

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15509 of 2024

Kishore Kumar Choudhary Son of Late Jagdish Choudhary, Resident of
Village- Mahishi, Ward No. 10, P.S.- Mahishi District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Home Department, Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Bihar, Patna.
4. The Superintendent of Police (Railway), Patna.
5. The Superintendent of Police, Saharsa.
6. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mukund Mohan Jha, Advocate
For the Respondent/s	:	Mr. Anant Pd. Singh, SC 15
For the AG	:	Mr. RamYash Singh, Advocate
		Mr. Utkarsh Bhushan, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 28-10-2024 Heard Mr. Mukund Mohan Jha, learned counsel

appearing on behalf of the petitioner; Mr. Anant Pd. Singh,

learned SC 15 for the State and Mr. Ram Yash Singh along with

Mr. Utkarsh Bhushan, learned counsels for the AG, Bihar.

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

*(I) For issuance of an appropriate writ in
the nature of certiorari for quashing the order passed
vide letter no.116 dated 25.02.20 whereby the
Superintendent of Police, Railway, Patna has decided
to revise the date of ACP/MACP after date of passing
i.e. 11.10.09 of Hindi noting examination while
petitioner was getting ACP since the year 1999.*



(ii) For issuance of an appropriate writ in the nature of certiorari for quashing the order vide memo no.829 dated 12.05.2020 issued by the Superintendent of Police, Railway, Ptana whereby the deducted the payment of salary without following the principles of natural justice.

(iii) For issuance of an appropriate writ in the nature of mandamus to calculate his salary for fixation of pension in the light of earlier 1st ACP, 2nd ACP and 3rd ACP for which he is entitle since 1999, 2006, 2016 respectively.

(iv) For issuance of an appropriate writ in the nature of mandamus to return back the amount which was deducted by the authority without issuing any show cause to him.

(v) For issuance of an appropriate writ in nature of mandamus to pay the difference of salary as well as fix the pension thereafter and also pay the difference of pension till the actual payment.

(vi) For issuance of an appropriate writ in the nature of mandamus to pay the interest upon the amount which was deducted from his salary as well as the amount which was not given after his superannuation due to this impugned order.

(vii) For issuance of an appropriate writ/s, order/orders for which petitioner is entitled.”

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was granted first ACP with effect from 09.08.1999 and second ACP with effect from 06.07.2009, however, the same was reviewed incorrectly holding that the petitioner is entitled for first ACP from the date of passing of Hindi Noting examination on 11.10.2009 and,



accordingly, he was entitled for second ACP with effect from 11.10.2019. Petitioner is aggrieved by the order of recovery, contained in Memo No.829 dated 12.05.2020, containing Patna Rail District Order No.316 of 2020 (Annexure 3). Learned counsel submitted that law in respect of recovery from from Class III and IV employees is well settled in the case of **State of Punjab & Ors. etc. Vs. Rafiq Masih (White Washer) etc.**, reported in **2015(4) SSC 334** and later on clarified in case of **Thomas Daniel Vrs. State of Kerala & Ors.** reported in **2022 LiveLaw (SC) 438** and also the clarification made by the Additional Director General of Police, contained in Memo No.907/401921 dated 14.12.2018 (Annexure 1) clarifying to the above effect.

4. Considering 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**, in which it has been held by the Apex Court that ACP and MACP scheme is financial progression as a result of stagnation of an employee and the same cannot be considered to be regular promotion. In view of the law laid down by the Apex Court, and subsequent clarification made by the Full Bench of this Court in **CWJC No.18727 of 2017 (Kamlanand Thakur Vs. The**



State of Bihar) and other analogous matter, the order contained in Memo No.829 dated 12.05.2020, passed by the Superintendent of Police (Railway), Patna is hereby set aside and quashed.

5. If any recovery has been made from the petitioner, who is a class III employee will be held to be against the law laid down by the Apex Court in case of **Rafiq Masih (Supra)** and **Thomas Daniel (Supra)** and the amount recovered deserves to be returned back to the petitioner. In case no recovery is made, the same cannot be done in view of the order dated 12.05.2020 having been already quashed.

6. The writ petition is, accordingly, disposed of.

(Purnendu Singh, J)

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