

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18043 of 2021

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Shambhu Sharan Son of Late Govind Lal Resident of Village - Manpur, P.O.
Purani, Police Station- Giriyak, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna.
2. The Principal Secretary, Minor Water Resources Department, Government of Bihar, New Secretariat, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Old Secretariat, Patna.
4. The Chief Engineer, Minor, Water Resources Department, Government of Bihar, Patna.
5. The Superintending Engineer, Minor Water Resources Division, Patna.
6. The Executive Engineer, Minor Water Resources Division, Nalanda.

... .. Respondent/s

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Service Matter – Grant of ACP/MACP -- Petitioner was Appointed on 21.03.1979 in the minor irrigation department and He superannuated on 31. 01. 2012 from the office of the Executive Engineer minor irrigation Department, Nalanda, while working as correspondence clerk - During the service he was granted 1st and 2nd ACP with effect from 09.08.1999 and 02.09.2007 respectively vide letter dated 20.08.2011 - Again petitioner was then granted benefit of 3rd ACP/ MACP VIDE LETTER dated 21.05.2015 with effect from 29.08. 2011.- Accordingly pay fixation of petitioner Was carried out after proper verification from account office, Nalanda and the same was granted from the date of passing the accounts examination i.e with effect from 17.01.2010 vide letter dated 28.09.2011 - After Superannuation on 31.01.2012 pension fixation was also done - thereafter vide order dated 07.08.2021 earlier order granting the benefits of 1st ACP/ 2nd ACP/ and 3rd MACP have been withdrawn and also directed to recover the excess amount paid to the petitioner - Hence the instant writ application.

Respondent State also filed counter-affidavit stating therein that the petitioner passed Departmental examination Finally on 17.01.2010 So He entitle to get the benefit from the said date, as such earlier order have been reviewed and recovery order has been passed .

It is held , As this subject matter has already been earlier decided by this court in a case of State of Bihar versus Ram Subhag Singh by judgment dated 11.05.2022 IN LPA no.- 04/2021 (as reported in 2022(2)PLJR 773) --NON PASSING of departmental examination shall not be an Impediment to grant the benefit of Time Bound promotion/ACP MACP. Further Hon'ble Supreme Court India in a Case of Rafiq Masih & others had also held that no recovery can be made from retired employees --Hence impugned order dated 07.08.2021 is unsustainable in the eye of law – Hence, Quashed --Respondents are directed to Refund the Recovery made from the petitioner,if any, within a period of Four Weeks from today.

The writ petition stands Allowed

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6. The Executive Engineer, Minor Water Resources Division, Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mukul Prasad, Adv.
For the State : Mr.Kapileshwar Prasad Yadav, GP-11

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 06-03-2024

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

“1. That the petitioner prefers the present writ petition for the issuance of an appropriate writ or writs in the nature of certiorari or any other writ or writs and direction or directions for quashing the letter No. 976 dated 07.08.2021 issued by the Chief Engineer, Minor Water Resources



Department by which the 2nd A.C.P. and 3rd A.C.P. granted to the petitioner vide Annexure-5 have been withdrawn and excess payment made to the petitioner has been directed to be recovered in one lump sum and the name of the petitioner finds place at serial no. 125 and for restoration of Annexure-1 and 2 by which the petitioner has been granted the benefits of 2nd & 3rd A.C.P. with effect from 2.9.2007 and 29.2.2021 and also for a further direction for stay of recovery of the excess amount paid to the petitioner during service period.”

2. The learned counsel for the petitioner submits that the petitioner was appointed on 21.3.1979 in the Minor Irrigation Department and he superannuated on 31.1.2012 from the office of the Executive Engineer, Minor Irrigation Department, Nalanda, while working as Correspondence Clerk. He was granted benefit of 1st and 2nd ACP by the Respondent No. 4, vide letter dated 20.8.2011, with effect from 9.8.1999 and 2.9.2007 respectively. The petitioner was then granted benefit of 3rd ACP / MACP, vide letter dated 21.5.2015, with effect from 29.8.2011. It is also stated that the fixation of pay of the petitioner was carried out, after proper verification from the Accounts Office, Nalanda and the same was granted from the date of passing of the Accounts Examination i.e. with effect from 17.1.2010, vide



letter dated 28.9.2011. Now, after superannuation of the petitioner on 31.1.2012, after fixation of the pension of the petitioner, the Respondent No. 4 has issued an office order dated 7.8.2021, whereby and whereunder the earlier orders, granting the benefits of 1st ACP / 2nd ACP and 3rd MACP, have been withdrawn and it has been directed to recover the excess amount, paid to the petitioner, which is impermissible in law, in view of the law laid down by the Hon'ble Apex Court in the case of *State of Punjab & Others vs. Rafiq Masih & Others*, reported in *(2015) 4 SCC 334*.

3. Per contra, the learned counsel appearing for the Respondent-State has referred to the counter affidavit, filed in the present case, to submit that passing of departmental accounts examination is a pre-requisite for grant of the benefits of ACP / MACP Scheme and since the petitioner had passed departmental accounts examination finally on 17.1.2010, he is entitled to get the benefits of MACP with effect from the said date and not from a date prior to the same, as such, the earlier orders, granting petitioner the benefits of ACP / MACP, have been reviewed and recovery has been sought to be made qua the excess amount of salary paid to the petitioner.

4. I have heard the learned counsel for the parties and



perused the materials on record.

5. This Court finds that the law regarding the issue under consideration 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. In fact, this aspect of the matter has also been 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 be also had 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 the dismissal of the Special Leave Petition filed by the respondent-State. It would be equally gainful to refer 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)***. In a



recent judgement, rendered by the Hon'ble Apex Court in the case of ***Amresh Kumar Singh*** (supra), 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.

6. Thus, there is no iota of doubt that the petitioner has to be granted the benefits of the Assured Career Progression scheme as also that of MACP scheme, *de hors* the fact that the petitioner has not passed the Departmental Accounts Examination, in case he has not been promoted, in order to deal with the problem of stagnation.

7. This Court further finds that the law regarding recovery is no longer res integra, inasmuch as the Hon'ble Supreme Court of India in the case of ***Rafiq Masih & Others*** (supra) has categorically held that no recovery can be made from the retired employees. In this regard, it would be relevant to reproduce paragraph no. 18 of the aforesaid judgment, rendered in the case of ***Rafiq Masiq & Others*** (supra), hereinbelow:-

“18. It is not possible to postulate all situations of hardship which would govern employees on



the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(I). Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii). Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii). Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv). Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v). In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”



8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the impugned order dated 7.8.2021, passed by the Chief Engineer, Minor Water Resource Department, Patna, is unsustainable in the eyes of law, hence, is quashed and the Respondent authorities are directed to refund the recovery made from the petitioner, if any, within a period of four weeks from today.
9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.3.2024
Transmission Date	NA

