

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13866 of 2024

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Kameshwar Prasad Yadav Son of Late Lakshman Prasad Yadav Resident of
Village- Bara Telpa, P.S- Chapra Town, District- Saran.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kishore Kumar Thakur, Advocate Mr. Braj Kishore Singh, Advocate
For the Respondent/s	:	Mr. Kumar Alok, SC-7

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 20-09-2024 The petitioner has invoked the constitutional writ jurisdiction of this Court under Article 226 of the Constitutions of India for the following reliefs:-

“i) For a direction to the respondents to grant him 1st and 2nd ACP/MACP with due dates, by counting his period of regular service of 12 years from the date of his entry in service as Accounts Clerk/Senior Accounts Clerk, as also to allow him the benefit of 2nd ACP/MACP with effect from the due date, by counting 20 years of his regular service from the date of his entry in service as Accounts clerk/senior Accounts clerk.

Thereby the petitioner prays to grant him 1st ACP with effect from August 2004 with



consequential monetary benefit thereof. Similarly the benefit of 2nd MACP be made admissible to the petitioner with effect from August 2012, both of which benefits have been allowed to the other similarly situated class III employees working within the jurisdiction of Saran Road Circle Hajipur of Road Construction Department, but denied to the petitioner on the ground that on the relevant date, he had since not cleared departmental examination, such benefits will be made admissible to the petitioner with effect from the date of his finally passing the said departmental accounts examination.

ii) Further prayer in the present writ application is to allow 3rd MACP to the petitioner with effect from August 2022, which has been illegally denied to him, by completely ignoring that the said benefit has been allowed to other such similarly situated class III employees who had not finally passed the departmental Accounts examination, in compliance of the judgment and order dated 28.06.2024 rendered by the Full Bench of this Hon'ble Court in CWJC No.18727 of 2017 (Kamlanand Thakur and other analogous cases), as well as judgment and order rendered by the Hon'ble Supreme Court in SLP No.8219-8226 of 2019 (Annexure-P-5).

Thereby the petitioner prays for setting aside that portion of the office order No.33 issued under the signature of respondent Superintending Engineer of Saran Road Circle of Road Construction



Department, communicated vide Memo No.834 dated 28.07.2021, which relates to the petitioner, whereby, 1st and 2nd ACP/MACP has been allowed to the petitioner from the date he finally passed the departmental accounts examination, and further, the 3rd MACP alongwith monetary benefit thereof has been denied to him on the same ground that the petitioner has not completed 30 years of qualifying service after finally passing the departmental account examination on the date of consideration of his case by the circle level screening committee dated 28.07.2021.”

2. Thus, the petitioner has prayed for granting him 1st and 2nd ACP/MACP on completion of 10 years and 20 years of service by counting his period of regular service from the date of entry in the service as Accounts Clerk/Senior Accounts Clerk.

3. The petitioner was appointed as Accounts Clerk on compassionate ground by an order dated 30.07.1992 in the pay scale of Rs.1200-1800/-, which was prevalent at that point of time. After his joining, the petitioner passed departmental accounts examination as well as Hindi noting and drafting examination in the year 2002. Again, the respondent department notified for departmental accounts examination in the year 2008, the petitioner again appeared in the said examination along with others and he passed the examination, the result of



which was published in January, 2010. In the meantime, in order to give effect of 5th Pay Commission, the respondent-State abolished time bound promotion scheme and introduced ACP Scheme in the year 2003, which came into affect from 09.08.1999. According to the said rule, any employee who is deprived of any regular promotion during his service career has to be provided 1st ACP on completion of 12 years of qualified service and 2nd ACP on completion of 24 years of qualified service. Subsequently, on the basis of the recommendation of 6th Pay Commission, A.C.P. Rules, 2003 was repealed by MACP Scheme in the year 2010 and under the said scheme a regular government employee is entitled to get financial up-gradation on completion of 10 years, 20 years and 30 years of qualified service.

4. It is contended by the petitioner that as he was appointed on 6th August, 1992, on completion of 12 years of qualified service, he was entitled to 1st ACP on 6th August, 2004. However, the said benefit of 1st ACP was denied to the petitioner w.e.f. 6th August, 2004, on the ground that he has not finally passed a departmental accounts examination, which is a precondition required in Rule 5(4) of ACP Rules.

5. The petitioner has referred to the series of cases



decided by this Court, wherein it is clearly held that the provision of Assured Career Progression or Modified Assured Career Progression is a benefit granted to an employee, when no promotion is granted to him in ***Kamlanand Thakur Vs. The State of Bihar and others*** (C.W.J.C. No.18727 of 2017 decided on 28.06.2024), a Full Bench of this Court relying upon the decision of the Hon'ble Supreme Court in ***Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.***, reported in ***2023(2) PLJR (SC) 423***, held that requirement for passing of departmental accounts examination for promotion is not applicable in case of grant of ACP benefits under the ACP Rules, 2003.

6. 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.

7. It is also held by the Special Bench of this Court in ***Kamlanand Thakur*** (Supra) that 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



(ACP Scheme) shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies and if the Rules/Resolution 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 reasons 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.

8. The petitioner made a representation (Annexure-P/7) on 28.02.2024 but the respondents have not disposed of the said representation as yet. Therefore, this Court disposes of the instant writ petition directing the respondent Nos. 2 & 3 to dispose of the representation (Annexure-P/7) dated 28.02.2024 submitted by the petitioner, within 60 days from the date of communication of this order, in the light of observation made herein-above and on the basis of the Full Bench decision of this Court passed in C.W.J.C. No.18727 of 2017 (Kamlanand



Thakur Vs. The State of Bihar & Ors.) by passing a speaking
and reasoned order.

9. Accordingly, the instant writ petition is thus,
disposed of on contest.

(Bibek Chaudhuri, J)

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