

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 19186 of 2021

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Nand Kishore Singh Son of Late Janki Singh, Resident of Village-Tarwan,
P.S.-Phulwarisharif, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Vishweshwaraiya Bhawan, Baily Road, Patna.
2. Chief Engineer, (North) Road Construction Department, Government of Bihar, Vishweshwaraiya Bhawan, Baily Road, Patna.
3. Superintending Engineer, Saran Road Circle, Road Construction Department, Hajipur
4. Executive Engineer, Road Division Chapra Road Construction Department, Government of Bihar,

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur, Advocate
Mr. Braj Kishore Singh, Advocate
For the State : Mr. Syed Iqbal Ahmad (Sc20)
Md. Zeeshan Kalim, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 06-12-2023

The present writ petition has been filed for setting aside the order dated 03.6.2016, issued by the Superintending Engineer, Saran Road Circle, Road Construction Department, Hajipur, i.e. the respondent no.3, in so far as the same concerns the petitioner, whereby and whereunder the petitioner has not only been denied the benefits of second and third Assured Carrier Progression



scheme (herein after referred to as the ACP) but has been granted the benefit of 1st ACP w.e.f. 17.01.2010, i.e. from the date of passing of the Departmental Accounts Examination instead of the date of his entitlement i.e. 09.08.1999. The petitioner has also sought quashing of the order dated 28.07.2021, passed by the respondent no.3, in so far as the same concerns the petitioner whereby and whereunder the petitioner has been granted the benefits of 2nd ACP with effect from 17.01.2020, however he has not been granted the benefits of 3rd ACP/MACP.

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as Junior Accounts Clerk in the Road Construction Department on 23.05.1987 and at the moment he is posted as Sr. Accounts Clerk at the Road Division, Chapra, which falls under Saran Road Circle.

3. The learned counsel for the petitioner has submitted that the petitioner has not only passed the Hindi Noting and Drafting Examination, but has also passed the Departmental Accounts



Examination, however, he has not been granted the benefits of 1st ACP with effect from 09.08.1999, i.e. upon expiry of 12 years of his service, rather he has been illegally granted the benefits of 1st ACP with effect from 17.01.2010, i.e. the date of passing of the Departmental Accounts Examination and similarly, the respondents have erroneously granted the benefits of 2nd ACP with effect from 17.01.2020 instead of 01.01.2009. It is further submitted by the learned counsel for the petitioner that it is a well settled law that non-passing of the Departmental Accounts Examination cannot be an impediment to grant of the benefits of ACPs/MACPs scheme and in this regard, he has referred to a 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**. Thus, it is submitted that the petitioner is entitled to grant of the benefits of the ACP/MACP schemes from the due date without the respondents being impeded by the factum of non-passing of the Departmental



Accounts Examination in time.

4. *Per contra*, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case that the petitioner was appointed as Junior Accounts Clerk on 23.05.1987 and as per Clause 4 of the ACP Rules, 2003, the petitioner is required to obtain similar qualification as are prescribed under the Recruitment/Service Rules for Regular Promotion, against the existing vacancies and in case the Rules/Regulations prescribe passing of the departmental examination, the same is required to be passed for sanction of the benefits under the ACP/MACP scheme. It is stated that since the petitioner has passed the Departmental Accounts Examination with effect from 17.1.2010, he was allowed the benefit of 1st APC with effect from 17.01.2010 and after completion of ten years, starting from 17.01.2010, the petitioner has been granted the benefits of 2nd MACP with effect from 17.01.2020. Therefore, it is submitted that the present writ petition is devoid of any merit and the



same is fit to be dismissed.

5. I have heard the learned counsel for the parties and perused the materials on record.

6. 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.

7. 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.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the impugned orders dated 03.06.2016 and the one dated 28.07.2021, passed by the respondent no.3, as far as the same relates to the petitioner, are quashed and the respondent-authorities are directed to grant the benefits of the 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 Departmental Accounts examination in time.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.12.2023
Transmission Date	NA

