

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14305 of 2024

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Ajay Kumar Mishra, Son of Late Jotiyandra Narayan Mishra Resident of
Village- Patuaha, Police Station- Saharsa, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resources Department, Saharsa.
4. The Superintending Engineer, Irrigation Circle, Purnea.
5. The Executive Engineer, Irrigation Division, Narpatganj, District-

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha 3, Advocate
	:	Mr. Shambhoo Kumar Suman, Advocate
For the Respondent/s	:	Standing Counsel-16

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 20-09-2024 Heard Mr. Satish Chandra Jha 3, along with Mr. Shambhoo Kumar Suman, learned counsels appearing on behalf of the petitioner and learned Standing Counsel-16 appearing on behalf of the respondent.

2. Petitioner has *inter alia* prayed for following reliefs in the paragraphs No.1 of the writ petition:-

“(i) To direct the respondents particularly Respondent no.3, to consider and grant benefit of 1st and 2nd Assured Career Progression Scheme (Herein after referred as A.C.P.) to the petitioner, who regularised as Moharir w.e.f. 20.04.1976 and retired as such w.e.f. 31.07.2007 and during his entire service period he was not allowed any regular promotion as such he was / is legally entitled to get benefit of A.C.P. in terms of law laid down by the Full Bench of this Hon'ble Court, in the case of Kamlanand Thakur Vs The State of Bihar and Others, bearing C.W.J.C. No. 18727 of 2017 and other analogous



cases decided on 28.06.2024, wherein the Full Bench has 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 A.C.P. benefits under A.C.P. Rules, 2003.

(ii) To direct the respondents, to make payment consequential monetary benefit to the petitioner, after grant of benefit of A.C.P. and also revised his entire pensionary benefit in lieu thereof.

(iii) That the Hon'ble Court may be pleased to grant any other relief or reliefs to the petitioner, as this Hon'ble Court may think it proper in the present facts and circumstances of this case."

3. Learned counsel appearing on behalf of the petitioner informs that the petitioner was appointed on 20.04.1976 as Moharir and had retired on 31.07.2007. The petitioner became entitled for 1st and 2nd ACP and in this regard he has filed an application before the authority concerned, but till date the same has not been given to him. However, petitioner seeks to file a detailed representation before the authority concerned in light of the law laid down by the Apex Court in the case of ***Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.*** reported in ***2023 SCC OnLine SC 496*** and the recent judgment dated 28.06.2024 of the Hon'ble Full Bench of this Court passed in ***CWJC No. 18727 of 2017 (Kamlanand Thakur Vs. The State of Bihar)*** and other analogous matter.

4. Considering the aforesaid information given by the petitioner, I find it proper to refer Rule 4 (5) of **Bihar State Employees Service Condition (Assured Career Progression**



Scheme) Rules, 2003 is reproduced hereinafter.

“(4) Eligibility and conditions

(5) The requirements and manner of grant of financial progression under the Scheme shall be the same which have been prescribed for regular promotion against vacancies under recruitment/ appointment Rules. If for any promotion passing of departmental examination or any other eligibility has been prescribed then the same would also be necessary condition for grant of benefit under the Scheme if such condition is prescribed under Rules/Circulars/Resolutions.”

5. The terms and conditions, as per Rule 4(5) of the 2003 Rules, is that the requirement for grant of financial progression would be the same as prescribed for grant of regular promotion under service rules/orders governing grant of regular promotion.

6. Considering the provision of the Scheme, the applicable Rule governing grant of regular promotion to the petitioner puts condition that an employee is mandatorily required to be adjudged fit to be promoted before grant of regular promotion i.e. in other words, his service should not be unsatisfactory.

7. In view of the fact that the petitioner has claimed that he has been stagnated on the same post and seeks to file a detailed representation before the authority concerned, the



authority concerned is required to call for the service particulars of the petitioner and verify, as to whether, any disciplinary action or any penalty order has been passed against the petitioner and decide the grievance of the petitioner expeditiously, in light of the law laid down by the Apex Court in the case of **Amresh Kumar Singh (Supra)** and the Full Bench of this Court in the case of **Kamlanand Thakur (Supra)**. In case of delay in any manner, the petitioner may take action against the respondent/s concerned.

8. It is, however, worth to be noted that ACP/MACP scheme is a financial progression given to an employee, which is time-bound scheme, as a result of stagnation of government servant on the same post.

9. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J.)

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