

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No. 8063 of 2023**

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Raj Kumar Jha Son of Shrikant Jha, Resident of Village- Kashipur, P.S.-  
Samastipur, District- Samastipur, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Inspector General of Police (Training), Bihar, Patna.
3. The Deputy Inspector General, Munger Range, Munger.
4. The Assistant Inspector General of Police (Welfare), Bihar, Patna.
5. The Superintendent of Police, Jamui.
6. The District Accounts Officer, Jamui.

... ... Respondent/s

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*Quashing - for issuance of writ in the nature of certiorari for quashing Memo No.2470 dated 24/4/2023 issued by Deputy Inspector General, Munger wherein MACP's granted to the petitioners have been withdrawn by the Deputy Inspector General, Munger wherein MACP's granted to the petitioners have been withdrawn – for issuance writ in the nature of certiorari for quashing the quashing the Jamui Jiladash No.508/2023 issued by Supritendent of Police, Jamui – for issuance a writ in the nature of certiorari quashing the date of service of confirmation of petitioner and fixing the date of confirmation of petitioner as 6/3/1983 – for holding the actions of respondent authorities arbitrary and same deserves to be set aside and for holding and declaring that no recovery would be effected pursuant to aforesaid impugned orders against petitioner as he is not responsible for late passing of the supplementary training examination – the petitioner was appointed as Genera Constable in Rohtas District Police Force on 6/3/1983 after which he was transferred to Jamui District Force as Driver Constable – petitioner appeared in the basic training examination on 26/11/1984 in which he failed in the law paper but then he subsequently cleared the exam – the petitioner was granted the befit of 1<sup>st</sup> A.C.P. on 9/8/1999, 2<sup>nd</sup> MACP on 12/3/2009 and 3<sup>rd</sup> MACP on 12/3/2019 by the competent authority – thereafter the Suprintendent of Police, Jamui vide memo dated 22/7/2021 had sent the petitioner and others, who had not cleared the basic training examination for appearing in the supplementary training examination wherein the petitioner appeared and was subsequently declared to have passed the same on 8/2/2022- subsequently the petitioner superannuated on 31/1/2023 – after retirement the Deputy Inspector General of Police, Munger Range by impugned order dated 24/4/2023 has cancelled/ withdrawn the benefits of 1<sup>st</sup> ACP, 2<sup>nd</sup> MACP and 3<sup>rd</sup> MACP granted and the petitioner would only be entitled to grant of 1<sup>st</sup>*

ACP w.e.f. 8/2/2022 the day on which he cleared the supplementary exam of basic training- the Superintendent of Police, Jamui and issued consequential order dated 28/2/2023 which has also been challenged in the present proceedings – the order dated 28/11/2023 passed by this Court is reproduced – nowhere is depicted that passing of basic training examination, more particularly law paper is a condition precedent for grant of the benefits of ACP/MACP scheme – this court finds that the passing of any departmental examination/basic training examination cannot be a condition precedent for the purpose of grant of the benefits of ACP/MACP scheme- the aspect of the matter is covered by previous judgments – it is well settled law that no recovery can be effected from the petitioner, who has already attained the age of superannuation since there has neither been any fraud nor misrepresentation by the petitioner herein leading to payment of excess amount of salary whereas it is the negligence and laches on the part of respondent authorities which has led to excess payment of salary –this aspect of the matter is squarely covered by the judgments of the Hon’ble Supreme Court – having regard to the facts and circumstances of the case and for the foregoing reason this Court finds that the impugned order dated 24/4/2023 passed by Deputy Inspector General of Police, Munger Range as also the one dated 28/4/2023 passed by the Superintendent of Police, Jamui are perverse and contrary to law – the impugned order is hence quashed – the respondent authorities are directed to grant the benefit of ACP/MACP scheme to the petitioner with effect from due date without being impeded by the fact that the petitioner had not passed the basic training examination in time within a period of four weeks of receipt /production of a copy of this order – the petition stands allowed. Referred:

*State of Bihar & Ors v Ram Subhaj Singh* (LPA No.4 of 2021 reported in 2022 (2) PLJR 773

*State of Bihar & Ors v Anjani Kumar* 2013 (2) PLJR 643

*State of Bihar & Ors v Smt.Jivachi Devi* 2020 (2) BLJ 471

*State of Bihar & Ors v Shri Krishna Singh & Anr* (L.P.A. No.372 of 2019)

*Amresh Kumar Singh v State of Bihar & Ors* 2023 (2) PLJR (SC) 423

*State of Punjab & Ors v Rafiq Masih & Ors* 2015 (4) SCC 334

*Thomas Daniel v State of Kerela & Ors* 2022 SC online 536

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- 5. The Superintendent of Police, Jamui.
- 6. The District Accounts Officer, Jamui.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Prince Kumar Mishra, Advocate  
For the Respondent/s : Mr. P. K. Verma (AAG-3)  
Mr. Saroj Kumar Sharma, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 01-04-2024

The present writ petition has been filed seeking the following reliefs:-

“1. (a) For issuance of writ in the nature of Certiorari, quashing the Order contained in Memo No. 2470 dated 24/04/2023 issued by the Deputy Inspector General, Munger Range, Munger, whereby and whereunder, after superannuation of petitioner, 1<sup>st</sup> ACP, 2<sup>nd</sup> MACP and 3<sup>rd</sup> MACP, which was granted on 09.08.1999, 12.03.2009 and



*12.03.2019, respectively, has been withdrawn/cancelled and it has been stated that petitioner would be entitled to grant of first ACP on 08.02.2022, the day he cleared his supplementary examination of Basic Training.*

*(b) For issuance of writ in the nature of Certiorari, quashing the Jamui Jiladesh No. 508/2023 issued by Superintendent of Police, Jamui, whereby and whereunder in compliance of the Order contained in Memo No. 2470 dated 24/04/2023 issued by the Deputy Inspector General, Munger Range, Munger, after superannuation of petitioner, 1st ACP, 2nd MACP and 3rd MACP, which was granted on 09.08.1999, 12.03.2009 and 12.03.2019, respectively, has been withdrawn/cancelled/rescinded and it has been stated that petitioner would be entitled to grant of first ACP on 08.02.2022, the day he cleared his supplementary examination of Basic training.*

*(c) For issuance of writ in the nature of Certiorari, quashing the date of confirmation of service of petitioner*



*from 08.02.2022, and thereafter fixing the date of confirmation of petitioner as 06.03.1983.*

*(d) For holding and declaring that action of respondent authorities in canceling the 1st ACP, 2nd MACP and 3rd MACP, which was granted on 09.08.1999, 12.03.2009 and 12.03.2019, respectively, is arbitrary, unconscionable and illegal and therefor same deserves to be set aside.*

*(e) For holding and declaring that no recovery would be effected pursuant to aforesaid impugned orders against petitioner as he is not responsible for late passing of the supplementary training examination."*

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as General Constable in Rohtas District Police Force on 06.03.1983, whereafter he was transferred to Jamui District Force as Driver Constable. It is stated that the petitioner had appeared at the basic training examination on 26.11.1984, however, he had failed in the law paper but then he had



subsequently cleared the exam. Nonetheless, the petitioner was granted the benefits of 1<sup>st</sup> A.C.P. on 09.08.1999, 2<sup>nd</sup> MACP on 12.03.2009 and 3<sup>rd</sup> MACP on 12.03.2019 by the competent authority. Thereafter, the Superintendent of Police, Jamui vide Memo dated 22.07.2021 had sent the petitioner and others, who had not cleared the basic training examination, for appearing in the supplementary training examination, to be held at Primary School, Nath Nagar, wherein the petitioner had appeared and was subsequently declared to have passed the same on 08.2.2022. The petitioner had then superannuated on 31.01.2023.

3. The learned counsel for the petitioner has submitted that after retirement, the Deputy Inspector General of Police, Munger Range, by the impugned order dated 24.04.2023 has cancelled/withdrawn the benefits of 1<sup>st</sup> ACP, 2<sup>nd</sup> MACP and 3<sup>rd</sup> MACP granted to the petitioner, as aforesaid, on the ground that the petitioner would be entitled to grant of 1<sup>st</sup> ACP with effect from 08.02.2022, the day on which he had cleared the



supplementary exam of basic training. The Superintendent of Police, Jamui had then issued the consequential order dated 28.04.2023, which has also been challenged in the present proceedings. The learned counsel for the petitioner submits that no rule/regulation exists in the respondent police department, which stipulates that passing of the basic training examination is a condition precedent for grant of the benefits of ACP/MACP. In any view of the matter, it is submitted that law in this regard is no longer *res integra*, inasmuch as a learned Division Bench of this Court in the case of the ***State of Bihar & Ors. vs. Ram Subhag Singh*** (LPA No. 4 of 2021), reported in ***2022 (2) PLJR 773***, by a judgment dated 11.5.2022, has held that non-passing of departmental examination shall not be an impediment to grant of the benefits of time bound promotions / ACP /MACP.

4. It is next contended by the Ld. Counsel for the petitioner that the aforesaid aspect of the matter has also been conclusively decided by a



judgment, rendered by this Hon'ble Court in the case of ***State of Bihar & Ors. vs. Anjani Kumar***, reported in ***2013 (2) PLJR 643***, which has also been upheld by the Hon'ble Apex Court, by an order dated 10.3.2014, passed in SLP (C) No. 19182 of 2013. In this regard, reference has also been made to a judgment rendered by the learned Division Bench of this Court in the case of ***State of Bihar & Ors. vs. Smt. Jivachi Devi***, reported in ***2020 (2) BLJ 471***, which has also been upheld by the Hon'ble Apex Court, in view of dismissal of the Special Leave Petition filed by the respondent-State. The Ld. Counsel for the petitioner has next referred to a judgment rendered by the learned Division Bench of this Court in the case of ***The State of Bihar & Ors. vs. Shri Krishna Singh & Anr. (L.P.A. No. 372 of 2019)***. Lastly, reference has been made to a recent judgment, rendered by the Hon'ble Apex Court in the case of ***Amresh Kumar Singh & Ors. vs. The State of Bihar & Ors.***, reported in ***2023(2) PLJR (SC) 423***, wherein it has been held that extending the benefit of ACP,





which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, cannot be withheld for not possessing additional educational qualification, hence for the purposes of granting benefits of ACP/MACP, passing of any exam is not necessary.

5. The learned counsel for the petitioner has next contended that no recovery can be made from the petitioner, who is a retired employee, especially since there has been neither any misrepresentation nor any fraud has been committed by him leading to payment of excess amount of salary. Reference in this connection has been made to the judgments rendered by the Hon'ble Apex Court in the case of **State of Punjab & Ors. vs. Rafiq Masih & Ors.**, reported in **(2015) 4 SCC 334** as also the one rendered in the case of **Thomas Daniel vs. State of Kerala & Ors.**; reported in **2022 SC online SC 536**.

6. *Per contra*, the learned counsel for the respondents has referred to the supplementary



counter affidavit filed in the present case to submit that the respondents have issued an Order bearing Police Order No. 268/99, wherein at internal page No. 6, it has been mentioned that it is extremely necessary to have knowledge of certain subjects. Thus, it is submitted that since the petitioner had not passed the basic training examination, no benefits of ACP/MACP scheme could have been granted to him.

7. I have heard the learned counsel for the parties and perused the materials on record. This Court would, at the outset, reproduce herein below the order dated 28.11.2023, passed by this Court in the present case:-

*“The learned counsel for the respondent-State seeks some time to bring on record the scheme which postulates passing of basic training examination, more particularly, law paper, in which the petitioner had failed, but has subsequently passed, to demonstrate that non-passing of the same would dis-entitle the petitioner from grant of the benefits of ACP/MACP scheme.”*

8. Though the respondent-State has filed a



supplementary counter affidavit bringing on record the aforesaid Police Order No. 268/99, however, the same nowhere depicts that passing of basic training examination, more particularly law paper, is a condition precedent for grant of the benefits of ACP/MACP scheme. Thus, this Court finds that passing of any departmental examination/basic training examination cannot be a condition precedent for the purposes of grant of the benefits of ACP/MACP scheme. This aspect of the matter is squarely covered by the aforesaid judgments referred to by the learned counsel for the petitioner, rendered by the Hon'ble Apex Court in the case of **Amresh Kumar Singh** (supra) as also by the Ld. Division Bench of this Court in the case of **Ram Subhag Singh** (supra), **Anjani Kumar** (supra), **Smt. Jivachi Devi** (supra) and **Shri Krishna Singh & Anr.** (supra), some of which have also been upheld by the Hon'ble Apex Court.

9. It is a well settled principle of law that no recovery can be effected from the petitioner, who has already attained the age of superannuation



since there has neither been any misrepresentation nor any fraud has been committed by the petitioner herein leading to payment of excess amount of salary whereas it is the negligence and the laches on the part of the respondent authorities which has led to excess payment of salary. This aspect of the matter is squarely covered by the judgments rendered by the Hon'ble Apex Court in the case of **Rafiq Masih & Ors.** (supra), reported in **(2015) 4 SCC 334** as also by the one rendered in the case of **Thomas Daniel** (supra), reported in **2022 SC online SC 536**.

10. Having regard to the facts and circumstances of the case and for the foregoing reasons, this Court finds that the impugned order dated 24.04.2023 passed by the Deputy Inspector General of Police, Munger Range as also the one dated 28.04.2023, passed by the Superintendent of Police, Jamui are perverse and contrary to law, hence are quashed. The respondent authorities are directed to grant the benefits of ACP/MACP scheme



to the petitioner with effect from the due date without being impeded by the fact that the petitioner had not passed the basic training examination in time, within a period of four weeks of receipt/production of a copy of this order.

11. The writ petition stands allowed.

**(Mohit Kumar Shah, J)**

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	04.04.2024
Transmission Date	N/A

