

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.370 of 2021

- 1.1. Kaushal Kishore Mishra Son of Late Upendra Nath Mishra, Resident of Satyendra Nagar, West of Block Office, P.O., P.S. and District Aurangabad.
- 1.2. Satish Kumar Mishra, Son of Late Upendra Nath Mishra, Resident of Satyendra Nagar, West of Block Office, P.O., P.S. and District Aurangabad.
- 1.3. Prabha Kumari, Daughter of Late Upendra Nath Mishra, wife of Birendra Kumar Panday, Resident of In front of Girl School, Aurangabad, P.O., P.S. and District - Aurangabad.
- 1.4. Padma Pathak, Daughter of Late Upendra Nath Mishra, Wife of Arvind Kumar, Resident of 7/8 Grasim Staff Colony, Nagada, P.O., P.S. and District Ujjain, Madhya Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Secretary-cum-Commissioner, Water Resources Department, Govt. of Bihar Patna.
3. The Under Secretary, Water Resource Department, Old Secretariat, Patna.
4. The Superintending Engineer, Sone Canal Modernization Circle, Indrapuri, Dehri On One, District - Rohtas.
5. The Treasury Officer, Aurangabad, Bihar.
6. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Akhilesh Kumar Sinha, Advocate
For the Respondent/s : Mr. Shiv Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 26-09-2023

Heard learned counsel for the petitioners and the
learned State counsel.

2. This is the third round of litigation at the instance
of the original writ petitioner (since deceased and substituted in
this proceeding by his legal heirs). The grant of benefits under



the A.C.P./M.A.C.P. scheme have remained illusive for the employee since filing of C.W.J.C. No. 3969 of 2009. In the present proceeding, the deceased employee challenged the 'reasoned order' dated 06.11.2018 rejecting his claim for benefit of A.C.P. It is not in dispute that in terms of the A.C.P. scheme, the employee (since deceased) became entitled to grant of first financial progression on 09.08.1999. The dispute arises because grant of the same is resisted by the authorities by referring to a departmental order of punishment dated 16.09.1998. The same imposed two fold punishment, one 'Censure' and the other 'a bar on employee's promotion within three years from the date on which it becomes due'. Two punishments read as follows:

“(i) “निन्दन” जिसकी प्रविष्टि वर्ष 1987-88 की चारित्रि में की जायेगी।

(ii) देय तिथि से तीन वर्षों तक प्रोन्नति पर रोक।”

3. Learned counsel for the petitioners would submit that in terms of the earlier orders passed in C.W.J.C. No. 3969 of 2009 and C.W.J.C. No. 5972 of 2014 earlier filed by the original petitioner, the issue that the effect of Censure lapsed in the year 1991 has already been concluded. The respondents, however, are again raising the same issue.

4. Insofar as this submission is concerned, the same appears to be correct from bare reading of the two orders passed



in the earlier writ proceedings in which the original petitioner's claim for A.C.P. fell for consideration before this Court. Paragraph 3 of the latter judgment passed in C.W.J.C. No. 5972 of 2014 is relevant in this regard and is being extracted hereinbelow:-

“3. Even though this Court on the earlier writ petition filed by the petitioner bearing C.W.J.C. No. 3969 of 2009 has specifically held that the punishment of censure awarded to the petitioner lost its effect in 1991 and that if eligibility for promotion is reckoned from that date, punishment lost its effect in 1994 but the respondents are still depriving the petitioner his benefit due under the second ACP by calculating the requisite period with effect from three years after 1994. The order passed by the respondent No. 2 is therefore, not in accordance with the order passed by this Court in C.W.J.C. No. 3969 of 2009 in favour of the petitioner, which has never been challenged by the respondent authorities and is binding inter parties.”

5. The second aspect is the effect of the punishment imposing a bar on grant of promotion within three years from the date it became due. This punishment can only effect the prospect of regular promotion in terms of the tone and tenor of the order itself. It is nobody's case that the original petitioner (since deceased) was entitled to his regular promotion with effect from the date on which he is claiming A.C.P.. The two



issues are distinct. The grant of A.C.P. is technically not a grant of promotion but an increase in the pay-scale. It is a financial progression *in situ* without giving the benefit of higher post or without affecting any seniority. Had the petitioner been claiming a higher post/seniority then the same would be barred from the date on which it became due but that is not the case here. The original petitioner, therefore, cannot be deprived of his benefit of financial progression under the Scheme. More so, in view of the recent judgment of the Hon'ble Apex Court dated 25.04.2023 passed in the case of ***Amresh Kumar Singh and Ors. Versus The State of Bihar and Ors*** wherein the very same basic scheme under which the petitioner is claiming benefits fell for consideration before the Hon'ble Apex Court and Hon'ble Apex Court has held as follows:

“13. At the cost of repetition, it must be borne in mind that the object of ACP is to avoid stagnation where no promotional avenues are available. The grant of ACP is not technically a grant of promotion but increase in the pay scale to the next higher grade retaining the employee on the post held by him. This is only to accord monetary benefit without disturbing any seniority or actually effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.”

6. The Court, therefore, has no hesitation in recording



that the original petitioner cannot be deprived of his benefits for grant of A.C.P. w.e.f. 09.08.1989 and the same be granted to his legal heirs, if there is no other impediment, within eight weeks from the date of receipt/production of a copy of this order.

7. The writ application is allowed.

(Madhuresh Prasad, J)

Pankaj/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	04.10.2023
Transmission Date	

