IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10638 of 2020

==

Ratnesh Kumar, Son of Late Chandrika Prasad, Resident of Mohalla- Navratanpur, P.O. and P.S.- Jakkanpur, District- Patna, presently posted as Senior Accounts Clerk, office of the Superintending Engineer, Road Construction Department, Bhojpur Road Circle, Ara

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Finance Department, Government of Bihar, Patna
3. The Secretary (Expenditure) Finance Department, Government of Bihar, Patna
4. The Principal Secretary, Road Construction Department, Government of Bihar, Patna
5. The Engineer in Chief -cum-Additional Secretary-cum-Special Secretary Road Construction Department, Government of Bihar, Patna
6. The Chief Engineer (South) Road Construction Department, Government of Bihar, Patna
7. The Superintending Engineer, Road Construction Department, Bhojpur Road Circle, Ara
8. The District Accounts Officer, Bhojpur at Ara, District- Bhojpur at Ara

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Advocate
For the Respondent/s : Mr. Amit Prakash, GA-13

==

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 25-01-2022

This matter is heard via video conferencing due to circumstances prevailing on account of COVID-19 Pandemic.

2. Heard learned counsel for the parties.

3. In the instant petition, the petitioner has prayed for the following reliefs:

> "(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the order dated 19.02.2020 issued under the signature of the

Respondent no.7 and contained in his memo no.187 dated 19.02.2020 whereby and where under the Respondent no.7 has been pleased to cancel /modify the previous order by which the petitioner was granted the benefits of Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as ACP Rules, 2003) and Bihar Government Servant (Modified Assured Career Progression Scheme) Rules, 2010 (hereinafter referred to as MACP Rules, 2010) and has not only shifted the date with effect from which the petitioner was granted the benefits of ACP Rules, 2003 and MACP Rules, 2010 but has also directed for recovery of excess payment received by the petitioner.

(II) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities for grant of benefits of ACP Rules, 2003 with effect from the date when the petitioner had completed 12 years of service from the date of his initial appointment as also for grant of the benefits of MACP Rules, 2010 from due dates computed on the basis of first day of joining of the petitioner notwithstanding that at the relevant time, the petitioner had not cleared his Accounts Examination and on the ground that if the Accounts Examination was not conducted by the Department in the intervening period, the petitioner cannot be made to suffer for grant of benefits of ACP, if he was otherwise eligible for grant of such benefits.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case."

4. The petitioner was granted 1st ACP on 08.03.2011 and 2nd ACP on 18.03.2015 respectively. Further 18.03.2015 order was modified on 19.02.2020 and it was effected w.e.f. 30.08.2020.

5. In the light of these facts and circumstances, respondent no.7 abruptly canceled the benefit extended to the petitioner without providing an opportunity of hearing and also ordered for recovery of alleged excess payment. The petitioner has made out a *prima facie* case that he has not been heard before effecting alteration relating to grant of ACP/MACP etc.

6. Therefore, the petitioner has made out a *prima facie* case. If any order is affected to a person it has a civil consequences. In the result, he should be provided an opportunity of hearing, like issuance of show-cause notice and on receipt of reply proceed to pass order after due consideration of each of the contention to be raised in the reply. The aforesaid procedure has not been undertaken by the 7th respondent before passing the impugned order dated 19.02.2020 (Annexure-P-10).

7. The respondents are not disputed that the aforesaid procedure has not been undertaken by the 7th respondent before passing impugned order.

8. Accordingly, Annexure-P-10 dated 19.02.2020 is set aside and the present petition stands allowed, reserving liberty to the respondents to proceed in accordance with law after giving due ample opportunity of hearing to the petitioner.

(P. B. Bajanthri, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01 02.2022
Transmission Date	NA