

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 20503 of 2021

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Bimal Narain Pandey, S/o Paras Pandey, R/o Village-Dhankutwa, P.O.-
Dhankutwa via Chanpatiya Dhankutwa, P.S.-Dhankutwa, District-West
Champaran, Bihar-845449.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Secretary, Water Resources Department, Government of Bihar,
Patna.
3. The Chief Engineer, Water Resources Department, Motihari, East
Champaran.
4. The Executive Engineer, Water Drainage Division, Bettiah, West
Champaran.
5. The Accountant General A and E, Bihar, Birchand Patel Path, Patna-1.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14907 of 2022

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Basant Kumar Singh, son of Shri Shiv Ji Singh, resident of G- 6, Surya Prasad
Lane, Niromani Place, Jhauwa Kothi West, Choti Khanjarpur, P.O. and P.S.-
Jagdishpur, District- Bhagalpur, Pin Code- 812001

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Law Department, Bihar, Patna.
2. District Accounts Officer, Bhagalpur
3. District and Sessions Judge, Bhagalpur
4. Registrar-cum- Judge In- Charge, Accounts, Civil Court, Bhagalpur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13481 of 2023

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Nand Kishore Singh, Son of Late Vidhata Singh, Resident of Village -
Danwar, Police Station - Kachhama, District - Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resource Department,
Government of Bihar, Patna.
2. The Principal Secretary, Water Resource Department, Government of Bihar,



Patna.

- 3. The Chief Engineer, Central Design, Research and Quality Control, Water Resource Department, Anishabad, Patna.
- 4. The Executive Engineer, Quality Control (Irrigation Creation), Dehri.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 5786 of 2024

Rambabu Singh, Son of Chandeshwar Singh Resident of Village and P.O.- Bharwari, via Silaut, P.S.- Silaut, District- Muzaffarpur.

... .. Petitioner/s

Versus

- 1. The State of Bihar through Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
- 2. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department Government of Bihar, Patna.
- 3. The Chief Engineer (Mechanical), Public Health Engineering Department, Bihar, Patna.
- 4. The Regional Chief Engineer (Mechanical), Public Health Engineering Department, Muzaffarpur.
- 5. The Superintending Engineer, Public Health Engineering Department, Mechanical Circle, Muzaffarpur.
- 6. The Executive Engineer Public Health Engineering Department, Mechanical Division, Muzaffarpur.
- 7. The Treasury Officer, Muzaffarpur.
- 8. The Accountant General, Bihar, Patna.
- 9. The Secretary (Expense), Department of Finance, Govt. of Bihar, Patna.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 6360 of 2024

Uma Charan Rajak, Son of Bullak Rajak, Resident of Village- East Ashok Nagar, Road No.-11, P.S.- Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
- 2. The Principal Secretary, General Administrative Department, Govt. of Bihar, Old Secretariat, Patna.
- 3. The Principal Secretary, Minor Irrigation Department, Govt. of Bihar,



Vikash Bhawan, Patna.

4. The Engineer-in-Chief, Minor Irrigation Department, Bisheshwariya Bhawan, Bailey Road, Patna.
5. The Chief Engineer, Minor Irrigation Department, Sheikhpora, Patna.
6. The Superintending Engineer, Minor Irrigation Circle, Patna-1.
7. The Executive Engineer, Minor Irrigation Division, Patna- Near West side of Patna High Court null/pane Tanki.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 8727 of 2024

Azhar Hussain, Son of Md. Akabar Husaain, Resident of Milki Anaith, Ara Police Station - Ara, District- Bhojpur, Ara.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary. Water Resource Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resource Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resource Department, Dehri.
4. The Executive Engineer, Sone Canal Division, Khagaul, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 20503 of 2021)

For the Petitioner/s : Ms. Roona, Advocate
For the Respondent/s : Mr. Vinay Kirti Singh (GA2)

(In Civil Writ Jurisdiction Case No. 14907 of 2022)

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate
For the State : Mr. S.K. Mandal (SC3),

Ms. Neelam Kumari, AC to SC-3

For the PHD : Mr. Satyabir Bharti, Advocate
Mr. Abhishek Anand, Advocate

(In Civil Writ Jurisdiction Case No. 13481 of 2023)

For the Petitioner/s : Mr. Ravindra Kumar Singh, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC 11)

(In Civil Writ Jurisdiction Case No. 5786 of 2024)

For the Petitioner/s : Mr. Sunil Kumar, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, A.A.G. - 13

(In Civil Writ Jurisdiction Case No. 6360 of 2024)

For the Petitioner/s : Mr. Anil Kumar Choudhary, Advocate
For the Respondent/s : Mr. Standing Counsel (18)

For the AG Bihar : Mr. Chaitanya Swaroop, Advocate

(In Civil Writ Jurisdiction Case No. 8727 of 2024)

For the Petitioner/s : Mr. Ravindra Kumar Singh, Advocate



For the Respondent/s : Smt. Anuradha Singh, SC-21
Mr. Rakesh Prabhat, AC to SC-21
Ms. Shatabdi Sinha, AC to SC-21

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT
Date : 18-09-2024

1. These cases, with some factual differences, ultimately relate to same prayer of granting pay-scale under Assured Career Progression or Modified Assured Career Progression, which were denied to the petitioners. Therefore, this Court takes up all the writ petitions, captioned above, and proposes to dispose them of in a common judgement, albeit factual differences.

2. Since the facts of each case is different, the same is narrated separately hereinbelow:

C.W.J.C. No. 20503 of 2021

3. The petitioner was initially appointed as Class-IV employee in Water Resources Department, Government of Bihar. Subsequently, on 22nd of May, 1981, the petitioner along with 101 persons were promoted to the post of Junior Accounts Clerk. Subsequently, by a government order, the posts of Junior Accounts Clerk were merged with the Sr. Accounts Clerk and they are commonly designated as Accounts Clerk. In 2003, rules relating to Assured Career Progression (A.C.P.) under the name and style of Bihar State Employees Services Conditions



(Assured Career Progression Scheme) Rules, 2003 came into force, giving retrospective effect on and from 9th of August, 1999. The petitioner was entitled to 1st A.C.P. on 9th of August, 1999. He retired from service on 30th of June, 2002, attaining the age of superannuation. On 14th of November, 2002, the petitioner was informed by the Respondents that he was not granted the benefit of A.C.P. as he failed in departmental examination. It is also contended by the petitioner that the Finance Department by its notification, dated 25th of March, 2015, declared that the employees, who were appointed in between 1st of May, 1980 to 27th of September, 1999, as Accounts Clerk, shall be entitled for pay-scale of Rs. 4500-7000/-. The said benefit was also not granted to the petitioner.

4. So is the instant writ.

C.W.J.C. No. 14907 of 2022

5. In the instant case, the petitioner was appointed as a Clerk in the judgeship of Bhagalpur. In 1986, 1994 and 2003, he participated in the departmental examination and passed all the said examinations conducted by the district judiciary of District-Bhagalpur. On 25th of June, 2003, Bihar State Employees Service Conditions (Assured Career Progression Scheme) Rules, 2003 was notified, extending the benefit of 1st financial



progression under A.C.P. Scheme w.e.f. 9th of August, 1999. On 27th of November, 2008, the District and Sessions Judge, Bhagalpur issued an order, extending the benefits of financial progression in favour of the petitioner w.e.f. 14th June, 2008. Further case of the petitioner is that on 14th of July, 2010, M.A.C.P. Scheme was notified and implemented w.e.f. 1st of January, 2009 and it was decided under the said scheme that the government employees would get M.A.C.P. in the State of Bihar upon completion of 10, 20 and 30 years of service.

6. On the said fact, the petitioner moved this Court in C.W.J.C. No. 879 of 2013. While the said representation was pending, the Division Bench of this Court in a connected appeal bearing L.P.A. No. 806 of 2014 was pleased to held that an employee cannot be made to suffer on account of non-holding of examination by the Respondents. Subsequently, on 23rd of February, 2018, the writ petition, filed by the petitioner, was allowed, directing the petitioner to submit a fresh representation. The petitioner, accordingly, submitted a representation before the learned District and Sessions Judge, Bhagalpur but no action was taken by him which prompted the petitioner to file a contempt petition bearing M.J.C. No. 890 of 2021.

7. Subsequently, on 21st of September, 2021, the



petitioner was directed to repay an amount of Rs. 12,84,443/-, failing which it was directed to be recovered from his salary. The petitioner submitted a representation on 24th of September, 2021. On 7th of May, 2022, the learned District and Sessions Judge, Bhagalpur passed an order bearing Memo No. 3954, (Annexure- R-3/A to the counter affidavit) stating, *inter alia*, that the petitioner was not entitled for grant of similar benefits admissible under the Assured Career Progression Scheme. The contempt application filed by the petitioner was disposed of on 8th of August, 2022 by a Co-ordinate Bench of this Court giving liberty to the petitioner to challenge the said Memo No. 3954, dated 7th May, 2022 in a separate writ petition.

8. Hence, the instant writ.

9. A counter affidavit has been filed on behalf of the Respondent Nos. 3 and 4. It is stated on behalf of the Respondents that the employees of the District Judiciary in the State of Bihar are governed by Bihar Civil Courts Staff (Class-III and Class-IV) Rules, 1998 and Bihar Civil Courts Staff (Class-III and Class-IV) Rules, 2009. Rules 21 and 22, respectively, of the said Rules mandate that the employees shall not be promoted to the junior selection grade or to a super time scale in service unless they qualify in the examination specified



by the High Court. It is also stated that in order to get financial progression, a Clerk posted in a Civil Court shall have to pass examinations in: -

- (i) Civil Court and Criminal Court Rules framed by the High Court;
- (ii) Accountancy;
- (iii) Knowledge of drafting of correspondence and order-sheet; and
- (v) Practice and procedure.

10. The petitioner passed the said departmental examination held in the year 2008 and he was granted A.C.P. w.e.f. 14th of June, 2008, i.e., the date on which he appeared in the second part of the examination. It is further stated by the Respondents that the petitioner had joined Bhagalpur Judgeship on 5th of September, 1985 and he has been granted A.C.P. benefit *vide* order No. 85, dated 27th of November, 2008. The petitioner's pay was fixed and service book was sent to the District Accounts Officer, Bhagalpur for verification. The Accounts Officer also mentioned that the petitioner was entitled to get A.C.P. on the date of his appearing / passing the departmental examination and not from the date when the A.C.P. Rules had come into force.



C.W.J.C. No. 13481 of 2023

11. The petitioner was appointed as a Correspondence Clerk in Water Resources Department, Government of Bihar on 28th of May, 1992. He retired from service on attainment of 60 years of age on 31st of July, 2022. During his period of service, he was not promoted to any higher post. He was entitled to get 1st A.C.P. w.e.f. 3rd of February, 2004, 2nd M.A.C.P. w.e.f. 3rd of February, 2012 and 3rd M.A.C.P. w.e.f. 3rd of February, 2022. It is also contended on behalf of the petitioner that he passed the departmental examination on 2nd of February, 2010 and then only he was granted 1st A.C.P. w.e.f. 29th of August, 2010. He was subsequently granted 2nd A.C.P. on 3rd of March, 2012. However, the petitioner was not granted 3rd M.A.C.P. He submitted a representation on 18th of April, 2023, for grant of A.C.P. and M.A.C.P. w.e.f. above-mentioned dates but the prayer was not considered.

12. So is the instant writ petition.

13. The Respondent Nos. 1 to 4 filed a counter affidavit, stating, *inter alia*, that the petitioner passed the departmental accounts examination on 2nd of December, 2010 and he was granted the benefits of 1st A.C.P. w.e.f. 5th of August, 2011. The petitioner was also granted 2nd M.A.C.P. w.e.f. 18th of



November, 2013 and he was not eligible for grant of 3rd M.A.C.P. as he was superannuated on 31st of July, 2022. The Respondents contend that Rule 157(3)(J)(kha) of the Bihar Board Miscellaneous Rules provides in specific terms that the Clerks who do not pass the final accounts departmental examination will not be given promotion to the higher scale. In concurrence with the said rule, the Finance Department, Government of Bihar, had reiterated that an employee is entitled to get financial benefit by way of A.C.P. after he, being successful in departmental examination. A.C.P. and M.A.C.P., which granted to the petitioner, were only after he being successful in departmental examination. So there is no illegality in granting A.C.P. / M.A.C.P. to the petitioner.

C.W.J.C. No. 5786 of 2024

14. In the instant case, the petitioner was appointed / absorbed as a Typist by an order passed by the Chief Engineer, Mechanical, Public Health Engineering Department, Government of Bihar, dated 25th of May, 1987. He joined his service on 27th of May, 1987. Again on 10th of July, 1987, his service was terminated on the ground of excess employees in the cadre. Thereafter, on 28th of February, 1990, the petitioner and other employees, whose services were terminated on the



ground of excess employees, were again taken back in the service on the same post *vide* order dated 28th of February, 1990, issued by the Secretary, Public Health Engineering Department, Government of Bihar. On 31st of October, 1990, the petitioner passed Hindi Noting and Drafting Examination. On 3rd of June, 2006, the petitioner was extended the benefit of 1st A.C.P. *vide* Office Order No. 44, dated 3rd of June, 2006. On 30th of September, 2008, the Respondents postponed the benefit of 1st A.C.P. on account of not passing Accounts Examination. Again by an order dated 17th of February, 2009, the petitioner was granted the benefit of 1st A.C.P. That on 16th of January, 2010, the petitioner passed the final level departmental accounts examination and he was promoted to the post of Head Clerk on 1st of September, 2010. Thereafter, he was extended the benefit of 2nd A.C.P. w.e.f. 1st of January, 2009.

15. It is the case of the petitioner that 3rd M.A.C.P. of the petitioner was due w.e.f. 27th of May, 2017. However, the said 3rd M.A.C.P. was not granted and in the meantime, the petitioner retired from service on 31st of January, 2020. After his retirement, the petitioner received a letter dated 26th of February, 2020, issued by the Superintending Engineer, Public Health Mechanical Circle, Muzaffarpur, whereby earlier office orders



were modified and the petitioner was directed to repay the excess amount disbursed to him by way of arrears of salary / pension and other allowances. The Respondent No. 5 issued another order on 19th of March, 2020, whereby he revised the pay of the petitioner, modifying all office orders and directed the petitioner to repay the excess amount. On 13th of June, 2020, the Respondent No. 5 wrote a letter to the Accountant General (A & E), Bihar, Patna, requesting him to adjust the amount of Rs. 7,32,487/- from the amount of gratuity of the petitioner and accordingly it was recovered.

16. The petitioner has filed the instant writ petition for quashment of the order dated 19th of March, 2020, issued by the Respondent No. 5, revising his pay and arrears of salary as well as the letter dated 13th of June, 2020, by virtue of which an amount of Rs. 7,32,487 was recovered.

C.W.J.C. No. 6360 of 2024

17. The petitioner is a retired employee of Minor Irrigation Department, Government of Bihar, Patna. He was initially appointed as an Accounts Clerk on 12th of December, 1973. On 10th of May, 1988, the petitioner was given 1st time-bound-promotion w.e.f. 12th of December, 1983. On 6th of June, 2009, he was extended the benefit of 2nd A.C.P. *vide* letter No.



759, dated 6th of August, 2009 w.e.f. 9th of August, 1999. The petitioner was also extended the benefit of 3rd M.A.C.P. w.e.f. 1st of January, 2009, *vide* order dated 28th of September, 2011. On 16th of January, 2010, the petitioner has passed departmental accounts examination. He retired from service on superannuation on 29th of February, 2016. Subsequently, by a letter, dated 25th of January, 2017, the Respondent No. 5 withdrew and modified the order of extending the benefit of 1st time-bound-promotion to the petitioner w.e.f. 16th of January, 2010. Thereafter, an amount of Rs. 11,10,694/- was recovered from the account of gratuity and unutilized earned leave *vide* order dated 12th of October, 2017. The petitioner submitted a representation to the Principal Secretary, Minor Irrigation Department, Government of Bihar, Patna, which was rejected by the Respondent No. 3.

18. So is the instant writ.

C.W.J.C. No. 8727 of 2024

19. The petitioner was appointed *vide* order bearing no. 1692, dated 23rd of June, 1986 as a Clerk on compassionate ground in Water Resources Department. He joined his service on 25th of June, 1986. The petitioner retired from service on superannuation on 31st of December, 2019. He passed his



departmental examination on 22nd of February, 2014. Only after passing the departmental examination, he was granted 1st and 2nd A.C.P. by an order dated 26th of May, 2016 w.e.f. 22nd of February, 2014. Subsequently, on 6th of March, 2020, he was directed to submit a reply showing cause as to why the order of grant 2nd A.C.P. in favour of the petitioner would not be cancelled. The petitioner accordingly submitted his reply but *vide* order dated 18th of May, 2020, the 2nd A.C.P. granted to the petitioner was cancelled. Subsequently, on 11th of September, 2020, the Respondent No. 4 directed the Treasury Officer to recover an amount of Rs. 3,58,136/- and the same was recovered from his retiral dues. The petitioner moved this Court by filing C.W.J.C. No. 7346 of 2022, which was disposed of by a Co-ordinate Bench *vide* order dated 19th of June, 2023, directing the Respondent Authority to pass a reasoned order in the light of the judgement passed by the High Court on submission of a representation, to be filed by the petitioner. The petitioner submitted his representation on 4th of July, 2023. The said representation was rejected *vide* impugned order dated 21st of July, 2023 by the Executive Engineer. In his order dated 21st of July, 2023, the Executive Engineer considered that the petitioner was appointed on 25th of June, 1986 in pay-scale of



Rs. 580-860/- as a Clerk in the department. On 22nd of February, 2014, he passed the departmental examination. Subsequently, *vide* order dated 26th of May, 2016, he was granted 1st and 2nd M.A.C.P. w.e.f. 22nd of February, 2014. Subsequently, 7th Pay Commission was introduced w.e.f. 1st of January, 2016 and *vide* Finance Department Notification No. 10936, dated 27th of November, 2014, the benefit of 2nd A.C.P. in favour of the petitioner was stopped.

20. Being aggrieved by the said order, the petitioner has filed the instant writ petition.

21. From the pleadings of the parties. The following issues are framed for adjudication of the disputes: -

(i) In **C.W.J.C. No. 20503 of 2021** – Whether it is incumbent upon an employee to pass the departmental examination in order to get the benefit of A.C.P.?

(ii) In **C.W.J.C. No. 14907 of 2022** – Whether the Bihar State Employees Services Conditions (Assured Career Progression Scheme) Rules, 2003 and subsequently Modified Assured Career Progression Rules, 2010 are applicable in respect of employees of the District Judiciary in the State of Bihar in view of Bihar Civil Courts Staff (Class-III and Class-IV) Rules, 1998 and Bihar Civil Courts Staff (Class-III and



Class-IV) Rules, 2009?

(iii) In **C.W.J.C. No. 13481 of 2023** – Whether the petitioner is entitled to the benefit of A.C.P. and M.A.C.P. only from the date of appearance and / or passing of departmental examination?

(iv) In **C.W.J.C. No. 5786 of 2024** – Whether the date of granting A.C.P. / M.A.C.P. can be modified subsequently by the Respondents and the petitioner ought to be directed to make repayment of excess amount by deducting the same from gratuity of the petitioner?

(v) In **C.W.J.C. No. 6360 of 2024** – Whether the benefit of 1st time-bound-promotion granted to the petitioner can be withdrawn after a lapse of 23 years and excess salary ought to be deducted from the amount of gratuity and unutilized earned leave of the petitioner?

(vi) In **C.W.J.C. No. 8727 of 2024** – Whether after superannuation of the petitioner, the Respondents are entitled to recover portions of pay and allowances on the plea that the same was granted on wrong calculation of A.C.P. / M.A.C.P.

22. This Court has considered all the issues together.

23. The Hon'ble Supreme Court in ***Amresh Kumar Singh & Ors. v. State of Bihar & Ors.***, reported in **2023 (2)**



PLJR (SC) 423 had the occasion to review Bihar Accounts Service Rules, 2000, as modified on 28th of March, 2000, which provided for minimum graduation qualification for promotion to the Bihar Accounts Service as also the A.C.P. Rules of 2003, which spelled out that the beneficiary ought to fulfill the same conditions as would be required for promotion, 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 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.

24. While coming to the said conclusion, the Hon'ble Supreme Court has noted 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.

25. In *Amresh Kumar Singh* (supra), the appellants were appointed as Accounts Clerks, where the minimum qualification was Intermediate. The cadre of Junior Accounts Clerk and Senior Accounts Clerk, which existed prior to 1980, merged w.e.f. 1st May, 1980 and a common cadre of Accounts Clerk came into existence. In 1999, the demerger of the cadre took place and the Clerks came to be retained in their respective cadres without any promotional avenues. Those Clerks were extended the benefit of A.C.P. by the Writ Court, but in appeal, the contention of the State was accepted by the Division Bench and for the purposes of grant of A.C.P.s, as per the Rules, the qualification of graduation was sine qua non, which was not possessed by the appellants. The order of the Writ Court, extending the benefit of A.C.P. to the appellants was, accordingly, set aside. Under such factual circumstances, the Hon'ble Supreme Court decided as aforesaid in *Amresh Kumar Singh* (supra).

26. On this subject or the issues involved in the above-mentioned writ petitions, there were divergent opinion passed by different Hon'ble Benches of this Court. In order to



set the principle of law at rest as many as five writ petitions were referred to the Full Bench and in the case of ***Kamlanand Thakur v. State of Bihar & Ors. (C.W.J.C. No. 18727 of 2017)*** along with other cases, the Full Bench, relying upon the decision of the Hon'ble Supreme Court in Amresh Kumar Singh (supra), decided the issue in paragraph 47, which is as under: -

“47. The effect of scheme, the Supreme Court went on, must be judged keeping in view the object and purport of the scheme. In that context, it was further held that the fulfillment of educational qualifications prescribed under the Recruitment Rules for the purposes of promotion are not necessary for non-functional in situ promotion like grant of ACP.”

27. The learned Advocate on behalf of the Respondents in C.W.J.C. No. 14907 of 2022 submits that the employees of the Civil Courts in Bihar is governed by the Bihar Civil Courts Staff (Class-III and Class-IV) Rules, 2009. Rule 22 of the said Rules deals with promotion of an employee to a higher grade. Rule 22 runs thus: -

“22. Promotion. (1) A candidate shall not be promoted to the higher scale in service unless he qualifies in the examination as prescribed by the High Court.

(2) Appointment to the higher grade of



the ministerial establishment should ordinarily be made by seniority from lower grade provided they possess the prescribed educational and other qualification as laid down in these Rules or any other existing law that may be applicable and are otherwise fit to perform the duties attached thereto and pass the test, if any, prescribed under these Rules.

(3) Typist before his promotion to the higher scale must pass another test of typing; the minimum speed of typing would be 50 words per minute in English or 35 words per minute in Hindi. Mistakes at the rate of 1½ words per hundred words shall only be allowed and he will have to pass an examination in practice and procedure and in such other paper for next promotion in higher scale as may be prescribed by the High Court from time to time.

(4) Before a Stenographer is promoted to the higher scale he will have to pass the test of stenography at the rate of 120 words per minute in English and 80 words per minute (in Hindi sic?) and only 5% mistakes shall be allowed and he will also have to pass the examination of practice and procedure and such other papers for next promotion in higher scale, which may be specified by the High Court from time to time.

(5) Before a clerk is promoted to the category 2 or he gets financial progression in



the same scale by any other reason he will have to pass an examination in:-

(i) Civil Court and Criminal Court Rules framed by the High Court.

(ii) Accountancy.

(iii) Knowledge of drafting of correspondence and order sheet and

(iv) Practice and Procedure.

(6) A Clerk before his promotion in Category 1 or he gets financial progression in next higher scale by any other reason shall have to pass an examination on procedure (Civil and Criminal) Stamp Act, Court-fees Act, Suits Valuation Act, Correspondence and Noting and Drafting. Typists/Stenographers may be transferred to the post of Clerks on completion of period of 10 years. if they pass the necessary examination as mentioned hereinbefore.

(7) If suitable persons are not available for promotion to the Category 1 of Clerk, it would be open to an Appointing Authority to fill up the said posts by direct recruitment, subject to the prior concurrence of the High Court. The qualification for direct recruitment in the posts of Supertime Scale shall be B.A., B.Sc. and B.Com. or an equivalent degree from the recognized University and also degree in Bachelor of Law.”

28. The learned Advocate for the Respondents



especially refers to Sub-clause-(6) of Rule 22. This provision states that a Clerk before his promotion in Category 1 or he gets financial progression in next higher scale by any other reason, shall have to pass a departmental examination. It is submitted by him that A.C.P. or M.A.C.P. Rules promulgated by the State Government under Article 309 of the Constitution of India is not applicable in case of the employees of the Civil Courts for getting financial benefit in situ.

29. I am not in a position to accept such contention raised by the learned Advocate appearing on behalf of the Respondents. While Rule 22 of 2009 Rules deals with promotion, A.C.P. and M.A.C.P. Rules deal with granting financial benefit to an employee whose position is stagnated for not being promoted to the higher scale. Therefore, the Civil Court staff in the State of Bihar are governed by A.C.P. and M.A.C.P. Rules, when the concerned employee does not get promotion due to one reason or the other.

30. In C.W.J.C. No. 5786 of 2024, it is found that the petitioner was appointed as Typist initially on 25th of May, 1987. He joined his service on 27th of May, 1987. He was terminated on the ground of excess employees in the cadre. Again on 25th of February, 1990, they were taken back in the service. Since then,



the petitioner had been working in Public Health Engineering Department. Therefore, the date of service of the petitioner ought to be held w.e.f. 28th of February, 1990. The petitioner was entitled to 1st A.C.P. after 12 years of his service. Thus, he was entitled to get 1st A.C.P. on or from 28th of February / 1st of March, 2002. The petitioner, however, was granted the 1st A.C.P. *vide* office order no. 44, dated 3rd June, 2006. The said benefit was cancelled *vide* order dated 30th of September, 2018 on account of the petitioner's not passing accounts examination. The said order, dated 30th of September, 2008 was unjust and illegal as this Court holds that the petitioner was entitled to 1st A.C.P. on completion of his 12 years of service. Thereafter, the petitioner was entitled to get 2nd A.C.P. on completion of 20 years of service. However, as the petitioner was promoted to the post of Head Clerk, he was granted 2nd A.C.P. w.e.f. 1st January, 2009. The petitioner is entitled to get 3rd M.A.C.P. on completion of 30 years of service, meaning thereby, he was entitled to get 3rd M.A.C.P. on and from 28th of February, 2020. This Court fails to understand as to how the 3rd M.A.C.P. of the petitioner was due w.e.f. 29th of May, 2017. The petitioner counted his service from his initial appointment which was terminated on 10th of July, 1987. He cannot claim 3rd M.A.C.P.



from 27th of May, 2017. As he retired from service on 31st of January, 2020, he was not entitled to get 3rd M.A.C.P.

31. In such view of the matter, this Court holds that the petitioner of C.W.J.C. No. 5786 of 2024 was entitled to 1st A.C.P. w.e.f. 28th February / 1st of March, 2002 and the 2nd M.A.C.P. w.e.f. 28th of February / 1st of March, 2012. However, since he got 2nd A.C.P. w.e.f. 1st of January, 2009 on his promotion to the post of Head Clerk, he was entitled to get 2nd A.C.P. w.e.f. 1st January, 2009.

32. With regard to C.W.J.C. No. 6360 of 2024, the petitioner was given 1st time-bound-promotion w.e.f. 12th of December, 1983, i.e., after the expiry of 10 years of his service. He was granted the 2nd A.C.P. on 6th of June, 2009 w.e.f. 9th of August, 1999. The petitioner was also extended the benefit of 3rd M.A.C.P. w.e.f. 1st of January, 2009. After his retirement, the petitioner was directed to make repayment of a sum of Rs. 11,10,694/- on the ground that he was not entitled to get the benefit of 1st time-bound-promotion on 10th of May, 1988 and the benefit of 1st time-bound-promotion was granted w.e.f. 16th of January, 2010.

33. This Court fails to understand how the previous order of granting time-bound-promotion was modified and the



benefit of the said promotion was extended w.e.f. 16th of January, 2010. After granting promotion and subsequent A.C.P. and M.A.C.P. along with financial benefit, the petitioner cannot be directed to make repayment of the amount from his retiral dues.

34. The same is the case in respect of C.W.J.C. No. 8727 of 2024.

35. In the *State of Punjab & Ors. v. Rafiq Masih*, reported in (2014) 8 SCC 883, the question of law for consideration before the High Court of Punjab and Haryana was whether the government is entitled to recover from an employee any payment made in excess of what the employee is otherwise entitled to in the absence of any fraud or misrepresentation on the part of the employee. The High Court of Punjab and Haryana, relying on a Full Bench decision in the case of *Budh Ram v. State of Haryana*, reported in 2009 (122 FLR) 1053, directed not to recover the excess amount from the Respondents.

36. In *Shyam Babu Verma & Ors. v. Union of India & Ors.*, reported in (1994) 2 SCC 521, the Hon'ble Supreme Court held that since the amount has already been paid to the petitioner for no fault of theirs, the said amount shall not be recovered by the Respondent-Union of India. The same view



was taken in *Sahib Ram v. State of Haryana & Ors.*, reported in *1995 Supp (1) SCC 18*.

37. In a subsequent decision in the case of *Chandi Prasad Uniyal & Ors. v. State of Uttarakhand & Ors.*, reported in *(2012) 8 SCC 417*, question was raised as to whether the appellant can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions, had come to the conclusion that even if by mistake of the employer, the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made can be recovered.

38. In *Rafiq Masih* (supra), it was held by the Hon'ble Supreme Court in paragraphs 8 to 14 as under:

“8. In our view, the law laid down in Chandi Prasad Uniyal case [(2012) 8 SCC 417 : (2012) 4 SCC (Cri) 450] , no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision this



Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Articles 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provisions speak of the powers of this Court, the former vest a plenary jurisdiction in the Supreme Court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a court or tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing “complete justice” in any cause or matter.

9. The word “complete justice” was fraught with uncertainty until Article 142 of the Constitution received its first interpretation in Prem Chand Garg v. Excise Commr. [AIR 1963 SC 996] which added a rider to the exercise of wide extraordinary powers by laying down that though the powers are wide, the same is an



ancillary power and can be used when not expressly in conflict with the substantive provisions of law. This view was endorsed by a nine-Judge Bench in Naresh Shridhar Mirajkar v. State of Maharashtra [AIR 1967 SC 1 : (1966) 3 SCR 744] reiterated by a seven-Judge Bench in A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] and finally settled in Supreme Court Bar Assn. v. Union of India [(1998) 4 SCC 409]

10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction and can be best described in the words of this Court in Ramakant Rai v. Madan Rai [(2003) 12 SCC 395 : 2004 SCC (Cri) Supp 445] : (SCC p. 403, para 14)

“14. ... It is a residuary power; it is extraordinary in its amplitude, its limits, when it chases injustice, is the sky itself.”

11. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in Union of India v.



Karnail Singh [(1995) 2 SCC 728] , it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution.

*12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. “Declaration of law” as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in *Indian Bank v. ABS Marine Products (P) Ltd.* [(2006) 5 SCC 72] , *Ram Pravesh Singh v. State of Bihar* [(2006) 8 SCC 381 : 2006 SCC (L&S) 1986] and in *State of U.P. v. Neeraj Awasthi* [(2006) 1 SCC 667 : 2006 SCC (L&S) 190] has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued*



to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.

13. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 :



(1994) 27 ATC 121] , [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248] and the latter judgment [(2012) 8 SCC 417 : (2012) 4 SCC (Cri) 450] .

14. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for their appropriate disposal. Ordered accordingly.”

39. For the reasons, stated above, this Court holds that grant of A.C.P. / M.A.C.P. does not depend upon passing departmental examination and getting promotion by an employee. The A.C.P. Rules was promulgated in the year 2003, which was made effective w.e.f. 09.08.1999. So the cut-off date of granting 1st A.C.P. was 09.08.1999, whatever be the length of service. It is stated in the Rule that the A.C.P. will be provided after 12 and 24 years of service. So, on 09.08.1999, if an employee completes 12 years of service, he is entitled to get 1st A.C.P. The A.C.P. Rule was modified by M.A.C.P. Rules where modified assured career progression was decided to be granted after expiry of 10, 20 and 30 years of service. M.A.C.P. Rules came into force on 1st of January, 2009. Therefore, on the cut-off date, if an employee completes 10/20/30 years of service, he is entitled to get 1st, 2nd and 3rd M.A.C.P. on the basis of his length



of service.

40. Secondly, when authority / employer granted the benefit of A.C.P. and M.A.C.P. to an employee, such financial benefit cannot be taken away by way of adjustment after his superannuation from his pensionary benefit.

41. Thirdly, the employees of the Civil Courts in the State of Bihar are governed by A.C.P. / M.A.C.P. Rules and where an employee is not promoted after stipulated period of time, he is entitled to get A.C.P. / M.A.C.P. as per the Rules. The provision for promotion will not curtail the right of the Civil Court employees to claim A.C.P. / M.A.C.P.

42. With the aforesaid directions, all the writ petitions stand disposed of, on contest, however, without costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	24.09.2024
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