

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7681 of 2022

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Nand Kishor Mahto S/o Paras Nath Mahto, Resident of Vill-Mithapur, Post-Garkha, Dist-Saran, Bihar-841311.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Old Secretariat, Patna.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. Regional Deputy Director, Education, Patna Division, Patna.
4. The District Education Officer, Patna, District Patna.
5. Treasury Officer, Patna.
6. Principal, Government Girls Intermediate (plus 2 Level) School, Gardanibagh, Patna-2.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Dhananjay Kumar, Advocate Mr. Kundan Kumar Ojha, Advocate Ms. Sadhna Parashar, Advocate
For the State	:	Mr. Madhaw Pd. Yadaw, G.P.23 Mr. Arvind Kumar, A.C. to G.P.23

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR

ORAL JUDGMENT

Date : 09-04-2026

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following reliefs:

“(i) That letter no 17 dated 18/01/2022 (Annexure-6) Issued under the signature of respondent no.-3 be quashed.

(ii) Respondents be directed to grant M.A.C.P. to the petitioner as he has completed his service of 30 years on 20/12/2006 as his initial appointment was on 20/12/1976 on the post of Mali under Contingent Mining and the said period have been approved by the learned commissioner after due inquiry while confirming his first Time Bound



Promotion.

3. The brief facts, giving rise to the present writ petition, are that the petitioner was appointed on the post of *Mali* on purely temporary basis vide Memo No.659, dated 20.12.1976, issued under the signature of the then Principal, Government Girls High School, Gardanibagh, Patna in the pay scale of Rs.155-1-160-2-190 along with the applicable allowances. Subsequently, after retirement of one Peon in the said school, the petitioner was appointed on the said post vide Letter No.19, dated 31.01.1984. After completion of 10 years of service, the petitioner was granted the benefits of upgradation w.e.f. 20.12.1986 and his pay scale was fixed at Rs.800-1150/- vide Letter No.6271-6355, dated 11.11.1992, issued under the signature of the School Inspector-cum-Deputy Director, Education, Government of Bihar, Patna. After completing 12 years of service, the petitioner became eligible for first A.C.P. and vide Letter No.1802 vi (02), dated 23.03.2006, issued under the signature of the School Inspector-cum-Deputy Director, Education, Government of Bihar, Patna, the benefits of first A.C.P. was granted to the petitioner w.e.f. 09.08.1989 and the benefits of second A.C.P. was also granted after completion of 24 years of service w.e.f. 20.12.2000. Subsequently, the Modified Assured Career Progression (M.A.C.P.) Scheme came into effect from year 2010, wherein it has been provided that three upgradation will be granted on



completion of 10, 20 and 30 years of service. It is the case of the petitioner that since he had completed 30 years of service in the year 2006 itself, he became entitled for grant of M.A.C.P. benefits w.e.f. 2006. The petitioner superannuated from service on 31.10.2011. After retirement of the petitioner, vide Memo No.285, dated 11.11.2013, issued under the signature of the Secretary to the Commissioner, Patna Division, Patna, the first time bound promotion, granted to the petitioner and similarly situated employees, was confirmed. From perusal thereof, it would transpire that the date of first time bound promotion of the petitioner was mentioned as 20.12.1986, i.e., 10 years from the date of his joining on the post of *Mali*. Subsequently, vide Letter No.17, dated 18.01.2022, issued under the signature of the Regional Deputy Director of Education, Patna Division, Patna addressed to the Principal, Government Girls High School, Gardanibagh, Patna, it was informed that since the petitioner completed 30 years of service on 01.02.2014 and he retired from service on 31.10.2011, therefore, the benefits of M.A.C.P. has not been granted to the petitioner on account of his not completing 30 years of service, prior to his retirement.

4. The learned counsel for the petitioner submits that the petitioner was appointed as a *Mali* on temporary basis in 1976 and subsequently he was appointed on the post of Peon in 1984,



therefore, his services should have been counted from 1976 itself and the authorities concerned, while granting the benefits of first and second A.C.P., have counted his services from 1976. The learned counsel for the petitioner further submits that not granting the benefits of M.A.C.P. to the petitioner, is illegal and arbitrary since on the one hand, while granting the benefits of first and second A.C.P., the authorities have taken into consideration the services rendered by the petitioner on the post of *Mali*, on the other hand, he was denied the benefit of M.A.C.P. on the ground that he has not completed 30 years of service, on the date of his retirement. The learned counsel for the petitioner further submits that as per Rule 4 of the A.C.P. Scheme, 2003, it has been provided that if a person, who was working as a Sweeper and subsequently appointed on the post of Peon, whose pay scale is identical, his past services shall be counted for the purposes of granting A.C.P., however the respondent authorities have not taken into consideration Rule 4 of the A.C.P. Scheme, 2003 and had denied the said benefit to the petitioner, although he was working in the same pay scale of *Mali*, prior to his appointment on the post of Peon in 1984.

5. *Per contra*, the learned counsel appearing on behalf of the Respondents-State submits that the petitioner was temporarily engaged on the post of Mali under contingent mining



vide Letter No.659, dated 20.12.1976 and after retirement of the regular Peon, he was appointed as a Peon vide Letter No.19, dated 31.01.1984. He was granted first time bound promotion w.e.f. 20.12.1986, wherein it was clearly mentioned that the petitioner was appointed in regular establishment on 01.02.1984. He further submits that there is a statutory provision in the M.A.C.P. Scheme, 2010 to give the benefits of M.A.C.P. to those employees who have completed 30 years of qualifying service, however in case of the petitioner since he was appointed on 01.02.1984 and retired on 31.10.2011, therefore, he was not granted the benefits of M.A.C.P. on completion of 30 years of service, since as per his date of joining, i.e., 01.02.1984, he would have completed 30 years of service on 01.02.2014. The authorities concerned taking into consideration have rightly rejected the claim of the petitioner for grant of M.A.C.P. benefits on completion of 30 years of service. The learned counsel appearing on behalf of the State, relying on the statement made in the counter affidavit filed on behalf of the Respondent No.3 submits that the petitioner was appointed on the vacant post of Peon vide Letter No.19, dated 31.01.1984 and the so called appointment on the post of *Mali* cannot be treated as an ad hoc employment, rather it was purely a daily wage appointment, for which payment has been made from contingent head and it cannot be counted for the purposes of regular service.



He further submits that admittedly without noticing the above, the petitioner was granted his first time bound promotion w.e.f. 20.12.1986, vide Letter No.1802, dated 23.03.2006 w.e.f. 1999 and the second A.C.P. w.e.f. 20.12.2000.

6. The learned counsel for the State further submits that the A.C.P./M.A.C.P. Screening Committee in its meeting dated 15.11.2021 examined the claim of the petitioner for grant of 3rd M.A.C.P., however after considering the same rejected his claim on the ground that since he has not completed 30 years of service on his date of retirement, he is not entitled for the benefits of M.A.C.P. The name of the petitioner is mentioned at serial no.23 of the proceeding of the meeting dated 15.11.2021. The learned counsel for the State further, by referring to the counter affidavit filed on behalf of the Respondent No.3 on 01.12.2025, submits that no sanctioned and vacant post of *Mali* was available in the school and the petitioner was working as a daily wager, for which payments have been made from contingent head. He further submits that as per Rule 4 of the A.C.P. Rules, 2003, which deals with the eligibility and conditions for grant of the A.C.P., wherein Section 4(1) says that if a person working as a Sweeper is recruited on the post of Orderly, the scale of pay of which is same, previous service shall be counted. However, explanation to Rule 4(4) says that the service rendered on casual or daily wages



basis/contract basis or temporary basis shall not be counted for the purpose of benefit of financial progression under the scheme, therefore, the petitioner has been rightly denied the benefits of M.A.C.P.

7. Having heard the learned counsel for the parties and considering the materials available on records, this Court finds that admittedly the petitioner was appointed as a *Mali* on temporary basis on 20.12.1976 and subsequently vide letter dated 31.01.1984, he was appointed on the post of Peon in the concerned school, since no vacant/sanctioned post of Mali was available in the school concerned. The petitioner gave his joining on 01.02.1984 and until his superannuation on 31.10.2011, he worked on the said post of Peon. The petitioner was granted the benefit of first time bound promotion on completion of 10 years of service and subsequently was granted the benefits of A.C.P. w.e.f. 1999 and the second A.C.P. in 2000. It is not in dispute that the petitioner retired on 31.10.2011 and prior to retirement, he did not complete the service of 30 years from the date of his appointment on the post of Peon, i.e., 01.02.1984. It has been admitted by the respondent authorities in their counter affidavit that the first time bound promotion and other benefits, i.e., first A.C.P. and second A.C.P., which was granted to the petitioner, calculating his service from 20.12.1976, was without noticing the fact that the petitioner



was appointed on 01.02.1984. The authorities later on discovered the discrepancy and, therefore, have rightly rejected the claim of the petitioner for grant of M.A.C.P. benefits since prior to his retirement, he has not completed 30 years of service, which he would have completed on 01.02.2014. During his entire service period, the petitioner never raised any grievance with regard to not counting his past service and happily accepted whatever was given to him.

8. Accordingly, I do not find any merit in the writ petition and the same is dismissed.

9. Pending application(s), if any, shall also stand disposed of.

(Ritesh Kumar, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2026
Transmission Date	NA

