

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13080 of 2014

1. Janeshwar Mahto, Son of late Yadu Mahto resident of Village - Akhtiyarpur, P.S. - Bikram, District - Patna, presently working as Peon, Bihar Industrial Area Development Authority, Patna.
2. Shankar Rai Son of late Makkhan Rai resident of Village - Balahiya, P.O. - Bariyarpur, P.S. - Peer, District - Muzaffarpur, presently working as Peon, Regional Office, Bihar Industrial Area Development Authority, Darbhanga.
3. Ashok Kumar Singh Son of Late Ram Janam Singh resident of Village - Saidanpur, P.S. - Gaurichak, District - Patna, presently posted as Area Incharge, Industrial Area Bihiya, Bihar Industrial Area Development Authority, Patna.
- 4.1. Kushami Devi Wife of Late Chandeshwar Paswan, resident of Village- Mirjanagar, P.S.-Mahua, District-Vaishali.
5. Anjani Kumar Son of late Gajadhar Prasad resident of Village - Bhagwanpur Chowk, P.S. - Sadar, District - Muzaffarpur presently working as Peon, Bihar Industrial Area Development Authority, Patna.

... .. Petitioner/s

Versus

1. The Chairman Bihar Industrial Area Development Authority Udyog Bhawan, East Gandhi Maidan, Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maida
3. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
4. The Executive Director, Regional Officer, Bihar Industrial Area Development Authority, Darbhanga.
5. The Executive Director, Regional Officer, Bihar Industrial Area Development Authority, Patna.
6. The Officer on Special Duty, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Prashant Sinha, Advocate
For the Respondent/s	:	Mr.Pankaj Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 24-07-2024

In the instant petition, petitioners have prayed for



following reliefs:

(i) For issuance of a writ in the nature of certiorari for quashing of Letter No. 7398 dated 27.12.2011, and letter No. 2618 dated 16.05.2014 issued by the Consultant Media-Cum-Officer on Special Duty to the Petitioner No.3 whereby it has been communicated to the petitioner that due to coming into force of 5th Pay Revision w.e.f. 01.01.1996 (which has been named as “Shashtam Vetan”), the benefit of Time Bound Promotion for the employees of Bihar Industrial Area Development Authority (hereinafter referred to as BIADA only) has been abolished. Additionally, the A.C.P. Scheme is not applicable upon the employees of BIADA.

(ii) For holding that the BIADA cannot deprive the Petitioners from the avenue of promotion as it has been held by Hon’ble Supreme Court in various judgements that avenue of promotion is a fundamental right of every employee and any policy, which does not provide for avenue promotion is unfair, unjust and against the public interest and also violative of Article-14 & 16 of the Constitution of India.

(iii) For necessary direction to the respondents to make applicable the Accelerated Career Progression Scheme (hereinafter referred to as ACP only) in the case of the Petitioners and to grant benefit of three ACPs to the petitioners as they are continuously working in BIADA since 1986 but thereafter, they have not been given benefit of any promotion till date. Needless to say that approximately 30 years have already lapsed since 1986 and the petitioners are eligible for grant of all the three ACPs. Alternatively, the Petitioners may be allowed with the benefit of Time Bound Promotion.

(iv) For necessary direction to the



respondent authorities to grant the financial benefit of the 1st Time Bound Promotion along with differential arrears of salary to the Petitioners, which were granted to them by the erstwhile North Bihar Industrial Development Authority vide Memo No. 439 dated 09.05.1997 and Memo No. 465 dated 21.05.1997 but was kept in abeyance by the Authority due to reasons best known to them.

(v) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.”

2. The overall grievance of the petitioners are that they are entitled to have the benefit of time bound advancement, ACP, MACP and 5th Pay Revision. In the backdrop of the fact that petitioner Nos. 1, 2, 4 and 5, who were appointed as Peon in the then North Bihar Industrial Development Authority in the year 1986. Similarly, petitioner no.3 was appointed on 01.09.1976. Thereafter, his services were regularized on 12.07.1979 with effect from his initially appointment i.e. 01.09.1976. Thereafter, he was appointed as a Typist on 31.07.1986. Time bound advancement scheme was existing in the eye of law till 01.01.1996. 1st Petitioner was eligible to be have the benefit of time bound advancement on 31.07.1996, the remaining petitioners were eligible on 11.07.1996. It was extended on 21.05.1997 and 09.05.1997, respectively. Grant of time bound advancement to the petitioners was kept in abeyance



on 10.09.2001 by the Managing Director of Bureau of Public Enterprises. Admittedly, the State policy relating to time bound advancement was not existing in the eye of law as on 01.01.1996, therefore, if the petitioners are eligible on 31.07.1996 and 11.07.1996, in that event, as on that day the scheme of time bound advancement was not existing. Therefore, the petitioners are not entitled.

3. Grant of ACP/MACP benefit is concerned, three BIADAs were merged with one BIADA in the year 2003. Thereafter, the petitioners services were merged with the BIADA in the year 2003. BIADA have not adopted the ACP, on the other hand, they had adopted MACP in the month of January, 2015 even though scheme of MACP was introduced on 25.06.2003 with retrospective effect i.e. with effect from 09.08.1999. In this backdrop, the petitioners have approached the concerned Respondent claiming that they are entitled to ACP and MACP. They are not entitled to ACP benefits for the reasons that BIADA have not adopted the ACP scheme. Thereafter, MACP was adopted for the first time in the month of January, 2015, even if this date is taken into consideration, the petitioners are not entitled in terms of their claim.

4. Learned counsel for the petitioners, vehemently,



submitted that on 02.07.2003 Agenda No. 6 was pointed out to the extent that whatever the service benefit to other than the undivided industrial area development authority are governed by the then Patna Industrial Area Development Authority.

5. It is admitted fact that Patna Industrial Area Development Authority have not adopted the ACP and MACP benefit. Accordingly, the petitioners have not made out a case.

6. 5th Pay Revision is stated to have been adopted by the BIADA only on 22.09.2006. In this regard, if the petitioners are otherwise eligible to claim 5th Pay Revision, the same shall be examined by the concerned Respondent and proceed to pass a detailed speaking order to the extent whether each of the petitioners are entitled to have the benefit of 5th Pay Revision, which was stated to have been adopted on 22.09.2006. In this regard, necessary speaking order shall be passed by the concerned authority and proceed to communicate the same to the petitioners. The above exercise shall be completed within a period of three months from the date of receipt of this order.

7. Accordingly, the present Writ petition stands disposed of.

8. At this stage, learned counsel for the petitioners submitted that petitioner no.3, who has been granted the benefit



of time bound advancement contrary to policy decision, the same was sought to be recovered a sum of Rs. 38,000/- (Rs. Thirty Eight Thousand) from his leave encashment. Such recovery is impermissible in the light of Hon’ble Supreme Court decision in the case of *State of Panjab and others vs Rafiq Masih White Washer and others* reported in (2015) 4 SCC 334.

9. Accordingly, concerned Respondent is hereby directed to refund the recovered amount of Rs. 38,000/- to the petitioner No.3 within a period of one month from the date of receipt of this order.

(P. B. Bajanthri, J)

manish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2024
Transmission Date	NA

