

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6729 of 2020

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Ashok Kumar Singh Son fo Late Digambar Singh Resident of Mahananda Colony, Janta Chowk, T/F9, POLice Station-Khajanchi Hat, District-Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Water Resources Department, Government of Bihar, Patna.
2. Chief Engineer Flood Control and Drainage, Water Resources Department, Katihar.
3. Superintending Engineer, Mahananda Flood Control Circle, Katihar
4. Executive Engineer Flood Control Division, Kadhagola, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahasweta Chatterjee, Advocate
For the Respondent/s : Mr. Vinay Kriti Singh, GA 2

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

Date : 29-03-2022

Heard learned counsel for the parties.

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

“(i) That an appropriate writ may be issued quashing by the office order no. 92 vide memo no. - 2708 dated 31/12/2019 issued by the respondent no. 2, the Chief Engineer, as contained in annexure – 4 whereby and where under the respondent no. 2 has shifted the date of 2nd promotion granted to the petitioner under M.A.C.P. scheme from 03/05/10 to 13/10/2017 with a direction to the controlling authority to re-fix the salary of the petitioner accordingly.

(ii) That, an appropriate writ may be issued quashing the letter no. - 1609 dated 05/08/19 issued by Chief Engineer, respondent no. 2, addressed to all the



Superintending Engineers all the Executive Engineers and Chief Engineers of Katihar region, as contained in annexure whereby and where under respondent no. 2 has issued direction to scrutinise the service book of the employees subordinates to them and to send proposal to him through proper channel for cancellation of promotions of those employees granted under A.C.P. and M.A.C.P. scheme in violation of the provision of Rule (4) (5) (II) of A.C.P. Rule 2003 relying on letter issued vide memo no. - 10936 dated 27.11.14 issued by the special v/s Secretary of Revenue department communicating to all the principle Secretary. Heads of all the department, all Divisional Commissioner, and all the District Magistrate that if any employee has been given promotion under A.C.P. Scheme late due to some reason he or she should be granted 2 nd promotion after 12 years or 10 years from the date the 1 st promotion under the Scheme was granted.

(iii) That an appropriate writ may be issued, commanding upon the respondent authority not to start recovery of any amount from the salary of the petitioner during the pendency of this writ application.

(iv) That any other reliefs may be granted for which the petitioner is found entitled to.”

3. The petitioner was extended M.A.C.P benefit while assigning the date as 03.05.2010. The same is sought to be postponed from 03.05.2010 to 13.10.2017 and further ordering of re-fixation of pay and recovery of difference of pay during the intervening period from 03.05.2010 to 13.10.2017.



4. Learned counsel for the petitioner submitted that the impugned action of the respondent is without notice. In other words, petitioner has not been heard as to why such alteration of date of assigning M.A.C.P from 03.05.2010 to 13.10.2017 are to be made. In the counter affidavit, respondents have taken a contention that the petitioner has been issued notice as to why the date of M.A.C.P granted shall not be altered from 13.10.2017 to 03.05.2010. However, no material information has been placed on record as to whether petitioner was issued notice or not? That apart perusal of the impugned communication/order, it is evident that authority nowhere stated that on what date notice was issued and as to why the petitioner has not submitted his explanation and other material information, therefore, *prima facie* the impugned communication/orders are without application of mind.

5. Accordingly, the petitioner has made out a case. Hence, orders dated 31.12.2019 and 05.08.2019 stand set aside, reserving liberty to the concerned respondent to issue appropriate show cause notice with material information if the authority intends to alter the date of assigning of M.A.C.P. from 03.05.2010 to 13.10.2017. Such notice must be a detailed notice so as to enable the petitioner to counter properly. On receipt of show cause notice, petitioner shall submit detailed explanation in order to



sustain the date of eligibility to M.A.C.P as 03.05.2010 with material information. On receipt petitioner’s explanation, the concerned respondent is hereby directed to pass a detailed speaking order either in accepting or rejecting petitioner’s explanation. In other words speaking order shall be passed and communicated to the petitioner. The above exercise shall be completed within a period of four months from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	31.03.2022
Transmission Date	

