IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1107 of 2021

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Trilokee Prasad Verma Son of Late Shambhoo Prasad Verma Resident of Ram Sakhi Niwas, Paraw Pokar Lane, Aam Gola, Muzaffarpur, P.S.- Kaji Mohamadpur, Post- Ramna, District- Muzaffarpur

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Finance Department, Bihar, Patna.
2. The Director-cum-Joint Commissioner (Accounts-Administration) Provident Fund Directorate, Finance Department, Bihar, Patna.
3. The Dy. Director, Provident Fund Directorate, Finance Department, Bihar, Patna.
4. The Assistant Director, Provident Fund Directorate, Finance Department, Bihar, Patna
5. The District Provident Fund Officer, Muzaffarpur.
6. The Accountant General Bihar, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 2784 of 2021

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Dharnidhar Jha Son of Late Kapileshwar Jha Resident of Village-Majhaura, Post-Chanauraganj, P.S.-Jhanjharpur, District-Madhubani, Pin-847404.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Finance Department, Bihar, Patna.
2. The Director-Cum-Joint Commissioner (Accounts-Administration), Provident Fund Directorate, Finance Department, Bihar, Patna.
3. The Dy. Director, Provident Fund Directorate, Finance Department, Bihar, Patna.
4. The Assistant Director, Provident Fund Director, Finance Department, Bihar, Patna.
5. The District Provident Fund Officer, Madhubani.
6. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 1107 of 2021)

For the Petitioner/s	:	Mr. Sidhendra Narayan Singh, Adv.
		Mr. Kumar Lalit, Adv.
For the State	:	Mr. Naman Nayak, AC to AAG 13
For the AG	:	Dr. Anand Kumar, Adv.
	:	Mr. Rajan Prakash, Adv.
		Ms. Vijeta Kumari, Adv.

(In Civil Writ Jurisdiction Case No. 2784 of 2021)

For the Petitioner/s	:	Mr. Sidhendra Narayan Singh, Adv.
		Mr. Kumar Lalit, Adv.
For the State	:	Mr. Naman Nayak, AC to AAG 13
For the AG	:	Dr. Anand Kumar, Adv.
	:	Mr. Rajan Prakash, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 24-04-2025

Heard Mr. Sidhendra Narayan Singh, learned Advocate for the petitioners, Mr. Naman Nayak, learned Advocate for the State and Dr. Anand Kumar, learned Advocate for the Accountant General.

2. Considering the identical nature of relief and the issue posed before this Court, both the applications have been heard together and are being disposed off with this common order. The petitioners are since aggrieved with different orders as also the opinion rendered by the Finance Department, for the sake of convenience, the reliefs prayed for by the petitioners are separately noted hereinbelow.

3. The petitioner in CWJC No. 1107 of 2021 is the retired Head Assistant, District Provident Fund Office,

Muzaffarpur, and he preferred the present writ petition for the following reliefs:

> *"i. For quashing of opinion/decision dated 18-2-2020, taken in record by the Finance Department, contained in* ***ANNEXURE-5****, after being forwarded the Record to the Finance Department on/after recommendation of Screening Committee dated 29-7-2019, inter alea,* ***holding/opining that the scale of Rs.4000-6000/-is approved for Upper Division Clerk since 1-1-1996 and petitioner is entitle for 1^{st} ACP in scale of Head Clerk-Rs.5000-8000/- & 2^{nd} ACP in the scale of Rs.5500-9000/- but since the scale of Rs.5500-9000/- is approved for Sri Prasad(the petitioner) w.e.f. 1-1-1996 itself which is the 2^{nd} higher scale of basic scale of Rs.4000-6000/- and therefore, the 2^{nd} financial Upgradation is not admissible to him (the petitioner)****.*
>
> *ii. For quashing of consequential Memo no.1661 dated 04-5-2020, contained in* ***ANNEXURE-6****, issued by the respondent-Dy. Director on the grounds/points indicated in the decision of Finance Department dated 18-2-2020, contained in* ***ANN-5****, declining the claim of petitioner for grant of ACP in scale of Rs.6500-10500/- w.e.f. 09-08-1999.*
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> *iii. Further,* ***on grant of relief no. i & ii, respondents may be directed to allow ACP in the Scale of Rs. 6500-10500/- to petitioner w.e.f. 09-08-1999 with payment of consequential arrear of monetary benefit along with penal interest for delayed payment @ 18% with heavy cost for this unwanted litigation.****"*

4. The petitioner in CWJC No. 2784 of 2021 was also superannuated from the post of Head Assistant, District Provident Fund Office, Madhubani and preferred the present writ petition for the following reliefs:

> *"i. For quashing of Memo no.1985 dated 02-6-2020, contained in **ANNEXURE-6**, issued by the respondent-Dy. Director, declining the claim of petitioner for grant of ACP in scale of Rs.6500-10500/-w.e.f. 09-08-1999 on the basis of opinion/decision of Finance Department dated 18-2-2020 saying that **the scale of Rs.4000-6000/-is approved for Upper Division Clerk w.e.f. 1-1-1996 but since the scale of Rs.5500-9000/- is approved for Sri Jha(the petitioner) w.e.f. 1-1-1996 itself which is the 2nd higher scale of basic scale of Rs.4000-6000/-and therefore, the 2nd financial Upgradation is not admissible to him (the petitioner)**.*
>
> *ii. Further, **on grant of relief no. i, respondents may be directed to allow ACP in the Scale of Rs. 6500-10500/- to petitioner w.e.f. 09-08-1999 with payment order of consequential arrear of monetary benefit along with penal interest for delayed payment @ 18% with heavy cost for this unwanted litigation.**"*

5. The relevant necessary facts, which have been culled out from the materials available on record are summarized hereinbelow.

(i) The petitioners were appointed long back in the year 1967 as Correspondence Clerk under the Irrigation Department; and after rendering services to different places, they have been brought in Tube Well Division, Muzaffarpur and Samastipur, respectively. Subsequent thereto, the petitioners were also promoted on 19.01.1974 and 29.09.1973 as Head Clerk/Upper Division Clerk by the order of the Chief Engineer (Mech.), State Tube Well, Bihar, Patna.

(ii) Pursuant to the order of the State Government bearing No. 844 dated 28.02.1974, the entire organization of State Tube Well, Bihar and its offices/staff including services of the petitioners merged in Bihar Water Development Corporation duly constituted by the Government with clear stipulation that all the service condition such as salary, promotion, pensionary benefits, inter-se seniority of transfer and those retained in Irrigation Department will remain the same.

(iii) Upon creation of Provident Fund Directorate in 1986, the State Government has placed the services of the petitioners and several others, including *Rameshwar Singh* and *Ramadhar Thakur* under the Provident Fund Directorate in Finance Department, Bihar, Patna vide Memo No. 1832 dated 10.03.1986. The petitioners in compliance with the order, aforenoted, submitted their services to the office of the

Provident Fund Directorate and continued at their respective places of posting till their superannuation.

(iv) The petitioners along with other aforenoted similarly situated persons were accorded senior selection grade & super time selection grade in the revised scale of Rs. 1640-2900/- and Rs. 1800-3330/- respectively. On implementation of the recommendation of 5^{th} Pay Revision, the petitioners and others were also extended the scale of Rs. 5500-9000/- with effect from 01.01.1996.

(v) Notwithstanding the aforesaid fact, the Provident Fund Directorate ignoring the fact that the petitioners and others were the Government appointees since inception and their services were merged in Bihar Water Development Corporation by the Government with full pay protection and now, they have been brought under newly created Provident Fund Directorate again by the order of the State Government. The respondent authorities canceled their fixation of pay in the scale of Rs. 5500-9000/- at the fag end of their superannuation with a direction to re-fix their pay in reduced pay scale, which is approved under the Provident Fund Directorate and to recover the excess payment.

(vi) The order of fixation/reduction of pay scale was put to challenge by one *Rameshwar Singh* in CWJC No. 11777 of 1999, which came to be allowed on 05.09.2002. The State of Bihar being aggrieved preferred LPA No. 81 of 2003, but the same also stands rejected. Thereafter, SLA (Civil) No. 12806 of 2003 was also preferred by the State of Bihar, but it was also rejected on 01.08.2003 by the Hon'ble Supreme Court. Similarly, the petitioner (*Trilokee Prasad Verma*) preferred CWJC No. 12968 of 2003, which came to be allowed on 21.02.2005, likewise the petitioner (*Dharnidhar Jha*) preferred CWJC No. 9288 of 2003 and his case was allowed on 31.08.2007. In case of *Ramadhar Thakur*, who preferred CWJC No. 11985 of 2008, his case was also allowed vide order dated 08.03.2013; said *Ramadhar Thakur*, later on, also prayed for the ACP, which finally came to be allowed on 19.03.2018 in LPA No. 599 of 2015.

(vii) Placing reliance upon all the aforenoted decision, especially the decisions rendered in the case of *Ramadhar Thakur*, the petitioners preferred so many representation before the respondent Provident Fund Directorate for extending the benefit of ACP. However, as the matter discussed hereinabove, and the issue was kept pending under consideration before this Court; no decision was taken on the representation of the petitioners and when the final order came to be passed in the case of *Ramadhar Thakur* in LPA No. 599 of 2015 on 19.03.2018, the petitioners again preferred a detailed representation with a request to extend the benefit of ACP in the light of the decision of the learned Division Bench in case of *Ramadhar Thakur* (supra) based upon parity. In the meanwhile, the Provident Fund Directorate vide office order under Memo No. 4888 dated 26.11.2018, allowed the benefit of ACP to several employees, including *Ramadhar Thakur* in the scale of Rs. 6500-10500/-.

(viii) Subsequently, the respondent Finance Department while considering the claim of the petitioners, inter alia, opined that the pay scale of Rs. 4000-6000/- is approved for Upper Division Clerk since 01.01.1996; hence, the petitioners are entitled to the scale of Head Clerk for Rs. 5000-8000/- and 1st ACP in the scale of Rs. 5500-9000/-, with effect from 01.01.1996 itself, which is the second higher scale of basic scale of Rs. 4000-6000/-. Hence, the second financial upgradation is not admissible to them. Based upon the opinion rendered by the Finance Department, the Provident Fund Directorate turned down the claim of the petitioners for grant of ACP in the scale of Rs. 6500-10500/- with effect from 09.08.1999 vide Memo No.

1661 dated 04.05.2020 and Memo No. 1985 dated 02.06.2020 respectively on the grounds indicated hereinabove, which order is also impugned herein.

(ix) It is to be noted that during the pendency of the writ petition, the claim of the petitioners was also considered at the level of the Director, Provident Fund Directorate, Bihar, Patna and their respective claims have been negated under Memo Nos. 49 dated 04.01.2021 and 39 dated 04.01.2021 respectively, on the identical ground/points as opined by the Finance Department, declining the claim of the petitioners for grant of ACP in the pay scale of Rs. 6500-10500-, which are also impugned herein.

6. While assailing the impugned order(s) and the action of the concerned respondents, learned Advocate for the petitioners has vehemently contended that apart from the impugned orders being illegal, arbitrary, discriminatory they are also wholly without application of mind. Bare perusal of Annexure 1 & 2 of both the writ petitions, it is demonstrative of the fact that service condition of the petitioners as well as *Ramadhar Thakur* and others are one and same under same department, whereas *Ramadhar Thakur* has already been allowed ACP in the scale of Rs. 6500-10500/- with effect from

09.08.1999 vide Memo No. 4888 dated 26.11.2018. Referring to Annexure-2 as contained in Memo No. 5886 dated 02.07.1991, it is further contended that admittedly the petitioners are senior to *Ramadhar Thakur* as would be evident that he got super time selection grade, much after the petitioners; that apart, the petitioners have also passed their final departmental accounts examination, which was necessary to get further promotion/scale/ACP in view of the circulars of the Finance Department. The issue of entitlement of pay scale of Rs. 5500-9000 as on 01.01.1996, is no more in dispute, as it has attained finality. Nonetheless, the respondent authorities erred in-law in declining the 2nd ACP to the petitioners in the scale of Rs. 6500-10500/- and by this way again disputed the admissibility of grant/fixation of pay scale of Rs. 5500-9000/- as on 01.01.1996.

7. Mr. Sidhendra Narayan Singh, learned Advocate for the petitioners strenuously contended that the fixation of pay scale of petitioners in the scale of Rs. 1640-2900/- was never subject matter of any dispute by the respondent and grant of scale of Rs. 5500-9000/- on 01.01.1996 is not a higher/promotional scale, rather it was a replacement scale of pay scale of Rs. 1640-2900/-; morevoer, Clause 3 (1-क) of ACP Rule, 2003 clearly specified that financial upgradation given

under selection grade/time bound promotion before 01.01.1996 will not be counted for financial upgradation under this rule. Hence, in any view of the matter, the petitioners ought to be allowed the benefit of ACP with effect from 09.08.1999 in the next higher scale i.e. scale of Rs. 6500-10500/-.

8. Mr. Naman Nayak, learned Advocate for the State dispelling the aforenoted contentions of the learned Advocate for the petitioners has submitted that while considering the grievance of the petitioners, their names were placed before the Screening Committee and opinion was also sought from the Finance Department. The claim of the petitioners were duly examined by the Finance Department, Government of Bihar. It was found that the petitioners were appointed to the post of Correspondence Clerk and subsequently, they were promoted to the post of Head Clerk and later on, promoted to the Senior Selection Grade in the pay scale of Rs. 850-1360 with effect from 01.04.1981. The petitioners were also allowed super time selection grade in the pay scale of Rs. 880-1510 with effect from 01.04.1986. Based upon the aforesaid facts, the pay scale of the petitioners were determined in the scale of Rs. 5500-9000 with effect from 01.01.1996. Keeping in view the aforesaid facts, the Finance Department, Government of Bihar, in the light of the

Clause 4(3) of the ACP Rules, 2003, opined that the petitioners have already been getting the second highest pay scale with effect from 01.01.1996. Hence, they should not be granted financial progression.

9. In sum and substance, it is the contention of the learned Advocate for the State, after referring the explanation of the ACP Rules, that if an employee is appointed in scale-1 and now he is in scale-2, then he shall be granted one more financial progression in scale-3 under ACP scheme. In case, if an employee's basic salary is in scale-1 at the time of his appointment and now he placed in scale-3, then he need not be granted any financial progression. In the case of the petitioners, they have already extended 3rd highest pay scale with effect from 01.01.1996, so they are not entitled for next financial progression under Clause 3(2) and 4(3) of the ACP Rules, 2003. On the reasons discussed hereinabove, the claim of the petitioners were duly considered and rejected by the Director, GPF Directorate, Finance Department, Government of Bihar.

10. Learned Advocate for the State, at this stage, further drew the attention of this Court to the second supplementary affidavit filed on behalf of the respondent nos. 2-5 and submitted that the petitioners were in the same pay scale

of Rs. 5500-9000/- as that of *Ramadhar Thakur*, who was also getting the pay scale of Rs. 5500-9000, but due to inadvertence, he has been allowed the pay scale of Rs. 6500-10500/- as 2nd ACP, ignoring the provisions of Rule 3 (2) and 4 (3) of the ACP Rules, 2003. Moreover, the reliance of the petitioners on a decision rendered by the learned Division Bench of this Court in LPA No. 599 of 2015 would not be applicable in the case in hand, as Rule 3(2) and 4 (3) of the ACP Rules, 2003 was not an issue for adjudication, rather it was confined to the prerequisite of passing of the Departmental Accounts Examination for grant of Assured Career Progression (ACP) Scheme. The Hon'ble Court has not given any direction regarding any specific pay scale under 2nd ACP to the appellant (*Ramadhar Thakur*).

11. This Court has given anxious consideration to the submissions advanced by the learned Advocate for the respective parties and also perused the materials available on record. The facts are not in dispute that the petitioners were initially appointed as Correspondence Clerk and later on, when the entire organization of State Tube Well along with its Officer and Staffs were merged in Bihar Water Development Corporation, the services of the petitioners were also transferred to the Corporation with the similar conditions and the benefits,

as was admissible in the Irrigation Department.

12. It would be worth noting that on a query made by this Court vide order dated 09.11.2022 in CWJC No. 1107 of 2021 as to how the case of the petitioner is different to those of *Dharnidhar Jha*, *Ramadhar Thakur* and other similarly situated persons, a response has been made by filing a supplementary counter affidavit on behalf of respondent nos. 2-5. In para-3 thereof, the concerned respondents admitted the factual position of parity but denied the claim by stating as follows:

> *"That at the outset it is very humbly submitted that the case of the petitioner stands at similar footing to the case of Dharnidhar Jha and Ramadhar Thakur on the facts and all of them are entitled for grant of ACP without fulfilling the requirement of passing the account examination due to lack of promotional avenue. However, the pay scale of Rs. 6500-10500/- being claimed by way of 2nd ACP over and above the pay scale of Rs. 5500-9000/- is incorrect. Their ACP entitlements are covered under clause 3(2) and 4 (3) of the ACP Rules 2003."*

13. On account of creation of Provident Fund Directorate in the year 1986, the services of the petitioners and several others, including *Rameshwar Singh* and *Ramadhar Thakur*, were also brought in the Provident Fund Directorate. There is no dispute with regard to the position obtained by the petitioners that they were shown senior to *Ramadhar Thakur*.

The petitioners were also extended the benefit of senior selection grade and super time selection grade, which were duly accepted by the Provident Fund Directorate and thus allowed the revised pay scale on Rs. 1640-2900/-. On implementation of the recommendation of the 5th Pay Revision, the petitioners were allowed the pay scale of Rs. 5500-9000 with effect from 01.01.1996, which is the corresponding scale of Rs. 1640-2900/- i.e. made applicable with effect from 01.01.1996. It is this pay scale, which was cancelled by the Government and put to challenge before this Court in various writ petitions, including CWJC No. 11777 of 1999, CWJC No. 12968 of 2003, CWJC No. 9288 of 2003 and CWJC No. 11985 of 2008, wherein, the Court has quashed the decision of the Provident Fund Department reducing the pay scale/recovery order(s). The issue was taken to the Hon'ble Apex Court and finally given quietus in favour of the petitioners and other identically situated persons.

14. From a careful reading of Memo no. 5886 dated 02.07.1991 (Annexure-2) to the writ petition, it would be evident that such pay scale of Rs. 1640-2900 and 1800-3330 was extended to the petitioners in compliance with the Finance Department letter no. 2791 dated 18.05.1991 and was made

effective till holding of the posts of Senior Selection Grade and Super Time Selection Grade, extended only to the petitioners and others, who were in the Provident Fund Directorate, which order, as contained in the letter dated 02.07.1991 has never been modified rather given effect to in case of Ramadhar Thakur and others by allowing them to the pay scale of 6500-10500 by way of 2nd ACP.

15. It would also be gainsaying here that the entire case of the petitioners is based on parity with that of *Ramadhar Thakur*, who has been accorded the benefit of 2nd ACP in the pay scale of Rs.6500-10500/-. Once, the respondent authorities have failed to differentiate the case of the petitioners with that of *Ramadhar Thakur*, whose services have also been brought in the Provident Fund Directorate from the Corporation and till date, no rectification order has been passed in case of *Ramadhar Thakur*, this Court finds no reason or occasion not to allow the identical benefit to the petitioners.

16. In view of the discussions made hereinabove, as also the special facts of the case, which do not attract the legal hurdle as disclosed in the counter affidavit and supplementary counter affidavit; and the case of the petitioners squarely based on parity with that of *Ramadhar Thakur*, this Court finds no

reason or occasion not to allow the identical benefits to the petitioners.

17. Accordingly, this Court finds substance in the writ petitions and set-aside the impugned orders as noted in paragraph no. 1 of the writ petitions as well as in the interlocutory applications.

18. The respondent authorities are directed to accord the similar benefits, as has been accorded to *Ramadhar Thakur*, preferably within a period of twelve weeks, from the date of receipt/production of a copy of this order.

19. The writ petitions as well as the I.A.(s) stand allowed.

20. Pending application(s), if any, stands disposed off.

21. There shall be no order as to cost.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	25.03.2025
Uploading Date	28.04.2025
Transmission Date	NA