

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2115 of 2023

1. Ashutosh Kumar, Son of Late Siya Sharan Singh Resident of Village-Karisowa , Police Station-Wazirganj, District-Gaya, Presently residing at Chankayapuri Colony, Near Mau Bhavan, Police Station-Rampur, District-Gaya.
2. Ramesh Kumar,, Son of Late Kesho Singh Resident of Village- Sultanpur, Police Station-Mokamah, District-Patna, Presently Residing at D/10, Police Colony, Near Sai Mandir, Anisabad, Patna.
3. Shivnath Pandey Son of Late Ram Prit Pandey, Resident of Mohalla-Basant Vihar Colony, Raghunath Path, Baily Road, Police Station-Danapur, District-Patna.
4. Surendra Kumar Singh, Son of Late Roop Narayan Singh Resident of House No. 289, Guljar Pokhar, Ward No. 13, Munger, Police Station Kotwali, District-Munger.
5. Prem Shankar Singh Son of Late Sadhu Ram Singh Resident of Ward No.1, Chhapar Bigha, Police Station-Belsand, District-Sitamarhi.
6. Devanand Srivastava, Son of Late Kamta Prasad Srivastava, Resident of Kamta Niwas, Near Over Bridge Maripur, Muzaffarpur, Police Station-District-Muzaffarpur.
7. Shyam Sunder Prasad, Son of Late Daya Shanakr Prasad Resident of Village-Harhsarganj, Police Station-Hathsarganj, District-Vaishali at Hajipur.
8. Md. Zubair Alam Son of Late Md. Ayub, Resident of Road No. 03, New Nagmatiya Colony, Police Station-Kotwali, District-Gaya.
9. Sohail Ahmad Son of Late Anwar Hussain, Resident of Ward No.32, Gali No. 03, Near Agarwa, District-Motihari at East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-Cum-Principal Secretary, Labour Resource Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Law Secretary, Department of Law, Government of Bihar, Patna.
6. The Labour Commissioner, Department of Labour Resource, Government of Bihar, Patna.

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 17626 of 2022

1. Shankar Dayal Upadhyay Son of Late Keshva Nand Upadhyay Resident of Flat No. 103, Keshva Malti Enclave, Police Colony, Phulwari, Patna-800025.
2. Rabindra Nath Pandey Son of Late Ramadhar Pandey Resident of B 106, Dream Jewel Apartment, R.K. Puram, Mainpura, Patna-801503.
3. Anand Kumar Tiwari Son of Late Ram Pujan Tiwari Resident of 22 Magadh Vihar, Gardanibagh, Phulwari, Patna-800002.
4. Harish Chandra Thakur Son of Late Mahendra Thakur, Resident of Dronpur, Jhapaha, Muzaffarpur-842004.
5. Chandra Bhushan Thakur Son of Late Ram Ratan Thakur Resident of Adarsh Colony, Kalambagh Road, Mahammadpur Kazi, Muzaffarpur-842001.
6. Manju Sinha Wife of Sri Mritunjay Kumar Sinha Resident of House No. A/6, Road No. 1, Sachivalya Colony, Kankarbagh, Patna-800020.
7. Ashok Kumar Sinha Son of Late Ram Nandan Lal Resident of B 3, Housing Colony, Kankarbagh, Patna-800020.
8. Raj Kumar Sharma Son of Late Ram Chandra Sharma Resident of Flat No.101, Pushpa Mansion, Vivekanand park Colony, North S.K. Puri, Patna-800013.
9. Jagata Nand Dubey Son of Late Sadhu Sharan Dubey Teacher Colony Charitravan, Buxar-802101.
10. Surendra Prasad Singh Son of Late Ganesh Prasad Singh Resident of E/2-15, Chandra Villa, Sadhnepuri, Phulwari, Patna.-800001.
11. Rajpati Narain Son of Late Dev Waran Singh, Resident of Village-Raghunathpur, P.S. Paliganj, District-Patna.
12. Bali Bihari Prasad Son of Late Anirudh Prasad Resident of Village Dumraon, Nimaj Tola, P.O.-Dumraon, District-Bhojpur.
13. Shashi Bhushan Prasad Srivastava, Son of Late Ganesh Prasad Resident of near Durga Mandir, Village-Siswania, P.S.-Uchkagaon, District-Gopalganj.
14. Narendra Deo Kumar Son of Late Dilip Kumar Singh Resident of M-12, Vijay Bihar Colony, East Gola Road, Danapur, Patna-801503

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
3. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
4. The Principal Secretary, Finance Department, Government of Bihar, Patna,
5. The Commissioner, Labour Resources Department, Government of Bihar,



Patna.

6. The Joint Commissioner, Labour Resources Department, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18262 of 2019

-
1. Sudhir Kumar Sinha S/o Late Parmeshwar Dayal Resident of Mohalla-Mahendru, P.o.- Mahendru, P.s.- Sultanganj, Town and District- Patna-800006, Bihar Secretariat Canteen, Patna
 2. Arun Kumar S/o Late Ram Darshan Prasad Resident of House No. NA 3/1, New Alkapuri, P.o.- Anisabad, P.s.- Gardanibagh, Patna-800002, superannuated as Labour Superintendent-cum-Deputy Registrar, Trade Union, New Secretariat, Bihar, Patna
 3. Ashok Kumar S/o Late Braj Raj Ram Resident of Flat No. 207, Surya Laxmi Villa, Ram Jaipal Path, Bailey Road, Patna-801503, superannuated as labour Superintendent-cum-Deputy Registrar, Trade Union, Niyojan Bhavan, Bailey Road, Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Additional Chief Secretary/Principal Secretary Labour Resources Department, Govt. of Bihar, Niyojan Bhavan, Patna
3. The Principal Secretary Finance Department, Govt. of Bihar, patna
4. The Commissioner Labour Resources Department, Govt. of Bihar, Patna
5. The Joint Commissioner Labour Resources Department, Govt. of Bihar, Patna
6. Secretary to labour Commissioner cum Drawing and Disbursing Officer Labour Commissioners Office, Niyojan Bhavan, Bailey Road, Patna
7. Manager cum Drawing and Disbursing Officer Bihar Secretariat Canteen, Old Secretariat, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No.1741 of 2023

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1. Pramod Kumar Srivastava Son of Shri Jagdish Prasad Resident of Duplex No.- D/7, Balajee Greens, Ainthapalli, Sambalpur- 768004.
 2. Vijay Kumar Singh, Son of Shri Krishna Ballabh Singh Resident of Opposite Diksha School, at Sai Niwas Indira Nagar Mal Godam, Nwadha, Gondapur, Nawada, Bihar- 805110.
 3. Arun Kumar Paswan, Son of Late Gambhir Paswan Resident of Khurd, Sughari, Nawada, Bihar- 805126.
 4. Prabhat Kumar Barua, Son of Bhola Nath Barua Resident of Mahendru



Mohalla, Sampatchak, Patna, Bihar- 800006.

5. Shambhu Nath Prasad Gupta, Son of Late Umanath Prasad Gupta Resident of West Bhagwan Bazar, Chapra, Saran, Bihar- 841301.
6. Subodh Kumar, Son of Late Chandradeo Prasad Resident of Nasriganj, Opposite Prem Brij Vatika, Danapur, Danapur cum Khagaul, Patna, Bihar- 800012.
7. Ashok Kumar Sinha, Son of Ramanujesh Prasad Resident of A/21, Kankarbagh Housing Colony, P.O.- Lohiyannagar, P.S.- Kankarbagh, District and Town- Patna- 800020, Bihar.
8. Manoj Kumar Singh, Son of Late Baijnath Prasad Varma Resident of Village and Post Adampur, Police Station Giriyaak, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar Represented through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
3. The Labour Commissioner, Labour Resources Department, Government of Bihar, Patna.
4. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 1961 of 2023

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1. Umesh Prasad Singh Son of Shri Vidya Narayan Singh Resident of Village and Post Chatauni, P.S. Basopatti, District Madhubani, PIN-847225, Bihar.
 2. Arun Kumar Singh Son of Late Awadh Bihari Singh Resident of A/25, Police Colony, Anisabad, Phulwari, District-Patna-800002,
 3. Raman Kumar Singh Son of Shri Braj Kishore Singh Resident of Professor Colony, Gangjala, Ward No. 16, Kahara, Saharsa.
 4. Rabindra Bhushan Son of Late Madan Lal Resident of House No. B/6, Sachiwalaya Colony, Kankarbagh, P.S. Patrakar Nagar, P.O. Lohiya Nagar, PIN-800020, Bihar.
 5. Dipendra Bhushan Son of Shri Parmeshwar Dayal Resident of 202, Sanskriti Apartment, Bhuthnath Road, Amarnath Mandir, Adarsh Colony, Patna- 800026.

... .. Petitioner/s

Versus

1. The State of Bihar represented through the Chief Secretary, Government of Bihar, Patna.



2. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
3. The Labour Commissioner, Labour Resources Department, Government of Bihar, Patna.
4. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
5. The Principal Secretary, General Administration Department, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18248 of 2022

Bhola Shankar Choudhary Son of Late Prafulla Chandra Choudhary Resident of Near Lal Kothi, New Area Jakkanpur, Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
3. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
4. The Principal Secretary, Finance Department, Government of Bihar, Patna,.
5. The Commissioner, Labour Resources Department, Government of Bihar, Patna.
6. The Joint Commissioner, Labour Resources Department, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 18515 of 2022

1. Ramanuj Brahamchari Son of Late Shital Singh, Resident of Mohalla - Krishna Vihar Colony, Road No. 7A, Beur Bitaura, Police Station - Beur, District - Patna.
2. Nagendra Kumar Pandey Son of Late Ram Sumer Pandey, Resident of Kamla Apartment, Flat No. 202, Visheshwaraiya Nagar, New Baily Road, Patna, Police Station - Rupaspur, District - Patna.
3. Chandra Bhushan Prasad Singh, Son of Late Jatadhari Prasad Singh, Resident of Flat No. B- 102, Shree Apartment, West Anandpuri, Patna - 800001, Police Station - Anandpuri, District - Patna.
4. Upendra Prasad, Son of Late Mukhal Roy, Resident of House No. 430, Ward No. 37, Gola Road, Danapur, Patna, Police Station Rupaspur, District - Patna.



5. Anil Kumar Sharma, Son of Late Mundrika Singh, Resident of Vijay Nagar, Rukanpura, Road No. 3A, East of Patel Chauk, Police Station - Rupaspur, District - Patna.
6. Pramod Kumar Mishra, Son of Late Hari Shankar Mishra, Resident of 303A, Kali Mandir Road, Prasad Apartment, Hanuman Nagar, Patna, Police Station Hanuman Nagar, District - Patna.
7. Janardan Singh, Son of Late Barho Singh, Resident of Village- Barhar, Police Station - Rajauli, District - Nawadah.
8. Dilip Bhartiya, Son of Late Devendra Prasad Chaudhary, Resident of House No. 16, Justice Nandlal Path, Rajbanshi Nagar, Patna, Police Station - Shastri Nagar, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, Labour Resource Department, Government of Bihar, Patna.
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Law Secretary, Department of Law, Government of Bihar, Patna.
6. The Labour Commissioner, Department of Labour Resource, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3747 of 2023

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1. Dr. Umesh Narayan Parbat Son of late Ram Narayan Parbat, resident of Village - Mora, P.O. - Mora, P.S. - Bhagwanpur Hat, District - Siwan, at present - Flat no. 102, Aditya Palace, PGS More, Ambedkar Chawk, Danapur- 801503.
 2. Hemant Kumar Das, Son of late Ramesh Chandra Das, resident of Village - Ballor, P.O. - Ballor, P.S. - Manigachhi, District - Darbhanga.
 3. Tripurari Sharan Srivastava, Son of late Bishwanath Sah, Labour Enforcement Officer (Retired), resident of Sub-registry Office Compound, P.O. Dalsingh Sarai, P.S. - Dalsingh Sarai, District - Samastipur, at present at 105 B, Magistrate Colony, P.O.- Ashiyana Nagar, P.S.- Rajeev Nagar, District - Patna - 800025.
 4. Nagendra Kumar Mishra, Son of Late Bhuneshwar Nath Mishra, Labour Enforcement Officer (Retired), resident of Mohalla - Shivpuri, Ward no. 16, At and P.O. and P.S.- Buxar, District - Buxar.
 5. Deepak Kumar son of Late Bishwanath Sah, Labour Enforcement Officer (Retired), resident of D.N. Das, Lane, Langar Toli, P.S. - Kadamkuan, Patna



- 800004, at present at Ward no. 34, Shankar Puri, P.O. - Ramna, District - Muzaffarpur.

6. Baikunth Singh, Son of Late - Ram Ekbal Singh, Labour Enforcement Officer (Retired), resident of Village- Nagwan, P.O. - Chorauli, P.S. - Basantpuri, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Personal and Administrative Reforms Department, Government of Bihar, Old Secretariat Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Old Secretariat Patna.
4. The Principal Secretary, Labour Resources Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna.
5. The Commissioner, Labour Resources Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna.
6. The Joint Commissioner, Labour Resources Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna.
7. The Deputy Secretary, Labour Resources Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna.
8. The Deputy Secretary, Personal and Administrative Reforms Department, Government of Bihar, Niyojan Bhawan, Bailey Road, Patna.
9. The Deputy Secretary, Finance Department, Government of Bihar, Old Secretariat Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 2115 of 2023)

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG 13
Mr. Rajat Kumar Tiwari, AC to AAG 13

(In Civil Writ Jurisdiction Case No. 17626 of 2022)

For the Petitioner/s : Mr. Arun Kumar Sinha, Advocate
For the Respondent/s : Mr. Rakesh Prabhat, AC to SC 21
Mr. Sarvesh Kumar Singh, AAG 13
Ms. Anuradha Singh, SC 21

(In Civil Writ Jurisdiction Case No. 18262 of 2019)

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Arun Kumar Sinha, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG 13
Mr. Naman Nayak, AC to AAG 13

(In Civil Writ Jurisdiction Case No. 1741 of 2023)



For the Petitioner/s : Mr. Mrigank Mauli, Sr. Advocate
Mr. Kumar Ravish, Advocate
Mr. Sanket, Advocate
Ms. Siddhi Aashana, Advocate
For the Respondent/s : Mr. Sarvesh Kumar (GP 24)
Mr. Ravi Kumar, AC to AAG 13
Mr. Abhinav Alok, AC to AAG 13
Mr. Tej Pratap Singh, AC to AAG 13

(In Civil Writ Jurisdiction Case No. 1961 of 2023)

For the Petitioner/s : Mr. Kumar Ravish, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG 13
Mr. Ravi Kumar, AC to AAG 13
Mr. Abhinav Alok, AC to AAG 13

(In Civil Writ Jurisdiction Case No. 18248 of 2022)

For the Petitioner/s : Mr. Arun Kumar Sinha, Advocate
For the Respondent/s : Mrs. Anuradha Singh (SC 21)
Mr. Rakesh Prabhat, AC to SC 21
Mr. Sarvesh Kumar Singh, AAG 12

(In Civil Writ Jurisdiction Case No. 18515 of 2022)

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr. Sarvesh Kumar (GP24)

(In Civil Writ Jurisdiction Case No. 3747 of 2023)

For the Petitioner/s : Mr. M.N.Prabhat, Sr. Advocate
Mr. Praveen Prabhakar, Advocate
Mr. Ved Prakash Srivastava, Advocate
For the Respondent/s : Mrs. Anuradha Singh (SC21)
Mr. Rakesh Prabhat, AC to SC 21

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT**

Date : 08-10-2024

1. The common question as to whether the Respondents as government officials acting on behalf of the State, being fully competent and duly authorized in that behalf, after taking decision of eligibility to the benefit of Modified Assured Career Progression (M.A.C.P.) in favour of the Petitioners, can modify such notification / order by a subsequent notification and deny the financial benefit to the Petitioners, which they were enjoying by virtue of the previous order passed



by the competent authority.

2. Since the common question of law, as enumerated above, is involved in the above-mentioned batch of writ petitions, involving the superannuated employees of the Labour Enforcement Department, Government of Bihar, all the writ petitions were heard analogously and the same is disposed of by this judgement.

3. Since the factual matrix involved in all the writ petitions are almost similar, I propose to deal with the facts involved in C.W.J.C. No. 2115 of 2023 hereinbelow.

4. I also propose to mention factual deviations, if any, in other writ petitions, which are taken up for adjudication along with C.W.J.C. No. 2115 of 2023.

5. In C.W.J.C. No. 2115 of 2023, there are nine (09) Petitioners, who superannuated on attainment of the age of retirement. The Petitioners were initially appointed on the post of Labour Enforcement Officer under Labour Resources Department, Government of Bihar on the basis of the recommendation made by the Bihar Staff Selection Commission and their services were governed by Labour Enforcement Officer (Selection) Rules, 1990, in which there was no promotional avenues available. In the absence of any



promotional avenues, there was obvious stagnation in respect of pay-scale of the Petitioners. Subsequently, as per the recommendation of the 5th Pay Commission, the State Legislature accepted policy of Assured Career Progression (A.C.P.) and the Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as “A.C.P. Rules, 2003” for short) was promulgated w.e.f. 9th of August, 1999. The Scheme provides that if a government employee is employed in a non-promotional service, he is entitled to get financial progression on completion of 12 and 24 years of service by way of 1st A.C.P. and 2nd A.C.P. Subsequently, the A.C.P. Rules of 2003 for Bihar State employees were repealed on July 13, 2010 and replaced/substituted by the Bihar State Employees Service Conditions (Modified Assured Career Progression) Scheme, 2010 (hereinafter referred to as “M.A.C.P Scheme, 2010” for short), stipulating grant of financial benefit to the employees after 10, 20 and 30 years of service, if an employee does not have any promotional avenue in his service.

6. In respect of their service as Labour Enforcement Officer, it is submitted by the Petitioners that under Rule 3 of Bihar Labour Service (General) Rules, 1969, there were two



types of Class-II posts in the cadre, viz.,

*(i) Class-II post (Senior Branch)
consisting of Assistant Labour Commissioner at
the 1st place and Labour Superintendent at the
2nd place; and*

*(ii) Class-II posts (Junior Branch)
consisting of Labour Officer in the 1st place and
remaining other posts in the 2nd place.*

7. Similarly, Rule 5 of Bihar Labour Service (General) Rules, 1969 stipulates that there were two sources of appointment in the department, first by way of competitive examination conducted by the Public Service Commission and secondly by way of promotion. Therefore, as per Bihar Labour Service (General) Rules, 1969, the Labour Enforcement Officers had promotional scope on the higher post of Labour Superintendent. Since there was no promotional post under the name and style of Labour Officer, Labour Enforcement Officers were promoted to the post of Labour Superintendent in the pay-scale of Rs. 6500-10500/- and the subsequent promotional post was Assistant Labour Commissioner in the pay-scale of Rs. 10000-15200/-, considering the cadre of Labour Enforcement Officer as feeder cadre for promotion to the post of Labour Superintendent.

8. It is further stated that issue relating to entitlement



of the Labour Enforcement Officers for promotion on the post of Labour Superintendent has been set at rest in C.W.J.C. No. 10625 of 2006, *vide* order, dated 30th of June, 2010.

9. Thereafter, Bihar Labour Enforcement Officers Association filed a writ petition bearing C.W.J.C. No. 14956 of 2009 claiming 2nd ACP in the pay-scale of Rs. 10000-15200/- admissible to the post of Assistant Labour Commissioner in place of Rs. 7500-12000/-. The said writ petition was disposed of *vide* an order dated 23rd of November, 2009, directing the State Government to take decision on pending representation submitted by the Petitioners/Association within 3 months by a reasoned order.

10. The Respondent No. 6, Labour Commissioner, Bihar passed a reasoned order, bearing Memo No. 68, dated 21st of May, 2011, rejecting the claim of the association, which again prompted Bihar Labour Enforcement Officers Association to file C.W.J.C. No. 15501 of 2011 in context to Finance Department's Notification bearing No. 769, dated 28th of January, 2008 under which amendment of Rule 3 of ACP Rules, 2003 was made with retrospective effect of 9th of August, 1999 by adding a proviso in Sub-Rule (2) of Rule 3, stating, *inter alia*, that if there is a provision for promotion of government employee from one



cadre to another cadre, in that event the government employee would be entitled for financial progression under ACP scheme in the minimum scale of next cadre by way of first promotion and thereafter would be entitled for next scale of higher post of the said cadre by way of his second promotion under ACP scheme. During the pendency of C.W.J.C. No. 15501 of 2011, the State Government promulgated Bihar Labour Service (Appointment and Service Condition) Amendment Rules, 2014, wherein it is clearly stipulated in Rule 6 that 50 per cent of total basic grade post of the cadre would be filled up from the cadre of Labour Enforcement Officers and Labour Welfare Officers on seniority-cum-eligibility basis. As per the classification of cadre mentioned in Rule 3 of the Amendment Rules, 2014, basic post in the cadre is Labour Superintendent and the next promotional post is Assistant Labour Commissioner and thereafter Deputy Labour Commissioner.

11. The claim of the Petitioners regarding grant of ACP was considered by the Respondent authorities and on the basis of the approval issued by the Finance Department, the Labour Commissioner passed a fresh order bearing Memo No. 3306, dated 29th of July, 2016, specifically mentioning that Labour Enforcement Officers will get 1st MACP on the post and



pay of Labour Superintendent and 2nd MACP on the post and pay of Assistant Labour Commissioner.

12. In view of the above notification, dated 29th of July, 2016, the grievance of the Petitioners was set at rest and C.W.J.C. No. 15501 of 2022 was disposed of being infructuous vide order dated 24th of October, 2016. Pursuant to the decision taken by the Labour Commissioner, Bihar, claim of MACP of Labour Enforcement Officers were considered by the Screening Committee in its meeting dated, 26th of June, 2018 and 35 numbers of Labour Enforcement Officers were recommended for grant of 3rd MACP in grade pay of Rs. 7,600/- and claim of about 31 Labour Enforcement Officers were refused on the ground of non-availability of confidential report during certain period of their service. Again claim of about 32 numbers of Labour Enforcement Officers was kept pending without any reason whatsoever.

13. In the instant writ petition, Petitioner Nos. 3 and 5 to 9 have already been granted 1st, 2nd and 3rd MACP whereas Petitioner Nos. 1, 2 and 4 have not been extended the benefit of 3rd MACP on the technical ground of non-availability of confidential report at the time of holding the meeting of Screening Committee for grant of MACP. All the Petitioners got



the 1st and 2nd MACP in the pay-scale of Labour Superintendent as well as Assistant Labour Commissioner. The Labour Enforcement Officers whose claim for grant of MACP was denied by the Screening Committee for non-availability of confidential report or any other ground, filed separate writ petition bearing C.W.J.C. No. 1882 of 2021 and C.W.J.C. No. 9517 of 2021. The said writ petitions were disposed of, directing the concerned Respondent to proceed, issuing detailed show cause notice as to why the said officers/Petitioners are not entitled to MACP as it was due to the Petitioners. On receipt of Petitioners' explanation, the concerned Respondent was directed to pass speaking order as to whether Petitioners are entitled to MACP or not.

14. Under the above factual background, the present writ petition challenges the decision of the Labour Commissioner, Bihar passed vide a Memo No. 4504, dated 18th of November, 2022, whereby the Labour Commissioner, Bihar, Respondent No. 6 herein, revoked the benefits of MACP granted to the Petitioners vide Memo No. 3306, dated 29th of July, 2016, resulting in the demand for recovery of excess payment made to the Petitioners which they claimed is illegal, unfair, unjust and violative of Principles of Natural Justice as



well as Articles 14 and 16 of the Constitution of India.

15. The Respondent Nos. 3, 5 and 6 have been contesting the instant writ petition by filing a counter affidavit. It is pleaded by the contesting Respondents that the benefit of ACP is admissible only where the promotional post is not available in a particular cadre of service by virtue of the proviso to Rule 3 of the ACP Rules, 2003 which was introduced by the Finance Department vide a Notification No. 769, dated 20th of January, 2008. It is clearly stated that in a case where there is a provision of promotion from one cadre to another, in such cases, the Government Servant of first cadre is entitled for the lowest scale of second cadre as ACP and similarly, the Government Servant is entitled for 2nd ACP in the next higher scale. Subsequently, vide a Notification No. 7566, dated 14th of July, 2010, MACP Rules, 2010 was promulgated. MACP Rules also provides that where a regular promotion is not provided to a government employee then he is entitled for financial progression in higher scale after completing 10, 20 and 30 years of regular service.

16. It is also stated by the contesting Respondents that in the light of the 5th Pay Revision, pay-scale of Labour Enforcement Officers was approved at Rs. 5500-9000/- w.e.f. 1st



of January, 1996, but, later on, the said pay-scale was reduced to Rs. 5000-8000/-, vide a Memo No. 9803, dated 21st of October, 2011 w.e.f. 1st of January, 1996.

17. It is further pleaded by the contesting Respondents that the Labour Resource Department again took opinion of the Finance Department in the year 2021 in the light of the recommendation of the Departmental Screening Committee, determining service conditions of Labour Enforcement Officers because in the erstwhile Bihar Labour Service Rules, 1969, there was no provision for regular promotion of the Labour Enforcement Officers to the post of Labour Superintendents. Later on, by virtue of Bihar Labour Service (Appointment and Service Conditions), Amendment Rules, 2014, promotional avenue was created and it is provided that 50 per cent of total basic grade posts of the cadre would be filled up by promotion from the cadre of Labour Enforcement Officers and Labour Welfare Officer on seniority-cum-eligibility basis.

18. In view of the introduction of promotional avenue, the Departmental Screening Committee in its meeting, dated 16th of August, 2022 decided as hereunder:-

(i) As per the order, dated 29th of July, 2016, a government servant in the cadre of Labour Enforcement Officer whose promotion



to the post of Labour Superintendent is admissible, would be entitled for 1st Financial Progression to the pay-scale/grade of post of Labour Superintendent and further 2nd Financial Progression to the pay-scale/grade-pay of the post of Assistant Labour Commissioner as per provision envisaged in ACP/MACP Rules. However, prior to 2014, as there was no provision for regular promotion from the post of Labour Enforcement Officers to Labour Superintendent, the Labour Enforcement Officers were given 1st and 2nd Financial Progression to the Labour Superintendent and Assistant Labour Commissioner, respectively, after the year 2014 only. Thus, the Screening Committee recommended that for cases prior to 2014, it would be appropriate if the same are considered in the light of the Finance Department's Notification No. 4685, dated 30th of June, 2003, by which the ACP Rules, 2003 was notified w.e.f. 9th of August, 1999, and, which, inter alia, provided for 1st and 2nd financial progression on higher pay-scale of Rs. 5500-9000/- and Rs. 6500-10500/-, respectively.

(ii) Since C.W.J.C. No. 15501 of 2011 was disposed of by the Hon'ble Court in the light of the Labour Department's Order, dated 29th of July, 2016, the changed scenario, dealing with cases prior to 2014, ought to be



brought to the notice of the Hon'ble Court by filing appropriate review petition/appeal.

19. In the light of the above-mentioned facts, the Screening Committee recommended to send the matter to the Law Department for legal opinion so that further steps may be taken in this matter.

20. The Law Department gave its opinion on 4th of November, 2022, which runs thus:-

“I have gone through the brief for opinion, in particular paragraph nos. 19 (ii) and 19 (iii) at pages 169/170 of the notes dealing with the two specific department's decision that the Departmental Screening Committee has arrived at, and has sought legal opinion. I am in agreement with both the points on which the legal opinion has been sought and the department can consider filing a review petition before the Hon'ble Court to highlight the scenario prior to 2014 could not be considered / envisaged when the writ petition was disposed of.”

21. In view of the above opinion of the Law Department, Respondents filed ***Civil Review No. 5 of 2023 (The State of Bihar & Ors. v. Bihar Labour Enforcement Officers Association)*** against the order, dated 25th of October, 2016, passed in C.W.J.C. No. 15501 of 2011. The said review petition



is still pending.

22. In view of the recommendation of the Departmental Screening Committee and the opinion by the Law Department, Order No. 3306, dated 29th of July, 2016 was repealed and the 1st ACP and 2nd ACP was made admissible in the scale of Rs. 5500-9000/- and Rs. 6500-10500/-, respectively, by an order bearing Memo No. 4504, dated 18th of November, 2022.

23. The Departmental Screening Committee recommended the admissibility of ACP / MACP of Labour Enforcement Officers as follows:-

- (i) ACP and pay-scale of Rs. 5500-9000/-
- (ii) 2nd ACP / MACP PB- 2 + 4800/- Level - 8
- (iii) 3rd MACP P.B-2 + G.P. 5400 Level-9.

24. In the light of the said recommendation, the impugned notification was issued and the 1st ACP in the scale of Rs. 6500-10500/- of Labour Superintendent, 2nd ACP in the scale of Rs. 10000-15200/- with revised scale grade-pay of Rs. 6600/- of Assistant Labour Commissioner and consequential 3rd MACP in revised GP-7, Rs. 7600/- were held not admissible to the Labour Enforcement Officers.

25. Thus, it is contended by the contesting



Respondent that the impugned Notification No. 4504, dated 18th of November, 2022, was issued on the basis of the recommendation of the Departmental Screening Committee and, therefore, there is no reason to interfere with the impugned notification.

26. A reply to the counter affidavit is filed on behalf of the Petitioners, denying the claim of the Respondents as to the validity of the impugned notification.

27. It is vehemently denied by the Petitioners that Bihar Service (General) Rules, 1969 did not have any provision for promotion from the post of Labour Enforcement Officers to Labour Superintendent and as such in view of the absence of clarity with regard to the promotional avenue, the Petitioners were not entitled to get a benefit of pay-scale of promotional post.

28. It is contended on behalf of the Petitioners that there was specific provision in 1969 Rules relating to promotion and pursuant to the said Rules, claim of promotion of Labour Enforcement Officers cadre came up for consideration before this Court in *C.W.J.C. No. 1241 of 2000 (Lalan Singh & Ors. v. State of Bihar & Ors.)* in which this Court directed that 50 per cent post of Labour Superintendent are to be filled up by



promotion from the post of Labour Inspector, which were subsequently known as Labour Enforcement Officers and disposed of the writ petition vide an order, dated 12th of August, 2008. The Respondent/State preferred *L.P.A. No. 5188 of 2009* against the aforesaid order passed in *C.W.J.C. No. 1241 of 2000* and the said appeal was dismissed by the Division Bench.

29. In *C.W.J.C. No. 10625 of 2006 (Pradeep Kumar Singh & Ors. v. State of Bihar & Ors.)*, the Respondents admitted that promotions were being granted to the Labour Enforcement Officers in terms of Bihar Labour Service (General) Rules, 1969.

30. It was also contended on behalf of the Petitioners in the said writ petition that the Labour Enforcement Officer is the feeder post for promotion on the post of Labour Superintendent. The claim of the Petitioners were settled by the Labour Resource Department in consultation with the Finance Department, vide Annexure 5, dated 29th of July, 2016. There was no reason to unsettle the claim of the Petitioners by passing Impugned Order No. 4504, dated 18th of November, 2022.

31. In *C.W.J.C. No. 17626 of 2022*, there are 14 number of Petitioners, who retired from service on superannuation as Labour Enforcement Officer. They also



challenged the validity and legality of the impugned order / Notification No. 4504, dated 18th of November, 2022, on the same facts as involved in C.W.J.C. No. 2115 of 2023.

32. Additionally, the Petitioners of this writ petition submitted a representation before the Principal Secretary, Labour Resources Department on 2nd of December, 2022 for redressal of their grievances but the said representation was not considered.

33. By filing an Interlocutory Application, the Petitioners have prayed for issuance of writ in the nature of Certiorari to quash a letter/order, dated 19th of January, 2024, issued by the Office of Accountant General (A & E), Bihar, Patna, addressed to the Treasury Officer, Muzaffarpur, by which the pension of the Petitioner No. 5 has been reduced from Rs. 51400 to 45150/- w.e.f. 1st of December, 2018 with a direction to pay the amount of revised pension after adjusting the excess amount of pension, paid earlier. It was also directed to recover a sum of Rs. 2,24,812/- from the gratuity of the Petitioner No. 5.

34. Counter affidavit filed by the Respondents and rejoinder to the counter affidavit depict the same story as that of C.W.J.C. No. 2115 of 2024.

35. In *C.W.J.C. No. 18262 of 2019*, the Petitioners



are also retired Labour Enforcement Officers. They retired from service about 5 to 10 years back, which could be ascertained from their age, mentioned in the cause title of the writ petition.

36. They have filed the instant writ petition praying for issuance of a writ in the nature of mandamus commanding the Respondents to discharge their legal obligation to grant financial benefits in salary by implementing their own order bearing Office Order No. 8, dated 11th of December, 2017 and Office Order No. 12, dated 19th of July, 2018, whereby the Petitioner Nos. 1 and 2 have been granted 2nd A.C.P. in the pay-scale of Rs. 15600-39100/- with grade pay of Rs. 6600/- w.e.f. 7th of April, 2000 and 16th of August, 2000, respectively, and the Petitioner No. 3 has been granted 2nd A.C.P. in the same pay-scale w.e.f. 29th of May, 2005 as well as 3rd M.A.C.P. in the pay-scale of Rs. 15600-39100/- with grade pay of Rs. 7600/- w.e.f. 29th of August, 2011.

37. The Petitioners have also prayed for issuance of writ in the nature of mandamus commanding the Respondents to fix the pay of Petitioners according to 2nd and 3rd A.C.P. / M.A.C.P. granted to them and to pay arrears of salary and other benefits admissible to them. They have also prayed for a direction to fix their pensionary benefits on the basis of financial



upgradation by way of granting A.C.P. / M.A.C.P.

38. By filing an Interlocutory Application, the Petitioners have prayed for issuance of a writ of Certiorari by quashing Office Order No. 56, dated 10th of July, 2023, issued *vide* Memo No. 3174, dated 10th of July, 2023, as contained in Annexure- 12, by which the pay-scale of Petitioner No. 3 for 1st A.C.P., 2nd A.C.P. and 3rd M.A.C.P. has been reduced without affording any opportunity to him of being heard and in utter violation of Principles of Natural Justice.

39. It is found from the record of *C.W.J.C. 1826 of 2019* that the writ petition was heard on 17th November, 2020 by a Coordinate Bench and this Hon'ble Court after hearing both the parties observed that save and except the present Petitioners, other similarly situated employees have been granted ACP/MACP in accordance with the policy decision taken by the Labour Resource Department and duly ratified by the Finance Department. Therefore, this Court was of the opinion that due to some strange and oblique reason, the case of the present Petitioners was not considered and the counter affidavit filed on behalf of the Respondent No. 2, is wholly untenable in law.

40. Thereafter, on the submission of the learned counsel for the State that he will seek further instruction in the



matter in the Department of Finance (Respondent No. 3) and will come up with fresh affidavit explaining the reasons as to why the Petitioners have not been granted 2nd ACP and MACP as has been demanded by them, the matter was adjourned.

41. Subsequent to the hearing, dated 17th January, 2020, I.A. No. 01 of 2023 was filed for the relief, which has already been narrated.

42. In *C.W.J.C. No. 1741 of 2023* also, the Petitioners, who are retired Labour Enforcement Officers, have challenged the legality and validity of the Office Order No. 4504, dated 18th November, 2022, passed by the Labour Commissioner, Bihar, Patna, whereby and whereunder, the Labour Commissioner took a decision to reduce the Pay-Scale/Pay-Band attached to the grant of the benefits of 1st ACP Scheme/ 2nd ACP Scheme/MACP Scheme which were granted to the Petitioners during their service tenure as per their legal entitlement as reflected against their names in the impugned order. The Petitioners prayed for restoration of benefits already granted to them as per the original Pay-Scale and quashing of the order of recovery of excess salary from the pensionary benefits. All other facts are similar to C.W.J.C. No. 2115 of 2023.



43. *C.W.J.C. No. 1961 of 2023, C.W.J.C. No. 18248 of 2022, C.W.J.C. No. 18515 of 2022 and C.W.J.C. No. 3747 of 2023* are other writ petitions, wherein, the Petitioners prayed for quashing and setting aside of the impugned Office Order No. 4504, dated 18th November, 2022, by virtue of which the pay-scale of the Petitioners, granted in 1st ACP and 2nd ACP in the promotional post of Labour Superintendent and Assistant Labour Commissioner, respectively, was reduced and the Petitioners were directed for the repayment of excess amount paid on the basis of alleged wrong fixation of financial upgradation.

44. I have heard the learned Senior Counsels on behalf of the Petitioners and the learned Advocates for the Respondents.

45. I have also perused the entire materials on record of all the writ petitions taken up for consideration by this Court.

46. At the outset, a question may be cropped up as to whether the above-mentioned writ petitions are maintainable in view of pendency of the review application being Civil Review No. 5 of 2023 filed by the State of Bihar against the judgement, dated 24th of October, 2016 passed in C.W.J.C. No. 15501 of 2011.



47. In this regard, I may record the submission made by the learned Advocate General in M.J.C. No. 753 of 2023 in C.W.J.C. No. 15501 of 2011. A Coordinate Bench of this Court in the order, dated 11th of April, 2023, recorded the submission of the learned Advocate General in the following words:-

“Learned Advocate General very clearly and fairly submits that the opinion so given by the office of the learned Advocate General for filing review, in this regard, was not mandated. It is further submitted that in the event if the Petitioners are aggrieved by the subsequent order dated 18.11.2022, they have remedy available in law.”

48. In view of recording such submission made by learned Advocate General in M.J.C. No. 753 of 2021, the contempt petition was disposed of by a Coordinate Bench of this Court without passing any order.

49. In view of such circumstances, the Petitioners have approached this Court in constitutional writ jurisdiction, praying for quashing of Memo No. 4504, dated 18th of November, 2022, passed by the Respondent No. 6, by virtue of which the pay-scale under 1st, 2nd and 3rd MACP of the Petitioners were reduced and the Petitioners were directed to make repayment of excess amount which was paid to them by



virtue of earlier order dated 29th of July, 2016.

50. I am in agreement with learned Sr. Counsels for the Petitioners that Bihar Labour Service (General) Rules, 1969 speaks of promotional posts in Rule 3.

51. Rule 3 runs thus:-

संवर्ग—(1) इस सेवा में निम्न पद रहेंगे:—

(i) श्रेणी 2 पद (वरीय शाखा)

(क) सहायक श्रम-आयुक्त ।

(ख) श्रम अधीक्षक ।

(ii) श्रेणी 2 पद (कनीय शाखा)—

श्रम पदाधिकारी, और

(iii) ऐसे अन्य पद जिन्हें सरकार समय समय पर सृजित और विशेष रूप से सेवा (सामान्य) में शामिल करें।

52. Rule 6 of Bihar Labour Service (General) Rules,

1969 speaks about determination of vacancy in the feeder post by virtue of promotion from Labour Enforcement to Labour Superintendent. The said Rule runs thus:-

रिक्तियों का निर्धारण—राज्यपाल प्रतिवर्ष सेवा की विभिन्न कोटियों में उस वर्ष सीधी भरती और/या प्रोन्नति और या स्थानान्तरण द्वारा भरी जाने वाली रिक्तियों की संख्या निर्धारित करेंगे:

परन्तु सेवा की विभिन्न कोटियों में से किसी एक में प्रोन्नति द्वारा किसी एक वर्ष में भरी जाने वाली रिक्तियों की संख्या उस वर्ष उस कोटि में भरी जाने वाली रिक्तियों की कुल संख्या के आधे से कम न होगी, जबतक कि राज्यपाल का इस विषय में समाधान न हो जाये कि प्रोन्नति के लिये उपर्युक्त पदाधिकारियों की संख्या पर्याप्त नहीं है:



परन्तु यह भी श्रेणी 2 (वरीय शाखा) (क) के पदों पर नियुक्तियां, प्रोन्नति(अस्पष्ट) और सीधी भरती द्वारा 75:25 के अनुपात में की जाएगी।

53. Rule 30 speaks about the manner in which promotion is to be granted to the Labour Enforcement Officers.

The said provision runs thus:-

सेवा में विभिन्न पदों पर प्रोन्नति के लिये उम्मीदवारों का चुनाव करने के प्रयोजनार्थ: एक चुनाव समिति गठित की जायेगी जिसमें सचिव, श्रम एवं नियोजन विभाग, श्रम आयुक्त, वित्त सचिव, तथा मुख्य सचिव अथवा नियुक्ति विभाग द्वारा नाम-निर्दिष्ट पदाधिकारी और कोई अन्य पदाधिकारी भी, जिन्हें राज्यपाल उपयुक्त समझकर, नियुक्त करें, रहेंगे इनमें सबसे वरीय सचिव अध्यक्ष के रूप में कार्य करेंगे। श्रम आयुक्त चुनाव समिति के सचिव के रूप में कार्य करेंगे। चुनाव समिति सेवा की रिक्तियों की अपेक्षा 25 प्रतिशत अधिक उम्मीदवार चुनेगी, और उनके नाम अधिमानक्रम से विन्यस्त करेगी। यह कोई जरूरी नहीं कि बिहार श्रम-सेवा, श्रेणी ए (कनीय शाखा) में प्रोन्नति के लिये नाम-निर्दिष्ट व्यक्ति स्नातक ही हों, बस उन्हें इतनी पर्याप्त शिक्षा होनी चाहिए कि वे विभागीय परीक्षा पास कर सकें और इस प्रकार श्रम पदाधिकारी का कार्य करने योग्य सिद्ध हो सके। शारीरिक क्षमता और साधारण बुद्धि पर भी विशेष ध्यान दिया जायेगा। समिति यदि किसी उम्मीदवार के अवक्रमण का प्रस्ताव करे तो उसके समर्थन में कारण देते हुए एक संलेख अभिलिखित करेगी। चुनाव



समिति द्वारा चुने गये उम्मीदवारों के नाम सारे संगत कागजात के साथ और समिति द्वारा इस प्रकार अभिलिखित संलेख तथा जिस पदाधिकारी के अवक्रमण की बात हो, उसके गोपनीय अभिलेख अग्रसारित कर दिये जायेंगे।

54. Rule 34 speaks about pay-scale of the officers promoted to the next cadre. Therefore, the Respondents were not correct to say that Bihar Labour Service (General) Rules, 1969 does not have any provision for promotion.

55. Rule 3(i) of the ACP Rules, 2003 states that the State government employees under Group B, C and D, who in their service life did not get any financial upgradation would get first financial upgradation on completion of 12 years service and second financial upgradation after 24 years of regular service.

56. In view of the recommendation of 6th Pay Commission, MACP Rules, 2010 was promulgated for all regular Group A, B, C and D employees w.e.f. 1st of January, 2009 after expiry of 10, 20 and 30 years of service.

57. By passing impugned Notification No. 4504, dated 18th of November, 2022, the Respondent No. 6 in the State Government took the decision to reduce the pay-scale of Labour Enforcement Officers which were granted on the basis of 1st, 2nd and 3rd MACP retrospectively, and many of the Petitioners in the batch matters were directed to repay the excess amount.



58. In *Syed Abdul Qadir & Ors. v. State of Bihar & Ors.*, reported in (2009) 3 SCC 475, it is held by the Hon'ble Supreme Court in Paragraph Nos. 57 to 59 as hereunder:-

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount



that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

59. In C.W.J.C. No. 2115 of 2023, it is asserted that almost all the Petitioners retired from their service at least about 5 to 7 years ago. They are now dependent upon their pensions, which were fixed on the basis of receipt of last pay drawn as per



the notification, dated 29th of July, 2016, granting 1st, 2nd and 3rd MACP to them.

60. It is further found from the writ petitions that the benefit of MACP was not granted till date to the Petitioner Nos. 1, 2 and 4 of C.W.J.C. No. 2115 of 2023 on the ground that the reports in respect of their satisfactory service were not available before the departmental committee granting benefit of MACP.

61. In *ITC Ltd. v. State of U.P. & Ors.*, reported in *(2011) 7 SCC 493*, the Hon'ble Supreme Court observed in Paragraph No. 108 in the following words:-

“108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation.”

62. The law relating to recovery of excess payment is



set at rest by the Hon'ble Apex Court in *State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.*, reported in (2015) 4 SCC 334. Paragraph No. 18 of the said judgment is relevant and reproduced 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.”

63. In *Jagdish Prasad Singh v. State of Bihar & Ors.* (Civil Appeal No. 1635 of 2023, decided on 8th of August, 2024), the Hon’ble Supreme Court, while allowing the appeal, held in Paragraph Nos. 27 and 28 as hereunder:-

“27. The order dated 8th October, 2009 passed by the State Government directing reduction in the pay scale of the appellant from Rs. 6500-10500/- to Rs. 5500-9000/- w.e.f. 1st January, 1996 and directing recovery of the excess amount from him is grossly illegal and arbitrary and is hereby quashed and set aside. The impugned order, dated 27th August, 2012, passed by the Division Bench of the High Court does not stand to scrutiny and is hereby quashed. Therefore, the appellant shall continue to receive the pension in accordance with the pay-scale of Rs. 6500-10500/-.

28. In case, if any reduction in pension and consequential recovery was effected on account of the impugned orders, the



appellant shall be entitled to the restoration/reimbursement thereof with interest as applicable.”

64. Thus, the Hon'ble Supreme Court has decided the issue finally that in case a scale of pay is granted to an employee by the Government on due consideration of all relevant matters in relation to the pay-scale or promotional pay-scale, subsequently after a lapse of considerable period of time such order cannot be modified by way of reduction of pay-scale and the employee cannot be directed to repay the excess salary from his future salary or pensionary benefits. In most of the cases, the facts of which have been elaborately narrated, Labour Enforcement Officers were granted 1st ACP and 2nd and 3rd MACP on the basis of Labour Resource Department Notification, dated 29th of July, 2016 and the said notification was published with the concurrence of the Finance Department.

65. Most of the Petitioners in these batch of writ petitions have retired from service. By issuing subsequent Notification No. 4504, dated 18th of November, 2022, the said benefit cannot be asked to be withdrawn and the competent authority in Labour Resource Department cannot direct the Petitioner to repay the excess amount paid in salary or pensionary benefits.



66. At this stage, let me consider as to whether there was any scope to modify, nay, cancel and repeal Notification No. 3306, dated 29th of July, 2016, by issuing Notification No. 4504, dated 18th of November, 2022.

67. It is contended on behalf of the contesting Respondents in the counter affidavit filed by them showing the reason for issuance of Memo No. 4504, dated 18th of November, 2022 that Bihar Labour Service Rules, 1969 had no provision for regular promotion from the post of Labour Enforcement Officer to Labour Superintendent. Only in the year 2014, Bihar Labour Service (Appointment and Service Condition) Amendment Rules, 2014 was passed, expressly providing promotional avenue of Labour Enforcement Officers to the post of Labour Superintendent up to maximum limit 50 per cent on the basis of seniority-cum-eligibility.

68. In view of such circumstances, the Departmental Screening Committee in its meeting held on 16th of August, 2022 that by virtue of the Notification dated 29th of July, 2016, a government employee in the cadre of Labour Enforcement Officer, whose promotion to the post of Labour Superintendent was admissible, would be entitled to get 1st Financial Progression to the pay-scale/grade of the post of Labour



Superintendent and further 2nd Financial Progression to the pay-scale/grade-pay of the post of Assistant Labour Commissioner. According to the Departmental Screening Committee, Notification, dated 29th of July, 2016 did not consider that prior to 2014, there was no provision for regular promotion from the post of Labour Enforcement Officer to Labour Superintendent in the applicable Rules. Therefore, the Screening Committee recommended that for cases prior to 2014, it would be appropriate if the same is considered in the light of Finance Department Notification No. 4685, dated 30th of June, 2003 by which Bihar State Employees Conditions of Service (Assured Career Progression Scheme) Rules, 2003 was notified w.e.f. 9th of August, 1999 and which, inter alia, provided for 1st and 2nd Progression on higher pay-scale of Rs. 5500-9000/- and Rs. 6500-10500/-, respectively, within revised pay-scale PB 2 + GP 4600 / PB 2 + 4800/-, revised from 1st January, 2009.

69. It is also contended on behalf of the Respondents that this Court while disposing of C.W.J.C. No. 15501 of 2011 on the basis of Labour Department's order, dated 29th of July, 2016 failed to consider the changed scenario in respect of the claim of the employees prior to 2014. In other words, the employees, who retired prior to 2014, could not claim the



benefit of financial progression in terms of Labour Department's order, dated 29th of July, 2016. This was the basis of issuance of Memo No. 4504, dated 18th November, 2022.

70. The objection raised by the Respondents do not have any leg to stand because it clearly mentioned hereinbefore that Bihar Labour Service (General) Rules, 1969 do contain promotional avenue and determination of vacancy in Rule 3 and 6 of the said Rule.

71. Part 4 of 1969 Rules deals with the provisions of promotion and transfer of an employee appointed in the feeder post of Labour Enforcement Officer. Therefore, the decision of the Screening Committee to the effect that prior to 2014, there was no provision in the Rule of promotion of Labour Enforcement Officers cannot be accepted contrary of record.

72. The Petitioners were granted 1st ACP at the pay-scale of Rs. 6500-10500/-, 2nd ACP at the scale of Rs. 10,000-14200/- with grade-pay of Rs. 6600/- and 3rd MACP in the grade-pay of Rs. 7600/-. The said pay-scale was reduced to Rs. 5500-9000/-; Rs. 6500-10500/- with grade-pay of Rs. 4800/- and grade-pay of Rs. 5400/-, respectively, on the basis of Labour Department Notification No. 4504, dated 18th of November, 2022.



73. It is important to note at this stage that the issue relating to financial benefit of the employees was decided by this Court in C.W.J.C. No. 15501 of 2011. The State Government filed a review petition which was registered as Civil Review No. 5 of 2023. By an order dated 28th of August, 2023, the review petition was dismissed as withdrawn. Therefore, the decision in C.W.J.C. No. 15501 of 2011 has reached its finality. When it is decided by a Constitutional Court that the Petitioners are entitled to get financial progression on the basis of Notification No. 3306, dated 29th of July, 2016, can the effect of such order be taken away by a Departmental Screening Committee in a subsequent decision, dated 18th of November, 2022? Specific answer to this question is in the negative. An Administrative Authority does not have any power or jurisdiction to modify its previous order which has been decided and found valid and lawful by a subsequent administrative notification.

74. This Court is not unmindful to note that the Administrative Authority had the power of delegated legislation only after duly authorized on that behalf by the legislature.

75. In the instant case, the Labour Commissioner had no authority to pass Notification No. 4504, dated 18th of



November, 2022.

76. It is also pertinent to note that the Finance Department vide Memo No. 769, dated 28th of January, 2008 added a proviso in Rule 3.2 of the ACP Rules, 2003, containing inter alia:-

“If there is provision for promotion from one cadre to another cadre then the government employee of this cadre would be entitled/eligible to get ACP in the minimum scale of the other cadre. From the minimum scale of the other cadre to the scale of the next higher post would be admissible in the shape of 2nd ACP, and would be paid. This provision clearly shows that the Labour Enforcement Officers were entitled to minimum scale in the cadre of Labour Superintendent by way of 1st ACP and subsequently their financial progression would be on the minimum scale of the next higher post, i.e., Assistant Labour Commissioner by way of 2nd ACP / MACP.”

77. Again Rule 6 (ii) of the Bihar Labour Services (Appointment and Service Conditions) Amendment Rules, 2014 expressly provides that 50 per cent of the total basic grade-pay post of the cadre i.e., Labour Superintendent will be filled up from the cadre of Labour Enforcement Officers and Labour Welfare Officers.



78. Rule 21 of the said 2014 Rules says:-

“(i) All Rules prior to these Rules will be deemed repeal;

(ii) Notwithstanding such repeal, any action taken under the provision of earlier Rules/Resolutions/Instructions will be deemed to be taken under these Rules. (emphasis supplied)”

79. Thus, the decision taken vide Notification No. 3906, dated 29th of July, 2016, for granting 1st ACP and 2nd and 3rd MACP on the minimum scale of pay of the higher cadre cannot be cancelled by a subsequent notification.

80. Similar issue came up for consideration before the Division Bench of the High Court of Jharkhand in L.P.A. No. 142 of 2018 (The State of Jharkhand & Ors. v. Ambika Prasad & Ors.) along with other Appeals. The Division Bench vide order, dated 7th of February, 2023, elaborately discussed the issue and decided as hereunder:-

“35. Therefore, the Respondents in this batch of Letters Patent Appeals have raised a plea that once a decision was taken in compliance of the writ Court's order dated 11th May 2005 and such a decision has been notified by the Department of Agriculture and Sugarcane Development, Government of Jharkhand on 20th March 2007, the State of



Jharkhand could not have unilaterally withdrawn the benefits so accorded to the Respondents. It is submitted that some of the Respondents who were employed under the State of Bihar were already granted similar pay-scales by the State of Bihar. The learned counsels appearing for such Respondents have submitted that the benefits under the ACP scheme which were accorded to them by the Government of Bihar could not have been withdrawn by the State of Jharkhand. It is stated that the Bihar Agricultural Service Act, 1982 was applicable to such officers under Category-1 to 9 and there was a hierarchy of posts under Schedule-I to the Act of 1982 in terms thereof the ACP benefits have been given to them.

36. From the materials on record, it appears that this was the understanding within the Department of Agriculture and Sugarcane Development, Government of Jharkhand that the government employees who were working on the post of Inspector/Weight & Measure are entitled for the pay-scale of Rs.6500-10500/- as 1st ACP and the pay-scale of Rs.10000-15200/- on grant of 2nd ACP and, accordingly, such benefits were accorded to the Respondents. This becomes so apparent on a glance at the order dated 20th March 2007 which contains the recommendation of the Committee constituted



by the Government of Jharkhand in compliance of the order passed by this Court in W.P.(S) No. 2128 of 2005 title “Kedar Nath Choubey and others v. State of Jharkhand and others”. Moreover, in a country like India with a written Constitution and which professes its undying allegiance to the Rule of Law it is necessary that the rights of the parties which have concretised on account of efflux of time should not be tinkered with lightly by the State authorities. An administrative decision if taken on a mistake of fact can be corrected, but then, it is not every mistake which can be permitted to be corrected in the garb of a mistake committed in the past. Though, Mr. Jai Prakash, the learned Additional Advocate General has contended that without concurrence of the Department of Finance the aforesaid ACP benefits were granted to the Respondents, it is not in dispute that the decision as contained in the Notification dated 20th March 2007 has been implemented by the State of Jharkhand. Seven years thereafter, the State of Jharkhand has issued the Notification No. 263 dated 22nd January 2014 which has seriously affected the Respondents. It is also admitted at bar that all the Respondents except a few have by now superannuated from service. Even otherwise, keeping in mind the judgment in “State of Punjab v. Rafiq Masih (whitewasher)” (2015) 4



SCC 334 the order passed by the writ Court that no recovery shall be made from the Respondents and if any recovery has been made the amount shall be refunded to the Respondents does not call for any interference by this Court.

37. Having regard to the aforesaid facts and circumstances in the case, the writ Court's order as contained in paragraph no.12 of the order dated 22nd January 2014 that the writ Petitioners are entitled for the pay-scale of Rs. 6500-10500/- on account of grant of 1st ACP and the pay-scale of Rs.10000-15200/- by way of 2nd ACP also does not call for any interference by this Court. However, it is made clear that we have accorded our concurrence to the writ Court's order dated 18th December 2017 in the peculiar facts and circumstances of the case.”

81. In a subsequent decision passed in W.P. (s) No. 5362 of 2019, a Coordinate Bench of the High Court of Jharkhand by its order, dated 8th of August, 2024 held that the Respondents shall give benefits of 1st A.C.P. in the scale of promotional post in the Heirarchy of Labour Superintendent in pay-scale of Rs 8000-13500/- with Grade Pay of Rs. 5400/- and 2nd A.C.P. in the pay-scale of second Promotional Hierarchy post of Labour Assistant Commissioner in the pay-scale of Rs.



10000-15000/- with Grade Pay of Rs. 6600/- and other benefits, if the Petitioner is entitled.

82. Referring to a decision of the Hon'ble Supreme Court in the *State of Haryana & Ors. v. M.P. Mohla*, reported in *(2007) 1 SCC 457*, learned counsels for the Respondents tried to impress upon the Court that the cause of action for issuance of Notification No. 4504, dated 18th of November, 2022 is entirely different and in view of the subsequent notification, earlier notification, dated 29th of July, 2016 ought to be held as repealed.

83. I am not in a position to accept such contention advanced by the learned counsel for the Respondents. Moreover, the decision in *M.P. Mohla* (supra) is not applicable under the facts and circumstances of this case, because the above-mentioned report had dealt with the question of maintainability of a review of an order passed under Article 226 of the Constitution of India.

84. The facts of this case disclose that the State had filed a review petition against the judgment passed in C.W.J.C. No. 15501 of 2011 and the said review application was dismissed as withdrawn.

85. In view of the above discussions, all the writ



petitions are allowed, on contest.

86. The notification, bearing Memo No. 4504, dated 18th of November, 2022, is quashed and set aside and Notification No. 3306, dated 29th of July, 2016 is revived.

87. The Petitioners are entitled to get financial progression by way of 1st ACP and 2nd and 3rd MACP on the basis of their fixation of pay and grade-pay as per Notification, dated 29th of July, 2016.

88. Order, directing the Petitioners, to pay the excess amount is also quashed and set aside.

89. The Respondents, specially, the Principal Secretary, Labour Resource Department, Government of Bihar and Labour Commissioner, Government of Bihar are directed to fix the scale of pay, granting admissible ACPs and MACPs to the Petitioners no. 1, 2 and 4 of the C.W.J.C. No. 2155 of 2023.

90. Office Order No. 56, dated 10th of July, 2023, issued vide a Memo No. 3174 of the same date, by virtue of which the pay-scale of the Petitioner in 1st ACP, 2nd ACP and 3rd ACP was reduced is also quashed and set aside.

91. The Respondents are directed to give the benefit of ACP / MACP to the Petitioners on the basis of Memo No. 3306, dated 29th of July, 2016, within 30 days from the date of



communication of this order.

(Bibek Chaudhuri, J)

skm/uttam-

AFR/NAFR	AFR
CAV DATE	03.09.2024
Uploading Date	08.10.2024
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