

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11657 of 2024

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Braj Kishore Pandey, Son of Late Mangal Pandey, Resident of Mohalla-Srikrishna Nagar, Motihari, Police Station-Sadar Motihari, District- East Champaran.

... .. 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 Motihari.
4. The Executive Engineer, Planning and Monitoring Division, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Singh, Advocate
For the State : Mr. Mahtab Alam, AC to SC 20

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

2 06-08-2024

The petitioner joined service on the post of Typist on 16th January 1990 in the Irrigation Creation, Water Resources Department, Government of Bihar, and was posted in the Office of Motihari. On and from 30th June 1990, he was appointed as Lower Division Clerk (Accounts) in the said office. The petitioner claimed his 1st ACP on completion of 12 years of service with effect from 16th January 2002. He also claimed 2nd and 3rd MACP on completion of 20 years and 30 years of his service with effect from 16th January 2010 and 16th January 2020. The petitioner



submitted a representation to this effect, but the said representation was rejected by the Chief Engineer, Irrigation Creation, Water Resource Department, Motihari. While rejecting the representation of the petitioner, the Chief Engineer considered the provisions of बिहार राज्यकर्मचारी सेवा शर्त(सुनिश्चित वृत्ति उन्नयन योजना) नियमावली- 2003, Finance Department Notification No.7135 dated 30th December 2005, Water Resources Department Notification No. 2035 dated 16.12.2014 and Bihar Accounts Service Rules-2000 (बिहार लेखा सेवा नियमावली-2000).

2. On considering the above-mentioned rules and notifications, respondent no. 03 came to a decision that the petitioner is not entitled to claim ACP and MACP from 16th January, 2002, 16th January 2010, and 16th January 2020 on the ground that he passed the departmental examination which is necessary for getting ACP and MACP on 16th January 2010. The issue as to whether an employee is required to pass the departmental examination for *in situ* promotion by granting only monetary relief came up for consideration before the Full-Bench of this Court in ***CWJC No. 18727 of 2017 (Kamlanand Thakur Vs. The State of Bihar and Ors.)*** along with other cases and the Full-Bench of this Court by an order dated 28th June 2024, after considering the decisions of the Hon'ble Supreme Court in the



case of *Union of India v. C.R. Madhava Murthy*, reported in (2022) 6 SCC 183 and *Union of India v. G. Rajanna*, reported in (2008) 14 SCC 721 held in paragraph 48 as herein:-

“(A.) Rule 157(3)[J] of the Bihar Board’s Miscellaneous Rules, 1958, requiring passing of Departmental Accounts Examination for promotion, is not applicable in case of grant of A.C.P. benefits under the A.C.P. Rules, 2003;

(B.) Rule 157(3)[J] of the Bihar Board’s Miscellaneous Rules, 1958 is confined to passing of preliminary examination/final examination in Accounts only for the purposes of confirmation, crossing the efficiency bar and promotion to Selection Grade only and not for regular promotion;

(C.) Rule 4(5) of the A.C.P. Rules, 2003 even though provides that the prescribed requirements and mode of sanction of financial progression under the scheme (A.C.P. scheme) shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies and if the Rules/Resolutions prescribe passing of Departmental Examination or any qualification for promotion, that shall also be an essential condition for sanction of benefit under the scheme will not affect the claim for grant of A.C.P. after completion of twelve/twenty four years of service for the reason that such financial progression under the A.C.P. scheme is only in situ promotion and nothing more. This is even notwithstanding any such requirement of



passing any Departmental Examination or acquiring any educational qualification for promotion under the Service/Recruitment/Promotion Rules.”

3 . Thus, in paragraph 48 (A), the Full-Bench of this Court held that Rule 157(3)[J] of the Bihar Board's Miscellaneous Rules, 1958 requiring passing of Departmental Accounts Examination for promotion is not applicable in case of grant of ACP benefits under the ACP Rules, 2003.

4. This principle will govern even in cases regulated by similar other rules and notifications.

5. Relying on the above-mentioned decisions, this Court finds that departmental examination is not necessary for getting ACP and MACP after the expiry of a certain period of time as envisaged in ACP Rules, 2003. Therefore, I have no other alternative but to hold that the impugned order dated 13th April 2024, passed by the Chief Engineer, Irrigation Creation, Water Resources Department, Motihari is liable to be quashed and set aside. Accordingly, the impugned order is quashed and set aside.

6. The instant writ petition is allowed. The respondent no. 03, is directed to fix the ACP and MACP of the petitioner in the light of the Full-Bench decision of this Court, passed in CWJC No.



18727 of 2017, and other batch matters within 30 days from the date of communication of this order.

7. The instant writ petition is accordingly allowed.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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