

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18919 of 2017

Arbind Kumar Sinha, son of Late Siyaram Prasad, resident of Birsa Adiwasi Colony, Guljarbagh near Vaishali House, Sampatchak, P.S.- Guljarbagh, Patna- 800007, at present residing at Indraprasth Colony, P.O.+ P.S.- Ishakchak, District- Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Road Construction Department, East Bihar Circle, Bhagalpur.
4. The Executive Engineer, Road Construction Department, East Road Division, Bhagalpur.
5. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Anjani Kumar Jha, Advocate
For the Respondent/s : Mr. Sushil Kumar -GP-22

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 11-09-2018

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

2. In this case, the petitioner is challenging the order containing memo no.516 dated 06.06.2016 (Annexure-1) with respect to present petitioner, by which the benefit of second and third A.C.P., conferred to the petitioner has been withdrawn without disclosing any ground and also direction has been given



for recovery of excess payment made to the petitioner.

3. In paragraph no.21 of the counter affidavit filed by the State, it has been averred as follows:-

“21. That in reply to the statement made in paragraph no.5, 6, 8 and 9 of writ petition it is respectfully stated and submitted that as per Clause 4(5) (ii) of A.C.P. Rules, 2003 if a government servant has not been allowed benefits of first financial progression beyond 12 years the second financial progression will be granted to him after 12 years from the date of the first financial progression. Since the first financial progression was given to the petitioner with effect from 10.03.2002 as such the petitioner became entitled for next financial progression after 12 years from the date of the first financial progression but in the present case the petitioner was allowed second financial progress much earlier i.e. with effect from 9.12.2006 which was itself illegal and in teeth of provisions made under ACP Rules 2003. Further the petitioner was not entitled to get benefits of 3rd MACP with effect from 19.8.2013 in view of provisions made under MACP Rule 2010 as such the case of petitioner was scrutinized in the meeting of screening committee dated 05.06.2017, constituted at Circle Level and after due examination it was recommended to cancel the benefits of Second ACP and third MACP accordingly it was cancelled under Annexure-1 to the writ petition”



4. From perusal of the aforesaid paragraph, it appears that if one way or other, an employee is not granted the benefit of M.A.C.P., later on, at the event of granting the benefit of 2nd or 3rd A.C.P. there should be a gap of 12 years between two A.C.Ps., as the petitioner was granted the benefit of first A.C.P in 2002, so he will be entitled for second A.C.P. after 12 years from the date of granting first A.C.P. and as such, the action of granting the benefit of M.A.C.P. was illegal.

5. This Court has failed to understand if on some reason or other the petitioner was not given the benefit of first A.C.P. in time how he can be deprived of the second A.C.P. as Rule does not prescribes such condition in A.C.P. or M.A.C.P. Rules that there should a gap of 12 years between first and second A.C.P.

6. Further, the impugned order of recovery has been passed one year after the retirement of the petitioner and as per the decision of the Hon'ble Supreme Court rendered in the case of *State of Punjab vs. Rafiq Masih* reported in (2014) 8 S.C.C. 883 and *State of Punjab and Ors. Vs. Rafiq Masih (white washer)* reported in 2015(1) PLJR (S.C.) 261, the impugned order cannot survive.



7. In such view of the matter, the order containing memo no.516 dated 06.06.2016 (Annexure-1) is quashed with respect to the present petitioner. The pay of the petitioner will be restored what he was getting at the time of his superannuation.

8. With the aforesaid observations and directions, this writ petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	26.09.2018
Transmission Date	N/A.

