

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1814 of 2020

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Lakhan Prasad Son of Late bal Kishun Prasad, Resident of Mohalla- Janta Chowk, Mahananda Coloney, Purnea, Police station- K. Hatt, Purnea, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Principal Secretary, Water resource department, govt. of Bihar, Patna.
3. The Chief Engineer, Flood Control and Drainage, water resource department, Katihar.
4. The chief Engineer, Water resource department, Purnea.
5. The Superintending Engineer, Mahananda Flood Control circle, Katihar.
6. The Superintending Engineer, Drainage circle, Purnea.
7. The Executive Engineer, Flood Control Division, Salmari, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satish Chandra Jha 3
For the Respondent/s : Mr.Vinay Kirti Singh (Ga2)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 08-12-2021

In the instant petition, petitioner has prayed for following relief/reliefs:

“I. To quash the office order bearing Memo no. 2707 dated 31.12.2019 (Annexure 1) issued under the signature of respondent no. 3, whereby and where under benefit of 1st and 2nd Modified Career Progression Scheme (Hereinafter referred to as M.A.C.P.) granted to the petitioner w.e.f. 01.01.2011 and 07.05.2011 in the grade pay of Rs. 2800/- and 4200/- respectively vide office order bearing Memo no. 71, dated 11.01.2012 (Annexure 2) issued under the signature of respondent No. 4 has been modified and 2nd M.A.C.P. granted to the petitioner has been cancelled holding that grant of said benefit is against the condition mentioned in clause 4(5)(ii) of Bihar Govt. Employees Service Condition (Assured Career Progression Scheme) Rule 2003 (Hereinafter referred as ACP



Rule 2003) and opinion of the Finance Department contained in letter 10936 dated 27.11.2014 with further direction to recover access amount and paid in lieu thereof.

Aforesaid order is not only arbitrary rather same is wholly illegal one and has been passed in complete violation of principle of natural justice as well as ignoring the law laid down by the Hon'ble court that A.C.P./M.A.C.P is not a promotion rather same is financial up gradation as such passing of departmental examination is not necessary.

II. To direct the respondent to grant the petitioner 1st A.C.P. after completion of 12 years of service in the scale of Rs. 5000- 8000 (revised scale of 9300-34500), grade pay 4200 2nd A.C.P. in the grade pay of Rs. 4600 as has been given to several employees, including junior to the petitioner irrespective of the fact that, whether they have had passed the departmental examination.

III. To direct the respondent not to take any coercive action against the petitioner in terms of aforesaid impugned office order bearing Memo no. 2707 dated 31.12.2019 (Annexure 1), during the pendency of writ application because, there was/is no misrepresentation and suppression of facts on the part of petitioner in getting the benefit of two M.A.C.P. vide office order bearing Memo No. 71 dated 11.01.2012 (Annexure 2).

IV. That the Hon'ble Court may be pleased to grant any other relief or reliefs to the petitioner, as this Hon'ble court may think it proper in the present facts and circumstances of this case."

In connection with the grant of 2nd MACP there were certain alleged errors committed by the authorities. In the guise of rectification of grant of 2nd MACP to the petitioner the official respondent proceeded to cancel the 2nd MACP and further order for recovery. Thus, petitioner is before this Court in questioning the order dated 31.12.2019 (Annexure 1). On receipt of this 31.12.2019, petitioner had submitted detailed representation on 06.01.2020 (Annexure 10). The same has not been considered as



on this day. It is further submitted that while passing order dated 31.12.2019 petitioner has not been heard. The aforesaid factual aspect has not been disputed by the learned counsel for the respondent. Therefore, the concerned respondent is hereby directed to consider petitioner's representation Annexure 10 filed by the petitioner and proceed to pass speaking order after due consideration of each of the contentions stated in the representation dated 06.01.2020. Such speaking order shall be passed within a period of two months from the date of receipt of this order. In the meanwhile, if any recovery had been made by the official respondent from the petitioner, the same shall be refunded forthwith.

In the light of the above facts and circumstances, Annexure1 dated 31.12.2019 is set aside.

With the above observations, the petition stands allowed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2021
Transmission Date	NA

