

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15492 of 2024**

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Shankar Kumar Jha @ Shankar Jha Son of Late Dinanath Jha Resident of  
Village- Kahara, P.O.- Kahara, P.S.- Saharsa, District- Saharsa, Bihar-852202.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Agriculture Department, Government of Bihar, Patna.
2. The Principal Secretary, Agriculture Department, Government of Bihar, Patna.
3. The Joint Secretary, Agriculture Department, Government of Bihar, Patna.
4. The Director (Agriculture), Government of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
6. The Principal Secretary, Finance Department, Government of Bihar, Patna.
7. The Development Commissioner, Bihar, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Anand Kumar Ojha, Adv  
For the Respondent/s : Mr.Government Pleader (6)

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**  
**ORAL ORDER**

2      08-10-2024                      Heard Learned Counsel for the petitioner and  
  
Learned Counsel for the State.

2. The present writ petition has been filed for quashing of the decision of the Screening Committee dated 07.12.2021 to the extent it relates to the Writ Petitioner at Sr. No. 32 keeping pending the decision to grant 3<sup>rd</sup> M.A.C.P with effect from 27.11.2020 and issuance of writ in the nature of mandamus commanding the Respondents to grant 3<sup>rd</sup> MACP in pay scale of Pay Level-13 to the petitioner and pay the



consequential monetary benefit along with statutory interest as well as revise the post retiral benefits including the pension and also incorporate the consequence of upgraded pay scale in the admitted dues pending with the department.

3. Learned Counsel for the petitioner submits that petitioner was appointed in the agricultural department in the year 1990 and has completed the service of 33 years. The petitioner retired with effect from 31.01.2024, and become entitled for pension with effect from 01.02.2024. He further submits that petitioner has submitted the duly filed up pension documents before his retirement in the month of January, 2024 itself but the same has not been paid as yet due to litigation. Counsel submits that by the notification vide memo No. 1422 dated 01.03.2008 issued by Cultural Department petitioner was at Sr. 11 and was granted 1<sup>st</sup> ACP. The date of appointment of the petitioner is 27.11.1990 and the 1<sup>st</sup> ACP was granted on 27.11.2002 and he was given the pay-scale of Deputy Director, Agriculture in the pay-scale of 10,000-325-15,200 and by subsequent notification number 3601 dated 13.09.2017, petitioner was granted regular promotion in the pay-scale of PB-3, 15,600-39100, GP- 6600 to the post of Deputy Director (Agro) Jute, Bihar, Patna and the said regular promotion



partakes the nature of 2<sup>nd</sup> MACP. He further submits that MACP Rule has been implemented after repealing the ACP Rules, 2002 with effect from 01.09.2009, and under MACP Rule, employee is entitled for 3<sup>rd</sup> ACP financial upgradation after 10, 20 and 30 years of service. He further submits that the petitioner has joined the service on 29.11.1990 retired on 31.01.2024, and thus, he has completed 33 years of his service, and hence, entitled for 3<sup>rd</sup> MACP also. He further submits that Vigilance P.S. Case No. 32 of 2020 was lodged and departmental proceeding has also been initiated vide Resolution No. 308 dated 31.08.2021. Counsel specifically submits that the criminal case was lodged against the petitioner on 31.12.2020, and departmental proceeding was commenced on 31.08.2021, but the department admits that the entitlement of the petitioner for 3<sup>rd</sup> ACP has accrued with effect from 27.11.2020, and he was found eligible for the grant of 3<sup>rd</sup> MACP on that due date. Counsel submits that on the due date of promotion, which had been decided by the promotion committee itself, that for 3<sup>rd</sup> ACP, the entitlement begins from 27.11.2020 but the reason for not granting ACP had been assigned in the recommendation of the committee that ACR of the petitioner was not available and the Vigilance Case was pending against him. He further submits



that in the light of Rule-299 of the Bihar Service Code read with Rules 101 and 102 of the Bihar Financial Rule, it is the employer (the government itself) who is responsible for preparation of the ACR and in preparation of ACR, there is no role of the employee. He further submits that the recent decision of Hon'ble Supreme Court of India in the case of ***Amresh Kumar Singh & Ors. Vs. State of Bihar & Ors.*** reported in ***2023 SCC OnLine SC 496*** as well as another judgment passed by the Hon'ble Supreme Court in the case of ***Union Of India Vs. C.R. Madhava Murthy*** reported in ***2022(6) SCC 183*** in which Hon'ble Court has clearly held that grant of ACP and MACP provides for Regular Financial Upgradation and there are incentive scheme for employee, who completes a particular period of service, but without getting promotion for lack of promotional avenues and the effect of scheme must be judged keeping in view the object and purport of the scheme. He specifically submits that in the light of the said judgments and specific Rule, the decision of the committee is not in accordance with law, and hence, he has no option but to file the present writ petition.

4. Counsel for the State on the other hand submits that the counter affidavit is required in this case as it has been



categorically mentioned that entitlement of the petitioner has come on 27.11.2020, but due to lack of the ACR and pendency of the trap case, the benefit of the 3<sup>rd</sup> MACP could not be granted.

5. Upon hearing the parties, it transpires to this Court that there is no need of filing counter affidavit in this matter and this matter has to be decided considering the aforesaid Rules and the Judgments by the Screening Committee afresh, as at the time of deciding for grant of 3<sup>rd</sup> MACP for the petitioner, neither those Rules for grant of 3<sup>rd</sup> MACP for the petitioner, nor those decisions mentioned in this case have been discussed by the Screening Committee. As such, the decision of the Screening Committee dated 07.12.2021 is hereby quashed.

6. It is directed to Respondent No. 7 to initiate the process of fresh consideration of the case of the petitioner considering Rule 229 of the Bihar Service Code, read with Rule 101 and 102 of the Bihar Finance Rule as well as the judgment of *Amresh Kumar Singh & Ors. Vs. State of Bihar & Ors(Supra)* and the case of *Union Of India Vs. C.R. Madhava Murthy(Supra)* a fresh within 90 days from the date of production of a copy of this order.

7. It is made clear, that this writ petition has been



allowed only quashing of the decision of the Screening Committee so far as the case of the petitioner at Sr. 32 is concerned, on rest other relief demanded by the petitioner, this Court has not expressed any opinion.

8. With the aforesaid observation and direction, this writ petition stands allowed.

**(Dr. Anshuman, J)**

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