

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 21024 of 2021

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Umesh Kumar S/O - Late Krishnath Singh R/O - Himmat Patty, Parsauni, P.S.
- Sahebganj, Presently Posted as Correspondence Clerk, Road Construction
Department, Road Division No. - 2 Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, R.C.D. Bihar, Patna.
2. The Addit. Chief Secretary, Road Construction Department, Bihar, Patna.
3. The Engineer - in - Chief, Road Construction Department, Bihar, Patna.
4. The Chief Engineer, North Bihar, Road Construction Depart., Bihar, Patna.
5. The Superintending Engineer, North Bihar Circle, Muzaffarpur.
6. The Executive Engineer, Road Construction Department, Road Division no.
- 2, Muzaffarpur.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
For the State : Mr. K. K. Singh, AC to GA-22

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 10-04-2024

The present writ petition has been filed for quashing the office order dated 30.10.2019, passed by the respondent no.5, i.e. the Superintending Engineer, North Bihar Road Circle, Muzaffarpur whereby and whereunder the benefits of 1st ACP, granted to the petitioner in the past, has been amended and instead, he has been granted the benefits of 1st MACP with effect from



29.08.2010, i.e. the date on which the petitioner has passed the departmental accounts examination and further it has been directed to recover the extra amount of wages paid to the petitioner, from his salary. The petitioner has also prayed for quashing of the consequential letter dated 25.06.2021, issued by the respondent No. 6, whereby and whereunder it has been directed that a sum of Rs.6,25,128/- be recovered from the petitioner in installments.

2. Shorn of the unnecessary details, it would suffice to state that the petitioner was appointed on compassionate ground on 23.02.1996 as Correspondence Clerk, whereafter he had passed the Hindi Noting and Drafting Examination in the year 1996 and then he was granted the benefits of 1st ACP with effect from 23.02.2008, but with a stipulation that the financial benefits would be paid with effect from 29/30.08.2010, the date on which he had passed the departmental accounts examination. Nonetheless, by the impugned order dated 30.10.2019, the benefits of 1st ACP granted



to the petitioner has been amended and it has been directed to grant the benefits of 1st MACP to the petitioner with effect from 29.08.2010, i.e. the date on which he has passed the departmental accounts examination. Consequently, a sum of Rs.6,25,128/-, allegedly paid in excess to the petitioner, has been directed to be recovered.

3. The learned counsel for the petitioner has submitted that it is a well settled law that non-passing of the departmental accounts examination cannot be an impediment to grant of the benefits of the ACP/MACP scheme.

4. *Per contra*, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case that the benefit of 1st ACP was granted to the petitioner, vide letter dated 29.08.2011, wherein it has been clearly stipulated that in case any excess amount is paid by mistake, the same shall be recovered. It is further submitted that since the petitioner had passed the departmental accounts examination on 29.08.2010, the benefit of 1st ACP



granted to the petitioner with effect from 23.02.2008 has been amended and it has been directed that the benefit of 1st MACP be granted to the petitioner with effect from the date he has passed the departmental accounts examination, i.e. 29.08.2010. Thus, it is submitted that there is no illegality in the impugned orders dated 30.10.2019 and 25.6.2021 respectively.

5. I have heard the learned counsel for the parties and perused the materials on record.

6. 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***, 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.

7. 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 the petitioner has not passed the Departmental Accounts Examination in time, in case he has not been promoted, in order to deal with the problem of stagnation.

8. Having regard to the facts and circumstances of the case, for the foregoing reasons and in view of the law laid down by the Hon'ble Apex Court as also this Court in a catena of judgments, as aforesaid, the impugned order dated 30.10.2019, passed by the Superintending Engineer, North Bihar Circle, Muzaffarpur as also the order of recovery dated 25.06.2021, issued by the Executive Engineer Road Construction Department, Road Division No.II, Muzaffarpur are not



sustainable in the eyes of law, hence are quashed and the respondents are directed to grant the benefits of ACP/MACP scheme to the petitioner with effect from the due date without being impeded by the fact that the petitioner had not passed the departmental accounts examination in time.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA

