

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8978 of 2019

Hari Kishore Singh, S/o Mritunjay Kumar Singh, R/o Mohalla- Chhoti
Khanjarpur, S.M. College Road, P.S. Barari, Dist-Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Road Construction Department, Bihar, Patna
2. The Superintending Engineer Mechanical Division, Road Construction Department, Bhagalpur
3. The Superintending Engineer Mechanical Circle, Road Construction Department, Patna
4. Executive Engineer, Mechanical Division, Road Construction Department, Bhagalpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr. Syed Iqbal Ahmad (SC-20)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 18-12-2019 Heard learned counsel for the petitioner and the respondents.

The grievance of the petitioner in the present writ application is that after grant of 1st ACP, 2nd ACP and 3rd ACP under the Modified Career Progression Scheme, the respondents have decided to cancel the ACP granted to the petitioner vide order dated 19.09.2018.

Learned counsel for the petitioner submits that the respondents after due application of mind have granted the benefit of ACP. Their subsequent action of cancelling the same and directing recovery is illegal and arbitrary. He further submits that the requirement of passing examination as a



condition for grant of ACP has been considered by a learned Single Judge of this Court in the case of **Masomat Indu Devi Vs. The State of Bihar & Ors**, reported in **2019 (2) PLJR 241** and the learned Single Judge held out that the scheme formulated in the year 2014 cannot operate with retrospective dates. Para 20-25 of the judgment is quoted herein below:

“20. A bare reading of the three judgments, referred to above, makes the following propositions absolutely clear, leaving no scope of any confusion, unless the judgments are viewed and analyzed with a myopic vision. The common thread running in all the three judgments, referred to above, is as follows:-

(A) The A.C.P. Rules of 2003 do not provide an avenue of promotion, but only financial progression in case of no promotion having been given to an employee;

(B) The recipient/beneficiary of such scheme has to be an employee who is otherwise eligible for being promoted to the higher post;

(C) Passing of Accounts Examination or Departmental Examination, as the case may be, under the Bihar Boards Miscellaneous Rules, 1958 would be necessary for crossing efficiency bar, confirmation and for promotion to selection grade, but not general promotion;

(D) The requirement of passing the exam. can only be thrust upon and made applicable



to an employee in view of the Service Rules of the Department.

21. A further condition can be gleaned from the aforesaid judgments for being eligible for getting the benefits of financial progression under the A.C.P. Rules of 2003, which is that, if there are no promotional avenues available in the Cadre.

22. Applying the aforesaid principles in the case of the late employee, it can safely be stated that he was absorbed and regularized in government service on 09.07.1981 on the post of Accounts Clerk in the Irrigation Department on which, he joined on 10.07.1981 at a pay- scale of Rs. 730-1080. Admittedly, he has not been paid the 1st time bond promotion and the benefits of A.C.P. Rules of 2003. The late employee died in harness on 04.09.2009, while was posted as Accounts Clerk. The Departmental Rules, framed only in the year 2014, has provided for 3-tier in the Cadre of Accounts Clerk and the requirement of passing the Departmental Accounts Examination and attaining computer knowledge for confirmation and promotion. The petitioner died much before the aforesaid rules came into effect.

23. Under such circumstances, in the considered opinion of this Court, the respondents are not justified in withholding the benefits of 1 st time bond promotion and financial progression under the A.C.P. Rules of 2003 to the late husband (employee) of the petitioner.

24. Under the aforesaid circumstances, the petitioner is directed to make a representation



before the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna (respondent No. 2) within a period of four weeks from the date of receipt/production of a copy of this order. On receipt of such representation, the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna (respondent No. 2) shall dispose off such representation within a period of eight weeks thereafter, taking into account the position of law as has been discussed in the present order. If the dues of the late husband (employee) of the petitioner is found to be tenable, necessary sequel orders shall be or directed to be passed within the aforesaid stipulated period.

25. With the aforesaid observation and direction, the writ petition stands disposed off. “

Learned counsel submits that the condition of passing of Departmental examination in the matter of grant of ACP is not attracted, as ACP is only a financial upgradation.

On consideration of the judgment of the learned Single Judge of this Court in the case of **Masomat Indu Devi** (supra) and in order to maintain consistency, the present writ application is disposed of in terms of the discussion made in para 20-25 of the judgment of the learned Single Judge (**2019 (2) PLJR 241**), the respondents are directed to take fresh decision in the light of the judgment of the learned Single Judge of this Court referred herein above within a maximum period of 60 days from the date of receipt/production of a copy of this



order. The order dated 19.09.2018 and other decision nullifying the earlier benefit granted under the MACP shall not come in the way of the respondents in taking fresh decision.

(Anil Kumar Upadhyay, J)

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