

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 18031 of 2023

1. Abdhesh Kumar Singh Son of Late Ram Bilash Singh, Resident of Van Bihar Colony, Ward No. 2, P.O. Aashiana Nagar, P.S. Rajeev Nagar, District- Patna, the retired Assistant Engineer, Water Resources Department, Flood Control and Water Drainage Division, Kishanganj, District- Kishanganj.
2. Jitendra Kumar Bhagat, Son of Hari Prasad Bhagat, Resident of Village and P.O. Chirouri, P.S. Chausa, District- Madhepura, the retired Junior Engineer, Water Resources Department, Irrigation Division, Birpur, District- supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary (Expenditure), Finance Department, Government of Bihar, Patna.
4. The Additional Secretary, Finance Department, Government of Bihar, Patna.
5. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
6. The Engineer-in-Chief (Headquarter), Water Resources Department, Government of Bihar, Patna.
7. The Under Secretary (Prabandhan), Water Resources Department, Government of Bihar, Patna.
8. The Superintending Engineer, Water Resources Department, Flood Control and Drainage Circle, Purnea.
9. The Superintending Engineer, Water Resources Department, Irrigation Circle, Saharsa.
10. The Executive Engineer, Water Resources Department, Flood Control and Water Drainage Division, Kishanganj, District- Kishanganj.
11. The Executive Engineer, Water Resources Department, Irrigation Division, Birpur, District- Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Awnish Kumar
For the Respondent/s : Mr.Government Pleader (19)

CORAM: HONOURABLE MR JUSTICE RITESH KUMAR

CAV JUDGMENT

Date : 19-02-2026

Heard the parties.



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

“(I) For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 26.07.2022 passed by the respondent No 6 and contained in his Memo No 3127 dated 26.07.2022, whereby and where under after seeking the opinion of Finance Department, the respondent No 6 has been pleased to hold that since the Junior Engineers of the Water Resources Department are entitled for the pay scale of PB-3 + 5400 Grade Pay only by way of benefits of second MACP, their claim for grant of benefits of second MACP, their claim for grant of benefits of second MACP in the pay scale of PB-3 + 6600 Grade Pay is totally misconceived and, therefore, rejected.

(II) For issuance of an appropriate writ in the nature of certiorari for quashing the letter dated 27.08.2021 issued under the signature of the respondent No 10 and contained in his Memo No 899 dated 27.08.2021, whereby and where under after modification of the petitioners’ pay scale on grant of benefits of first MACP in the pay scale of PB 3 Grade Pay 5400 which was earlier granted to the petitioners in PB3 Grade Pay 6600, direction was issued for recovery of a sum of Rs 5,32,612/- from the retirement benefits payable to the petitioner No 1 on account of his retirement on 31.01.2021.

(III) For issuance of an appropriate writ in the nature of certiorari for quashing the letter dated 30.11.2021 issued under the signature of the Respondent No 10 and contained in his letter No 1162 dated 30.11.2021 addressed to the Treasury Officer, Secretariat Treasury, Irrigation Building, Patna whereby and where under direction was issued for recovery of a sum of Rs 5,32,612/- from the



retirement benefits payable to the petitioner No 1.

(IV) For issuance of an appropriate writ in the nature of certiorari for quashing the letter dated 23.02.2022 issued under the signature of the Respondent No 11 and contained in his letter No 202 dated 23.02.2022 and addressed to the Accountant General, Bihar, Patna whereby and where under the Accountant General was requested for issuance of payment of gratuity order in favour of the petitioner No 2 after deduction of a sum of Rs 4,33,308/- on account of reduction of pay scale of petitioner No 2 on grant of benefits of second MACP in PB 3 Grade Pay – 5400/- which was earlier granted to the petitioner No 2 in PB – 3 Grade Pay – 6600.

(V) For issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent-authorities for grant of benefits of second MACP to the petitioners in the pay scale of PB 3 + Grade Pay 6600 in view of the structure of different pay scale under Schedule I of the Finance Department Resolution contained in Memo No 630 dated 21.01.2010 read with the provisions of the State Government Resolution contained in Memo No 7566 dated 14.07.2010 on the ground that in view of the provisions contained in aforesaid resolution since the petitioners are entitled for the pay scale prescribed under Schedule I and not under Schedule II, the opinion of the Finance Department relying upon the Division Bench judgment of this Hon'ble Court in LPA No 1126 of 2017 (Md Nasiruddin and others Vs The State of Bihar and others) and the impugned order passed by the Respondent No 5 are totally illegal and cannot be sustained in law.

(VI) For issuance of an appropriate writ in the nature of certiorari for quashing the



letter dated 10.04.2015 passed by te Respondent No 4 and contained in his letter No 3655 dated 10.04.2015 whereby and where under he has informed the Respondent No 5 that in view of the Finance Department letter No 504 dated 16.01.2014, the pay scale of PB 3 + 5400 Grade Pay would be a financial progression for the Government servants working in PB 2 + Grade Pay 4800 or 5400 and thus in the case of Junior Engineers PB 2 + Grade Pay 5400 would be the scale of first Assured Career Progression and PB 3 + Grade Pay 5400 would be the scale of second Modified Assured Career Progression on the ground that if all the writ petitioners were appointed as a Junior Engineer much before 01.01.2006 for whom there was a separate recommendation for pay fixation as contained in letter No 630 dated 21.01.2010, the case of the petitioners would not be covered by the aforesaid letter of Finance Department which can be applied only in case of other Government servant joining their services on or after 01.01.2006.

(VII) For a declaration that since the petitioners were entitled for the benefits of first Assured Career Progression much before the introduction of Modified Assured Career Progression Scheme Rules 2010, therefore, in view of the amended provisions of Assured Career Progression Rules, 2003 amended in 2008, the petitioners were entitled for the pay scale of Assistant Engineer in the scale of Rs 6500 – 10,500 (PB 2 + Grade Pay 5400 with effect from 01.01.2006), the aforesaid letter of the Finance Department cannot be applied in the case of the petitioners for reduction of their scale which they were duly granted by way of benefits of second Modified Assured Career Progression.

(VIII) For issuance of an appropriate writ in the nature of mandamus commanding and directing the Respondent Authorities for



payment of withhold amount of retirement benefits of the petitioners as also for fixation of their salary in accordance with the provisions of MACP Rules, 2010 for the purposes of revision of their retirement benefits.

(IX) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

3 At the outset, the learned counsel for the petitioners submits that the petitioner No. 1 was appointed as a Junior Engineer in the Water Resources Department on 11.03.1987 and since then he was discharging his duties until his retirement and no complaint whatsoever was made against him. Similarly, the petitioner No. 2 was appointed as a Junior Engineer in the Water Resources Department on 31.08.1988 and until his retirement, he served the Department without any complaint whatsoever. The petitioner No. 1 was promoted to the post of Assistant Engineer in the year, 2016 vide Notification dated 29.11.2016 and till the date of his retirement, he was holding the post of Assistant Engineer.

4. The learned counsel for the petitioners further submits that after introduction of Bihar State Employees Service Condition (Assured Progression Scheme) Rules, 2003 (for brevity, **ACP Rules 2003**), both the petitioners were granted the benefits of first financial progression in the pay scale of Rs. 6,500 – 10,500/- w.e.f. the date when they completed 12 years of continuous service, from



the date of their appointment. The petitioner No. 1 was granted the benefit of first ACP w.e.f. 09.08.1999 whereas the petitioner No 2 was granted the same benefit w.e.f. 31.08.2000. The learned counsel for the petitioners further submits that on the basis of the recommendation of the 5th pay commission, since the pay scale of Assistant Engineer w.e.f. 01.01.1996 was Rs. 6,500 – 10,500/- in view of the amended provisions of ACP Rules 2003, the petitioners were granted the aforesaid pay scale by way of benefits of first ACP w.e.f. the date when they completed 12 years of continues service. After implementation of the recommendation of the sixth pay revision commission, the pay scale was further revised w.e.f. 01.01.2006 and the petitioners were granted the replacement pay scale of pay band 2 with grade pay of Rs. 5,400/-. Subsequently, the ACP Rules 2003 was substituted by the Modified Assured Career Progression Scheme and Rules, 2010 (for brevity **MACP Rules 2010**).

5. The learned counsel for the petitioners further submits that from perusal of paragraph No. 2 of Schedule-1 of the MACP Rules 2010, it would transpire that the next scale, as contemplated under Schedule-1 of Finance Department Resolution No. 630 dated 21.01.2010 would be granted to the employees and since the Department had revised the pay scale of its employees w.e.f.



01.01.2006 and as per Schedule-1 appended with Resolution No. 630 dated 21.01.2010, there can be no doubt that after the scale of pay band 2 + Grade Pay of Rs. 5,400/-, the next scale would be pay band 3 with grade pay of Rs. 6,600/-. Since by way of benefits of first ACP, the petitioners were already granted the pay scale of pay band 2 with grade pay of Rs. 5,500/- w.e.f. 01.01.2006, by way of benefits of second MACP, the petitioners were granted the pay scale of pay band 3 with grade pay of Rs. 6600/- by way of benefits of second MACP w.e.f. 01.01.2009 vide orders contained in Memo No. 2140 dated 22.05.2014. Accordingly, their pay scale was revised w.e.f. 01.01.2009 in the pay band 3 with grade pay of Rs. 6,600/- and they were paid their arrears of salary accordingly. All of a sudden, the Department came out with an order contained in Memo No. 4447 dated 06.12.2017 by which the pay scale of pay band – 3 with grade pay of Rs. 6,600/- which was granted to the petitioners earlier in terms of MACP Rules, 2010 was modified/revised and the petitioners were granted the scale of pay band 3 with grade pay of Rs. 5,400/-, in view of the advisory issued by the Finance Department vide letter No. 3655 dated 10.04.2015.

6. The learned counsel for the petitioners further submits that similarly situated persons filed CWJC No. 411 of 2018



challenging the order contained in Memo No. 4447 dated 06.12.2017 whereby the pay scale of the Junior Engineers/Assistant Engineers were revised in pay band – 3 with grade pay of Rs. 5,400/-, in view of the advisory issued by the Finance Department vide its letter No. 3655 dated 10.04.2015. The writ petition was finally heard and disposed of vide order dated 22.11.2021 passed by a coordinate Bench of this Court wherein it was directed that the re fixation/modification order shall be treated to be show cause notice, since no notices were issued to the petitioners and liberty was granted to the petitioners to file their reply/explanation within a specific time and the authorities were directed to pass a speaking order considering each of the petitioners' contentions in their explanation. The petitioners of CWJC No. 411 of 2018 filed their respective representations and the same was rejected by the authorities concerned vide Memo No. 3127 dated 26.07.2022. In the meantime, vide letter No. 899 dated 27.08.2021 issued under the signature of Executive Engineer, Flood Control and Water Resource Division, Kishanganj, a direction was issued for recovery of the excess payment made to the petitioner No. 1 and vide letter No. 1162 dated 30.11.2021 issued under the signature of the Executive Engineer, Flood Control and Water Resource Division, Kishanganj addressed to the



Treasury Office, Secretariat Treasury, Irrigation Department, Patna for recovery of a sum of Rs. 5,32,612/- from the retirement benefits payable to the petitioner No 1. Similarly, vide letter No. 202 dated 23.02.2022 issued under the signature of the Executive Engineer, Irrigation Division, Veerapur, Supaul addressed to the Accountant General, Bihar, Patna, a request was made to send the pension papers of the petitioner No. 2, so that excess payment to the tune of Rs. 4,33,308/- can be recovered from the gratuity amount, to be payable to him after his retirement on 31.08.2021.

7. A counter affidavit has been filed on behalf of respondents No 2 to 4 wherein it has been stated that the pay scale of the petitioners w.e.f. 01.01.1996 was fixed at Rs. 5000 – 150 – 8,000/- and they were granted the first ACP in the pay scale of Rs. 6,500 – 10,500/-, which was subsequently enhanced to Rs. 8,000 – 13,500/- as benefits of first ACP. It is further submitted that w.e.f. 01.01.2006, the petitioners were given the replacement pay scale of pay band – 2, i.e. Rs. 9,800 – 34,800/- with grade pay of Rs. 5,400/- and as the petitioners were not completing 24 years of service before 13.07.2010, i.e. the date of repeal of ACP Rules 2003, the petitioners were entitled for two financial upgradation under the MACP Scheme 2010, on completion of 20 years of service or on 01.01.2009, i.e. the date of implementation of MACP



Scheme 2010, whichever is later. The Controlling Department of the petitioners, while according the benefit of second MACP w.e.f. 01.01.2009, wrongly granted the pay scale of pay band 3, i.e. Rs. 15,600 – 39,100/- with grade pay of Rs. 6,600/- instead of pay band 3 with grade pay of Rs. 5,400/-. The said error was rectified vide Memo No. 4447 dated 06.12.2017 in view of Letter No. 3655 dated 10.04.2015 of the Finance Department.

8. The learned counsel for the State-respondents further submits that as per Clause 8.1 of Schedule 1 of MACP Scheme, it was notified that grade pay of Rs. 5,400/- in pay band 2 and pay band 3 will be treated as separate grade pay for the purposes of grant of upgradation under the MACP Scheme. Even the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training), Government of India, New Delhi vide its Letter No. 30909 dated 08.04.2013 informed the State Government that in terms of para 8.1 of the Scheme, grade pay of Rs. 5,400/- in pay band 2 and grade pay of Rs. 5,400/- in pay band 3 will also be treated as separate grade pay for the purpose of grant of upgradations under MACP. Every financial upgradations including non-functional grade granted are treated as an offset against one financial upgradation under the MACP Scheme.



9. The learned counsel for the respondent-State further submits that letter No. 3655 dated 10.04.2015 and letter No. 504 dated 16.01.2014 of the Finance Department were issued to clarify the implementation of MACP Scheme 2010 and to clarify the admissible pay scale benefits of MACP to the State Government employees. Even vide judgment dated 04.10.2018 passed by a learned Division Bench of this Court in ***LPA No. 1126 of 2017 (Md Nasimuddin & Others -Versus- The State of Bihar & Others) reported in 2019 (1) PLJR 11***, grade pay of Rs. 5,400/- has been made available to two pay bands, i.e. pay band 2 and pay band 3 and this separate grade pay in two pay bands have been treated as a separate grade pay for the purposes of grant of upgradation under the MACP Scheme. The judgment dated 04.10.2018 passed in LPA No. 1126 of 2017 was dismissed by the Hon'ble Supreme Court of India vide order dated 18.04.2022 passed in SLP (C) No. 1925 of 2019.

10. The learned counsel for the State-respondents further submits that the petitioners have not questioned the validity of clause/para 8.1 or any of the provisions of the MACP Scheme and they have challenged the subsequent orders/actions without challenging the statutory provision which is not maintainable in view of the judgment of the Supreme Court of India reported in the



case of *Edukanti Kistamma (Dead) through LRS & Others*
-Versus- S Venkatareddy, (2010) 1 SCC 756 wherein, in paragraph
No 22, the Hon'ble Supreme Court has held as follows:

“22. It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (vide P Chitharanja Menon v A Balakrishnan [(1977) 3 SCC 255 : 1977 SCC (L&S) 378 : AIR 1977 SC 1720] ; H V Pardasani v Union of India [(1985) 2 SCC 468 : 1985 SCC (L&S) 482 : AIR 1985 SC 781] ; and Govt of Maharashtra v Deokar's Distillery [(2003) 5 SCC 669 : AIR 2003 SC 1216]).”

11. The learned counsel for the State-respondents further submits that the decision taken by the Department is in consonance with clause/para 8.1 of the MACP Scheme and the clarification issued by the Central Government and the orders passed by the learned Division Bench of this Court.

12 Having heard the learned counsel for the parties and after going through the records, it appears that the petitioners, after coming into effect of ACP Rules, were given the benefits of first ACP in the pay scale of Rs. 6,500 – 10,500/- which was subsequently revised to Rs. 8,000 – 13,500/-. After revision of their respective pay scales in the sixth pay revision w.e.f.



01.01.2006, they were given the replacement pay scale of pay band 2, i.e. Rs. 9,800 – 34,800/- with grade pay of Rs. 5,400/- and after the ACP Rules, 2003 was repealed with MACP Rules 2010, the petitioners were entitled for two financial upgradations on completion of 20 years of service or on 01.01.2009, whichever is later, but while granting the said benefits w.e.f. 01.01.2009, the Department granted the pay band 3, i.e. Rs. 15,600 – 39,100/- + grade pay of Rs. 6,600/- to the petitioners instead of the pay scale of pay band 3, i.e. Rs. 15,600 – 39,100/- with grade pay of Rs. 5400/-, for which they were entitled. When the Department realized its mistake, the same was rectified by the order contained in Memo No. 4447 dated 06.12.2017, in view of the Letter No. 3655 dated 10.05.2015 issued by the Finance Department. The said rectification was made in view of clause/para 8.1 of the MACP Scheme 2010. Clause 8.1 of the MACP Scheme, 2010 was subject matter of a writ petition and finally, the same was decided by a learned Division Bench of this Court in LPA No. 1126 of 2017 and the appeal preferred by the appellants of LPA No. 1126 of 2017 was dismissed by the Hon'ble Supreme Court of India on 18.04.2022 in SLP (C) No. 1925 of 2019.

13. Therefore, in view of clause 8.1 of the MACP Scheme 2010, the petitioners are entitled for pay band 3, i.e. pay



scale of Rs. 15,600 – 39,100/- with grade pay of Rs. 5,400/-, which was incorrectly given to them in the pay band 3 with grade pay of Rs. 6,600/-

14. Accordingly, I do not find any illegality in the impugned order contained in Memo No. 3127 dated 26.07.2022, Memo No. 899 dated 27.08.2021, letter No. 1162 dated 30.11.2021, letter No. 202 dated 23.02.2022 and letter No. 3655 dated 10.04.2015.

15. Accordingly, the writ petition is dismissed.

(Ritesh Kumar, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	06.02.2026
Uploading Date	24.02.2026
Transmission Date	NA

