IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1848 of 2019

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Nand Kishore Mandal Son of Late Dukha Mandal Resident of Village and Post Office Bathnaha, Police Station- Bathnaha, District- Araria.

... ... Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Water Resources Department, Bihar, Patna.
2. The Principal Secretary, Water Resource Department, Govt. of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resource Department, Saharsa.
4. The Superintending Engineer, Irrigation Circle, Water Resource Department, Saharsa.
5. The Executive Engineer, Irrigation Division, Water Resource Department, Birpur, Supaul.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Adv.

For the Respondent/s : Mr. Amit Kumar Jha, AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 17-10-2024

Heard Mr. Sanjeev Kumar Singh, learned Advocate for the petitioner and Mr. Amit Kumar Jha, learned Advocate for the State.

2. The petitioner is aggrieved by the order contained in Memo No. 200 dated 09.02.2018 issued by the respondent no. 3, so far it relates to the petitioner, whereby the benefit of 2^{nd} Modified ACP granted to the petitioner under Modified Assured Career Progression Scheme (hereinafter referred to as 'MACP') has been cancelled and directed to recover the amount of excess payment, after superannuation of the petitioner which, in the humble submission of the petitioner, is not sustainable, apart from in violation of the principles of natural justice. The petitioner also sought a direction upon the respondent

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authorities to grant benefit of 1st ACP on completion of 12 years of service under the ACP Scheme, 2003 and 2nd MACP on completion of 20 years of service under the MACP scheme along with the consequential monetary benefits.

3. The short facts which led to filing of the present writ petition are that the petitioner was appointed on the post of Typist-cum-Clerk in the Water Resources Department in the year 1987 and superannuated on 31.10.2015 from the said post. It is stated that in view of coming into force of the Assured Career Progression Scheme, the petitioner though became entitled to get the 1st ACP w.e.f. 09.08.1999 after completion of 12 years of service but the same has been accorded to him w.e.f. 30.08.2010 by taking into consideration that the petitioner has passed the Departmental Accounts Examination on 29.08.2010.

4. Learned Advocate for the petitioner contended that the issue with regard to passing of the departmental examination stands settled by various decisions of this Court and lastly by the Full Bench of this Court in the case of ***Kamlanand Thakur vs. the State of Bihar*** and other analogous cases vide judgment dated 28.06.2024 which crystallized the issue and held as under:

> *"(A.) Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958, requiring passing of Departmental Accounts Examination for*

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promotion, is not applicable in case of grant of A.C.P. benefits underthe A.C.P. Rules, 2003;
(B.) Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958 is confined to passing of preliminary examination/final examination in Accounts only for the purposes of confirmation, crossing the efficiency bar and promotion to Selection Grade only and not for regular promotion;
(C.) Rule 4(5) of the A.C.P. Rules, 2003 even though provides that the prescribed requirements and mode of sanction of financial progression under the scheme (A.C.P. scheme) shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies and if the Rules/Resolutions prescribe passing of Departmental Examination or any qualification for promotion, that shall also be an essential condition for sanction of benefit under the scheme will not affect the claim for grant of A.C.P. after completion of twelve/twenty four years of service for the reason that such financial progression under the A.C.P. scheme is only in situ promotion and nothing more. This is even notwithstanding any such requirement of passing any Departmental Examination or acquiring any educational qualification for promotion under the Service/ Recruitment/ Promotion Rules."

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5. Reliance has also been placed on a decision rendered by the learned coordinate Bench of this Court in the case of ***Nand Kishore Singh vs. State of Bihar [2024(3) PLJR 71],*** wherein in identical situation the learned Court has set aide the impugned order and directed to grant the benefit of ACP/MACP with effect from the due date.

6. Adverting to the aforesaid facts and the settled legal position, the learned Advocate for the petitioner further contended that once the passing of the Departmental Accounts Examination held to be not a precondition for grant of the benefit of ACP/MACP, the letter of the Finance Department dated 27.11.2014 as also Clause 4(5) (ii) of ACP Rules, 2003 and the consequential impugned order shall not be applicable. He would thus contended that once the date of 1^{st} ACP is shifted with effect from the due date of 09.08.1998, the petitioner shall obviously be entitled to get the benefit of 2^{nd} MACP with effect from 30.08.2010.

7. Learned Advocate for the State, *per contra*, submitted that since the petitioner had passed the Departmental Accounts Examination on 29.08.2010, he has rightly been accorded the benefit of ACP w.e.f. 30.08.2010; moreover the impugned order causing cancellation of the benefit of MACP

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has been passed in view of the letter issued by the Finance Department dated 27.11.2014 as also in terms of Clause 4(5) (ii) of ACP Rules, 2003. Thus, there is no infirmity in the impugned order cancelling the 2^{nd} MACP.

8. Mr. Jha, learned Advocate for the State also submits that since the petitioner has never assailed the order of 1^{st} ACP which was granted to him with effect from the due date of passing of the Departmental Accounts Examination, the petitioner cannot be allowed to turn around and pray for shifting the date of his ACP w.e.f. 09.08.1999.

9. This Court has heard the learned Advocate for the respective parties. Admittedly, the issue with regard to passing of the Departmental Examination for grant of benefit of Time Bound Promotion/ACP/MACP has no longer *res integra* and been settled by various judgments of this Court and finally by the Full Bench of this Court in the case of ***Nand Kishore Singh****(supra)*. The impugned order, so far it relates to the petitioner, whereby the benefit of 2^{nd} MACP granted to the petitioner stood cancelled is based upon the letter issued by the Finance Department dated 27.11.2014 (Annexure-2 to the writ petition). The letter clearly stipulates that in case delay has caused in according the benefit of ACP on account of any order

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of punishment or delay in passing of the Departmental Accounts Examination; and thus the employee gets first financial progression belatedly in terms of Clause 4(5) (ii) of the ACP Rules, 2003 and the 2nd financial progression does not become due before repealing of 2003 Rules, he will get the 2nd financial progression after completion of 10 years of service in view of the Modified Assured Career Progression Scheme, 2010.

10. In the case in hand, the petitioner was granted the benefit of 1st ACP on 30.08.2010 on account of delay in passing of the Departmental Examination and since the petitioner superannuated on 31.10.2015, he has not been found eligible for the benefit of 2nd MACP; but once the Court held that passing of the departmental examination is not a precondition for granting benefit of ACP, thus in any view of the matter, the impugned order, to the extent it relates to the petitioner, is not applicable in the case of the petitioner. This Court also finds that in identical situation in the case of ***Nand Kishore Singh*** (supra), the learned Court having taken note of the fact that non-passing of the Departmental Accounts Examination could not be an impediment to grant the benefit of ACPs/MACPs scheme and thus having found fault in granting the benefit of 1st ACP with effect from the due date of passing of the Departmental

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Accounts Examination, quashed the impugned order and directed to grant the benefit of ACP/MACP with effect from the due date without being impeded by the fact that the petitioner had not passed the Departmental Accounts Examination in time.

11. In view of the aforesaid facts, this Court finds substance in the writ petition and accordingly set aside the impugned order, as contained in Memo No. 200 dated 09.02.2018 as also any other consequential order, so far it relates to the petitioner. The concerned respondent(s) is hereby directed to grant the benefit of ACP/MACP with effect from the due date and also ensure payment of admissible benefits, preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

12. The writ petition stands allowed.

(Harish Kumar, J)

Anjani/-

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