

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17184 of 2022

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Braj Kishor Thakur S/o Late Ayodhya Thakur, R/o Shivpuri, Radhe Krishna
Mandir Marg, P.S. L.B.S. Nagar, Distt - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Agriculture Department, New Secretariat, Government of Bihar, Patna.
2. The Secretary, Agriculture Department, New Secretariat, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Old Secretariat, Government of Bihar, Patna.
4. The Treasury Officer, Vikash Bhawan, New Secretariat, Patna.
5. Finance (Personal Claim fixation Cell), Government of Bihar, Patna.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan Sinha, Sr. Advocate
		Mr. Jai Prakash Verma, Advocate
For the Respondent/s	:	Mr. Anant Pd. Singh, SC-15

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 08-02-2024

Heard Mr. Rajendra Narayan Sinha, learned senior counsel alongwith Mr. Jai Prakash Verma, learned counsel for the petitioner. Mr. Mahendra Prasad, learned counsel for the State, as well as Mr. Vinod Kumar Labh, learned counsel for the Accountant General, Bihar Patna.

2. The petitioner by filing the present writ petition under article 226 of the Constitution of India seeking a direction upon the respondents to ensure the payment of differential amount of gratuity and leave encashment from the date of his initial appointment made in the erstwhile, Bihar State Agriculture Marketing Board, Patna till his retirement from the



Agriculture Department alongwith interest.

3. Further prayer has been made to direct the respondent authorities to grant benefit of 3rd MACP to the petitioner from 13.05.2010 alongwith the financial benefits accrued thereon and the other consequential benefits from the date of completion of his 30 years of service, in the light of the decision taken by the Deputy Secretary, Department of Agriculture as contained in notification no. 3556 dated 23.10.2019.

4. The short facts which led to the filing of the present case is that the petitioner was employee of the erstwhile Bihar State Agriculture Marketing Board however, after coming into force of Bihar Agriculture Produce Market Repeal Act, 2006 on 01.09.2006 the Bihar State Agriculture Marketing Board/ Agriculture Produce Market Committee dissolved and subsequent thereto, in view of Section 6 of the repealing act, the service of the petitioner was absorbed under the State in the Department of Agriculture to the post of Accounts Officer with effect from 02.09.2008.

5. Later on, the Principal Secretary, Department of Agriculture accorded the continuity of services to the petitioner and other erstwhile employees of the Board vide memo no.



3054 dated 13.07.2016 (Annexure 1 to the writ petition).

6. The petitioner after having been absorbed in the Agriculture Department, Government of Bihar, in course of time superannuated from his service on 31.01.2017 however, despite his persuasion and repeated request, when his legitimate dues of different amount of gratuity and different amount of leave encashment apart from 3rd MACP have not been accorded, he filed the present writ petition.

7. Mr. Sinha, learned senior counsel representing the petitioner submits that in view of the resolution of the Finance Department, Government of Bihar as contained in letter no. 796 Finance Department 02.02.2018 read with paragraph 5(xiii), under the MACP scheme 2010, there is no iota of doubt that regular service period under the Board shall be counted for the adjusted employees.

8. Referring to paragraph nos. 9 to 11 of the writ petition, he further submits that similarly situated persons to the petitioner who were also employees of the erstwhile Board, have been accorded the differential amount of leave encashment and gratuity by the State Government, in the light of the order of this Court. The name of the identical employees have been disclosed as Sri Ravindra Kumar Sharan, Sri Prem Narayan and



Sri Ram Yash Shah and others.

9. He next submitted that the Department of Agriculture vide its notification no. 3556 dated 23.10.2019 has already been resolved to grant the benefit of 3rd MACP to the petitioner on P.B.- 4 + Grade pay of Rs. 8,700/- with effect from 13.05.2010, the date on which the petitioner completed 30 years of service.

10. Further in the light of the afore-noted order, the In-charge Officer, Finance (Personal Claim Fixation Cell) also issued a letter to the Under Secretary, Agriculture Department, Bihar, Patna with a request for fixation of pay scale of the petitioner after getting approval from the competent authority, but till date, the order has not been implemented.

11. While the matter was pending consideration the Joint Secretary, Department of Agriculture, Government of Bihar has taken up the representation of the petitioner and vide its order dated 11.08.2023 as contained in letter no. 4297 rejected his claim for grant of financial benefits of 3rd MACP and further order has been passed to recover excess paid amount, if any due to irregular financial upgradation.

12. The afore-noted order has been put to challenge by filing interlocutory application no. 1 of 2023. While assailing



the order of the Joint Secretary, Department of Agriculture, learned senior counsel submitted that the petitioner was granted the benefit of first ACP with effect from 09.08.1999 and consequently his pay scale of Rs. 6,500 - Rs. 10,500 has been enhanced to Rs. 10,000 – Rs. 15,200 on completion of 12 years of his service, taking note of the date of his joining as on 13.05.1980 to the post of Accounts Officer in the Board. Subsequently, the petitioner has been allowed 2nd ACP on completion of 24 years of service with effect from 13.05.2004 in the pay scale of Rs. 12,000 – Rs. 16,500.

13. Later on the petitioner has been accorded the financial benefit of 6th pay scale with effect from 01.04.2007 on grade pay of Rs. 5,400/- and by virtue of grant of first ACP he was allowed grade pay of Rs. 6,600/- and further grade pay of Rs. 7,600/- by virtue of grant of 2nd ACP and thus, as on 13.05.2010, the date on which the petitioner completed 30 years of his satisfactory service, he was entitled to get 3rd MACP on grade pay of Rs. 8,700/- with all consequential benefits.

14. He further drew the attention of this Court to the decision taken by the 7 men screening committee dated 19.06.2015 wherein, the petitioner who was holding the post of Accounts Officers, the post of the Chief Accounts Officer is



marked as the first promotion post and the post of Controller of Accounts is marked as the second promotion post. Accordingly, on first and second upgradation, the pay scale of Chief Accounts Officer and Controller of Accounts respectively was approved in the pay scale of Rs. 10,000 – Rs.15,200 and Rs. 12,000 - Rs.16,500 respectively.

15. He next submitted that the impugned order under challenge passed by the Joint Secretary, Department of Agriculture is in the teeth of the decision of the 7 men screening committee which was taken to its final conclusion, in the light of the order of this Court.

16. While concluding his submission he next submitted that, in view of gazette notification dated 23.03.2006 of the Finance Department, while amending the ACP rule, a new sub-rule 6 has been added after sub-rule 5 of Rule 4 of Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rule, 2006 which clearly says that competent authority for granting promotion on higher grade in any cadre/ post shall be the competent authority for granting the financial upgradation under the scheme on the recommendation of screening committee and thus, the decision of the screening committee dated 01.07.2019 for grant of 3rd MACP to the



petitioner as on 13.05.2010 with grade pay of Rs. 8,700 is legal and valid.

17. In the aforesaid premise, he submits that the impugned order is apart from being illegal and wholly without jurisdiction, is a move to over reach the decision taken by the screening committee and thus fit to be set aside.

18. A counter affidavit as well as supplementary counter affidavit has been filed on behalf of respondent no. 1 and 2.

19. It is submitted on behalf of the respondent State that the petitioner was initially appointed as Accounts Officer on 13.05.1980 and he was allowed first time bound promotion with effect from 13.05.1990 in the scale of Rs.2,400 – Rs.4,150. Further vide Board's Office Order no. 1186 dated 06.11.1999, he was allowed revised pay scale of Rs.6,500 – Rs.10,500 with effect from 01.04.1997 by fixing his pay at the level of Rs. 10,500.

20. In course of time, in the light of 6th pay commission recommendation, the pay of the petitioner further been revised in pay band 9,300 – 34,800, P.B.-2 grade pay Rs. 4,200/-. Subsequent thereto, the petitioner was allowed first ACP with effect from 09.08.1999 in the scale of Rs. 6,500 –



Rs.10,500 and 2nd ACP with effect from 13.05.2004 in the scale of Rs. 12,000-Rs.16,500 but, this financial progression was not just above the unrevised scale of Rs. 6,500 – Rs.10,500 of Accounts Officer cadre, rather it is higher than 3-4 pay scales. Moreover, the petitioner has already accorded the revised pay scale in pay band 9,300 – 34,800, P.B.-2 Grade Pay Rs. 4,200 (level-6) in terms of recommendation of the 6th Pay Commission.

21. He next submitted that in the matter an opinion has also been sought for from the Finance Department whereupon it has been advised that the Administrative Department is competent to consider about admissibility of the ACP after being fully satisfied about the ladder of posts held by the concerned officer.

22. However, there is no approval of ladder of post from the State Government in the Board and in the market committee thus, in the light of the aforesaid fact that the petitioner is getting the pay level higher than admissible to him as revealed from materials discussed hereinabove, thus the claim of 3rd MACP of the petitioner is rightly rejected.

23. This Court having anxiously heard the learned counsel for the respective parties and on being carefully perused



the impugned order comes to the conclusion that the claim of the petitioner for grant of 3rd ACP/MACP has been negated, especially, on the ground that the ladder of post under the Board as well as Marketing Committee has not yet been approved by the State Government and the Finance Department in its opinion also advised the Administrative Department to be assured with regard to ladder of post in respect of proposed officers and then only appropriate decision may be taken on the admissibility of ACP/MACP.

24. While rejecting the claim of the petitioner, the concerned respondent has also taken note of clause 3 of the ACP Rules which reads as follows:-

“वित्तीय उन्नयन, संबंधित सरकारी सेवक को उसके संवर्ग के लिए विहित विद्यमान उत्क्रम के वेतनमानों में मिलेगा और इस प्रयोजनार्थ वित्त विभाग द्वारा विभिन्न पदों के लिए मंजूर वेतनमान ही सुसंगत होंगे। जहाँ परोन्नति का उत्क्रम भर्ती/सेवा नियमावली में परिभाषित न हो या परोन्नति के उत्क्रम में दो नियमित परोन्नति से कम हो वहाँ इस नियमावली की अनुसूची-1 के अनुसार उच्चतर वेतनमान में ए.सी.पी. योजना के अधीन दो वित्तीय उन्नयन दिया जायेगा।”

emphasis supplied

25. Needless to emphasize that in the light of the order of this Court passed in CWJC No. 9798 of 2008, a 7 men committee was constituted and on the basis of decision of 7 men committee the petitioner has been allowed 1st and 2nd ACP benefit with effect from 09.08.1999 and 13.05.2004 in view of his date of joining i.e. 13.05.1980.



26. It is manifest from the decision of 7 men committee specially paragraph 20 thereof, that the petitioner designated as Accounts Officer at the time of his appointment and his next promotional post would have been assigned as Chief Accounts Officer and thereafter Controller of Accounts respectively.

27. Accordingly this Court finds substance in the contention of learned senior counsel representing the petitioner that on first and second upgradation of the petitioner, the pay scale of Chief Accounts Officer and Controller of Accounts respectively was approved with effect from the date mentioned in column 8 and 9 at the rate of Rs. 10,000 – 5,200 and Rs. 12,000 - 16,500 respectively as is manifest from the decision of the seven men committee, which committee has also taken a conscious decision to afford 3rd MACP to the petitioner as on 13.05.2010, with Grade Pay of Rs. 8,700/-, the date on which the petitioner completed 30 years of his satisfactory service. The decisions of the seven men committee have been brought on record as Annexures – 17 and 21 of the I.A. No. 01 of 2024.

28. Needless to observe that the 7 men committee constituted on 01.07.2019 was headed by the Principal Secretary, Agriculture Department, Bihar, Patna as a Chairman



thus, in any circumstances the order passed by the Joint Secretary to the Government of Bihar, nullifying the order of the 7 men committee in any view of the matter, cannot be said to be justified. Moreover, in view of the amended rule 6 of the Bihar State Employees Condition of Service (Assured Career Progression Scheme) Rules, 2003 as notified on 23.03.2006, which in clear terms stipulate that, “Competent authority for granting promotion on higher grade in any cadre/post shall be the competent authority for granting the financial upgradation under the scheme on the recommendation of Screening Committee”.

29. This Court further finds that the specific contention of the petitioner that he being discriminated at the hands of the respondents by not affording similar relief(s) to him as has been accorded to the similarly situated employees of the erstwhile Board e.g. Shri Rabindra Kumar Sharan, Shri Ram Narayan, Ram Yash Sah and others, has not been refuted, also makes out a case for consideration in favour of the petitioner.

30. In view of the aforesaid facts, circumstances and the position obtaining in law, this Court finds substance in the writ petition, accordingly the impugned order as contained in memo no. 4297 dated 11.08.2023 is hereby quashed and the



matter is relegated to the Principal Secretary, Agriculture Department, Government of Bihar, Patna, to take an appropriate decision in the matter relating to grant of 3rd MACP in the light of the discussions made hereinabove and the decision of the 7 men screening committee, preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

31. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.02.2024
Transmission Date	

