IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No. 257 of 2022

Ramnath Singh, aged about 62 years, S/o Late Rameshwar Singh, R/o Jharkhand Armed Police Awas, Block No. 14, Nepal House, Doranda, Ranchi, P.O. & P.S.-Doranda, Dist.-Ranchi, at present R/o Postal Park, Road No. 1, Gayatri Nagar, Singh Bhawan, Patna, P.O. & P.S.-Patna, Bihar

… … **Appellant**

Versus

1. The State of Jharkhand
2. The Director General of Police, Government of Jharkhand, Ranchi, Police Bhawan, Near Project Building, Dhurwa, P.O. & P.S.-Dhurwa, Dist.-Ranchi
3. The Inspector General of Police, Government of Jharkhand, Ranchi, Police Bhawan, Near Project Building, Dhurwa, P.O. & P.S.-Dhurwa, Dist.-Ranchi
4. The Inspector General, Jharkhand Armed Police, Rani Kothi, Nepal House, Doranda, P.O. & P.S.-Doranda, Dist.-Ranchi
5. The Deputy Inspector General (Personnel), Government of Jharkhand, Ranchi, Sector-2, Dhurwa, P.O. & P.S.-Dhurwa, Dist.-Ranchi
6. The Inspector General of Police (Training), Government of Jharkhand, Ranchi, Project Building, Dhurwa, P.O. & P.S.-Dhurwa, Dist.-Ranchi
7. The Commandant, Jharkhand Armed Police-1, Doranda, P.O. & P.S.-Doranda, Dist.-Ranchi … … **Respondents**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant : Mr. Nehru Mahto, Advocate
For the Respondent-State : AC to AAG-III

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22 /Dated: 22nd December, 2025

1. The present appeal is directed against the order dated 14.03.2022 passed by learned Single Judge of this Court in W.P.(S) No. 5353 of 2018, whereby and whereunder, the writ petition has been dismissed declining to grant the benefit of upgradation in pay scale due to non-passing of the Senior Promotion Course examination or having no exemption in passing thereto.

Factual Matrix:

2. The brief facts of the case as per the pleadings made in the writ petition and memo of appeal as also referred to in the impugned judgment needs to be referred herein.

3. It is the case of the writ petitioner that he joined in service as a Lohar Sepoy, a non-cadre post having no future avenue for promotion. Although he was appointed on 01.08.1981 and after completing the unblemished service he has superannuated from service after obtaining the age of 60 years w.e.f. 30.06.2016. His grievance is that he has not been granted any upgradation in pay scale either under the Assured Career Progression (for short ACP) scheme or under the Modified Assured Career Progression (for short MACP) scheme implemented w.e.f. 14.08.2002 vide Memo No. 5207 and 01.09.2009 implemented w.e.f. 01.09.2008 respectively. This petitioner has raised his grievance but that was turned down on the ground that he has not passed SPC examination even though five times such opportunity was given to him. He has approached to this Court by filing W.P. (S) No. 5353 of 2018 asking for the following reliefs:

> "a. For issuance of direction for quashing the Memo No. 5082/Ra. Ka dated 16.08.2010 (Annexure-21) issued by the Commandant, Jharkhand Armed Police-1, Ranchi and the Memo No. 5564/Ra. Ka dated 11.09.2010 (Annexure-24) issued by the Commandant, Jharkhand Armed Police-I, Ranchi
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> b. For issuance of direction for grant of First and Second Financial Upgradation by following Assured Career Progression Scheme (In short A.C.P. Scheme) 2002, framed by the Government of Jharkhand under Resolution dated 14.08.2002 in Memo No. 3/5-6 (Pronati)-02/2002-5207/VI, Ranchi issued under the Signature of Secretary, Finance Department, Jharkhand, Ranchi.
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> c. For issuance of direction for grant of Third Financial Upgradation by following Modified Career Progression (MACP) Scheme 2009 framed by Government of Jharkhand under Resolution dated 01.09.2009 in Memo No. 6/3-06/(Pro)-03/2009-2981/Vi dated 01.09.2009."

4. Learned Single Judge has agreed to the objection so raised on behalf of the State for non-passing of the Senior Promotion Course (for short SPC)

training which is required for any upliftment in the service career by dismissing the writ petition which is the subject matter of the present appeal.

Arguments advanced on behalf of the appellant/writ petitioner:

5. Mr. Nehru Mahto, learned counsel appearing for the appellant-writ petitioner, has assailed the impugned judgment on the ground that the post, upon which the writ petitioner was appointed, i.e. Lohar Sepoy, was a post having no future avenue for promotion, since, it is the non-cadre post having no hierarchy of the promotion. It has been contended that the schedule as per the ACP Scheme of 14.08.2002 or substituted by the MACP scheme by virtue of the resolution dated 01.09.2009, the writ petitioner is entitled to get the enhancement in the pay scale as per the pay scale referred in Schedule-I thereof. The same has been denied on the pretext that the writ petitioner has got no training of the SPC even though five opportunities have been granted to him. It has been contended that passing or getting the training of SPC examination is not required in the facts and circumstances of the case, since, there is no promotional avenues and in view thereof, the benefit of upgradation is to be given only by upgrading the pay scale as referred in Schedule-I of the resolution dated 01.09.2009 on completion of 30 years of service. It has been contended taking aid of the judgment passed by the Hon'ble Apex Court in the case of **Amresh Kumar Singh and others Vs. The State of Bihar and others (2023 SCC OnLine SC 496)** wherein the issue of upgradation in the pay scale has been taken into consideration and even in a case where the hierarchies are there but in such situation, the Hon'ble Apex Court has held that since the promotion said to be on substantive

basis rather it is only upgradation in pay scale being *in situ* promotion and as such, the requirement as is to be followed in a case of substantive promotion will not be applicable for the purpose of grant of upgradation in pay scale. It has further been contended that the case of the present writ petitioner is rather on better footing, since, herein it is the case where the pay scale is to be upgraded. In the pay scale attached to the post of the hierarchy, rather the writ petitioner is only entitled to get the pay scale, as referred in Schedule-I of the resolution dated 01.09.2009.

6. Learned counsel has further submitted by referring the judgment passed in the case of **Krishna Nandan Singh Vs. The State of Jharkhand & Ors. in L.P.A. No. 473 of 2017** wherein by applying the judgment rendered by the Hon'ble Apex Court in the case of **Amresh Kumar Singh and others** (supra) as also on consideration of the fact that in upgradation there is no requirement to pass the departmental examination, this Court has allowed L.P.A. No. 473 of 2017 by reversing the judgment passed by the learned Single Judge with a direction to make payment of the difference of such salary along with the consequential benefit. Learned counsel based upon the aforesaid ground has submitted that herein also the impugned judgment, therefore, needs interference, since, the rightful claim of the writ petitioner has been denied by dismissing the writ petition.

Arguments advanced on behalf of the Respondents:

7. Per contra, learned AC to AAG-III, appearing for the State, while defending the impugned judgment has submitted that the passing of the SPC examination is necessary and even though five opportunities have been given, but the writ petitioner on his own volition has not got the

training and as such, now it is not available for him to take the ground of not passing the said examination is not applicable.

8. Learned counsel for the State based upon the aforesaid ground has submitted that the impugned judgment, therefore, needs no interference.

Analysis:

9. We have heard learned counsel for the parties and have gone through the findings recorded by the learned Single Judge in the impugned judgment and also the pleadings, as referred in the memo of appeal.

10. This Court is on the basis of the undisputed fact herein i.e. the fact that the writ petitioner was appointed as Lohar Sepoy, a non-cadre post having no hierarchy for the future promotion and has completed more than 30 years of service being appointed on 01.08.1981 and he superannuated after attaining the age of 60 years i.e. on 30.06.2016, but has not got any upgradation in pay scale either under the ACP or MACP scheme implemented w.e.f. 14.08.2002 vide Memo No. 5207 and 01.09.2009 implemented w.e.f. 01.09.2008 respectively for the purpose of notional benefit and actual benefit w.e.f. 15.11.2000. The ground has been taken that the writ petitioner has not passed the SPC examination. The issue of passing of examination is the corum of consideration and as such, the proceeding to consider as to whether in the facts and circumstance of the case, the requirement to pass or to get the training of SPC examination was mandatorily required for the purpose of getting the upgradation under the Government scheme. The fact about passing of the departmental examination although was mandate of law by the Full Bench of Patna High Court in **Maheshwar Prasad Singh Vs. State of Bihar (2000 SCC OnLine Pat 840)** holding therein that the passing of

examination is necessary but the said judgment was in the context wherein the hierarchical promotion was to be given and the upgradation in pay scale is to be given on the pay scale attached to the higher post. Although the facts of the present case are different, since, here is no question of hierarchical promotion having not available since the post is added post having no future hierarchy. Even the judgment, which was pronounced by the Full Bench of the Patna High Court in the case of **Maheshwar Prasad Singh** (supra) has now been said to be not a good law in view of the judgment passed by the Hon'ble Apex Court in the case of **Amresh Kumar Singh and others** (supra) wherein the Hon'ble Apex Court has laid down the proposition that the upgradation since is not the regular promotion rather it is *in situ* promotion and as such, passing of the departmental examination is not necessary, relevant para of the said judgment is given below:

> **"12.** It may be worth noting that the ACP scheme was enforced on the recommendation of the Fifth Central Pay Commission in context with Group C and D employees and it provided monetary benefit to the employees on completion of 12 years and 24 years of regular service who were not able to get promotion. The scheme as such was anti-stagnation and envisages merely placement of the employees in the higher pay scale for the grant of financial upgradation only without grant of actual promotion. The benefit of the ACP as such is like granting non-functional *in situ* promotion.
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> **13.** At the cost of repetition, it must be borne in mind that the object of ACP is to avoid stagnation where no promotional avenues are available. The grant of ACP is not technically a grant of promotion but increase in the pay scale to the next higher grade retaining the employee on the post held by him. This is only to accord monetary benefit without disturbing any seniority or actually effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.

> **14.** The object and purpose of ACP/MACP Scheme has been reiterated by this Court in *Union of India* v. *C.R. Madhava Murthy*, (2022) 6 SCC 183, as one to relieve the frustration on account of stagnation and it does not involve actual grant of promotional post but merely monetary benefits in the form of next higher grade subject to fulfilment of qualifications and eligibility criteria.
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> **15.** In sum and substance, both ACP and MACP Schemes are schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief in the form of financial benefits. Accordingly, the schemes provide for regular financial upgradation on completion of 12-24 years and 10-20-30 years of service without promotion. They are incentive schemes for the employees who complete a particular period of service but without getting promotion for lack of promotional avenues. The effect of the schemes must be judged keeping in view the object and the purport of the scheme.
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> **16.** In *Union of India* v. *G. Ranjanna* reported in (2008) 14 SCC 721, the three-Judges Bench of this Court held that *in situ* promotions are made to remove stagnation of grade C and grade D employees by giving them certain monetary benefits.
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> **17.** It was further observed that fulfilment of educational qualifications prescribed under the recruitment rules for the purposes of promotion are not necessary for non-functional *in situ* promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of *in situ* promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated."

11. This Court had an occasion to consider the factual aspect in the case of **Krishna Nandan Singh** in **L.P.A. No. 473 of 2017** (supra) although the fact of the said case was of hierarchical promotion i.e. from the post of Inspector, Excise to the Superintendent, Excise but the requirement of passing of examination as per the Jharkhand Excise Act was available as has been taken note in the said judgment but applying the ratio laid down by the Hon'ble Apex Court in **Amresh Kumar Singh**

and others (supra) and considering the fact that the upgradation being *in situ* promotion, passing of the examination is not necessary. Hence, interfered with the judgment passed by the learned Single Judge with a direction to make payment of the difference of arrears of salary.

12. The contention has been raised on behalf of the State that even though the opportunity was given five times, the writ petitioner has not got the SPC training. But whether that can be a ground to deny the benefit, that is to be taken into consideration if it is not required, as has been held by the Hon'ble Apex Court in the case of **Amresh Kumar Singh and others** (supra), followed by this Court in **Krishna Nandan Singh** in **L.P.A. No. 473 of 2017** (supra).

13. Adverting to the factual aspect of the present case, herein the writ petitioner is seeking the upgradation in pay scale and admittedly, the post is having no hierarchy and as such, the pay scale, as referred in Schedule-I of the resolution dated 01.09.2009, is admissible to the writ petitioner and being in situ promotion and as such, as has been held by the Hon'ble Apex Court in the case of **Amresh Kumar Singh and others** (supra), followed by this Court in **Krishna Nandan Singh** in **L.P.A. No. 473 of 2017** (supra), this Court is of the view that the claim of the writ petitioner for upgradation of pay scale cannot be denied. Again adverting to the findings recorded by the learned Single Judge in the impugned judgment, wherein passing of the examination has been said to be necessary but this Court is of the view that since the ratio has already been laid down in the case of **Amresh Kumar Singh and others** (supra) and since the issue is still to be considered, as such,

considering the aforesaid facts, this Court is of the view that the impugned judgment needs interference.

14. It needs to refer herein that the closure of the issue has also been taken as a ground in L.P.A. No. 473 of 2017 which we have dealt with by considering the fact that even though the State has taken final decision but since the decision so taken by the State Authority is under the consideration under the power of judicial review before this Court under Article 226 of the Constitution of India and further since the ratio has been laid down by the Hon'ble Apex Court, the claim of the writ petitioner on the date of consideration when it was being considered, hence held that the applicability of the said judgment will be there. For reference, relevant paras of said L.P.A. No. 473 of 2017 is being referred hereinbelow:

> **"17.** The learned Advocate General who represented the State Government has submitted that the judgment passed by the Hon'ble Apex Court which is binding precedents under Article 141 of the Constitution of India and, therefore, we have its retrospective application unless referred in the judgment specifically regarding its applicability.
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> **18.** The learned Advocate General has relied upon the judgment rendered by the Hon'ble Apex Court in the case of M.A. Murthy v. State of Karnataka (supra) particularly in paragraph no. 8 thereof wherein it has been held that "prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it

earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest."

19. It has been contended by referring to the facts of the present case that here the issue has already been settled by the State rejecting the claim of the writ petitioner and, as such, applying the law laid down in the case of M.A. Murthy v. State of Karnataka (supra) as referred in paragraph no.8 that principles of prospective overruling although is a part of principle of constitutional canon of interpretation and it is a device innovated to avoid reopening of settled issues and, as such, in the facts of the present case, the judgment passed by the Hon'ble Apex Court in the case of Amresh Kumar Singh and others vs. State of Bihar and others (supra) will not be applicable.

20. Now this court is to decide the issue as to whether the case of the present petitioner can come under the settled issues in course of pending litigation. The decision taken by the Commissioner of Excise Department cancelling 2nd Assured Career Progression with effect from 09.08.1999 vide order dated 15.6.2010 was the subject matter before the writ court. Such decision was taken on the pretext of not passing the required examination for holding the post of Superintendent. The learned Single Judge has agreed to the

objections so raised on behalf of the State mandating the passing of the departmental examination as mandatory and also held that the decision in State of Punjab & Ors. vs. Rafiq Masih & Ors. (supra), does not help the petitioner.

21. We are only dealing with in the present appeal which has been challenged by the writ petitioner regarding entitlement of upgradation which has been recalled vide order dated 15.06.2010. The writ petition was filed in the year 2014 and was decided on 06.04.2017 on merits and against that order the present Letters Patent Appeal has been filed on 06.09.2017, after delay of 115 days. The delay was condoned vide order dated 08.01.2018 passed by the coordinate Bench of this Court in I.A. No. 7372 of 2017. The issue which has been decided by the State therefore came before this Court which is still pending for its adjudication.

22. Therefore, in course of pending proceeding, either writ petition or Letters Patent Appeal, will it be proper to be said that the issue has already been settled and it cannot be reopened.

23. The Court is still to adjudicate the right of the writ petitioner and the day when the issue is being decided the Hon’ble Apex Court and has laid down a law in the case of Amresh Kumar Singh and others vs. State of Bihar and others (supra) stating therein that the upgradation since is a situ promotion having no benefit of higher post and only the

pay is being upgraded and, as such, there is no requirement to pass the departmental examination to hold the higher post as has been referred in paragraph nos.17 and 18 as quoted hereinabove.

24. So, when Writ Petition or Letters Patent Appeal is pending before a court, then issue can be said to settled, can be answered by taking an example of a case in which the State has passed an order taking decision adverse to the interest of the litigant concerned. If the same has been accepted fairly for a long period and, thereafter, if any law has been laid down, then applicability of the said law will not be of any aid to the concerned person who has accepted the decision so taken by the State fairly for a long period.

25. The second situation, in a case where the State has taken decision adverse to the interest of the public servant and he has approached the court of law which attained it finality up to the highest level, then in such circumstances, on the basis of the judgment passed subsequent to the issue having been set at rest by the higher forum will not be reopened but what will happen if a litigation is lying pending before a court, regarding the decision taken adverse to the interest of the public servant as the facts of the present case and in the meanwhile if any judgment has been pronounced by the Hon’ble Apex Court on the similar issue then will it be proper for this court to accept the view as has been agitated by the learned Advocate General appearing for the State that

the issue on the basis of the decision so taken by the State, will be said to be settled.

26. This court is not in agreement with the said submissions, reason being that the order which has been passed claiming that the issues have been settled, is still to be assessed by the High Court under the power of judicial review and, if for such a long period, the adjudication under the power of judicial review is pending before the High Court or even before the Hon'ble Apex Court, then it will not be proper to say that the issues have been settled and, in such circumstances, it will not be a case of reopening the issues.

27. This Court is conscious that a Full Bench of Patna High Court has passed an order in the case of "Maheshwar Prasad Singh vrs. State of Bihar", reported in 2000 SCC OnLine pat 840 wherein passing of the departmental examination has been held to be mandatory but since the Hon'ble Apex Court has laid down a law in the case of Amresh Kumar Singh and others vs. State of Bihar and others (supra) as such in view of the principle as laid down under Article 141 of the Constitution of India read with Article 144 thereof, the judgment passed by the Hon'ble Apex Court is having binding precedent over the Full Bench of Patna High Court even though it was binding since rendered prior to 15.11.2000 i.e. the date of bifurcation of Bihar into two States, carving out the State of Jharkhand and State of Bihar."

15. Adverting to the factual aspect of the instant case, the writ petitioner had joined in service as a Lohar Sepoy, a non-cadre post having no future avenue for promotion and he has superannuated from service w.e.f. 30.06.2016. His grievance is that he has not been granted any upgradation in pay scale either under the Assured Career Progression (for short ACP) scheme or under the Modified Assured Career Progression (for short MACP) scheme implemented w.e.f. 14.08.2002 vide Memo No. 5207 and 01.09.2009 implemented w.e.f. 01.09.2008 respectively. The petitioner has raised his grievance but that was turned down on the ground that he has not passed SPC examination.

16. Applying the same principle as enunciated in the aforesaid case i.e. LPA 473 of 2017 which has been discussed and referred hereinabove in the preceding paragraphs and further taking into consideration the binding precedence and the Judgment passed by the Hon'ble Apex Court in the case of **Amresh Kumar Singh (supra)**, this Court is of the view that the impugned judgment/order passed by the learned Single Judge needs interference.

17. Accordingly, the judgment passed by the learned Single Judge is hereby quashed and set aside.

18. Subsequently, this appeal stands allowed.

19. In consequence thereof, writ petition also stands allowed.

20. The order dated 14.03.2022 passed in W.P.(S) No. 5353 of 2018 is quashed and set aside.

21. The State-respondents are directed to calculate the arrears of the difference of salary along with consequential benefits by counting for the purpose of pensionary benefits as also the difference in the

pensionary benefit and release the same in favour of the writ petitioner within a period of three months from the date of receipt/production of a copy of this order.

22. The State will take endeavour for fixation of pension on the basis of enhanced pay scale during the aforesaid period.

The instant appeal stands allowed and accordingly disposed of.

Pending I.A., if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Gautam Kumar Choudhary, J.)

AKT/Satendra
AFR
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