

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.105 of 2021

In
Civil Writ Jurisdiction Case No.7606 of 2019

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1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Viswaisaraiya Bhawan, Govt. of Bihar, Bailey Road, Patna.
 2. The Principal Secretary, Public Health Engineering Department, Viswaiswaraiya Bhawan, Govt. of Bihar, Bailey Road, Patna.
 3. The Engineer-in- Chief, Public Health Engineering Department, Viswaiswaraiya Bhawan, Govt. of Bihar, Bailey Road, Patna.
 4. The Chief Engineer (Mechancial), Public Health Engineering Department, Viswaiswaraiya Bhawan, Govt. of Bihar, Bailey Road, Patna.
 5. The Chief Engineer, Muzaffarpur Region, PHED, Muzaffarpur.
 6. The Superintendent Engineer, PH Circle, Motihari.
 7. The Executive Engineer, PH Division, Dhaka East Champaran, Motihari.
 8. The Sub- Divisional Officer, PH Sub- Division, Chhauradano, East Champaran at Motihari.
 9. The Sub- Divisional Officer, PH Sub- Division, Dhaka, East Champaran at Motihari.

... .. Appellant/s

Versus

- 1.1. Shia Devi W/o Late Chandradhar Sharma, Resident of Village - Namahi, P.O. - Niskhora, P.S. - Naubatpur, District- Patna.
- 1.2. Prashant Kumar, S/o Late Chandradhar Sharma, Resident of Village - Namahi, P.O. - Niskhora, P.S. - Naubatpur, District- Patna.
- 1.3. Puja Pandey, D/o Late Chandradhar Sharma, Resident of Village - Namahi, P.O. - Niskhora, P.S. - Naubatpur, District- Patna.
2. Mohammad Khabir Alam Son of Late Kalimullah Resident of Village- Sapti, P.O.- Jitikahi, P.S.- Dhaka, District- East Champaran, Bihar.
3. Panchu Rai Son of Late Paspas Rai Resident of Village- Chanchan Dhaka, P.S.- Dhaka, District- East Champaran, Bihar.
4. Jaylal Pandit Resident of Village- Chitahan Bankat, P.S.- Pakari Dayal, District- East Champaran, Bihar.
5. Manman Prasad Son of Late Gorakhnath Srivastava Resident of Village- Nawada, P.S.- Pakari Dayal, District- East Champaran, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Ranjan, Advocate
For the Respondent/s : Mr. Lalan Kumar Singh, Advocate



CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 14-03-2024

The present L.P.A. is filed in assailing the order of the learned Single Judge dated 19.09.2019 passed in C.W.J.C. No. 7606 of 2019.

2. Core issue involved in the present lis is whether respondents, Chandradhar Sharma and four others are entitled to ACP benefit or MACP benefit with reference to their service particulars?

3. Learned counsel for the appellant vehemently contended that as on the date of regularization on 28.06.2014, ACP scheme was not existing in the eye of law and in the result, respondents are not entitled to have the benefit of ACP. On the other hand, they are entitled to only MACP benefit which was introduced on 01.01.2009 and it was notified in the year 2010.

4. Undisputed facts are that respondents were initially appointed under work charge establishment in the year 1990 and their services were regularized on 28.06.2014. Service rendered against work charge establishment is required to be counted for the purpose of extending ACP/ MACP benefits and it is not disputed by the learned counsel for the appellant-State. If it is so, the initial appointment against work charge establishment in



the year 1990 read with date of regularization on 28.06.2014 is taken into consideration read with introduction of ACP in the year 2003, the respondents have completed 12 years of service in the year 2002 with reference to their initial appointment in the work charge establishment in the year 1990. No doubt, ACP scheme was not existing as and when respondents have completed 12 years of service.

5. Be that as it may, in the year 2003, ACP was introduced and it was invoked up to 01.02.2009 the date on which MACP scheme was introduced.

6. Learned counsel for the State-appellant submitted that as on the date of introduction of MACP on 01.02.2009, the respondents' services have not been regularized. Therefore, they are not entitled to ACP benefit. The same cannot be acceptable for the reasons that when it is undisputed that service rendered against work charge establishment till regularization is required to be considered for the purpose of certain service benefits including ACP/ MACP. In such circumstances, the respondents as and when they have completed 12 years of service in the year 2002, the date on which ACP scheme was not existing. However, the ACP scheme was introduced in the year 2003 w.e.f. the year 1999 and from that date they are entitled to



have the benefit of ACP and not MACP benefit. It is to be noted that retrospectively, service benefits were required to be extended to the respondents. One of the service condition is relating to ACP benefit as and when respondents have completed 12 years of service. In fact the respondents have completed 12 years of service before introduction of ACP, therefore, the respondents are entitled to ACP benefit from the date of its introduction.

7. At this stage, learned counsel for the appellant-State insisted that in the order of appointment, appellants have indicated that the regularised persons on 20.06.2014, they are entitled to MACP benefit. Merely, in the order of regularization if it is mentioned that regularized persons are entitled to MACP benefits that does not take away the right of the respondents insofar as extending ACP benefit, for the reasons that each of the respondent fulfill the criteria laid down in the ACP scheme introduced in the year 2003 which has effective from the year 1999.

8. It is to be noted that in the resolution / order of regularization if there is a mis-nommer of a word MACP that does not take away the ACP benefit. In fact, there is error committed by the authorities in mentioning MACP instead of



ACP.

9. Having regard to the service particulars and dates and events are taken into consideration, respondents are entitled to ACP benefit and not MACP benefits.

10. Accordingly, the present LPA is devoid of monetary benefits. While affirming the order of the learned Single Judge dated 19.09.2019 passed in C.W.J.C. No. 7606 of 2019. The present LPA stands dismissed.

11. The appellant No.6/ Competent Authority is hereby directed to calculate ACP benefit of the deceased-Chandradhar Sharma and extend to his legal heirs-respondent no.1 to 5 (petitioners) within a period of three months from the date of receipt of this order, failing which the respondents are entitled to interest on arrears of amount @ 8 % per annum.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

sanjeev/-
amitkumar

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.03.2024
Transmission Date	N/A

