanath Tiwary, Resident of Village- Rampur Dudhpura, P.S Samastipur, District Samastipur.
29. Prafull Chandra Prabhat, Son of Sri Triloki Prasad, Resident of Village- Barhari P.S. Chhabilapur, District Nalanda.
30. Praveen Kumar Singh, Son of Sri Nageshwar Singh, A/16, Sri Ram Path, New Punaichak, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Finance, Bihar Patna.
3. The Secretary, Road Construction Department, Bihar Patna.
4. The Secretary, Rural Works Department, Bihar Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate with
Mr. Prabhu Nath Pathak, Advocaes

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

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**ORAL JUDGMENT****Date: 12-07-2017**

Heard Mr. Y.V. Giri, learned senior counsel appearing for the petitioners along with Mr. Prabhu Nath Pathak, the Advocate on record and Mr. Rakesh Prabhat, learned Assisting Counsel to Standing Counsel No.21 for the State.

The petitioners are aggrieved by the order bearing letter No.6271 dated 5.8.2016, whereby the prayer of the petitioners for grant of Modified Assured Career Progression (hereinafter referred to as 'the MACP') on completion of 10 years of regular service as Assistant Engineer as well as for grant of grade pay of Rs.6600/- in pay band-3 has been rejected, inter alia, in reference to the provisions of 'the MACP Scheme' as circulated vide resolution bearing No.7566 dated 14.7.2010, a copy of which has been placed



at Annexure-4 to the writ petition.

The petitioner nos.1 to 26 herein were appointed as Assistant Engineer (Civil) in the pay-scale of Rs.6500-10500/- in pay band 2 vide notification no.5308(S) dated 31.07.2004. Similarly the petitioner nos.28 to 30 were appointed as Assistant Engineer (Civil) on 15.04.2005. Copies of the notifications are placed at Annexure 2 series to the writ petition.

Annexure 'D' to the supplementary counter affidavit is the confirmation order of the petitioners and others bearing No.6810(S) dated 15.6.2012 and on the date of confirmation these petitioners were confirmed in the scale fixed at pay band-3 with the grade pay of Rs.5400/-.

While on the subject it would be relevant to mention that the State of Bihar in order to remove the stagnation of such of the government servants in whose favour either the promotions were not forthcoming or they could not achieve the same, came up with a policy decision popularly known as 'Assured Career Progression Scheme' (hereinafter referred to as the 'ACP') which was circulated vide notification dated 25.6.2003 and granted financial progression to such of the stagnated government servants on completion of 12 years and 24 years of satisfactory service respectively, subject to the stipulations present therein. The ACP Scheme, 2003 was subsequently replaced by the Modified Assured Career Progression



Scheme which was enforced with effect from 1.1.2009 and circulated vide resolution dated 14.7.2010 at Annexure-4.

Under the new 'MACP' Scheme those government servants who had stagnated on their respective post were to be granted financial progression on completion of 10 years, 20 years and 30 years of satisfactory service subject to the consideration of grant of progression, if any, granted under the earlier 'ACP' Scheme or a promotion if any, granted in the meanwhile. It is in view of the 'MACP' Scheme enforced with effect from 1.1.2009 and alleged failure on the part of the State to grant benefits arising therefrom to the petitioners that they came before this Court in CWJC No.7239 of 2016 and which writ petition was disposed of vide order passed on 19.5.2016 by a Bench of this Court with a direction to the Principal Secretary, Finance Department to consider the entitlement of the claim of the petitioners for grant of benefit under the 'MACP' Scheme and its disposal in accordance with law within a period of three months of filing of such application. The claim being raised, has been rejected by the order impugned at Annexure-1 and hence this writ petition.

It is the argument of Mr. Giri, learned senior counsel appearing for the petitioners that the conclusion drawn by the Principal Secretary to reject the claim of the petitioners in so far as it mentions that there was a progression in salary of the petitioners on



the date of confirmation on their respective post, is a misnomer because there was no financial progression gained by the petitioners at the time of their respective confirmation. According to learned senior counsel it is wholly incorrect on the part of the Principal Secretary to have held that these petitioners would be entitled to a benefit under the 'MACP' Scheme on completion of 10 years from the date of respective confirmation for grant of any progression under the 'MACP' Scheme rather it should have been calculated with effect from the date of initial appointment in the year 2004/2005 as the case may be.

The second limb of the argument of Mr. Giri is that the grant of grade pay of Rs.5400/- in pay band-3 is illegal in view of the revised pay structure present at Annexure-4 which at Schedule-I nowhere fixes a grade pay of Rs.5400/- in the pay band-3 and thus once these petitioners have been granted scale in pay band-3 then they are entitled to a grade pay of Rs.6600/- and not Rs.5400/-.

The argument of Mr. Giri, learned counsel appearing for the petitioners has been contested by Mr. Prabhat, learned Assisting Counsel to Standing Counsel No.21 who in reference to Annexure 'D' to the supplementary counter affidavit submits that although these petitioners were appointed in pay band-2 in the revised scale of Rs.9300-34800/- (pre-revised scale of Rs.6500-10500/-) but on the date of confirmation they were granted a higher pay-scale in pay



band-3 of Rs.15,600-39100/- with a grade pay of Rs.5400/- as is manifest from Annexure 'D' at running page 142 of the proceeding which is a notification bearing Memo No.6810(S) dated 15.6.2012. The short submission made by Mr. Prabhat, learned State Counsel is that these petitioners having been granted progression at the time of confirmation from pay band-2 to pay band-3 with grade pay of Rs.5400/- with no objection being raised at that stage, in view of the stipulation present under 'the MACP' Scheme, the petitioners' entitlement of next progression would arise only after completion of 10 years of service from the date of confirmation i.e. 1.12.2008 in so far as petitioner no.1 is concerned as manifest from item no.78 of Annexure 'D' and similarly other petitioners would become entitled to claim such benefit on completion of 10 years from the date of their respective confirmation. He submits that since this mandatory period of 10 years has not been achieved by the petitioners after having been granted the financial progression on the date of confirmation, that the order impugned has been passed.

In response to the grade pay granted to these petitioners on their confirmation in the pay band-3, though learned counsel has relied upon the revised pay structure issued under the 6th Pay Revision Commission in support but has not been able to satisfy this Court as to the grant of a grade pay of Rs.5400/- in pay band-3 in reference to the revised pay structure present at Schedule I of the



‘MACP’ Scheme does not conceive of any such grade pay rather the minimum grade pay attached to pay band 3 is Rs.6600/-.

Be that as it may, this issue left open for discussion in an appropriate proceeding but in so far as the present case is concerned the issue as regarding grant of ‘MACP’ benefits to the petitioners in view of the position so explained by the respondents in the counter affidavit as taken note of hereinabove where these petitioners have moved from pay band 2 to pay band 3 on the date of confirmation of their respective services as manifest from Annexure ‘D’ I find no infirmity in the order impugned in so far as it holds that these petitioners would be entitled to the benefit under ‘MACP’ Scheme only on completion of 10 years of satisfactory service from the date of their respective confirmation.

The writ petition is disposed of accordingly.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17-07-2017
Transmission Date	NA

