

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14304 of 2021

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Sachitanand Chaudhary Son of Late Rang Nath Chaudhary, resident of Village-Belaur, Police Station-Udwantnagar in the district of Bhojpur. At present resident of Mohalla-Tilak Nagar, Katira, Police Station Ara Nawada in the district of Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Minor Irrigation Department, Government of Bihar, Patna.
2. The Principal Secretary, Department of Minor Irrigation Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Engineer-in-Chief, Minor Irrigation Department, Government of Bihar, Patna.
5. The Superintending Engineer, Minor Irrigation Department, Government of Bihar, Patna.
6. The Chief Engineer, Minor Irrigation Department, Bihar, Patna.
7. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar, Advocate
For the Respondent/s : Mr.Sita Ram Yadav (Gp16)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 13-12-2023

1. The present writ petition has been filed for quashing the order dated 29.04.2021, passed by the office of the Engineer-in-Chief, Minor Irrigation Department, Government of Bihar, Patna, under the pen and signature of the Superintending Engineer, whereby and whereunder the time bound promotion granted to the petitioner w.e.f. 01.08.1992, has been cancelled and the pay scale of the petitioner has been reduced and refixed,



as also the date of grant of benefits of 1st, 2nd and 3rd ACP/MACP, granted to the petitioner w.e.f. 09.08.1999, 01.08.2006 and 01.08.2012, respectively has been modified and made effective from 17.01.2000, 17.01.2010 and 17.01.2020, respectively, on the ground that the petitioner has passed the departmental accounts examination only on 17.01.2000. The petitioner has also prayed for quashing the order dated 15.07.2021, issued by the office of the Engineer-in-Chief, Minor Irrigation Department, Government of Bihar, Patna, whereby and whereunder the salary of the petitioner has been fixed at Level-11 instead of Level-12. Lastly the petitioner has prayed for quashing of the order of recovery dated 20.07.2021, issued by the office of the Engineer-in-Chief, Minor Irrigation Department, Govt. of Bihar, Patna.

2. The brief facts of the case according to the petitioner are that the petitioner was appointed as accounts clerk in the month of August, 1982 in the office of Minor Irrigation Department, Sasaram, Government of Bihar, Patna. The petitioner was then transferred from one office to another and had then superannuated on 31.08.2020. The petitioner was granted benefit of 1st ACP w.e.f. 09.08.1999 in the Pay-Scale of Rs. 5000-150-8000, vide office order contained in Memo



No.799 dated 25.5.2007, issued from the office of the Chief Engineer, Minor Irrigation Department, Patna and after completing of 24 years of his successful service, the petitioner was granted the benefit of 2nd A.C.P. w.e.f. 01.08.2006, in the Pay-Scale of Rs. 5500-9000. Thereafter, the petitioner was also granted the benefit of 3rd M.A.C.P. w.e.f. 01.08.2012, in the Pay-Scale of Rs. 9300-34800 with Grade Pay of Rs. 4800/-. Thereafter, in pursuance to the Resolution of the Finance Department, contained in Memo No.163 dated 08.01.2016, the pay scale granted to the petitioner, pursuant to grant of the benefits of 1st ACP, was revised and shifted in the pay scale of Rs. 6,500-10,500/- w.e.f. 15.04.2000 & accordingly, the pay scale of 2nd ACP, granted to the petitioner earlier, was revised and shifted in the pay scale of Rs.10,000-15,200/- as also the pay scale granted, after grant of the benefits of 3rd MACP w.e.f. 01.08.2012, was revised and shifted in the pay scale of Rs.15,600-39,100/-. The petitioner had in the meantime passed the departmental accounts examination on 17.01.2000.

3. The learned counsel for the petitioner has submitted that the 1st Time Bound Promotion was granted to the petitioner in the year, 1992, whereafter, the benefits of 1st, 2nd and 3rd A.C.P./ M.A.C.P. was granted to the petitioner w.e.f. 9.8.1999,



01.8.2006 and 01.08.2012 respectively, nonetheless, the 1st Time Bound Promotion granted to the petitioner w.e.f. the year 1992 was cancelled on the ground that the petitioner had not passed the Accounts Examination at that point of time, which he passed on 17.01.2000. Subsequently, the effective date of grant of the benefits of 1st A.C.P., 2nd A.C.P. and 3rd M.A.C.P. was also shifted to 17.01.2000, 17.01.2010 and 17.01.2020, vide office order contained in Memo No. 179 dated 29.04.2021 on the ground that the petitioner had passed the Departmental Accounts Examination only on 17.01.2000, hence he is entitled for the benefits of 1st A.C.P. w.e.f. 17.1.2000, to the benefits of 2nd A.C.P., upon completion of 10 years, w.e.f. 17.01.2010 and to the benefits of 3rd M.A.C.P. w.e.f. 17.01.2020. Accordingly, the Pay-Scale of the petitioner was also revised and reduced to a lower scale vide office order contained in Memo No. 179 dated 29.4.2021, in an illegal and arbitrary manner after about 29 years of the petitioner having been granted 1st Time Bound Promotion and also after about 22 years of grant of the benefits of 1st A.C.P.. It is further submitted that neither any notice was issued to the petitioner nor he was provided an opportunity of hearing and instead the impugned orders dated 29.04.2021 and 15.07.2021, have been passed unilaterally, as such the



same are fit to be set aside. The learned counsel for the petitioner has next contended that it is a well settled law that no recovery can be made from a superannuated employee in case of absence of any allegation of fraud qua the concerned employee and moreover, it is equally a well settled law that passing of departmental accounts exam is not a condition precedent for grant of the benefits of Assured Career Progression Scheme. In this connection, the learned counsel for the petitioner has referred to a judgment rendered by the learned Division Bench of this Court, passed in **LPA No. 599 of 2015 (Ramadhar Thakur Vs. The State of Bihar and Ors.)**.

4. Per contra, the learned counsel for the respondents has submitted by referring to the counter affidavit filed in the present case that since the petitioner has passed the departmental accounts examination only on 17.01.2000, the date with effect from which the petitioner was granted the benefits of 1st, 2nd and 3rd ACP/MACP, i.e. w.e.f. 09.8.1999, 01.8.2006 and 01.08.2012, respectively, has been shifted and now the petitioner is entitled to the benefits of 1st, 2nd and 3rd ACP/MACP w.e.f. 17.01.2000, 17.1.2010 & 17.1.2020 respectively. Nonetheless, it has not been denied by the Ld. counsel for the respondents that the petitioner has neither engaged



in any fraud nor has misrepresented so as to avail the aforesaid benefits and moreover, it has also not been denied that passing of the departmental accounts exam is not a condition precedent for grant of the benefits of ACP Scheme, in view of the law laid down by this Court as also the Hon'ble Apex Court.

5. I have heard the Ld. counsels for the parties and perused the materials on record. This Court finds that the law regarding recovery is no longer res integra and according to the well settled principles of law laid down by the Hon'ble Apex Court in a catena of decisions, reported in **(2009) 3 SCC (Syed Qadir vs. State of Bihar); (1995) Suppl.1 SCC 80 (Sahib Ram vs. State of Haryana); (1994) 2 SCC 52 (Shyam Babu Verma vs. Union of India); (1997) 6 SCC 139 (B. Ganga Ram vs. Regional Joint Director) ; (2006) 11 SCC 492 (Purshottam Lal Das vs. State of Bihar); (2000) 10 SCC 99 (Bihar State Electricity Board vs. Bijay Bhadur); (2006) 11 SCC 7089 (B.J. Akkara vs. Govt. of India University) and (1995) suppl. 1 SCC 18 (Sahib Ram vs. State of Haryana) and the one reported in (2015) 4 SCC 334 (State of Punjab vs. Rafique Masih)**, no recovery can be effected from the petitioner, who has already attained the age of superannuation, since there has been neither any misrepresentation on his part



nor any fraud has been committed by the petitioner leading to payment of excess amount of salary.

6. At this juncture, this Court, deems it fit and proper to refer to yet another judgment rendered to by the Hon'ble Apex Court in the case of **Thomas Daniel Vs. State of Kerala and Others**, reported in **(2022) SCC Online SCC 536**, paragraphs no.9, 11 and 14 to 16 whereof, are reproduced herein below:-

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid



in excess.

11. *In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an identical question as under:*

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/ allowances from an employee, if the following conditions are fulfilled:

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it,



genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular



has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.

16. In the result, the appeal succeeds and is accordingly allowed. The Judgment and order of the Division Bench dated 02.03.2009 and also of the learned Single Judge of the High Court dated 05.01.2006 impugned herein, and the order dated 26.06.2000 passed by the Public Redressal Complaint Cell of the Chief Minister of Kerala and the recovery Notice dated 09.10.1997 are hereby set aside. There shall be no order as to costs.”

7. Consequently, this Court finds that the present case is squarely covered, not only by a catena of judgments rendered by the Hon’ble Apex Court, referred to hereinabove, but also by a judgment rendered by the Hon’ble Apex Court in the case of **Rafique Masih (supra)**, paragraph no.18 whereof is



reproduced herein below:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to



recover”.

8. Yet another issue which arises for consideration in the present case is that the petitioner has not been wrongly granted the benefits of 1st Time Bound Promotion, 1st A.C.P., 2nd A.C.P. and 3rd M.A.C.P., inasmuch as passing of the departmental accounts examination is not a condition precedent for grant of the benefits of the Assured Career Progression Scheme. The law in this regard is no longer res integra, inasmuch as a learned Division Bench of this Court in the case of the **State of Bihar & Ors. vs. Ram Subhag Singh** (LPA No. 4 of 2021), reported in **2022 (2) PLJR 773**, by a judgment dated 11.5.2022, has held that non-passing of departmental examination shall not be an impediment to grant of the benefits of time bound promotions / ACP /MACP. In fact, this aspect of the matter has also been decided by a judgment, rendered by this Hon’ble Court in the case of **State of Bihar & Ors. vs. Anjani Kumar**, reported in **2013 (2) PLJR 643**, which has also been upheld by the Hon’ble Apex Court, by an order dated 10.3.2014, passed in SLP (C) No. 19182 of 2013. In this regard, reference be also 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. It would be equally gainful to refer to a judgment 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)**. In a recent judgement, rendered by the Hon'ble Apex Court in the case of **Amresh Kumar Singh** (supra), it has been held that 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, cannot be withheld for not possessing additional educational qualification, hence for the purposes of granting benefits of ACP/MACP, passing of any exam is not necessary.

9. 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.

10. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also considering the judgments rendered by the Hon'ble Apex Court,



referred to hereinabove in the preceding paragraphs, this Court finds that the impugned orders dated 29.04.2021, 15.07.2021 and 20.07.2021, passed by the office of the Engineer-in-Chief, Minor Irrigation Department, Government of Bihar, Patna, under the pen and signature of the Superintending Engineer, are contrary to law, hence are quashed. Consequently, the respondent-authorities are directed to grant the benefits of ACP/MACP Scheme to the petitioner w.e.f. the due date without being impeded by the fact that the petitioner had not passed the departmental accounts examination in time. As a sequitur, the respondents are restrained from making any recovery from the pensionary dues of the petitioner.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.12.2023
Transmission Date	NA

