

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7614 of 2024

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Sant Om Prakash Son of Late Sadho Prasad, Resident of Village - Bakaur,
Post-Paithana, P.S.- Islampur, District- Nalanda, Bihar - 801303.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Animal and Fish Resource Department, Government of Bihar, Patna.
2. The Principal Secretary, Animal and Fish Resource Department, Government of Bihar, Patna.
3. The Director, Dairy Development Directorate, Animal and Fish Resource Department, Government of Bihar, Patna.
4. The Department Screening Committee through the Director, Dairy Development Directorate, Animal and Fish Resource Department, Government of Bihar, Patna.
5. The District Dairy Development Officer, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Ranjeet Kumar Mr. Kanishk Kaustubh Mr. Rajnish Prakhar Ms. Lakshmi Kumari Mr. Ankesh Kumar Sinha
For the Respondent/s	:	Mr. Government Advocate 10

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 14-10-2025 Heard the parties.

2. This writ application has been filed on behalf of the
petitioner for the following reliefs:-

*(i) For setting aside the recommendation
cum decision of the Departmental Screening
Committee, Dairy Development Directorate i.e.
Respondent No. 4 contained in Memo No. 296
dated 27.02.2024 to the extent it relates to
petitioner whereby the screening committee did not
find the petitioner eligible for grant of Assured*



Career Progression (hereinafter referred to as ACP) because of pendency of criminal case ie. Vigilance Case No. 91 of 2011.

(ii) For that after setting aside the aforementioned recommendation cum decision of the Department Screening Committee, the respondent authorities be directed to grant the benefit of second and third ACP/MACP to the petitioner w.e.f. due date i.e. 09.03.2012 and 09.03.2022 respectively with all consequential benefits.

3. The brief facts of the case of the petitioner are that pursuant to his appointment to the post of Dairy Field Officer, he has submitted his joining on 9.3.1992 at Simdega, Dist-Gumla, Jharkhand and after completion of 10 years of his service on 9.3.2002, he has been granted the benefit of ACP vide Memo No. 571 dated 2.9.2005.

4. It is the case of the petitioner that when he was posted at Madhubani District, he was trapped by Vigilance Investigation Bureau and an FIR bearing Vigilance Case No. 91 of 2011 was registered against him and after that departmental proceeding was initiated against him and upon conclusion of the departmental proceeding, the order of dismissal/punishment has been passed against the petitioner.

5. The dismissal order has been challenged by the



petitioner in this Court vide CWJC No. 7245 of 2014 which has been allowed vide order dated 10.03.2016 and the petitioner was directed to be reinstated in service with all consequential benefits but the order dated 10.03.2016 has been set aside by the Hon'ble Division Bench of this Court vide order dated 9.8.2016 passed in LPA No. 691 of 2016 and the Hon'ble Division Bench has remanded the matter back to the department and the department vide Memo No. 1196 dated 11.08.2017 had again dismissed the petitioner which has again been challenged by the petitioner in CWJC No. 13200 of 2017 and this Court vide judgment dated 28.02.2019 set aside the order dated 11.08.2017 and remanded the matter back for fresh consideration.

6. Being aggrieved by the order dated 28.02.2019, the petitioner has preferred an LPA No. 462 of 2019 in which the Hon'ble Division Bench has passed certain directions but the newly constituted disciplinary authority has again dismissed the petitioner from service vide Memo No. 463 dated 19.03.2020 and aggrieved from the same, the petitioner preferred CWJC No. 8382 of 2020 in which this Court vide order dated 7.1.2021 directed the petitioner to file review application before the Departmental Authority. In compliance of the same, the petitioner submitted an application before the departmental



authority which was rejected vide order dated 23.11.2022. Thereafter, the petitioner again preferred CWJC No. 1474 of 2023 and the Court vide judgment dated 28.06.2023 had set aside the order of dismissal and also set aside the order passed in review with a direction to reinstate the petitioner in service with all consequential benefits.

7. In light of the judgment dated 28.06.2023, the petitioner has submitted a representation dated 21.08.2023 and thereafter the respondent authorities vide Memo No. 1149 dated 01.09.2023 withdrew the order of punishment and directed for the reinstatement of the petitioner on the post of Dairy Field Officer.

8. In compliance of the aforesaid direction, the petitioner was reinstated in service along with pecuniary benefits i.e. full salary for the period under suspension/dismissal and benefits of second ACP from 9.3.2012 and third ACP from 9.3.2022.

9. It is further the case of the petitioner that a seniority list of the Non Gazetted Officer / employee of Dairy Technical Cadre of Dairy Development Directorate, Government of Bihar, Patna was issued vide Memo No. 1544 dated 10.12.2013 and the petitioner was at serial no. 24 and two juniors to the



petitioner namely Binod Prasad and Niranjana Kumar Nirala positioned at seniority serial no. 25 and 26 respectively were granted the benefit of second ACP vide Order No. 54 contained in Memo No. 1303 dated 09.08.2012 with effect from 09.03.2012 and 20.03. 2012 respectively and they have also been granted benefit of third ACP vide order no. 31 contained in Memo No. 1099 dated 01.08 2022 with effect from 09.03.2022 and 20.03.2022 respectively.

10. In furtherance, a departmental screening committee was constituted headed by the Director, Dairy Development Directorate, Government of Bihar, Patna for considering the eligibility of the employees of the Dairy Technical Cadre for grant of ACP/MACP and meeting thereof was convened on 01.02.2024 wherein the name of petitioner besides the name of nine other similarly situated persons were considered and the screening committee, while considering the eligibility of similarly situated persons recommended the name of eight similarly placed person for the grant of second ACP and also the name of one Satyanarayan Prasad Singh for grant of third ACP with effect from 11.12.2022 but the screening committee did not find the case of petitioner fit for consideration / grant of benefit of ACP/MACP because of



pendency of a criminal case against him i.e. Vigilance Case P.S. No. 91/2011.

11. It has been submitted by the learned counsel for the petitioner that the decision of the departmental screening committee is illegal, arbitrary and discriminatory as the screening committee has granted the benefit of second and third ACP to one Sri Anil Kumar, whose case is similarly situated to the case of the petitioner as he had also been trapped by Vigilance Investigation Bureau and Vigilance P.S Case No. 17 of 2015 is pending against him which is still pending and therefore the same is not sustainable in the eyes of law.

12. Learned counsel for the petitioner has relied upon a judgment of this Court dated 8.1.2024 passed in CWJC No. 11522 of 2023 (*Radha Krishan Prasad v. The State of Bihar*) and has submitted that it is well settled by this Court that the pendency of criminal case is not an impediment in grant of ACP/MACP.

13. He further submits that the petitioner has superannuated in August 2024 and that the petitioner is entitled for the grant of second and third ACP as per scheme of the ACP/MACP rules and there is no impediment in granting the benefit of second and third ACP in view of judgment delivered



by this Court in aforementioned two cases.

14. Learned counsel for the petitioner further submits that the law in this regard is no longer res integra, inasmuch as in a similar situation where the petitioner of that case was denied the benefits of ACP Scheme on account of pendency of departmental proceeding and a criminal proceeding, a co-ordinate Bench of this Court has directed for considering the case of the petitioner for grant of the benefits of ACP Scheme. Reference in this connection has been made to a judgment rendered by a co-ordinate Bench of this Court in the case of ***Ranjan Kumar Chauhan Vs State of Bihar reported in 2008 (4) PLJR 244.***

15. Further, the learned counsel for the petitioner has also taken this Court to the judgment of this Court passed in ***CWJC No. 14609 of 2010 (Bijay Kumar Sinha Vs. The State of Bihar and Ors.)*** and has contended that grant of benefits of MACP scheme is not a promotion in the sense of the term of a vertical movement from a lower post to a higher post, but it is only grant of certain monetary benefits on the same post in order to mitigate the effect of stagnation, hence mere pendency of either a departmental proceeding or a criminal proceeding would not be an impediment for grant of the benefits of



ACP/MACP Scheme.

16. Learned counsel for the State, relying on the submissions made in the counter affidavit filed on behalf of respondent no. 2 and 3, has opposed the prayer of the petitioner made in the writ petition.

17. I have considered the submissions of the parties and perused the materials on the record.

18. A coordinate Bench of this Court in the case of ***Bijay Kumar Sinha v. The State of Bihar (Supra)*** has held as under:-

“The learned counsel for the petitioner submits that the only reason for denial of the 1st and 2nd A.C.P. to the petitioner herein is the pendency of a departmental proceeding, as has been contended in the counter affidavit filed by the Respondents. The learned counsel for the petitioner relies upon a judgment reported in (2008) 4 PLJR 244 (Ranjan Kumar Chauhan v. State of Bihar) to contend that in a similar situation where the petitioner of that case was denied grant of benefit of the A.C.P. Scheme on account of pendency of a departmental proceeding and a criminal proceeding, this Court had directed for considering the case of the said petitioner for granting the benefit of the Assured Career Progression Scheme.



It is a trite law that the benefit of Assured Career Progression Scheme is not a promotion in the sense of the term of a vertical movement from a lower post to a higher post, but it is only a grant of certain monetary benefits on the same post on account of stagnation on the said post. In such view of the matter, the Respondent-authorities cannot deny the grant of benefits of the Assured Career Progression Scheme to the petitioner herein, especially, in view of the fact that there is no such notification/circular of the State Government which bars grant of the benefits of the Assured Career Progression Scheme on account of pendency of either the departmental proceeding or a criminal proceeding.

In such view of the matter, I find that the petitioner is entitled to be granted the benefits of the Assured Career Progression Scheme de-hors the fact that a C.B.I. case is pending against him.”

19. Similarly, this Court in the case of **Jai Narayan Prasad v. State of Bihar, 2021 SCC OnLine Pat 379** and **Baidyanath Prasad v. State of Bihar, 2023 SCC OnLine Pat 2047** had relied and reiterated the law laid down in **Bijay Kumar Sinha (Supra)**. This Court has also noted the Judgment passed in **Ranjan Kumar Chauhan v. State of Bihar, 2008 SCC OnLine Pat 1393** relevant portion of which reads as under:



“6. Thus, the tenure of the punishment was for three years which has also lapsed prior to the date from which the petitioner claimed eligibility.

7. With regard to the pendency of the criminal proceedings, learned counsel submits that reliance on the Government instruction dated 11.9.2002 at Annexure-A to the counter affidavit for the same is misconceived. The instruction deals with the cases of regular promotion by a departmental promotion committee. The grant of benefit of assured career progression is not a promotion in the sense of the term of a vertical movement from a lower post to a higher post but only a grant of certain monetary benefits on the same post.

8. In that view of the matter, Annexure-A has no application.

9. In light of the discussion as aforesaid, this writ application is disposed with direction to the Respondents to consider the case of the petitioner for grant of benefits of assured career progression scheme from 2.6.2002, the same not having been disputed in the counter affidavit and take a final decision with consequential benefits within a maximum period of three months from the date of receipt and/or production of a copy of this order.”

20. The judgment rendered by a co-ordinate Bench of



this Court dated 02.09.2021, passed in C.W.J.C. No.2866 of 2020 (*Vijay Kumar Jha vs. The State of Bihar & Ors.*) is also noted.

21. Accordingly, having regard to the facts and circumstances of the case and also considering the submissions made on behalf of the parties and taking into account the law laid down by this Court in the judgments referred herein above, this Court finds that mere pendency of a departmental or a criminal proceeding cannot be an impediment for grant of the benefits of ACP/MACP scheme to an incumbent.

22. In view of the aforesaid discussions, this application is allowed.

23. Accordingly, the recommendation-cum-decision of the Departmental Screening Committee, Dairy Development Directorate contained in Memo No. 296 dated 27.02.2024 is hereby set aside.

24. The respondents authorities are directed to consider the case of the petitioner for granting the benefit of second and third ACP/MACP to the petitioner w.e.f. the due date i.e. 09.03.2012 and 09.03.2022 respectively with all consequential benefits without being impeded by the fact that a criminal proceeding is pending qua him.



25. This writ petition stands allowed.

(Sandeep Kumar, J)

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