

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20789 of 2014

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Prem Chand Prasad Singh Son of Late Sudisth Singh resident of Harail, P.S.-
Mohiuddinnagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director Administration Jail Directorate Department of Home, Bihar.
3. The I.G. Prison, Government of Bihar, Patna.
4. The Superintendent Adarsh Central Jail, Beur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vasant Vikas, Advocate.
		Mr. Shri Krishna Ranjan, Advocate.
For the State	:	Mr. Pankaj Kumar Sinha, AC to GA-9

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 19-12-2022 Heard Mr. Shri Krishna Ranjan, learned counsel for

the petitioner and Mr. Pankaj Kumar Sinha, learned AC to GA-9

appearing for the State.

2. The petitioner has filed this application for a

direction to respondent/State to consider his claim of

ACP/MACP which has been denied on the ground that the

petitioner has not passed the departmental Accounts

examination.

3. The I.A. No. 3731 of 2016 has been filed by the

petitioner challenging the impugned decision of the

Departmental Promotion Committee dated 31.7.2015 denying

the ACP/MACP to the petitioner. The name of petitioner figures



at Sl. No. 66 of the list (Annexure-6).

4. In view of the nature of prayer made in the Interlocutory Application, the same is allowed and taken as forming part of the writ application.

5. Learned counsel for the petitioner submits that the petitioner was appointed as Jail Warden on temporary basis in 1974. On 31.1.1994 the petitioner was taken into regular cadre as a Warden and his services was confirmed on 31.1.1984. The petitioner was promoted to the post of Sr. Warden with effect from 17.9.1988. Subsequently, the petitioner was promoted on the post of Clerk with effect from 16.1.1999. The claim of the petitioner is that the petitioner is entitled to be given MACP after completion of 10 years continuous service on the post of clerk.

6. Learned counsel for the petitioner submits that the requirement of passing the departmental accounts examination is not a condition precedent for grant of ACP as has been held by the Division Bench and co-ordinate Bench of this Court in the judgment passed in *Ramadhar Thakur Vs. The State of Bihar and Others in LPA No. 599 of 2015* arising out of *CWJC No. 486 of 2014 dated 19.3.2018*. He also relies upon the judgment of another Division Bench of this Court in LPA



No. 372 of 2019 arising out of CWJC No. 19307 of 2013 dated 25.4.2022 on this issue. He further relies upon a judgment of learned Single Judge in the case of *The State of Bihar V Shri Krishna Singh*, reported in *2019 (2) PLJR 241* on this point.

7. On the other hand, learned counsel for the respondent submits that the petitioner is not entitled for the benefit of MACP in view of the fact that the petitioner was awarded punishment in a departmental proceedings and his one increment was stopped with non-cumulative effect by virtue of order dated 4.10.2013 and, subsequently, the order of censure was passed against the petitioner on 24.9.2014. As such, he is not entitled for any exemption from passing the departmental examination.

8. I have heard learned counsel for the parties. The case of the petitioner is that the requirement of passing departmental examination is not the condition precedent for grant of MACP/ACP inasmuch as according to the petitioner that neither the scheme of ACP or MACP deals with such condition nor under Rule 157(3)(J) of the Bihar Boards Miscellaneous Rules, 1958, there was requirement of passing departmental examination.

9. The Division Bench of the Court as well as the



learned Single Judge has dealt with similar issues in Shri Krishna Singh (supra) and has held that denial of financial progression to the employee on the ground that he did not pass the accounts/departmental examination, is not justified in law.

10. From perusal of the impugned order which has been challenged by way of Interlocutory Application, it transpires that the petitioner has been denied Financial Progression on the ground of his not having been passed the departmental examination of accounts.

11. In view of the ground taken by the State in the impugned order, the new plea in counter affidavit that the petitioner found not entitled for exemption from passing the departmental examination, is not acceptable.

12. For the reasons stated hereinabove and taking into consideration the law laid down by this Court (supra), I am of the considered opinion that the impugned order does not require any interference by this Court.

13. In view of the aforesaid, the order issued vide Memo No. 4542 dated 4.8.2015 in respect of the petitioner is quashed.

14. The Respondent No. 2 is directed to consider the claim of the petitioner for grant of Financial Progression



under ACP/MACP in the light of the fact that passing of the departmental accounts examination is not the condition precedent for grant of Financial Progression to the petitioner. The decision in this regard shall be taken by the respondent No. 2 within a period of four weeks' from the date of receipt/production of a copy of this order.

15. With aforesaid observation and direction, this writ application stands allowed.

(Anil Kumar Sinha, J)

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