IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.914 of 2018

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Nagendra Paswan Son of Late Jai Kishun Paswan Resident of Village- Bishanpur Giddha, P.O. - Susta Madhopur, P.S. - Maniyari, District Muzaffarpur (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Engineer-in-Chief-cum-Additional Special Secretary, Road Construction Department, Government of Bihar, Patna
4. The Joint Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Superintending Engineer, National Highway Circle, Road Construction Department, Muzaffarpur Bih
6. The Accountant General(A,G.), Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Advocate
		Mr. Santosh Kumar Mishra,Advocate
For the State	:	Mr. Balram Kapri, AC to SC 26
For the Accountant General :		Mr.Satyendra Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date : 04-02-2021

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

2. The following reliefs as formulated by the petitioner have been claimed in the writ petition --

i) To issue an appropriate writ/order/direction in the nature of mandamus commanding the respondents to give effect the office order No. 5/ Stha (Vividh) Kshe-08-47/2014 129 dated 09.08.2016 (Annexure-4) whereby the petitioner *had been granted with effect from 07.04.2010 the benefit of third Modified Assured Career Progression (M.A.C.P) of Grade Pay of Rs. 4,800/- in Pay Band-2 of Head Assistant on completion of 30 years of service with entire consequential benefits;*

ii) To issue of writ in the nature of mandamus and/or any other appropriate writ, order or direction quashing and setting aside Letter No. 129 dated 10.02.2017 issued by the Superintending Engineer, National Highway Circle, Muzaffarpur (as contained in Annexure-7);

iii) To issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent to pay arrears of pay and allowance with effect from 07.04.2010 along with interest at the rate of 18 percent per annum until the date of payment on the grant of MACP benefits;

iv) To grant any other or further relief(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interest of justice."

3. The short facts of the case according to the petitioner are that he was appointed as a correspondence clerk on 29.04.1980 and in course of his career he was granted two regular promotions to the post of Head Clerk on 07.01.1992 and on the post of Head Assistant on 05.11.2004 respectively. After rendering about 35 years of service, he superannuated on 28.02.2015 from the Road Construction Department, N.H. Circle, Muzaffarpur. As such, having remained on the post of Head Assistant for more than 10 years prior to his retirement, he became entitled to 3rd M.A.C.P. and his pay to be raised to the

grade pay of Rs. 4,800/- in Pay Band-2.

4. Mr. Raju Giri, learned counsel for the petitioner states that the claim for 3rd M.A.C.P. has been denied for the sole reason that the petitioner has not cleared the accounts examination. It is submitted that the matter stands squarely covered by a decision of the Hon'ble Division Bench of this Court dated 19.03.2018 passed in LPA No. 599 of 2015 (Ramadhar Thakur vs. The State of Bihar and others) (Annexure-8 to the rejoinder) which was a case decided under the erstwhile ACP Rules. It is further submitted that the new M.A.C.P. Rules have been issued in terms of resolution dated 14.07.2010 effective from 01.01.2009 (Annexure-1 to the writ petition), which do not contemplate passing of departmental accounts examination for the purposes of grant of 3rd M.A.C.P.

5. Learned counsel for the State appears and has been heard. He reiterates the stand taken in the supplementary counter affidavit that the petitioner has not passed the departmental accounts examination.

6. Having heard the parties and on consideration of materials on record, this Court finds merit in the contention of the petitioner. The judgment of the Division Bench relied upon by the petitioner delivered in the context of the earlier ACP Scheme categorically held as follows --

> *"12. In our view, thus, the Full Bench does not support the case of the respondents rather it helps the Appellant's case as it is clear from what has been laid down by the Full Bench that Rule 157(3)(J) requires passing of accounts examination for promotion to selection grade only.*
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> *18. ... since we have clearly held that passing of departmental Accounts Examination is not a condition precedent for grant of Assured Career*

Progression under 'the ACP Rules' nor does Rule 157 (J)(3) of the Bihar Boards Miscellaneous Rules conceive of such a requirement……..''

7. Learned counsel for the State has not disputed that the new M.A.C.P. Rules would be applicable to the case of the petitioner and do not require passing of departmental accounts examination for the purpose of grant of 3rd M.A.C.P.

8. In the above view of the matter, the impugned letter No. 129 dated 10.02.2017 (Annexure-7) is hereby quashed with the observation that the petitioner would be entitled to grant of 3rd M.A.C.P. with consequential benefits.

9. The writ petition stands allowed.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	05.02.2021
Transmission Date	-