

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15600 of 2015

Shambhu Baitha son of Late Ram Nihora Baitha, resident of Mohalla-Kailashpuri, P.S. Dumra, District-Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health and Primary Welfare, Government of Bihar, Patna
2. The Director in Chief, Health Services, Government of Bihar, Patna
3. The Regional Deputy Director, Health Services, Tirhut Division, Muzaffarpur
4. The Civil Surgeon cum Chief Medical Officer, Sitamarhi

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Mr. Sitaram Yadav, GP-16 Mr. Yatindra Narayan, AC to GP-16

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 27-09-2023

The present writ petition has been filed
seeking the following relief:-

“1.That, the petitioner craves indulgence of this Hon'ble Court for issuance of appropriate writ / writs directing the Respondents to consider the case of the petitioner for granting him Third Assured Career Progression with effect from 2012 since when he completed 30 years of service in the cadre of Clerk working in the office of Civil Surgeon cum Chief Medical Officer, Sitamarhi, Respondent no.4., and after granting such promotion give him all consequential monetary benefit accruing on account of the aforesaid promotion.”



2. The learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case, which is though not on record, that although the petitioner is entitled for grant of third ACP/MACP but he has not been granted the same on account of non-passing of the second paper of the accounts examination. It is also submitted that the petitioner had passed the accounts examination only on 01.01.2011, hence he became entitled to grant of the benefits of second A.C.P. on 01.01.2011. Thus, consequently, the petitioner would become entitled to grant of the benefits of third A.C.P. with effect from 01.01.2021.

3. The learned senior counsel for the petitioner has submitted that the law in this regard 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 Assured Career Progression scheme/M.A.C.P.



4. In this regard, reference has been made to the 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 has also been made 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)***. The learned senior counsel for the petitioner has thus submitted that since the petitioner was granted the benefits of 2nd A.C.P. with effect from 01.02.2006, he would become entitled to the benefits of 3rd A.C.P. upon completion of 30 years of service i.e. w.e.f. 01.01.2012 or completion of 10 years of service from the date he got the benefit of 2nd A.C.P. i.e. 10 years from 01.02.2006, whichever is earlier.

5. I have heard the learned counsel for the



parties and gone through the materials on record. It would be 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 A.C.P./M.A.C.P., 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 A.C.P./M.A.C.P. Thus, the petitioner has to be granted the benefits of the Assured Career Progression scheme as also that of M.A.C.P., *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.

6. Having regard to the facts and circumstances of the case, I deem it fit and proper to direct the Regional Deputy Director, Health Services, Tirhut Division, Muzaffarpur to examine the case of the petitioner and grant the benefits of A.C.P./M.A.C.P., as are required to be granted to the petitioner, 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 in time.

7. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.10.2023
Transmission Date	N/A

