

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1882 of 2021

1. Chandra Shekhar Prasad Sinha Son of Sri Shivrath Sahay, resident of S/205, Shivmani Sadan, Aam Bagan Sadhanapuri, Gardanibagh, Phulwari, Patna-800001. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
2. Rajendra Kumar Singh, Son of Hari Narayan Singh, resident of 101 Panvaso Inkaleb, Ashokpuri, Khajpura, Phulwari, Patna- 800014. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
3. Lal Babu, Son of Tialk Singh, resident of Flat No. 4/C, Lakshay Kutir, Ranjan Path, Bailey Road, Patna- 801503. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
4. Surendra Prasad, Son of Jogendra Ram, Aam Bagicha, Mahadevpuri, Gardanibagh, Patna- 800001. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
5. Rajendra Prasad, Son of Late Bisheshwar Prasad, resident of Village-Benipur, P.O.- Rashisha, District- Nalanda. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
6. Usha Rani, wife of Sri Deepak Kumar Sinha, resident of Lane No. 4/A, Opposite Vijay Krishna , Vijay Nagar, Rukanpura, Patna- 800014. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
7. Purnendu Kumar Sinha, Son of Baidya Nath Prasad, resident of 88/A, C.D.A. Colony, North Shastri Nagar, L.B.S. Nagar, Patna- 800023. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
8. Bam Shankar Ram, Son of Late Munshi Ram, resident of Samhuta, Kargahar, Pipra, Sasaram- 821107. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
9. Jag Mohan Lal Manjhi, Son of Late Sahdeo Manjhi, resident of Khorodih, Sawari Baxi Jee, Jalalapur, Khairadih, Saran- 841412. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
10. Murari Prasad Gupta, Son of Yamuna Prasad, resident of Belwarganj, Gulzarbagh, Patna- 800007. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
11. Md. Shakil Mallick, Son of M. Mohammad, resident of Road No. 15/16, Near Ali Marriage Hall, New Colony, New Karimganj, Gaya - 823001. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.



12. Abdhesh Kumar, Son of Akhileshwar Narayan Ray, Raj Kumari Bhavan, Sachi Pati, Hajipur, Vaishali- 844101. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
13. Prem Nandan Prasad Sinha, Son of Late Lakshmi Prasad Ambastha, resident of Sikandarpur Road, P.O.- Mirzanhat, Kutubganj, District- Bhagalpur-812005. Petitioner superannuated from Government Service in the Labour Resources Department as Labour Enforcement Officer.
14. Shree Niwas Ojha, Son of Sri Sheo Gopal Ojha, resident of Lane 10, Gola Road, Ranjan Path, Danapur, Patna - 801503, presently working as Labour Enforcement Officer, Kashichak, District- Nawada.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary/Principal Secretary, Labour Resources Department, Government of Bihar, Niyogan Bhavan, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Commissioner, Labour Resources Department, Government of Bihar, Patna.
5. The Joint Commissioner, Labour Resources Department, Government of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Arun Kumar Sinha, Advocate
For the Respondent/s : Mr. Ajay Kumar Rastogi, AAG-10

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 31-03-2022

Heard the learned counsels for the parties.

2. In the instant petition, petitioners have prayed
for following reliefs:-

“(a) To issue a writ of certiorari for quashing office order no. 05 read with memo no. 5/R.L.-40-40/2011 Sra.San. 939 Patna dated 16.02.2018, whereby and whereunder the 3rd MACP granted to the petitioners vide order no. 7756 dated 11.12.2017 has been



stalled/stopped in complete violation of the principles of natural justice.

(b) To issue a writ of certiorari for quashing the part of the resolution of the proceedings of the Screening Committee held on 26.06.2018, by which under item B. 3rd MACP (revised grade pay Rs. 7600/-) has not been approved in regard to petitioners on the ground that their confidential remarks were not according to the standard/criteria laid down by the General Administration Department, Government of Bihar vide letter no. 929 dated 30.03.2011.

(c) To issue a writ of mandamus commanding the Respondents to grant financial hikes in salary to the petitioners by granting them 3rd MACP (revised grade pay Rs. 7600/-) after implementing their own order bearing office order no. 08 read with memo no. 7756 dated 11.12.2017 (Annexures-5), which was issued after considering the entire aspects and rules by the Government of Bihar in the Labour Resources Department as also after consideration by the Screening Committee in its meeting dated 28.07.2017.

(d) To issue a writ of Mandamus commanding the Respondents to fix the pay of the petitioners after granting them revised 3rd Modified Assured Career Progression and to pay the arrears of salary and other benefits admissible to them.

(e) To issue a writ of Mandamus commanding the Respondents to fix pension of the petitioners as per the salary hike after granting 3rd M.A.C.P. and further to pay all other pensionary benefits accrued to them by dint of salary hike along with calculation chart of the entire due amount and interest thereon at the rate of 18% per annum from the date it becomes due till the date of payment.

(f) To any other relief or



reliefs for which the petitioners may be found to be entitled.”

3. Petitioners have been granted benefit of MACP on 11.12.2017. To that effect an entry has been made in Column No. 9. When things stood, on 16.02.2018 grant of MACP on 11.12.2017 has been stalled. Thereafter, entry made in Column No. 9 in respect of grant of MACP has been deleted on 16.02.2018.

4. Petitioners were granted MACP on 11.12.2017. In other words, petitioners were drawing higher pay scale as on 11.12.2017. With reference to grant of MACP, the same has been deleted on 16.02.2018. Thereby reducing their pay and it has a civil consequences. In other words, petitioners are drawing lesser pay. In such circumstances, principle of *Audi Alteram Partem*/ principle of natural justice is warranted as held by the Apex Court from time to time. In other words, if there is any civil consequences arising out of an order and persons right is affected, such person is entitled to notice.

5. Learned counsel for respondent-State vehemently contended that pursuant to the deletion of entry made in Column No. 9 on 16.02.2018 is concerned, respondent has taken a decision in the Screening Committee that the petitioners do not fulfill the requisite criteria like petitioners



were stated to have faced certain adverse remarks. The same is countered by the petitioners' counsel stating that such adverse remarks were not communicated. In other words, adverse remarks were not communicated for the purpose of denial of any service benefits.

6. It is to be noted that even while the Screening Committee is taking note of certain alleged adverse remarks stated to have been written against the petitioners and if the same is taken into consideration while scrutinizing the petitioners' entitlement of MACP in that event the Screening Committee or competent authority should have issued a show cause notice asking the petitioners that they are facing adverse remarks in the result they are not entitled to MACP. In such an event petitioners should have been given an opportunity of explanation as to how the alleged adverse remarks would not come in the way of granting MACP, in the absence of providing ample opportunity of hearing/ principle of natural justice passing adverse order is impermissible. Hence petitioners have made out a case. Accordingly, orders dated 16.02.2018 and 26.06.2018 are set aside.

7. The concerned respondent is at liberty to proceed in accordance with law. In other words, issuance of a



detailed show cause notice as to why petitioners are not entitled to MACP as it was due to the petitioners. On receipt of petitioners’ explanation, the concerned respondent is hereby directed to pass speaking order as to whether petitioners are entitled to MACP or not?

8. Accordingly, the present petition is allowed with cost of Rs. 5,000/-. The cost shall be remitted in the Patna High Court Legal Services Committee within eight weeks. The cost shall be paid by the concerned department.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.04.2022
Transmission Date	

