

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16845 of 2024

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Kishore Kumar, S/o- Late Rajeshwar Prasad Singh, Resident of New Bypass Road, Soranpur Shiv Mandir, P.O. New Jaganpura, P.S. Ram Krishna Nagar, District- Patna, Bihar- 800027.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
5. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Government of Bihar, Patna.
6. The Superintending Engineer, Design, Planning and Monitoring Circle, Patna.
7. The Executive Engineer, Design Division Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar, Advocate Mr. Ajay Kumar, Advocate
For the Respondent/s	:	Mr. Rajeev Shekhar, AC to GA-13

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 30-10-2024 Heard Mr. Ashok Kumar, learned counsel for the petitioner and Mr. Rajeev Shekhar, learned counsel for the State.

2. The petitioner is aggrieved by the order dated 16.10.2024 as contained in Memo No. 3305 (Annexure-P/5 to the writ petition), issued under the signature of Chief Engineer, Flood Control and Drainage, Water Resources Department, Government of Bihar, Patna, whereby and whereunder, the claim of the petitioner for grant of 1st ACP/ 2nd MACP with



effect from the due date has been rejected.

3. Learned counsel for the petitioner contended that the impugned order rejecting the claim of the petitioner for grant benefit(s) of ACP/MACP with due date, is contrary to the mandate of the judgment rendered by the Full Bench of this Court in the case of **Kamlanand Thakur v. The State of Bihar and other analogous cases [2024 (4) BLJ 806]**.

4. Learned counsel for the petitioner further contended that the petitioner was duly appointed as Correspondence Clerk in Water Resources Department, Government of Bihar on 27.06.1997. On account of coming into force of Bihar State Employees Service Condition (Assured Career Progression Scheme), Rules, 2003, (for short 'the Rules, 2003') the employees were made entitled for their 1st financial progression after 12 years of their service and 2nd financial progression after 24 years of service and further the Rules, 2003 were amended in the year 2010 and, in view of the MACP Rules, 2010, the State Government employees were made entitled to financial progression after 10, 20 and 30 years of their respective service. Despite the fact that the issue with regard to passing of accounts examination stood settled by catena of judgments of this Court duly affirmed by the Hon'ble



Apex Court, the petitioner has been accorded the promotion after passing of his accounts examination, though the petitioner was entitled to get 1st financial progression w.e.f. 27.06.2009 after completion of 12 years of his continuous service.

5. On being aggrieved, the petitioner approached before the respondent no.5 along with the decision of this Court in **Kamlanand Thakur** (supra), wherein the Full Bench of this Court has in no uncertain terms held as follows.

“48. Thus, the questions stand answered as follows:-

(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.”

6. Irrespective of the facts afore-noted, the claim of the petitioner has been turned down vide Memo No. 3305 dated 16.10.2024 (Annexure-5 to the writ petition) only on the ground that the petitioner was not the party to the Full Bench decision.

7. On the other hand, learned counsel for the State contended that since the petitioner has passed his accounts examination on 28.08.2010 and thus the petitioner has been accorded the benefit of 1st MACP w.e.f. 28.08.2010, as the passing of the accounts examination was *sine qua non* for grant of benefit(s) under the ACPs/MACPs.

8. Having heard the learned counsels for the



respective parties and after going through the impugned order, this Court finds that the order impugned suffers from serious illegality, as the same has been passed contrary to the mandate of the Full Bench of this Court in **Kamlanand Thakur** (supra), whereby the Full Bench of this Court has held that passing of accounts examination is not “*sine qua non*” for extending the benefit of ACP/MACP. This Court, thus does not find any substance in the submission of the learned counsel for the State. The impugned order dated 16.10.2024 as contained in Memo No. 3305 (Annexure-P/5 to the writ petition), suffers from serious illegality and accordingly it is set aside.

9. The matter is relegated to the respondent no.4, the Principal Secretary, Water Resources Department, Government of Bihar, Patna to consider the claim of the petitioner for grant of 1st ACP and further financial progression with effect from the due date in the light of ratio held by the Full Bench of this Court in **Kamlanand Thakur** (supra), which is judgment in rem applicable to all identically situated persons.

10. It is expected that the entire exercise must be completed, preferably within a period of three months from the date of receipt/production of a copy of this order.

11. The writ petition stands allowed in terms of the



law laid down by the Full Bench of this Court in **Kamlanand Thakur** (supra).

(Harish Kumar, J)

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