

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5227 of 2023

Sukdeo Choudhary Son of Late Deo Sharan Chaudhary, resident of Mohalla-Patuchak, Bibiganj, Danapur Cant, Police Station- Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Minor Irrigation Commissioner, Bihar, Patna.
2. The Minor Irrigation Commissioner, Bihar, Patna.
3. The Secretary, Minor Irrigation Department, Bihar, Patna.
4. The Superintending Engineer, Minor Irrigation Department, Minor Irrigation Division, Bhagalpur.
5. The Executive Engineer, Minor Irrigation Division, Bhagalpur.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Brij Mohan Kumar Singh, Advocate
For the Respondent/s : Mr. Anirban Kundu (Sc24)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 01-11-2023

1. The present writ petition has been filed for quashing the order dated 27.11.2017, passed by the Executive Engineer, Minor Irrigation Division, Bhagalpur, whereby and whereunder the date of grant of first Assured Career Progression (for short 'ACP') has been modified and changed from 09.08.1999 to 27.06.2007. The petitioner has also prayed for grant of the benefits of first and second ACPs, inasmuch as the petitioner is entitled for grant of the benefits of first ACP with effect from 09.08.1999, as per the Assured Career Progression Rules, 2003.



Lastly, the petitioner has prayed for grant of the benefits of third ACP under the MACP Rules, 2010 with effect from 01.01.2009 and fixation of the pay scale and pension accordingly.

2. The brief facts of the case are that the petitioner was appointed by the Superintending Engineer Design (Minor Irrigation) Organization, Patna as Junior Accounts Clerk, vide Memo dated 17.01.1976, whereafter he had submitted his joining on 24.01.1976. The petitioner is stated to have appeared in the Hindi Noting and Drafting Examination, conducted on 28.08.1977, pursuant where to he was declared to have passed the same, vide Notification dated 08.11.1977, issued by the Govt. of Bihar, Rajya Bhasha Department. The petitioner was allowed first time bound promotion with effect from 24.01.1986, vide letter dated 26.08.1986. It is the further case of the petitioner that upon attaining the age of 50 years, the petitioner was exempted from passing the Departmental Accounts Exam, vide order dated 27.06.2007, whereafter he was allowed first and second ACPs with effect from 09.08.1999 and 21.01.2002 respectively, vide letter dated 31.10.2007 and then, the petitioner had superannuated, while working on the post of Accounts Clerk, on 31.01.2010. However, surprisingly, vide letter dt. 05.02.2011, the Executive Engineer, Minor Irrigation



Division, Bhagalpur wrote a letter to the petitioner stating therein that from a perusal of his service book, it appears that he has not passed the Departmental Accounts Examination, hence he is not entitled to derive the benefits of first time bound promotion, first ACP and second ACP with effect from the date the same have been given, but only with effect from 27.06.2007, the day on which he was granted exemption from passing the Departmental Accounts Exam on account of him having attained 50 years of age. The petitioner had then filed his reply dated 01.03.2011, however, the same was not considered, compelling the petitioner to file a writ petition bearing CWJC No. 9887 of 2011, *inter alia* praying therein to quash the aforesaid letter dated 05.02.2011 and the office order dated 14.08.2010, as also to direct the respondents not to recover any amount from his retiral dues. The aforesaid writ petition was heard at length and allowed by a judgment dated 20.01.2016, operative portion whereof is reproduced herein below:-

“In view of the facts and circumstances and the proposition of law, the impugned order is set aside with a direction to the respondents to grant all benefits to the petitioner treating the 1st Time Bound Promotion granted to the petitioner in the year 1986 as valid and legal and calculating the same pay the differential amount and fix the pension. Accordingly,



the respondents are directed to pay the gratuity amount which has not been paid to the petitioner within a period of eight weeks from today

It is made clear that petitioner shall be entitled to get interest on all such amount at the simple rate of 7% per annum. All the formalities must be completed within a period of three months. Meaning thereby, that the respondent State and Accountant General both are directed to re-calculate the pension of the petitioner, issue sanction order and authority slip and credit the amount to the account of the petitioner within a maximum period of three months from the date of receipt/production copy of this order.”

3. In pursuance to the aforesaid order dated 20.01.2016, passed by a co-ordinate Bench of this Court, the Executive Engineer, Minor Irrigation Division, Bhagalpur, i.e. the respondent no.5 has passed the impugned order dated 27.11.2017, stating therein that since the petitioner was exempted from passing the Departmental Accounts Examination, after having completed 50 years of age, vide order dated 27.06.2007, he has been illegally granted the benefits of first ACP and in fact he is entitled for being granted first ACP and second ACP only with effect from 01.2.2000 and 01.02.2001 respectively. It has also been stated in the said order dated 27.11.2017 that though the petitioner was entitled to get



the benefits of first, second and third ACPs with effect from 09.08.1999, upon completion of 12 years and 24 years of service, however, on account of non-passing of the Departmental Accounts Examination, he was not found entitled for grant of the same, nonetheless, upon being exempted from passing the Departmental Accounts Exam, after having completed 50 years of age, the petitioner is entitled for grant of benefits of first, second and third ACPs with effect from 01.02.2000, 01.02.2001 and 01.01, 2009 respectively.

4. The learned counsel for the petitioner has submitted that in a catena of decisions, the Hon'ble Apex Court and this Hon'ble Court have consistently held that non-passing of the Departmental Accounts Examination would not be an impediment for grant of the benefits of ACP/MACP.

5. *Per contra*, the learned counsel for the respondent-State has submitted that since the petitioner did not pass the Departmental Accounts Examination during his service tenure, he is not entitled to grant of the benefits of first, second and third ACPs from a date prior to the date of grant of exemption from passing the Departmental Accounts Examination i.e. 27.6.2007, hence the impugned order dated 27.11.2017 does not suffer from any legal infirmity, thus the present writ petition is



fit to be dismissed.

6. I have heard the learned counsel for the parties and perused the materials on record.

7. The law with regard to the issue under consideration in the present writ petition is no longer res integra, inasmuch as in a catena of decisions, the Hon'ble Apex Court and this Hon'ble Court have consistently held that non-passing of the departmental accounts examination would not be an impediment for grant of the benefits of the ACP/MACP. In this regard, reference be had to a judgment rendered by the learned Division Bench of this Court in the case of *State of Bihar & Ors. vs. Smt. Jivachi Devi*, reported in *2020(2) BLJ 471*, which has also been upheld by the Hon'ble Apex Court, in view of the dismissal of the Special Leave Petition filed by the respondent-State. Reference be also had to a judgment dated 25.04.2022, rendered by the learned Division Bench of this Court in the case of *The State of Bihar & Ors. vs. Shri Krishna Singh & Anr. (L.P.A. No. 372 of 2019)*. It would be equally gainful to refer to a judgment rendered by the Hon'ble Apex Court in the case of *Amresh Kr. Singh & Ors. vs. The State of Bihar & Ors.*, reported in *2023 (2) PLJR (SC) 423*, wherein it has been held that fulfilment of educational qualifications prescribed under the



recruitment rules for the purposes of promotion are not necessary for non-functional in-situ promotion, hence for the purposes of granting benefits of ACP/MACP, passing of any exam is not necessary. This aspect of the matter has also been considered by a learned Division Bench of this Court in the case of *The State of Bihar and others vs. Sri Ram Subhag Singh*, reported in **2022 (2) PLJR 773**, wherein the learned Division Bench of this Court has held that non-passing of departmental exam shall not be an impediment for grant of benefits of ACP/MACP. Thus, there is no iota of doubt that the petitioner has to be granted the benefits of the Assured Career Progression scheme as also that of MACP scheme, de hors the fact that the petitioner has not passed the Departmental Accounts Examination, in case he has not been promoted, in order to deal with the problem of stagnation.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, as also considering the law laid down by the Hon'ble Apex Court and by this Hon'ble Court, I deem it fit and proper to quash the impugned order dated 27.11.2017, passed by the respondent no.5 and remand the matter back to the Executive Engineer, Minor Irrigation Division, Bhagalpur to examine the case of the



petitioner afresh and grant him the benefits of ACP/MACPs, as is due to him, within a period of six weeks of receipt/production of a copy of this order, without being impeded by the issue of non-passing of the Departmental Accounts Examination and accordingly refix the pay scale and pensionary benefits of the petitioner, within the same time frame.

9. The respondents are further debarred from making any recovery from the petitioner in view of the law laid down by the Hon’ble Apex Court in the case of *State of Punjab & Ors. vs. Rafiq Masih & Ors.*, reported in *(2015) 4 SCC 334*, wherein the Hon’ble Apex Court has held that after retirement no recovery can be made from an employee, in case there is no misrepresentation on his part, which is the case of the petitioner in the present matter.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.11.2023
Transmission Date	NA

