

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3468 of 2023

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Bhagwanji Pathak Son of Late Rajeshwar Pathak, resident of Village - Mahisi, Police Station - Mahisi, District - Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water and Resources Department, Government of Bihar, Patna.
3. The Deputy Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Irrigation Creation (Sinchi Srijan), Water Resources Department, Saharsa.
5. The Superintending Engineer, Canal Circle, Saharsa.
6. The Executive Engineer, Irrigation Division, Saharsa.
7. The Under Secretary, Board of Revenue, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satish Chandra Jha 3, Adv
For the Respondent/s : Mr. Sriram Krishna, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

6 15-09-2023 1. Heard the learned counsel for the petitioner and
learned counsel for the State.

2. The petitioner's claim for grant of financial progression under the Assured Career Progression/Modified Assured Career Progression (ACP/MACP) Scheme is the issue arising for consideration in the instant case.

3. The claim is resisted by the learned counsel for State by submitting that the petitioner has not passed the examinations in accordance with the procedure.



4. The petitioner claims that he had passed the examination at a time when there was a bar and therefore, the respondents are not willing to acknowledge the said result.

5. The sum and substance is that for non-passing of departmental examination, he is being denied the benefits of financial progression under the ACP/MACP Scheme.

6. The learned counsel for the State has placed reliance on clause-10 of the Bihar Water Resources Department Field Clerical Cadre Rules 2014 (hereinafter referred to as "2014 Rules"). The rule does contemplate conduct of departmental examination. Clause 10, however, does not show that claim to benefit under ACP/MACP Scheme is in any way linked with passing of this departmental examination.

7. That apart, the learned counsel for the petitioner has also relied upon judgment of Hon'ble Apex Court in the case of *Amresh Kumar Singh & Ors. vs. the State of Bihar & Ors.* reported in **2023 (2) PLJR 423** dealing with grant of financial progression under the ACP Scheme of this State only.

8. The Hon'ble Apex Court has considered the fact that the benefits being granted by way of progression are in the nature of *in situ* progression and not functional promotions on a higher post; and for such grant of financial progression



recognizing the stagnation of the employee, the Apex Court has held as follows:

"19. In view of the aforesaid legal position coupled with the fact that the qualification of graduation prescribed is for the promotion to the post of Accounts Officer rather than for the grant of in situ promotion on the non-functional post or for extending the benefit of ACP which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, we are of the opinion that the judgment and order of the Division Bench of the High Court impugned in the appeals cannot be sustained. It is accordingly hereby set aside and that the judgment of the writ court dated 28.11.2017 is restored. The appellants are extended the benefit of ACP, as directed by the writ court."

9. Considering the rival submissions, the rule position, noted above, as also decision of the Hon'ble Apex Court relied upon by the petitioner's counsel, this Court would find that submissions advanced on the basis of 2014 Rule are unsustainable. Also in view of the decision of the Hon'ble Apex Court in the case of **Amresh Kumar Singh** (*supra*), this Court is of the view that the authorities cannot insist on acquiring of educational qualification which as per their submission is required for promotion to a higher post; in the matter of grant of only financial benefit under the ACP/MACP Scheme.

10. The writ application is thus allowed.

11. The respondent No. 4 should pass a specific order



in respect of the petitioner's claim for benefit under ACP/MACP Scheme without raising the requirement of passing the examinations and pay the benefits found due and admissible along with a chart showing calculation of the amount being paid, within three months from the date of receipt/production of a copy of this order.

(Madhuresh Prasad, J)

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