

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13219 of 2021

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Ishwar Rai Son of Late Tejan Rai, Resident of Village and P.O. Maricha, P.S. Tajpur, District - Samastipur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Health Govt. of Bihar, Patna.
3. The Special Secretary, Department of Health Govt. of Bihar, Patna.
4. The Joint Secretary-cum-Director General (Ayush) Department of Health Government of Bihar, Patna.
5. The Principal, Government of Ayurvedic College, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Verma, Adv. Mr. Debanjan Chowdhary, Adv.
For the State	:	Mr. Ravi Kumar, AC to GP 13 Mr. Akshay Lal Prasad, AC to GP 13

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 27-03-2025

Heard the parties.

2. The petitioner is aggrieved with the Memo No. 804 dated 23.06.2021 passed by the respondent no. 4 whereby the claim of the petitioner for financial benefit under Modified Assured Career Progression Scheme (MACP) has been turned down by refusing to count his services from his initial appointment, as has been done in the matter of Sri Anil Kumar Singh, Technician, who stands on similar footing.

3. Mr. Anil Kumar Verma, learned Advocate for the petitioner advertng to the facts enumerated in the writ petition



has contended that the petitioner was earlier engaged on 18.01.1984 as Water Man on leave vacancy. However, later on he was engaged as daily rated Mazdoor on 17.06.1985 vide Annexure-3 to the writ petition. Subsequent thereto, the services of the petitioner came to be regularized by the respondent no. 4 vide Memo No. 883 dated 21.12.1989 as office Peon in the College. It is further contended that like wise the petitioner, the services of one Sri Anil Kumar Singh was also regularized with effect from 1989, however, subsequent thereto, his service was counted with effect from 1987 and accorded all the benefits of ACP/MACP. The petitioner, upon being informed that the identically situated employee, whose service was also regularized in the year 1989 and his date of regularization has been shifted back with effect from the date when he was appointed as daily wager, has filed a detailed representation before the authority concerned to extend the benefits of 3rd MACP by shifting his date of regularization with effect from the date when he was also engaged as daily rated Mazdoor i.e., w.e.f. 17.06.1985, but his claim has been negated.

4. Heavy reliance has been placed by the learned Advocate for the petitioner on a decision rendered by the Apex Court in the case of *Jaggo vs. Union of India* [2025 (1) PLJR



(SC) 165] that long and uninterrupted service, for period extending well beyond ten years, can not be brushed aside merely by labelling their initial appointments as part time or contractual. The decision of the High Court of Judicature at Madras in **Writ Petition Nos. 7880, 7881 & 7882 of 2018** has also been rereferred to where the Court has taken note of a decision rendered by the learned Division Bench of the Madras High Court in W.P. Nos. 18681 and 18685 of 2014, which is quoted herein below:

“8. Be that as it may, as on date, the petitioners' services had been regularised though not from the date of their initial appointment. It is also the case of the respondents that the posts in which now the petitioners are accommodated did not exist in the year when they were originally appointed. Anyway, that cannot be a point put against the petitioners. Since the Government itself had chosen to employ the persons as Female Escort Warders for the purpose of carrying out the duties attached to the Warder. In the said circumstances, the services rendered by the petitioners from the date of their initial appointment cannot be completely ignored. In the above circumstances, this Court after perusing all the orders passed by this Court by single Judges and by the Division Benches is of the view that the present petitioners are also entitled to the relief viz., regularisation with effect from the date of original appointment with continuity of service. Of course, the pay scale for the period has to be taken into



account notionally and it is made clear that the petitioners are not entitled to any arrears of pay for the said period. The said period from the date of initial appointment shall be counted for all purposes except for arrears. In the said circumstances, this Court sets aside the impugned orders rejecting the claims of the petitioners seeking regularisation from the date of initial appointment.

9. The Writ Petitions are allowed on the above terms. No costs.”

5. On the strength of the afore noted decision, learned Advocate for the petitioner tried to persuade this Court that the petitioner may also be given identical benefit as has been accorded to similarly situated employee, namely, Sri Anil Kumar Singh.

6. The contention of the petitioner has been vehemently refuted by Mr. Ravi Kumar, learned Advocate for the State. It has been submitted at the Bar that the benefit of 3rd MACP is admissible from 22.12.2019 but as the petitioner had already superannuated on 30.11.2019, in such circumstances, he could not be entitled to get the benefit of MACP. It is further contended that while granting benefit under the MACP Rules, 2010, only regular service is to be counted and since the service of the petitioner had been regularized w.e.f. 21.12.1989, his services rendered prior thereto on daily wager cannot be counted in any circumstances. It is further clarified that the



petitioner, under a misconceived notion of facts, has wrongly alleged that he has been discriminated by the respondent but the fact that the Director, Indigenous Medicine Directorate, Bihar, Patna vide his letter No. 190 dated 29.12.2012 communicated a letter to the Principal, Government Ayurvedic College, Patna directing him to absorb the service of Sri Anil Kumar Singh w.e.f. 31.07.1987 in the light of the order passed by the Hon'ble Court in CWJC No. 1783 of 1990 and accordingly accord him the benefit of MACP.

7. Having considered the submissions advanced on behalf of the learned Advocates for the respective parties and taking note of the fact that the entire case of the petitioner is based on parity with that of Sri Anil Kumar Singh, based upon the judgment rendered by the Hon'ble Supreme Court in ***Jaggo vs. Union of India*** (*supra*) as also the decision of the Madras High Court quoted, hereinabove, this Court deems it fit and proper to relegate the matter to the respondent no. 3 to examine the claim of the petitioner afresh in the light of the judgment rendered by the Apex Court noted hereinabvoe and take appropriate decision.

8. Suffice it to observe that in case the case of the petitioner finds similar to that of Sri Anil Kumar Singh, the



services rendered by the petitioner as daily wager since 17.06.1985 be also counted, but only for the purposes of MACP and other retiral benefits.

9. The aforesaid exercise must be completed within a period of three months from the date of receipt/production of a copy of this order.

10. The writ petition stands disposed of with the aforesaid directions.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.04.2025
Transmission Date	

