

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16923 of 2022**

Manoj Kumar Son of- Late Ram Deo Sinha, R/O- Flat No. 306, Block- B,  
Sunrise Narayan Palace, Mohalla- Saubhaya Sharma Path Bailey Road, P.O.  
and P.S.- Rukanpura, District- Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Flood Control and Water Drainage, Water Resources Department, Government of Bihar, Patna.
4. The Executive Engineer, Planning and monitoring Division, Anisabad, Patna.
5. The Treasury Officer, Secretariat Treasury, Construction Building, Patna.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Alok Ranjan, Advocate  
For the Respondent/s : Mr. Vinay Kirti Singh ( Ga 2 )

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

3      23-07-2024

The petitioner has prayed for following reliefs by way  
of this writ petition :-

*“(i) For Quashing of Part of  
office order as contained in memo no. 2689  
dated 21.07.2022 issued under the signature  
of Chief Engineer, Flood control and Water  
Drainage, Water Resources Department,  
Government of Bihar, Patna, so far it relates  
to the petitioner, whereby and where under  
the authority has taken decision for grant of  
benefits 2<sup>nd</sup> MACP from 28.08.2021 in level  
7 pay scale of 44900-142400/- in place of  
28.08.2011, which has earlier been granted  
to the petitioner; though the petitioner is  
entitled for payment of 1<sup>st</sup> ACP w.e.f*



*03.05.2002, 2<sup>nd</sup> MACP with effect from 03.05. 2010 in Rs. 5400 /- grade pay and further a decision has been taken for not granting the benefits of 3<sup>rd</sup> MACP to the petitioner, without there been issuance of any show-cause notice to the petitioner, which is teeth of principals of natural justice and in teeth of various judicial pronouncements from time to time by Hon'ble High court and Hon'ble apex court.*

*ii). For quashing of office order as contained in letter no. 351 dated 27.10.2022 issued under the signature of Executive Engineer, Planning and monitoring Division, Anisabad, Patna whereby and where under pursuant to memo no. 2689 dated 21.07.2022 the pay scale of the petitioner has been fixed at lower level.*

*iii). For directing and commanding the respondent authorities to grant 3<sup>rd</sup> MACP which has become due after completion of 30 years of unblemished service.”*

2. Learned Advocate appearing on behalf of the petitioner submits that the petitioner joined as Accounts Clerk on 03.05.1990 in the Water Resources Department, Patna. The petitioner was granted 1<sup>st</sup> MACP in Rs. 4200/- Grade Pay with effect from 28<sup>th</sup> August 2011 and 2<sup>nd</sup> MACP in Grade Pay of Rs. 4600/- on and from 28<sup>th</sup> August 2011. Subsequently, vide Annexure-2, an order was passed by the Chief Engineer, Flood



Control and Drainage, Water Resources Department, withholding the Second MACP of the petitioner on the ground that he did not pass the departmental examination. Consequently, the amount which was paid to the petitioner, by way of Second MACP was directed to be recovered from the salary of the petitioner. The petitioner was directed to submit a representation, stating grounds against the said order and he made a detailed reply to the same. However, the petitioner's salary was fixed after deducting the benefits of Second MACP which is under challenge in the instant writ petition. The issue regarding grant of MACP, on the ground that an employee failed to qualify departmental examination, was taken up for consideration by the Division Bench of this Court in LPA No. 1788 of 2017 along with several other writ petitions. The Division Bench by its order dated 28<sup>th</sup> June 2024 decided as follows:-

*“48(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.”*

3. In view of the above discussion, the decision of the Chief Engineer, provided in Annexure-2 and 7 with regard to the petitioner be quashed. Accordingly, the petitioner is entitled to get the 2<sup>nd</sup> and 3<sup>rd</sup> MACP and all other consequential benefits.



4. The respondents are directed to release the benefits of 2<sup>nd</sup> and 3<sup>rd</sup> MACP to the petitioner, if not already been released within 90 days from the date of this order.

5. The instant writ petition is thus, disposed of.

**(Bibek Chaudhuri, J)**

Suraj Dubey/-

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|

