IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17457 of 2025

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Shyamal Mishra Son of Late Ram Gopal Mishra, Resident of D54/70C-A-P, Jaddumandi, Luxa, Behind Ashiyana Apartment, Chhitupur, Varanasi, PS Luxa, District Varanasi. At Present posted as Head Clerk, District Record Room, Bhabua, District Kaimur.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Bihar, Patna.
2. The District Magistrate, Kaimur at Bhabua.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Garg, Advocate

For the Respondent/s : Mr. Ajay Bihari Sinha, GA-8

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

Date : 01-12-2025

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has filed the instant application for the following reliefs:-

> "(i). For issuance of an appropriate writ\writs, order/orders, direction/direction in the nature of certiorari for quashing the order No.15/2024-25 passed by District Magistrate, Kaimur Respondent No.2 vide Memo No. XIX-03-25/491/Stha dated 04.04.2025 whereby the respondent no.2 has rejected the claim of petitioner regarding grant of benefits or 2nd ACP\MACP to the petitioner from the date of his joining and respondent no.2 has also rejected the claim of petitioner regarding payment of Grade Pay of Rs. 4600/- to the petitioner.
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> (ii). For issuance of an appropriate writ writs, order orders, direction directions in the nature of mandamus directing the respondent no.2 to grant the benefit of ACP MACP to the petitioner from the date of his joining i.e. 05.07.1995 and not from the date of

passing the Account Examination i.e. on 23.02.2014 incompliance of order passed by this Hon'ble court in CWJC No. 18727 of 2017(Kamlanand Thakur Vs. The state of Bihar and others) as well as in compliance of Memo No.4862 dated 29.04.2925 issued by Secretary (Expenditure), finance Department, Bihar, Patna and pay the pay scale accordingly to the petitioner.

(iii) For issuance of appropriate writ\ writs, order orders, direction\ directions in the nature of mandamus directing the respondent authorities to pay the arrear of salary, if any, become dues, due to non-payment of proper pay scale to the petitioner.

(iv) For grant of any relief(s) the petitioner would be found entitled to in the facts and circumstances of the case."

3. The brief submission of learned counsel for the petitioner is that he has not been given the benefit of 2nd ACP/MACP on the ground of his having not passed the departmental accounts examination.

4. It is contended by learned counsel for the petitioner that the action of the respondents is in teeth of the Full Bench judgment of this Court in the case of **Kamlanand Thakur Vs. The State of Bihar & Ors** reported in **2025(2) PLJR 623**. Relevant paragraph no. 48 of the judgment is reproduced hereinbelow for ready reference:-

"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."

5. Learned counsel for the petitioner further submits that consequent to the decision in the case of Kamlanand Thakur (supra), the respondents have also come out with an order contained in letter no. 4862 dated 29.04.2025 issued under the signature of the Secretary (Expenditure) Finance Department, Government of Bihar, Patna in terms of the aforesaid Full Bench judgment.

6. Learned counsel for the respondents fairly submit that in view of the judgment in the case of Kamlanand Thakur (supra) and the decision of the Government as contained in

the letter dated 29.4.2025 (Annexure-P/5), the matter requires to be looked into by the respondents once again.

7. Having heard learned counsel for the parties, the writ application is disposed of with a direction to the petitioner to file a representation before the District Magistrate, Kaimur at Bhabhua, (Respondent no. 2) within a period of four weeks. I

8. In case the representation is filed by the petitioner, the same shall be decided/disposed of by the respondent no. 2 taking into consideration the decision of this Court in the case of Kamlanand Thakur (supra) and the letter dated 29.4.2025 of the Finance Department.

9. The amount if any, found payable shall be paid to the petitioner within a period of two months from the date of passing of the order on the representation filed by the petitioner.

10. In case, any amount is found not payable, a reasoned order for the same shall be communicated to the petitioner within the aforesaid period.

11. It is made clear that the Court has not gone into the merits of the case of the petitioner which has to be decided by the respondent concerned.

12. The writ application stands disposed with the above observations and directions.

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.12.2025
Transmission Date	NA