

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7114 of 2023

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Amit Kumar Singh Son of Late Ram Bachan Singh Resident of Mohalla- Jail Road, Ara, P.S.- Ara (Sadar), District- Bhojpur, presently residing at Mohalla- Prabhunath Nagar, West of Housing Colony, near Hanuman Mandir, Chapra, P.S.- Mufassil, District- Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Baily Road, Patna.
2. Superintending Engineer, Saran Road Circle, Road Construction Department, Hajipur.
3. Executive Engineer, Road Division, Road Construction Department, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kishore Kumar Thakur, Adv.

Mr. Braj Kishore Singh, Adv.

For the Respondent/s : Mr. Tripurari Nath Ambastha, AC to SC-26

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 02-04-2024

The present writ petition has been filed for directing the Respondents to grant the benefits of 1st, 2nd and 3rd ACP / MACP Scheme to the petitioner from the due date i.e. with effect from August, 2004, August, 2012 and August, 2022, respectively. The petitioner has also prayed for quashing of the office order dated 9.2.2023, passed by the Superintending Engineer, Saran Road Circle, Hajipur, as far as the same relates to the petitioner, whereby and whereunder the benefits of 1st & 2nd ACP / MACP



scheme has been allowed to the petitioner with effect from the date, the petitioner has passed the departmental accounts examination and not from the due date as also he has been denied the benefits of 3rd MACP.

2. Shorn of the unnecessary details, it would suffice to state here that admittedly, the Respondents have taken a stand in the counter affidavit that on account of non-passing of the departmental accounts examination in time, the petitioner was earlier precluded from grant of the benefits of 1st and 2nd ACP/MACP scheme, however, after he has passed the departmental accounts examination, the benefits of 1st ACP has been allowed to him with effect from 17.1.2010 and that of 2nd MACP with effect from 17.1.2020.

3. This Court finds that the law regarding the issue under consideration is no longer *res integra*, inasmuch as a learned Division Bench of this Court in the case of the ***State of Bihar & Ors. vs. Ram Subhag Singh*** (LPA No. 4 of 2021), reported in ***2022 (2) PLJR 773***, by a judgment dated 11.5.2022, has held that non-passing of departmental examination shall not be an impediment to grant of the benefits of time bound promotions / ACP /MACP. In fact, this aspect of the matter has also been decided by a judgment, rendered by this Hon'ble Court in the



case of *State of Bihar & Ors. vs. Anjani Kumar*, reported in **2013 (2) PLJR 643**, which has also been upheld by the Hon'ble Apex Court, by an order dated 10.3.2014, passed in SLP (C) No. 19182 of 2013. In this regard, reference be also had to a judgment rendered by the learned Division Bench of this Court in the case of *State of Bihar & Ors. vs. Smt. Jivachi Devi*, reported in **2020 (2) BLJ 471**, which has also been upheld by the Hon'ble Apex Court, in view of the dismissal of the Special Leave Petition filed by the respondent-State. It would be equally gainful to refer to a judgment rendered by the learned Division Bench of this Court in the case of *The State of Bihar & Ors. vs. Shri Krishna Singh & Anr. (L.P.A. No. 372 of 2019)*. In a recent judgement, rendered by the Hon'ble Apex Court in the case of *Amresh Kumar Singh & Ors. vs. The State of Bihar & Ors.*, reported in **2023 (2) PLJR (SC) 423**, it has been held that extending the benefit of ACP, which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, cannot be withheld for not possessing additional educational qualification, hence for the purposes of granting benefits of ACP/MACP, passing of any exam is not necessary.

4. Thus, there is no iota of doubt that the petitioner has to be



granted the benefits of the Assured Career Progression scheme as also that of MACP scheme, *de hors* the fact that he has not passed the Departmental Accounts Examination, in case he has not been promoted, in order to deal with the problem of stagnation.

5. Having regard to the facts and circumstances of the case and considering the law laid down by the Hon’ble Apex Court as also by this Court, as aforesaid, this Court finds that the office order dated 9.2.2023, passed by the Superintending Engineer, Saran Road Circle, Hajipur, qua the petitioner herein is illegal, hence is quashed. The Respondents are directed to grant the benefits of 1st, 2nd and 3rd ACP/MACP to the petitioner with effect from the due date, without being impeded by the fact that the petitioner has not passed the departmental accounts examination in time, in case there is no other impediment, within a period of six weeks of receipt / production of a copy of this order.

6. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2024
Transmission Date	NA

