IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11407 of 2016

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Siyawar Sharan Dwivedi S/o - Late Ram Surat Dwivedi R/o Mohalla - Sheikhpura Yadubir Bhavan (Durga Ashram Gali) P.S. - Shastri Nagar, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Main Secretariat, Patna.
2. The Principal Secretary, Cabinet Secretariat (Civil Aviation) Department, Main Secretariat, Patna.
3. The Director-cum-Special Secretary, Directors of Civil Aviation, Cabinat Secretariat (Civil Aviation) Department, Government of Bihar, Patna Airport, Patna.
4. The Chief Flight Instructor, Bihar Flying Institute, Civil Aerodrome, Patna.
5. The Principal Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
6. The Principal Secretary, Transport and Civil Aviation Department, Government of Bihar, Patna.
7. The Principal Secretary, Disaster Management Department, Government of Bihar, Secretariat, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kishore Kumar Thakur, Adv. Mr. Braj Kishore Singh, Adv. Mr. Rajesh Kumar, Adv.
For the Respondent/s	:	Mr. Rajiv Roy- GP1 Mr. Suresh Kr, AC to GP1

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 04-12-2018

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

In this case, the petitioner is seeking relief of 1^{st} and 2^{nd} Assured Carrier Progression (A.C.P.) to the petitioner with effect from 9.8.1999 and 1.5.2005 respectively in terms of the provisions contained in Assured Carrier Progression (Amendment) Rules, 2006.

The petitioner has not been granted promotion during his entire period of service career. At the same time, the petitioner has been deprived of the A.C.P. for unconceivable reason. Further the prayer has been made for granting 3rd M.A.C.P. with effect from 1.5.2015 under the M.A.C.P. Rule as he has already completed thirty years.

The factual background of this case is that the Government has constituted the Bihar Flying Club and the State Government promulgated the Bihar Flying Club (Take over of Management and Control) Ordinance, 1974 whereby took over the Bihar Flying Club along with all the employees, in that manner, they achieved the status of employees of State Government of Bihar with effect from the date of publication in the official gazette. The General Manager, Bihar Flying Club issued the office order contained in Memo No. 137 dated 17.3.1974, whereby and whereunder, the Typists, who were appointed and working as Hindi and English Typists, were exempted from passing any type of departmental examination. The petitioner was initially appointed on 1.5.1981 in the pay-scale of 296-8-360 as ad-hoc basis, on the strength of the letter dated 13.4.1974 issued by the Personal Department of Government of Bihar, later on, vide letter no. 410 dated 29.09.1986, the petitioner along with others have been confirmed.

The petitioner has already crossed the age of 50 years, now he is not obliged to pass any departmental examination as per decision of the General Manager under whom they were working clarified that they are not obliged to pass any examination. Now it is part of Transport Department and the petitioner has been deprived of the A.C.P. on account of non-passing the departmental examination nor has been granted any benefit of regular promotion and, so, he is entitled to the benefit of A.C.P. as provided under the A.C.P. Rule, 2003 and, later on, M.A.C.P. Rule, 2010.

Counsel for the State has objected the argument of the petitioner by submitting that the petitioner has not cleared the departmental examination and, thus he cannot claim the benefit of either the promotion or the benefit of A.C.P. and, rightly has not been granted any benefit of A.C.P. or the M.A.C.P.

Two questions in this case have been raised, firstly, rightly from the very beginning, it was communicated to the petitioner that he is not required to pass any of the departmental examination and when become part of the Transport Department, it was never communicated that he is required to pass any examination as all-through he has remained attached with the

Bihar Flying Club, later on, became the part of the Governmental Organization. Secondly, it has been argued that the petitioner is not required to pass any of the departmental examination in view of the judgment passed in L.P.A. No. 599 of 2015.

It has been submitted that as per the earlier decision, the petitioner is not required to pass the departmental examination, even presuming that he has failed to pass the departmental examination, that will not change the situation adverse to the interest of the petitioner as for grant of A.C.P. and M.A.C.P., as there is no need to pass any departmental examination in view of judgment and the order dated 19.3.2018 passed in L.P.A. No. 599 of 2015. In that case, the matter was with respect to passing the accounts examination but, here is the departmental examination and, on the face of it, it appears that the employees were exempted to pass the examination as they were working in the Flying Club, part of the Transport Department and they were never communicated that they will be obliged to pass the departmental examination and that cannot be a ground to deprive the benefit of A.C.P. or M.A.C.P. in view of the order passed by this Court in C.W.J.C. No. 486 of 2014.

In that view of the matter, this Court directs the authority concerned to grant the benefit of A.C.P. and M.A.C.P. to the petitioner from the due date as he is entitled to within a period of four months from the date of receipt/production of a copy of this order.

The authority concerned is also directed to examine in view of the earlier policy for grant of increment as to whether the petitioner is required to pass any departmental examination whatsoever conducted by the Department and take a decision in the matter of grant of increment to the petitioner

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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