

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16888 of 2024

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Bibhuti Kumar Jha son of Late sunder Kant Jha, resident of Maa Kali Path,
Laxmi Nagar, Sipahi Tola Gali No. 07, Police Station Purnea (Madhubani
T.O.P.), District Purnea 854301.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Purnea Division, Purnea.
5. The District Education Officer, Katihar.
6. The District Programme Officer, Establishment, Katihar.
7. The District Accounts Officer, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Prabhat, Advocate
For the Respondent/s : Mr. Sarvesh Kumar, GP 24

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 11-11-2024 Heard the parties.

2. This writ petition has been filed to quash the order under Memo No. 1100 dated 11.10.2022 (Annexure-P/3) to the extent petitioner is concerned, issued by the Regional Deputy Director of Education, Purnea Division, Purnea (Respondent No. 4) whereby date of the 1st MACP was modified from 17.07.2010 to 23.07.2018 and 2nd MACP granted earlier was withdrawn and only 1st MACP was granted with effect from 23.07.2018, the date exemption from passing of the



departmental examination was granted.

3. Learned counsel for the petitioner submits that petitioner joined as Clerk on 07.07.2000 in the office of DSE, Purnea and is presently posted as Upper Division Clerk as Rajkiye +2 Uchh Vidyalaya, Kodha, Katihar. He was exempted from passing the Departmental Examination with effect from 23.07.2018 *vide* Letter No. 600 dated 27.10.2018. Petitioner was granted 1st MACP *vide* Letter No. 460 dated 09.08.2019 (Annexure-P/1) with effect from 23.07.2018. Thereafter, the date for grant of 1st MACP was modified to 17.07.2010 *vide* Letter No. 733 dated 22.10.2019 i.e. upon completion of 10 years of service. It is further submitted that petitioner was granted 2nd MACP *vide* Letter No. 98 dated 29.01.2021 (Annexure-P/1/2) read with its corrigendum *vide* Letter No. 222 dated 20.02.2021 (Annexure-P/1/3) with effect from 17.07.2020 i.e. after completion of 20 years of service. He further submits that the issue raised in this application has already been decided by co-ordinate Bench of this court *vide* Judgment dated 22.01.2024 passed in CWJC No. 3861 of 2023. The only issue which requires consideration is whether the passing of departmental examination is a condition precedent for grant of ACP/MACP or not. The Division Bench of this Court in **L.P.A.**



No. 599 of 2015 dated 19.03.2018 (*Ramadhar Thakur Vs. State of Bihar and Ors.*) has held that passing of departmental Accounts Examination is not a condition precedent for grant of Assured Career Progression under the ACP Rules nor Rule 157(3)(J) of the Bihar Board's Miscellaneous Rules conceives of such requirement. He further places reliance upon the **Division Bench judgment reported in 2020(2) BLJ 471 (*State of Bihar & Ors. Vs. Smt. Jivachi Devi*)** wherein this Court has held that the State is not justified by denying (refusing) benefits of the financial progression to the employee on the ground that he did not pass the accounts examination or departmental accounts examination. **Hon'ble Supreme Court** in the judgment bearing **SLP (C)No. 8219-8226 of 2019 (*Amresh Kumar Sinha & Ors. Vs. The State of Bihar & Ors.*)** has held that "*fulfillment of educational qualifications prescribed under the recruitment rules for the purposes of promotion are not necessary for non-functional in situ promotion. In other words, educational qualification required for the purpose of promotion is not necessary for grant of in situ promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated.*" Furthermore, the Supreme Court has also observed that the



object of ACP is to avoid stagnation where no promotion avenues are available. The grant of ACP is not actually a grant of promotion, but increase in the Pay Scale to the next higher grade retaining the employee on the post held by him. This is only to accord monetary benefit without disturbing any seniority or effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.

4. Having heard learned counsel for the parties and considering the aforesaid discussion and in view of the law laid down by the Division Bench of this Court and the judgment of the Hon'ble Supreme Court, the grant of ACP/MACP to the petitioner from the date of exemption of passing the departmental examination is erroneous and is not sustainable in law.

5. The grant of ACP or MACP is *in situ* promotion in which only financial upgradation is given to the employees for a long period of service and in order to avoid stagnation.

6. Accordingly, the impugned order under Memo No. 1100 dated 11.10.2022 (Annexure-P/3) is set aside and petitioner shall be entitled for payment of actual monetary benefit from the date of first MACP granted to him w.e.f. 17.07.2010 and second MACP w.e.f. 17.07.2020. Accordingly,



the respondent is directed to pay the consequential benefit to the petitioner w.e.f. 17.07.2010 and 17.07.2020 within a period of four weeks from the date of production/ receipt of the copy of this order.

7. In the result, this writ application is allowed.

8. There shall be no order as to costs.

(Prabhat Kumar Singh, J)

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