

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1126 of 2017

IN

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 D1, Anand Vihar, Anisabad, P.S.- Phulwarisharif, District- Patna.
 3. Krishna Prasad, Son of Sri Muniraj Singh, resident of 101, Laxmi Vatika Apartment, Road No. 4A, Gardanibagh, P.S.- Budha Colony, District- Patna.
 4. Indrajit Kumar, Son of Late Kailash Prasad Sinha, resident of near Dwarka High School, North Mandiri, P.S.- Budha Colony, District- Patna.
 5. Arjun Prasad Sinha, Son of Late Rameshwar Mehta, resident of Village- Uttarthu, P.S.- Bind, District- Nalanda.
 6. Dinesh Choudhary, Son of Sri Srinath Choudhary, resident of Ashok Nagar, Road No. 8, Ram Lakhan Path, Kankarbagh, P.S.- Kankarbagh, District- Patna.
 7. Ratnesh Singh, Son of Late Rajnath Singh, resident of Rukunpura, Bailey Road, P.S.- B.V. College, 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 Taj Narayan Singh, resident of Yarpur, Shivajee Path, P.S.- Gardanibagh, District- Patna.
 10. Rakesh Ranjan Pandey, Son of Sri Vidya Prasad Pandey, resident of Savitri Vihar, Hanuman Nagar, New Punaicha, P.S.- Shastri Nagar, District- Patna.
 11. Rajiv Ranjan Kumar, Son of Sri Yogendra Prasad Yadav,



resident of Village- Prithwichak, P.S.- 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 Sri 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, Hajipur, P.S.- Hajipur, District- Vaishali.

16. Ashok Kumar, Son of Sri Mahendra Yadav, resident of House No. 31, Chanakyapur, Raja Bajar, 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 Chaudhary, resident of MIG- 14, 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. Bhupsh Kumar, Son of Sri Bulkan Choudhary, resident of Village- Bishnupur, P.S.- Nagamausa, 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.- Shastrinagar, District- Patna.

22. Ashok Kumar, Son of Sri Ram Dayal Bhagat, resident of Village- Sobha Chapra, P.S.- Rivilganj, District- Saran at Chapra.

23. Praveen Kumar Sinha, Son of Sri Suresh Prasasd Sinha, resident of Sarwa, P.S.- Barbiga, District- Sheikhpura.



24. Om Prakash Tyagi, son of Sri Kali Charan Das, resident of Village- Nawabganj, P.S.- Surajgarha, 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 Sri Buddhinath Prasad Mandal, resident of Village- Moltola, P.S.- Pirpainti, District- Bhagalpur.
28. Sandeep Kumar, Son of Sri 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 Punaikchak, District- Patna.

.... Petitioners/Appellants

Versus

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

.... Respondents/Respondents

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Appearance :

For the Appellant/s : Mr. Prabhu Nath Pathak, Advocate

For the Respondent/s : Mr. Ajay Kr. Rastogi, AAG-10

Mr. Parijat Saurav, AC to AAG-10

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER



(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date: 04-10-2018

The appellants (original writ-petitioners) are aggrieved by the judgment and order dated 12.07.2017, passed by the learned Single Judge in C.W.J.C. No. 14098 of 2016, whereby the prayer made on their behalf for being granted the benefit of Modified Assured Career Progression (*in short the **MACP***) from the date of their appointment in service has been rejected and it has been held that they would be entitled to such benefit under the scheme only after completion of 10 years of satisfactory service from the date of their respective confirmation.

2. The appellants (original writ-petitioners) were appointed on the post of Assistant Engineer (Civil) in the Pay-Scale of Rs. 6500-10500/- in Pay Band-2 *vide* Notification No. 5308(S) dated 31.07.2004 and 15.04.2005. The aforesaid appellants were confirmed in the pay-scale of Pay Band-3 with Grade Pay of Rs. 5400/-.

3. The Principal Secretary, Finance Department, Govt. of Bihar *vide* order contained in Memo No. 6271 dated 05.08.2016, rejected the claim of the appellants (original writ-petitioners) for the 1st Assured Career Progression (*in short the **ACP***) in Grade Pay of Rs. 6600/-, which was being claimed after completion of 10 years of service from the date of their



appointment under the MACP Rules, 2010. The reason assigned in the aforesaid order was that such Grade Pay of Rs. 6600/- would be admissible and payable to the original writ-petitioners only after 10 years from the date of confirmation in service or 14 years from the date of initial appointment as the period of confirmation has been fixed for four years to the Assistant Engineers for ACP under the MACP Rules, 2010.

4. It is required to be noted that the ACP scheme was brought about in the year 2003, which was aimed at granting financial progression to the government servants who had stagnated. The scheme, therefore, provided that on completion of 12 years and 24 years of satisfactory service, they would be given the financial progression subject to the conditions under such scheme. The aforesaid scheme of 2003 was modified with effect from 01.01.2009 and the Modified Assured Career Progression of 2010 came to be notified. Here, the scheme to give financial progression was dependent on the completion of 10 years, 20 years and 30 years of satisfactory service of an employee, but 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.

5. The appellants (original writ-petitioners) challenged the aforesaid order of the Principal Secretary,



Finance Department, Govt. of Bihar, rejecting their claim on the ground that at the time when their services were confirmed, they did not get any financial progression and, therefore, claimed that the benefit of MACP ought to accrue to them on completion of 10 years from the date of their appointment in service. It was also agitated by the original writ-petitioners that on their confirmation in service with Pay Band-3, they were wrongly given the Grade Pay of Rs. 5400/- in place of Grade Pay of Rs. 6600/-.

6. According to Section 8.1 of the MACP scheme of 2010, the Grade Pay of Rs. 5400/- has been made available to two pay bands, viz., (i) Pay Band 2 and (ii) Pay Band-3. This separate grade pay in two pay bands has been treated as separate grade pay for the purposes of grant of up-gradation under the MACP scheme by the Ministry of Personnel Public Grievance and Pension, Department of Personnel and Training Establishment Department, Govt. of India *vide* letter dated 08.04.2013. Thus, the fallout of this is that the employees under the State of Bihar who are in the basic grade pay scale of Pay Band-2 + Rs. 5400/- are to be provide in-situ up-gradation in the pay scale of Pay Band-3 + Rs. 5400/- after completion of four years of service when their services would be confirmed.

7. Thus, the learned Single Judge on finding that



the original writ-petitioners were confirmed in service on a higher pay scale in Pay Band-3 of Rs. 15600 to 39100/- with Grade Pay of Rs. 5400/-, they would be deemed to have been granted financial progression at the time of their confirmation. Thus, under the MACP scheme, the next progression can be made available to the appellants (original writ-petitioners) only after having completed 10 years of service from the date of confirmation and not from the date of initial appointment.

8. After having heard the learned counsel appearing on behalf of the parties, we are of the view that the appellants (original writ-petitioners) were granted financial progression at the time of confirmation of their services on a higher pay band with Grade Pay of Rs. 5400/- and, thus, they are entitled under the MACP scheme for further financial up-gradation only after completion of 10 years of service, to be counted from the date of confirmation and not from the date of initial appointment.

9. So far as the admissibility of Grade pay of Rs. 6600/- to the appellants herein is concerned, it is clarified that the Grade Pay of Rs. 5400/- is available with two pay bands, viz., (i) Pay Band-2 and (ii) Pay Band-3 and, therefore, has to be treated as a separate grade pay for each pay band. The appellants (original writ-petitioners) would only be entitled to Grade Pay of Rs. 6600/- on a further promotion and not



before.

10. For the aforesaid reasons, we do not find any infirmity or illegality with the judgment and order passed by the learned Single Judge and for that reason, we dismiss the present Letters Patent Appeal.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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