

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15610 of 2024

Dr Radhey Shyam Gupta son of Late Setu Ram Resident of Dharmashala Road, Shahpur, P.S Aurangabad, District - Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Health Department, Government of Bihar, Patna
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Joint Secretary, Health Department, Government of Bihar, Patna.
4. The Superintendent, Mandal Kara, Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha, Advocate
For the Respondent/s : Mr. AC to SC-4

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 08-10-2024 Heard the parties.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

"i. For grant of monetary benefit of the 1st , 2nd and 3rd Assured Career Progression 2003 / Modified Assured Career Progression 2010 (herein after referred to as A.C.P./M.A.C.P) with all consequential benefit from its due date with interest as accordingly fix the arrear of salary and other monetary benefit payable to the petitioner.

ii. For payment of unutilised earned leave and gratuity as well as fixation of final pension to the petitioner.

iii. For any other relief or reliefs for which the petitioner is deemed to be entitle in the eye of law in the facts and circumstances of the present case."

3. Learned counsel appearing on behalf of the petitioner informs that the petitioner was appointed on 04.08.1983 as Medical Officer and superannuated from service



on 31.10.2022, while he was working as Medical Officer at Mandal Kara, Aurangabad. The benefit of 1st, 2nd and 3rd A.C.P./ M.A.C.P. has not been given to the petitioner from its due date. Petitioner seeks to file a detailed representation before the authority concerned in light of 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*, which is later on clarified in the recent judgment dated 28.06.2024 passed by the Hon'ble Full Bench of this Court in *CWJC No. 18727 of 2017 (Kamlanand Thakur Vs. The State of Bihar)* and other analogous matter.

4. Considering the aforesaid information given by the petitioner, I find it proper to refer Rule 4 (5) of **Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003**, which is reproduced hereinafter.

“(4) Eligibility and conditions

(5) The requirements and manner of grant of financial progression under the Scheme shall be the same which have been prescribed for regular promotion against vacancies under recruitment/ appointment Rules. If for any promotion passing of departmental examination or any other eligibility has been prescribed then the same would also be necessary condition for grant of benefit under the Scheme if



such condition is prescribed under Rules/Circulars/Resolutions.”

5. The terms and conditions, as per Rule 4(5) of the 2003 Rules, is that the requirement for grant of financial progression would be the same as prescribed for grant of regular promotion under service rules/orders governing grant of regular promotion.

6. Considering the provision of the Scheme, the applicable Rule governing grant of regular promotion to the petitioner puts condition that an employee is mandatorily required to be adjudged fit to be promoted before grant of regular promotion i.e. in other words, his service should not be unsatisfactory.

7. In view of the fact that the petitioner has claimed that he has been stagnated on the same post and seeks to file a detailed representation before the authority concerned, the authority concerned is required to call for the service particulars of the petitioner and verify, as to whether, any disciplinary action or any penalty order has been passed against the petitioner and decide the grievance of the petitioner expeditiously, in light of the law laid down by the Apex Court in the case of **Amresh Kumar Singh (Supra)** and the Full Bench of this Court in the case of **Kamlanand Thakur (Supra)**.



8. It is, however, worth to be noted that ACP/MACP scheme is a financial progression given to an employee, which is time-bound scheme, as a result of stagnation of government servant on the same post.

9. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

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