

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2926 of 2019

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1. Md. Rashid Jamal S/o Late Farid Ahmad R/o Village- Lodipur, P.S.- Khusrupur, Distt.- Patna
 2. Mithilesh Kumar Chaudhary S/o Late Namu Narayan Chaudhary R/o Village- Jhitki, P.S.- Khirhar, Distt.- Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Agriculture Department, Bihar, Patna
2. The Principal Secretary, Finance Department, Bihar, Patna
3. The Joint Director, Plant Protection, Mithapur Farm, Bihar, Patna
4. The Assistant Director Plant Protection, Nalanda
5. The Assistant Director, Plant Protection, Bhagalpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Amit Kumar
For the Respondent/s : Mr.Gajendra Prasad Yadav (SC 17)

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

11 23-02-2021 Heard both sides.

The petitioners in this writ petition seek following
reliefs:

(I) For direction upon the respondent No.3 to consider
and grant 1st MACP in the pay scale Rs.9300-34800/- grade pay
Rs.4200 to the petitioners w.e.f. 12.07.2009 and 01.01.2009 as
per provisions of the Finance Department.

(II) Accordingly, modify the office order bearing
memo no.108/1329 dated 14.12.2012 so far as it relates to the
petitioner no.1 whereby the petitioner no.1 was granted 1st



MACP erroneously by the respondent No.3 in grade pay of Rs.2800/- and similarly modify the office order no.40/474 dated 26.03.2013 whereby the petitioner No.2 was granted 1st MACP erroneously by the respondent No.3 in grade pay of Rs.2800/-.

(III) After granting 1st MACP in grade pay Rs.4200/- the difference amount pursuant to such grant may be paid to the petitioners after fixations of their pay.

(IV) For any other relief/reliefs to which the petitioner may be entitled to.

During the pendency of this writ petition, the petitioners also filed I.A. No.1 of 2020 for quashing the order as contained in Memo No.422 dated 25.03.2019 by which the claim of the petitioners for grant of Grade Pay of Rs.4200/- on grant of 1st M.A.C.P. and onwards on grant of 2nd M.A.C.P., 3rd M.A.C.P. has been rejected.

The facts in brief are that the petitioner No.1 was appointed on compassionate ground on the post of Clerk(UDC) on 12.07.1999 in the pay scale of Rs.4,000-6,000/-. Petitioner No.2 was also appointed on compassionate ground on the post of Upper Division Clerk on 23.07.1998 in the pay scale of Rs.4,000-6,000/- and they are presently working in the office of Assistant Director, Plant Protection, Bhagalpur-respondent



No.5. Petitioner No.1 was granted 1st M.A.C.P. w.e.f. 12.07.2009 in Grade Pay of Rs.2800/- vide office order No.108/1329 dated 14.12.2012 and petitioner No.2 was also granted 1st M.A.C.P. and his pay was fixed after granting Grade Pay of Rs.2800/- w.e.f. 01.01.2009 vide office order No.40/474 dated 26.03.2013.

Learned counsel for the petitioners submits that in view of Clause 4(ga) of resolution No. 10041 dated 03.11.2011 of the Finance Department, the petitioners are entitled to get Pay Band-2 and Grade Pay Rs.4,200/- on grant of 1st M.A.C.P. It is submitted that Clause 4(ga) provides that if the basic salary is in the scale of Rs.4,500-7,000/- or Rs.4,000-6,000/- but the promotional post of those posts are in the scale of Rs.5,000-8,000/-, Rs.5,500-9,000/- and Rs.6,500-10,500/-, their corresponding scale shall be in Pay Band-2 and Grade Pay Rs.4200/-. It is further submitted that the clarification was issued vide letter No.8594 dated 17.08.2012 by the Finance Department. Clause 3(i) of the aforesaid letter says that the class of employees whose salary was below in the pay scale of Rs.5,000-8,000/- such as Rs.4,500-7,000/-, Rs.4,000-6,000/- but their promotional post was in the scale of Rs.5,000-8,000/-, Rs.5,500-9,000/- and Rs.6,500-10,500/-, their revised scale shall



be in Pay Band-2 with Grade Pay Rs.4200/- and, therefore, the petitioners are entitled to get Pay Band-2 with Grade Pay Rs.4200/- on grant of 1st M.A.C.P. as the petitioners were appointed in the scale of Rs.4,000-6,000/- on the post of Upper Division Clerk. It is further submitted that respondent has illegally rejected the representation of the petitioners.

Learned counsel for the respondents submits that a detailed and reasonable order has been passed while rejecting the representation of the petitioners. The department sought opinion from the Finance Department. The Finance Department opined that the petitioners would be considered for M.A.C.P. under M.A.C.P. Scheme of 2010. Petitioners are entitled to 1st M.A.C.P. after completing ten years of service and/or w.e.f. 01.01.2009 whichever is later. The petitioners have given next higher pay scale of Rs.5,200-20,200/- Grade Pay of Rs.2800/- as stipulated in Schedule I of the Resolution No.630 dated 21.01.2010. The promotional scale of the post of the petitioners was not in the scale of Rs.5,000-8,000/- or Rs.5,500-9,000/- or Rs.6,500-10,500/-. The petitioners were appointed in the scale of Rs.4,000-6,000/- and the next level of promotion in the scale of Rs.4,500-7,000/-, therefore, the petitioners are not entitled to get Grade Pay of Rs.4200/- in Pay Band-2 after according 1st



M.A.C.P. and rightly the respondent has rejected the representation of the petitioners.

The petitioners based their claim on the provisions of the Resolution No.10041 dated 03.11.2011. Clause 4(ka) of the aforesaid letter provides that the class of employees who were appointed initially in the unrevised scale of Rs.5,000-8,000/- and their 1st and 2nd promotional posts are in the scale of Rs.5,500-9,000/- and Rs.6,500-15,000/- their scale of revision shall be in the Pay Band-2 and Grade Pay Rs.4,200/-, Rs.4,600/- and Rs.4,800/-. This provision does not speak about the class of employees such as petitioners. Petitioners were initially appointed on the post of Upper Division Clerk in the pay scale of Rs.4,000-6,000/- in the 5th Pay Revision. Their 1st promotional post was not either in the scale of Rs.5,000-8,000/- or Rs.5,500-9,000/- or Rs.6,500-10,500/-. The revised scale of the Upper Division Clerk such as the petitioners who were initially appointed in the scale of Rs.4,000-6,000/- was in the pay scale of Rs.5,200-20,200/- with Grade Pay of Rs.2400/-. The resolution of the Finance Department as contained in Memo No.630 dated 21.01.2010 provides that the employees in the Grade Pay Rs.2,400/- on 1st M.A.C.P. will get Grade Pay of Rs.2,800/-, the next Grade Pay as provided in resolution as



contained in Memo No.630 and accordingly, the petitioners were rightly granted Grade Pay of Rs.2,800/-. I find that the basis of the claim of the petitioners is on wrong premises as the petitioners were appointed in the scale of Rs.4,000-6,000/- and their promotional scale was not provided in the pay scale of Rs.5,000-8,000/- or Rs.5,500-9,000/- or Rs.6,500-10,500/-. Therefore, I find that the respondent has rightly rejected the representation of the petitioners for grant of Grade Pay of Rs.4,200/- after granting 1st M.A.C.P. to the petitioners.

Having considered the facts aforesaid, I find no merit in this writ petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

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