

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13629 of 2006

=====

Yamuna Prasad Yadav, Son of late Ganga Dayal Pd. Yadav, Resident of
Village – Narayanpur, Dedhpura, P.S. - Mahnar, District – Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Accountant General, Govt. of Bihar, Patna.
3. Superintendent Engineer, R.E.O., Works Division Saharsa.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : None.

For the Respondent/s : Mr. Arvind Kumar, AC to GA-9.

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 13-07-2023

No one appears on behalf of the petitioner. Mr.

Arvind Kumar, learned AC to GA-9 appeared on behalf of the
State.

2. The present writ petition has been filed for the
following reliefs:

*“That this is an application for issuance
of an appropriate writ, order or direction to
commanding the Respondents for quashing letter
no. 323 dated 08.03.2003 passed by the Executive
Engineer, R.E.O., Khagaria, whereby recovery is
sought to be made from petitioner’s pension
alleging excess payment following from an illegal
time bound promotion and the petitioner further
prays to release his pension immediately as the
petitioner and his dependents are at the verge of
starvation and petitioner further prays also to
grant any other relief / reliefs which the petitioner
is entitled in the facts and circumstances of the
case.”*

3. It appears that the petitioner was denied first time



bound promotion on the ground that he had not passed final departmental Accounts Examination. The petitioner has retired on 31.07.2002 while he was working as Correspondence Clerk at R.E.O., Circle, Saharsa. The S.E., R.E.O., Saharsa Circle issued letter to the Accountant General for recovery of excess payment due to illegal time bound promotion granted to the petitioner vide letter no. 323 dated 08.03.2006. Another writ petition with respect to certain reliefs has also been filed being C.W.J.C. No. 695 of 2006. The petitioner is aggrieved by the order of recovery on account of excess payment. Law has been crystallized as on date that no recovery can be made from a Class-III and Class-IV employee.

4. It is admitted that petitioner had retired from the post of correspondence Clerk after having given the benefit of first time bound promotion after completion of 10 years of service, however he has been denied for a reason that he had not passed final departmental Accounts Examination. The said action is illegal.

5. The Hon'ble Supreme in the case of **Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.** reported in **2023 SCC OnLine SC 496** has held in Paragraph Nos. 12, 13 and 14 with regard to the financial upgradation under ACP/MACP Scheme which are reproduced as under:



“12. It may be worth noting that the ACP scheme was enforced on the recommendation of the Fifth Central Pay Commission in context with Group C and D employees and it provided monetary benefit to the employees on completion of 12 years and 24 years of regular service who were not able to get promotion. The scheme as such was anti-stagnation and envisages merely placement of the employees in the higher pay scale for the grant of financial upgradation only without grant of actual promotion. The benefit of the ACP as such is like granting non-functional in situ promotion.

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.

*14. The object and purpose of ACP/MACP Scheme has been reiterated by this Court in **Union of India v. C.R. Madhava Murthy, (2022) 6 SCC 183**, as one to relieve the frustration on account of stagnation and it does not involve actual grant of promotional post but merely monetary benefits in the form of next higher grade subject to fulfilment of qualifications and eligibility criteria.”*

6. In view of the aforesaid proposition of law, no recovery can be made from the petitioner after granting time bound promotion. Accordingly, the writ petition stands allowed.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	18.07.2023
Transmission Date	N.A.

