

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1498 of 2019

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Usha Mishra W/o Late Uday Narayan Mishra, R/o Mohalla- Idgah Mohalla
P.S.- Dehri-on-Sone, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Water Resources Department, Sichai Bhawan, Patna
2. The Principal Secretary, Water Resources Department, Sichai Bhawan, Patna.
3. The Director, Planning and Development, Old Secretariat, Bihar, Patna
4. The Accountant General, Govt. of Bihar, Patna
5. The Executive Engineer, Design Division-1, Dehri-on-Sone. Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate Mr. Arvind Kumar Sharma, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, GP-2 Mr. Rajan Prakash, AC to GA-2
For the Accountant General	:	Ms. Supragya, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 23-07-2024

Heard Mr. Dinu Kumar, learned Advocate for the petitioner, Mr. Vinay Kirti Singh, learned GP-2 and the learned Advocate for the Accountant General.

2. The husband of the petitioner superannuated on 31.10.2017 from the post of Junior Engineer. On being aggrieved by non payment of admissible retiral benefits, he approached before this Court by filing the present writ petition way back in the year 2019. It is to be noted that during the pendency of the writ petition, the husband of the petitioner died



and in his place, the petitioner who happens to be widow of the erstwhile employee, has been substituted to pursue the present writ petition.

3. At the outset, learned Advocate for the petitioner contended that during the pendency of the writ petition, all the substantive retiral benefits have been paid to the petitioner, except the GPF amount for the period 1985-86 and 1986-87. It is also contended that so far the grant of 3rd MACP is concerned, despite the name of the husband of the petitioner was placed before the Departmental Screening Committee in its meeting held on 09.05.2019, the said committee did not recommend his name due to lack of proof of passing departmental examination.

4. Learned Advocate for the petitioner thus, contended that now the issue has set at rest by the highest Court of the land that for the benefit of ACP/MACP passing of the departmental examination is not *sine qua non*. Reliance has also been placed on a judgment rendered by the Division Bench of this Court in the case of ***The State of Bihar & Ors. Vs. Smt. Jivachi Devi (L.P.A. No. 833 of 2017 arising out of C.W.J.C. No.679 of 2015)*** duly affirmed by the Hon'ble Supreme Court, in view of dismissal of SLP (C) No. 782 of 2022. The similar issue has also



been settled by the Hon'ble Supreme Court in the case of ***Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.*** reported in **2023 (2) PLJR (SC) 423** wherein, the Hon'ble Court held as follows:

“fulfillment of the educational qualifications prescribed under the Recruitment Rules for the purposes of promotion are not necessary for non-functional in situ promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of in situ promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated”

(emphasis supplied)

5. The Hon'ble Supreme Court further referring to the judgment rendered in the case of ***Union of India & Ors. vs. C.R. Madhava Murthy and Anr., (2022) 6 SCC 183*** has duly held that the ACP/MACP scheme is only 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 fulfillment of qualifications and eligibility criteria.

6. At this juncture, learned Advocate for the State vehemently opposed the prayer of the petitioner and submits that the matter relates to retiral benefits and thus, any relief for



the ACP/MACP, the petitioner should file a fresh writ petition. It is further contended that so far the GPF amount for the period 1985-86 and 1986-87 is concerned, the same shall be paid to the petitioner after receiving the details of deductions of GPF from the Executive Engineer, Water Ways Division, Daltenganj, Jharkhand, and for which correspondences are being made.

7. Considering the limited grievance of the petitioner and taking note of the fact that the petitioner is a widow of the erstwhile employee, who had been pursuing his remedy before this Court since 2019 and died during the pendency of this writ petition, this Court does not find any substance in the objection raised by the Government Advocate and thus stands rejected. To meet the ends of justice this Court deems it proper to dispose of the writ petition with a direction to the respondent no. 2 to consider the claim of the husband of the petitioner for grant of MACP, in the light of the pronouncements of this Court, which have been affirmed up to the Hon'ble Supreme Court. This Court also expects that the respondent no. 2 shall take appropriate action with respect to the payment of remaining GPF amount for the period of 1985-86 and 1986-87.

8. The aforesaid exercise must be completed preferably within a period of 12 weeks from the date of



receipt/production of a copy of this order. In case, the claim of the petitioner finds favour, all the consequential benefits must be accorded to her, within the stipulated period.

9. The writ petition stands disposed of.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2024.
Transmission Date	NA

