

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.56 of 2022

Manoranjan Kumar Son of Bipin Chandra Singh Resident of 78 Shivaji Path,
Chhoti Khanjarpur, Jagdishpur, Bhagalpur - 812001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Road Construction Department, Govt. of Bihar, Patna.
2. The Principle Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Road Construction Department, National Highway Circle, Bhagalpur.
4. The Executive Engineer, Road Construction Department, National Highway Division, Bhagalpur.
5. The District Account Officer, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar Jha, Advocate Mr. Puja Kumari, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Ambastha (SC-26) Mr. Santosh Kumar Mishra, AC to SC-26 Mr. Devit Vinod, AC to SC-26

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 11-07-2024 The petitioner has invoked the extra-ordinary jurisdiction under Article 226 of the Constitution of India praying for the following reliefs:-

(i) For issuance of writ in the nature of certiorari for quashing of office order dated 06.08.2020 (Annexure-3) whereby benefit of second MACP which was given to the petitioner with effect from 10.03.2009 has been cancelled.

(ii) For issuance of writ in the nature of certiorari for quashing of letter No.945 dated 15.09.2020 (Annexure-6) whereby direction has been



issued for recovery of Rs.2,98,986/-.

(iii) For issuance of consequential direction after quashing the office order dated 06.08.2020 (Annexure-3) and letter No.945 dated 15.09.2020 (Annexure-6).

(iv) For issuance of direction to the respondent to give the benefit of Third MACP to the petitioner as he has completed the 30 years of qualified service.”

2. Indisputably, the petitioner was appointed on the post of Correspondence Clerk and joined service on 10.03.1989. By a letter dated 06.08.2020 Superintending Engineer, National Highway Authority, Road Construction Division, Bhagalpur passed an order that the Screening Committee did not find the previous function of the petitioner satisfactory and therefore, reply to the show cause filed by the petitioner was rejected. The petitioner was accordingly denied 2nd MACP as per Letter No.28 dated 17.01.2014. The petitioner submitted a representation on 27.11.2014 claiming his right to get ACP and MACP under Rule 4(5)(ii) of ACP Rules, 2003 relating to the eligibility and condition as per ACP Rules, 2003. In reply to the said letter, the Special Secretary, Government of Bihar informed the petitioner that as per Rule 4(5)(ii) of ACP Rules, 2003, if an employee suffers any punishment for departmental misconduct or that he



become unsuccessful in the departmental examination. His ACP will be calculated not from the date of initial appointment but from the date of rejection of the order of punishment or passing of the departmental examination.

3. It is submitted by the learned advocate on behalf of the petitioner that the respondent authority committed a patent illegality while misreading the relevant Rule 4(5)(ii) of ACP Rules, 2003. It is submitted by him that Rule 4(5)(ii) of ACP Rules, 2003 inter-alia states:

“Rule 4(5)(ii).....If the first financial progression, granted to a Govt. servant, is delayed beyond 12 years of regular service due to disciplinary proceedings etc. or due to the government servant being found unfit for promotion, then the second financial progression under the Scheme shall be granted after 12 years for the date of the first financial progression.”

4. It is also submitted by the learned advocate for the petitioner that the vires of the aforesaid rule was challenge before the Full Bench on being referred by the Division Bench as well as the Single Bench of this Court in C.W.J.C. No.18727 of 2017. While disposing of C.W.J.C. No.18727 of 2017 along with other writ petitions and L.P.As., the Full Bench of this Court vide a judgment dated 28.06.2024 passed the following



order in Para-48 of the said judgment :

“48. Thus, the questions stand answered as follows :-

(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.”

5. Therefore, the conditions laid down in Rule 4(5) (ii) of ACP Rules, 2003 has been diluted by the Full Bench of this Court in the aforementioned decision.

6. Under such backdrop, the learned advocate on behalf of the respondents submits that the petitioners prayer may be sent to the department for re-consideration in the light of the observation passed by the Full Bench of this Court in C.W.J.C. No.18727 of 2017 and other batch of matters.

7. This Court concurs with the submission made by the learned advocate on behalf of the State. Therefore, petitioner's case for grant of ACP and MACP be remanded to



the respondents authority for taking fresh decision in the light of the above mentioned judgment passed by the Full Bench of this Court on 28.06.2024.

8. Till finalization of entitlement of ACP and MACP by the petitioner from the date prior to the date on which it was directed to be paid is settled, the department is restrained from claiming recovery of any money paid by way of ACP and MACP to the petitioner within 90 days from the date of this order.

9. The instant writ petition is accordingly, disposed of.

(Bibek Chaudhuri, J)

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