

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4438 of 2024**

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Ravi Ranjan Son of Late Rajeshwar Prasad Verma, Resident of B Area,  
Mastarni Gali (behind Bhanamal), P.S.- Jakkanpur, Town and District- Patna,  
Bihar 800001.

... .. Petitioner/s

Versus

- 1 . The State of Bihar Through the Principal Secretary Education Department,  
Govt. of Bihar, Patna.
2. The Director, Secondary Education, Govt. of Bihar, Patna.
- 3 . The Regional Deputy Director of Education, Patna Division, Patna.
4. The District Education Officer, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rakesh Prabhat , Advocate  
For the Respondent/s : Mr. Mr. Dhurendra Kumar , AC to GP 5

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH**  
**ORAL ORDER**

2      29-10-2024                      Heard the parties.

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

*(i) To declare that passing of the  
departmental Examination is not condition  
precedent for granting of Modified Assured  
Career Progression (in short MACP).*

*(ii) To set aside the office order  
no. 776 dated 13.6.2020 (Annexure-4) issued  
by the RDDE, Patna Division, Patna so far  
in concerns with the petitioner, wherein he  
was granted 1 MACP belatedly w.e.f.  
15.05.2019 which is the date he was  
exempted from passing of the departmental  
examination, on the ground that he has not  
passed the Departmental Examination .*

*(iii) To quash the order under  
memo no. 1354 dated 06.06.2023 (Annexure*



*-5)issued by the Addl. Chief Secretary, Education Department, Bihar whereby the representation in light of order of learned State Appellate Authority, Education Department, Bihar passed in O.A./766/2022, for 1st MACP w.e.f. 12.07.2010 and the 2nd MACP w.e.f. 12.07.2020, has been rejected.*

*(iv) To issue the appropriate writ in the nature of Mandamus directing the respondent authority to grant the petitioner his 1st and 2nd MACP after completion of 10 years and 20 years of his service i.e.the 1st MACP w.e.f. 12.07.2010 and the 2nd MACP w.e.f. 12.07.2020.*

*(v) To calculate and pay the arrears of salary after granting the 1st MACP w.e.f. 12.07.2010 and the 2nd MACP w.e.f. 12.07.2020.*

3 . It is contented on behalf of petitioner that petitioner was appointed on the post of clerk on compassionate ground and has joined on 12.07.2000, in the office of District Superintendent of Education, Bhojpur in light of letter no. 1412 dated 6.7.2000 issued by the RDDE, Patna Division, Patna . Thereafter, this petitioner served in the office of District Superintendent of Education, Patna, B. N. R Training College, Gulgarbagh, Patna, and office of the District Education Officer, Rohtas. In light of transfer order vide letter no. 556 dated 23.06.2016, this petitioner joined in the office of DEO, Patna on 18.08.2016 and presently working in the office of the Director, Secondary Education, Govt. of Bihar, Patna upon deputation



done on 02.03.2020.

4. It is further contended by learned counsel for the petitioner that petitioner has given representation before the RDDE, Patna Division Patna to grant his MACP w.e.f. 12.07.2010 after having 10 years of service, in light of judgments rendered by the Hon'ble Court wherein it has been held that passing of Accounts Examination/ Departmental Examination is not required for grant of ACP/MACP but petitioner representation was rejected vide letter no. 1172 dated 22.09.2018 by the RDDE, Patna . Since the petitioner could not pass in 1st paper of Departmental Examination held by the SCERT, Bihar, Patna, upon his representation dated 20.04.2019 he was exempted w.e.f. 15.05.2019 from appearing in the Departmental Examination vide letter no. 520 dated 15.05.2019 issued by the RDDE, Patna Division, Patna . Thereafter the petitioner was granted his 1<sup>a</sup> MACP w.e.f. 15.05.2019 vide letter no. 776 dated 13.06.2020.

5 . Learned counsel for the petitioner further contended that petitioner has preferred CWJC no. 16418 of 2021 before the Hon'ble Patna High Court, for the relief prayed herein, which was disposed of on 18.04.2022 with the direction to present the case for adjudication before the District Appellate



Authority/State Appellate Authority in terms of order dated 23.02.2022 passed in CWJC no. 5489 of 2020 (Suresh Ram Vs. The State of Bihar & Others) and order dated 07.03.2022 passed in CWJC 34 of 2022 (Minakshi @ Sushri Minakshi & Anr Vs. The State of Bihar & Others). Accordingly the petitioner preferred O.A./766/2022 before the State Appellate Authority, Patna which was disposed of vide order dated 06.02.2023 with a direction to represent before the Additional Chief Secretary, Education Department, Bihar. In compliance of the order the petitioner gave a representation which was rejected vide order under memo no. 1354 dated 06.06.2023 .

6. Learned counsel for the petitioner further submits that the Hon'ble Patna High Court, in a similarly situated case reported in **(2021) 2 PLJR 382 (CWJC no. 4449 of 2021 Chowdhary Bimal Kumar Roy vs. The State of Bihar & Others)** where the petitioner has not passed the Departmental Examination, has found that the issue involved is no more *res integra* as same has been decided by the Division Benches of this Court in :-

(i) ***The State of Bihar & Others vs. Smt. Jivachi Devi reported in (2020) 2 BLJ 471,***

(ii) ***Bishwanath Prasad vs. The State of Bihar & Others reported in (2011)2 PLJR 136,***



(iii) *Avinash Chandra Singh vs. The State of Bihar & Others* reported in (2012) 1 PLJR 663,

(iv) *Uday Shankar Prasad vs. The State of Bihar & Others* reported in (2017) 3 PLJR 824,

(v) *Ramadhar Thakur vs. The State of Bihar & Others LPA no. 599 of 2015*, wherein this Hon'ble Court held that passing of departmental Accounts Examination is not a condition precedent for grant of Assured Career Progression under the ACP Rules nor Rule 157(3)(J) of the Bihar Board's Miscellaneous Rules conceives of such requirement".

7. Learned counsel for the petitioner lastly relies upon a decision of this Court passed by this Court in **CWJC No. 3861 of 2023 ( Mala Devi vs. State of Bihar )** where it has been held that the petitioner shall be entitled for payment of all the monetary benefit from the date of first and second MACP and respondent in the aforesaid case was directed to pay the consequential benefit to the petitioner.

8 . Learned counsel for the respondent/s submitted that petitioner was appointed as clerk vide Memo No. 1412 dated 06.07.2000 by the R.D.D.E., Patna Division, Patna in pay scale of Rs. 4000-6000/-. The petitioner is presently working in the Office of the Director, Secondary Education, Bihar, Patna on deputation . It is further submitted that petitioner filed



representation before the Respondent No. 03 for grant of 1<sup>st</sup> MACP w.e.f. 12.07.2010 annexing the Judgment passed in LPA No. 599 of 2015 wherein the Hon'ble Court held that passing of Departmental Account Examination is not required for grant of ACP/MACP. The respondent No. 04 considered the representation and rejected the same vide Letter No. 1172 dated 22.09.2018 on the ground that passing of departmental examination is required for grant of ACP/MACP. (Annexure-P12 of the writ petition) . Petitioner appeared Departmental Examination held by the SCERT Bihar but he did not pass in 1st paper. Thereafter, this petitioner filed representation on 20.04.2019 for exemption from departmental examination. The respondent No. 03 exempted him departmental 15.05.2019 in view of resolution vide Memo No. 3127 dated 08.03.2018 issued from passing examination in w.e.f. by General Administrative department vide Memo No. 520 dated 15.05.2019. (Annexure-P/3 of the writ petition) .

9. Considering the rival submissions made on behalf of both the parties and perused the materials available on record, it appears that the only issue which requires consideration is whether the passing of the departmental examination is a condition precedent for grant of ACP/MACP or not. The



Division Bench of this Court in L.P.A. No. 599 of 2015 dated 19.03.2018 (Ramadhar Thakur Vs. State of Bihar and Ors.) has held that passing of departmental Accounts Examination is not a condition precedent for grant of Assured Career Progression under the ACP Rules nor Rule 157(3)(J) of the Bihar Board's Miscellaneous Rules conceives of such requirement. In yet another Division Bench judgment reported in 2020 (2) BLJ 471 (State of Bihar & Ors. Vs. Smt. Jivachi Devi) this Court has held that the State is not justified by denying (refusing) benefits of the financial progression to the employee on the ground that he did not pass the accounts examination or departmental accounts examination .

10 . Hon'ble Supreme Court in the judgment bearing SLP (C) No. 8219-8226 of 2019 Amresh Kumar Sinha & Ors. Vs. The State of Bihar & Ors. has held that "fulfillment of 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 purpose of promotion is not necessary for 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."



11 . The Supreme Court has also observed that the object of ACP is to avoid stagnation where no promotion avenues are available. The grant of ACP is not actually 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 effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.

12. In view of the law laid down by the Division Bench of this Court and the judgment of the Hon'ble Supreme Court, the grant of ACP/MACP to the petitioner from the date of exemption of passing the departmental examination is erroneous and is not sustainable in law .

13 . The grant of ACP or MACP is in situ promotion in which only financial upgradation is given to the employees for a long period of service and in order to avoid stagnation, as such, the withdrawal of the second ACP granted to the petitioner by the respondent no. 4 is also not sustainable.

14. Considering the above facts, and materials available on record, order dated 06.06.2023 passed by Additional Chief Secretary, Education Department, Bihar contended in memo no. 1354 i. e., Annexure P/5 to the writ



petition is hereby quashed and the petitioner shall be entitled for payment of actual monetary benefit from the date of first MACP granted to him w.e.f. 12.07.2010 and second MACP w.e.f. 12.07.2020. Accordingly, the respondent No. 3 is directed to pay the consequential benefit to the petitioner w.e.f. 12.07.2010 and 12.07.2020 within a period of four weeks from the date of production/ receipt of the copy of this order.

13 . In the result, this writ application is allowed.

14. There shall be no order as to costs.

**(Prabhat Kumar Singh, J)**

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