IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10720 of 2019

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1. Om Prakash Singh Son of Late Sidhdheshwar Singh Resident of Village- Kamalpur, P.S.- Punpun, District- Patna.
2. Om Prakash Gupta Son of Dineshwar Prasad Gupta Resident of Village and P.S.- Asawan Bazar, District- Siwan.
3. Shekh Nurul Hoda Son of Late Shekh Jan Mohammad Resident of Mohalla- Mohawat Toli, P.S.- Town, District- West Champaran, Bettiah.
4. Most. Anju Devi Wife of Late Ravi Nandan Prasad Resident of Mohalla- Gandhi Nagar, Ramna, P.S.- Motihari, District- East Champaran.
5. Jagdish Prasad Sinha Son of Indra Lal Singh Resident of Village- Chiniya Bela, P.O., P.S.- Punpun, District- Patna.
6. Radha Pandey Son of Baleshwar Pandey Resident of Village- Parsa Bazar, P.S.- Parsa Bazar, District- Patna.
7. Surendra Prasad Singh Son of Late Ram Nagina Singh Resident of Village- Dariyapur, P.S.- Parsa Bazar, District- Patna.
8. Prem Sao Son of Late Baleshwar Sao Resident of Village- Noor Mohiuddinpur, P.S.- Parsa Bazar, District- Patna.
9. Nageshwar Yadav Son of Late Dewaki Prasad Yadav Resident of Village- Haivipur, P.S.- Punpun, District- Patna.
10. Chandeshwar Prasad Yadav Son of Late Ganga Prasad Yadav Resident of Village- Haivipur, P.S.- Punpun, District- Patna.
11. Tilkeshwar Mistri Son of Late Ram Janam Mistri Resident of Mohalla- Bahadurpur Bagicha, P.S.- Bazar Samittee, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Principal Secretary, Finance Department, Government of Bihar, Patna.
5. The Additional Secretary, Government of Bihar, Patna.
6. The Water and Land Management Institute (WALMI), Phulwarisharif, Patna.
7. The Director (Chief Engineer), Water and Land Management Institute (WALMI), Phulwarisharif, Patna.
8. The Superintending Engineer, Command Area Development Directorate, Water Resources Department, Bihar, Patna.
9. The Superintending Engineer, Command Area Development Circle, Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate

		Mr. Kamala Kant Tiwary, Advocate
For the State	:	Mr. Anjani Kumar (AAG-4)
For the R. No. 6 to 9	:	Mr. Satish Chandra Jha-3, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-07-2024

The petitioners, who are retired employees and the wife of a retired employee, seek for Assured Career Progression (for brevity, ACP) and Modified Assured Career Progression (for brevity, MACP) for the period while they were in service. To this end, they also challenge the restriction in the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003, produced as Annexure-1, and the Modified Assured Career Progression Scheme, 2010, produced as Annexure-2, wherein such benefits have been declined to autonomous bodies and public enterprises fully or partially aided by the State Government. The grounds raised by the petitioners are of arbitrariness and discrimination in denying such benefits to the employees of autonomous bodies; which have been extended to government employees and some of the autonomous bodies under the Government.

2. Learned Senior Counsel Sri. Umesh Prasad Singh took us through the rules and pointed out from Annexure-3 that the Government had directed the Command Area Development Agency (for brevity, CADA), which in the present case is the Gandak CADA, to grant ACP if the CADA has its own source of income. It is pointed out that as early as in 1999, the Gandak CADA had by Annexure-5 decided to adopt the service conditions of the employees of the Government. Annexure-7 is again the decision of the Regional Development Commissioner-cum-Chairman of the Gandak CADA, assuring the benefit of ACP to its employees as approved by the Board of Directors. It is also pointed out that Annexure 10 series indicate that such benefits having been given to other autonomous institutions/public enterprises, which raises a valid ground of discrimination.

3. Learned Senior Counsel relied on ***Lala Nand***

Kumar v. The Bihar State Food & Civil Supplies Corporation Ltd 2008(1)PLJR 579 in which, by virtue of the adoption of the Bihar Service Code and the failure of the Corporation to frame any service code or financial rules for itself, led to directions requiring the retirement age as applicable to the government employees to be adopted for the employees of the Corporation. Even those retired before the age of 60 years, who could not be reinstated for having passed the age of superannuation, as applicable to the government employees, were directed to be paid the service benefits. A later Division Bench followed the aforecited decision in ***L.P.A. No. 778 of 2018*** titled ***The Area Development Commissioner-Cum-Chairman, Gandak Area Development Agency, Muzaffarpur v. The State of Bihar*** Reliance is also placed on the ***The Commissioner, Patna Municipal Corporation v. Ruby Prasad; PMC 2018(3)PLJR 89***, to further advance the case of arbitrariness in the denial of ACP to employees who have continued for long in the agency.

4. Sri. Anjani Kumar, learned Additional Advocate General-IV, opposed the contentions, pointing out that the agency is funded by the Central Government and the State Government, and without the approval of the funding governments, there could not have been any adoption of the rules. Annexure-3 is relied upon to submit that the Government had distanced itself from payment of any ACP or MACP to the employees of the agency. Since, the decision taken by the Board of Directors of the Agency was without the approval of the Government it is urged that there is no cause for challenging the policy of the Government in granting ACP and MACP to its employees, as distinguished from the employees of the public sector undertakings and autonomous bodies. There can be no interference, in judicial review, of the policy as framed by the Government as has been held by the Hon'ble Supreme Court in ***Secretary, Government (NCT of Delhi) v. Grade-I DASS Officers' Association (2014) 13 SCC 296*** and ***Union of India v. M.V. Mohanan Nair; (2020) 5 SCC 421***. It is specifically pointed out that the

petitioners had failed to challenge the rules and the restriction of ACP and MACP, while they were in service. It was many years after retirement that the above prayer was made, which cannot be sustained. On retirement, the employer-employee relationship no longer exists, and there cannot be any claim for service benefits which the petitioners did not agitate at the proper time.

5. At the outset, we have to notice that even according to the petitioners, the Gandak CADA, an autonomous and independent body created under the Bihar Agricultural and Rural Area Development Agency Act, 1978, is no longer in existence. The Act under which the Agency was constituted has also been repealed. The four agencies created under the enactment have been merged into the Water and Land Management Institute, Phulwarisarif, Patna.

6. As was pointed out by the learned Additional Advocate General, we see that the petitioners are all persons who retired on various dates between 2010 to 2014, and the 4th petitioner is the wife of one another

retiree. The petitioners were in service when Annexure-1 and Annexure-2 rules regulating ACP and MACP to government employees came. The petitioners did not choose to challenge the restrictions in the said orders at that point of time, and the present challenge is also very many years after retirement. Having raised the challenge only in the year 2019, many years after Annexure-1 & 2 rules came into effect and after retirement, this dis-entiles them from claiming the service benefits, if at all due to them, which had not been challenged at the appropriate time. There is no question of their claims being considered as a continuing injury since on retirement all claims regarding service benefits stand extinguished, unless it was raised while in service and the proceedings were pending at the time of retirement. The restriction in the rules made the employees of the Agency ineligible to the benefits of ACP and MACP, which were not challenged before Court immediately on their coming into force, when all the petitioners were in service.

7. ***Secretary, Government (NCT of Delhi)***

(supra) and ***M.V. Mohanan Nair*** (supra) laid down the contours of judicial review in examining the Assured Career Progression scheme; being a policy decision of the Government, which was held to be not amenable to judicial review. The mere adoption of the rules applicable to the government employees by the Agency, an autonomous body constituted under a statute, would not *ipso facto* enable the employees to claim all benefits granted to government employees.

8. In the present case, we have to specifically notice that the ACP and MACP schemes brought in by the Government are restricted to government employees, and there cannot be any adoption of the same by the Board, without the approval of the Government since the agencies are not income generating bodies, and for financial support, it had to rely on the State Government and the Central Government.

9. Annexure-10 is with respect to the Bihar Police Building Construction Department, and Annexure-10(i) is with respect to Bihar Rajya Pul Nirman Limited,

wherein the ACP scheme and the MACP scheme were adopted. Obviously, they are income generating departments which could adopt the scheme and pay its employees from its own funds without dependence on the Government. Merely because in some autonomous bodies, the scheme has been implemented would not enable the petitioners to claim for the very same benefits. The mere fact of the different agencies being autonomous bodies would not confer on the employees of such different agencies with an equal status, nor can they be equated with government employees.

10. The decision relied on by the learned Senior Counsel for the petitioners in ***Lala Nand Kumar*** (supra) was with respect to the age of superannuation; based on the adoption of the conditions of government employees in a Corporation; which again is an income generating entity not always dependent on government funds. Further, it has to be noticed that therein, despite power conferred on the Corporation it had failed to bring in a service code different from that of the State Government,

the conditions of whose employees the Corporation had adopted. In the present case, the policies of ACP and MACP were brought in with a restriction in confining such benefits to government employees alone and specifically excluding autonomous bodies and public enterprises under the State Government.

11. The agency constituted under the Bihar Agricultural and Rural Development Agency Act, 1978 (BARADA Act) was specifically regulated by the provisions of the statute. Section 39 of the Act, under which the Gandak CADA was constituted provided that the Board can make regulations only with the previous approval of the State Government. Though the Gandak CADA had adopted the Service Rules including the Pension Rules as applicable to the employees of the State Government, the employees of the agency would not be enabled the benefits unless the State Government approves the same. The ACP & MACP benefits were also conferred on the government employees after the adoption of the service rules by the Board of the Gandak

CADA, by specific rules introduced in 2003 & 2010, which rules also restricted it to government employees and denied the benefit to the employees of autonomous bodies. We find the writ petition liable to be dismissed both on the grounds of delay and being devoid of merit.

12. The writ petition would stand dismissed, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Harish Kumar, J: I Agree.

(Harish Kumar, J)

Aditya Ranjan/-

AFR/NAFR	
CAV DATE	25.06.2024.
Uploading Date	03.07.2024.
Transmission Date	