

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3861 of 2023

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Mala Devi Wife of Rajendra Mistri Resident of Ward no. 12, Madar Ghat Kasba, Police Station
Kasba, Distirct Purnea 854330.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education department, Govenment of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Purnea Division, Purnea.
5. The District Education Officer, Purnea.
6. The District Programme Offier, Establishment, Purnea.
7. The District Accounts Officer, Purnea.

... .. Respondent/s

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Assured Career Progression (ACP) Scheme/Modified Assured Career Progression (MACP) – passing of departmental accounts examination is not a condition precedent for grant of ACP under ACP Rules nor rule 157 (3)(J) of the Bihar Board’s Miscellaneous Rules conceives of such requirements – education qualification required for the purposes of promotion is not necessary for grant of in situ promotion – grant of ACP is not actually a grant of promotion, but increase in the Pay Scale to the next higher grade retaining the employee on the post held - the object of ACP is to avoid stagnation where no promotion avenues are available – grant of ACP/MACP to the petitioner from the date of exemption of passing the departmental examination is erroneous and is not sustainable in law.

Cases referred:

- i. L.P.A. No. 599 of 2015 (Ramadhar Thakur vs. The State of Bihar)
- ii. C.W.J.C. No. 17632/2013 (Rajkeshwar Singh vs. State of Bihar)
- iii. (2020) 2 BLJ 471 (State of Bihar & Ors. vs. Smt. Jivachi Devi)
- iv. SLP (C) No. 8219-8226 of 2019 (Amresh Kumar Sinha) & Ors. vs. The State Bihar & Ors.)

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rakesh Prabhat, Advocate
For the Respondent/s : Mr. Madan Jeet Kumar, G.P.-20

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 22-01-2024

- 1. Heard the parties.
- 2. The petitioner joined as clerk on 02.06.1999 in the Office of District School Inspector, Purnea. Vide letter no. 460 dated 09.08.2019. He was granted 1st MACP with effect from 31.08.2018 i.e. the date of exemption from passing the Departmental Examination. Immediately, thereafter vide letter no. 733 dated 22.10.2019, the date of grant of first MACP was modified to 02.06.2009 i.e. after



completion of ten years of service of the petitioner. The petitioner was granted second MACP vide letter no. 98 dated 29.01.2021 with effect from 02.06.2019 i.e. after 20 years of the initial date of joining.

3. Learned counsel for the petitioner submits that on the objection raised by the District Accounts Officer, the RDDE, Purnea vide letter no. 1100 dated 11.10.2022 (Annexure-4) modified the date of first MACP with effect from 31.08.2018 and accordingly second MACP was withdrawn/cancelled. Learned counsel next submits that the Division Bench of this Court in ***L.P.A. No. 599 of 2015 dated 19.03.2018 (Ramadhar Thakur Vs. the State of Bihar and Ors.)*** has held that passing of Departmental Accounts Examination is not a condition precedent for grant of Assured Career Progression neither under the ACP Rules nor Rule 157(3)(J) of the Bihar Board's Miscellaneous Rules conceives of such requirement.
4. This Court has also decided a similar question in the case of ***Rajkeshwar Singh Vs. State of Bihar (CWJC No. 17632/2013)*** regarding grant of MACP/ACP and relying upon the judgment of Division Bench in Ramadhar Thakur (Supra), has held that there is no requirement for



passing of Departmental Accounts Examination for grant of ACP.

5. On the other had learned counsel for the State submits that the petitioner was required to pass departmental examination for grant of ACP/MACP for which she was exempted with effect from 31.08.2018, due to which the actual monetary benefit arising out of the first MACP has been granted to the petitioner from the date of exemption of passing the Departmental Examination i.e. from 31.08.2018 and before completion of 20 years in service, the petitioner retired on 31.07.2022, therefore, the second MACP has been withdrawn.
6. Having heard learned counsel for the parties it appears that the only issue which requires consideration is whether the passing of the departmental examination is a condition precedent for grant of ACP/MACP or not. The Division Bench of this Court in ***L.P.A. No. 599 of 2015 dated 19.03.2018 (Ramadhar Thakur Vs. State of Bihar and Ors.)*** has held that passing of departmental Accounts Examination is not a condition precedent for grant of Assured Career Progression under the ACP Rules nor Rule 157(3)(J) of the Bihar Board's Miscellaneous Rules



conceives of such requirement.

7. In yet another Division Bench judgment reported in **2020 (2) BLJ 471 (State of Bihar & Ors. Vs. Smt. Jivachi Devi)** this Court has held that the State is not justified by denying (refusing) benefits of the financial progression to the employee on the ground that he did not pass the accounts examination or departmental accounts examination.
8. Hon'ble Supreme Court in the judgment bearing **SLP (C) No. 8219-8226 of 2019 Amresh Kumar Sinha & Ors. Vs. The State of Bihar & Ors.** has held that "fulfillment 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 purpose of promotion is not necessary for 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."
9. The Supreme Court has also observed that the object of ACP is to avoid stagnation where no promotion avenues are available. The grant of ACP is not actually 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 effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.

10. Having heard learned counsel for the parties and considering the aforesaid discussion and in view of the law laid down by the Division Bench of this Court and the judgment of the Hon'ble Supreme Court, the grant of ACP/MACP to the petitioner from the date of exemption of passing the departmental examination is erroneous and is not sustainable in law.
11. The grant of ACP or MACP is in situ promotion in which only financial upgradation is given to the employees for a long period of service and in order to avoid stagnation, as such, the withdrawal of the second ACP granted to the petitioner by the respondent no. 4 is also not sustainable.
12. Accordingly, the impugned letter no 1100 dated 11.10.2022 at Annexure 4 is set aside and the petitioner shall be entitled for payment of actual monetary benefit from the date of first MACP granted to her w.e.f.



02.06.2009 and second MACP w.e.f. 02.06.2019.

Accordingly, the respondent is directed to pay the consequential benefit to the petitioner w.e.f. 02.06.2009 and 02.06.2019 within a period of four weeks from the date of production/ receipt of the copy of this order.

13. In the result, this writ application is allowed.

14. There shall be no order as to costs.

(Anil Kumar Sinha, J)

shweta/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06.02.2024
Transmission Date	N/A

