

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4791 of 2020

1. Kishor Kumar, aged about 55 years Gender-Male, Son of Keshri Narayan Mahto, resident of Village and P.O.- Kawadpur, District- Lakhisarai, Bihar- 811106, presently posted as Lecturer, DIET, Purabsarai, Munger.
2. Saroj Kumar Singh, aged about 53 years, Gender-Male son of Late Baijnath Singh Village- Koriawa, P.O.- Hasadih, District- Patna, presently posted as Lecturer, DIET, Sonpur, Saran.
3. Md. Israr Ahmed, aged about 53 years, Gender-Male, son of Md. Raja Karim, resident of Village and P.O.- Charuawan, P.S. Shekhopur Sarai District- Sheikhpura, Bihar- 811103, presently posted as Lecturer, DIET, Nawada.
4. Nawal Kishore, aged about 53 years, Gender-Male, son of Late Gopal Sharan Singh, resident of Village- Bakuwan, P.O. Poawan, P.S. Masaurhi, District- Patna- 804452, presently posted as Lecturer, DIET, Sonpur, Saran.
5. Ram Prasad Singh Yadav, aged about 55 years, Gender-Male son of Late Ram Chhapit Singh Yadav, resident of New Vikas Nagar, Kothiya, Kurgi, Sadaquat Ashram, District- Patna- 800010, presently posted as Lecturer, PTEC, Barh, Patna.
6. Manju Singh, aged about 53 years, Gender-Female wife of Dharmendra Sharma, resident of 2E, Shivam Kutir, Boring Road, Shivpuri, Phulwari, L.B.S. Nagar, P.O. Phulwari, P.S. Phulwari, District- Patna- 800023, presently posted as Lecturer, BNR Training College, Gulzarbagh, Patna.
7. Abha Rani, aged about 55 years, Gender-Female, wife of Sanjay Kumar, resident of Village- Madapur Chaube, P.O. Kharaunadih, P.S. Sadar, District- Muzaffarpur, presently posted as Lecturer, DIET, Sonpur, Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Education Department, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Patna.
5. The Principal Secretary, Finance Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Advocate
Ms. Aditi Hansaria, Advocate
For the Respondent/s : Ms. Binita Singh, SC 28
Mr. Nishant Kumar Jha, AC to SC 28



**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL JUDGMENT

Date : 21-03-2022

Heard the parties.

The case is being taken up from defect side.

Learned counsel for the petitioners is directed to submit the original petition along with attested affidavits and also remove all the defects pointed out by the Registry within two weeks from today.

The short question involved in the present petition is interpretation of Rule F.R. 22 (1) read with the circular issued by the State Government in relation to the method and manner in which increment is to be granted under Rule 22 (1) (a) (1).

The facts of the case are that the petitioners were appointed in the years 1991 and 1995 in Lower Subordinate Education Service Cadre as Assistant Teacher in the trained pay scale of Rs. 1200-1800/-. The Assured Career Progression Scheme Rules, 2003 was introduced (hereinafter referred to as the '2003 ACP Scheme') and as per the said scheme upon completion of 12 years on a post, the petitioners were granted pay scale of higher post, that is, Rs. 5500-9000/-. The ACP scheme came to be modified and a new modified Assured Career Progression Scheme, 2010 was introduced by the State Government known as MACP



scheme whereunder benefit was to be provided on completion of 10, 20 and 30 years of service. Upon completion of 20 years of service, therefore the petitioners were granted second time bound promotion pay scale and placed in the pay scale of Rs. 9300-34800/- with grade pay of Rs. 4800/-. After the said benefit was granted with effect from 2011(petitioner nos. 1 to 6) and 2015 (petitioner no. 7), the petitioners were granted regular promotion from the post of Assistant Teacher to the post of lecturer which carried the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- vide order dated 20th November, 2015 and 30th June, 2016 respectively. The petitioners pay fixation was again made and applying Rule 22(1) (a) (1) of the fundamental rules 3% increments upon having been promoted was granted to them.

It is to be noted that the petitioners have already been granted 3% increments benefits at the stage when they were placed in the pay scale of Rs.9300-34800/- on completion of 20 years of service under the MACP Scheme.

The grievances may not have arisen, had the other similarly placed persons not approached this Court seeking a similar relief as given to the petitioners by preferring the writ petition, which resulted in a direction issued by this Court to the Education Department, Government of Bihar, Patna to examine



the case of the similarly placed persons. After examining the aspects, an order came to be passed on 03.02.2020 by the Education Department, Government of Bihar Patna and the State Government reached to the conclusion that 3% of pay (which means one increment) cannot be granted twice to persons who have already been given benefit under the MACP scheme upon having been promoted again on regular basis. It is therefore, proceeded to direct that all those persons who have received the benefit of 3% increments after having received it earlier under the MACP, would be liable to recovery. The pay fixation was also required to be done afresh. This resulted in the present petition being filed by the petitioners who are aggrieved of the said order dated 03rd February, 2020.

Learned counsel submits that Rule F.R. 22(1) applies to persons who are promoted on a higher post and therefore on regular promotion the initial pay in the time-scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by increment at the stage, at which such pay has accrued. He has taken this Court to the method and manner in which such benefit is granted as explained by the State Government in its circular and submits that as the petitioners were drawing the pay



on the lower post in the grade of Rs.9300-34800/- with grade pay of Rs.4800/- on the day of promotion that is, in 2015, the Rule has to be interpreted to give them additional 3% pay benefit namely one increment on promotion which would be in addition to what the petitioners have received on completion of 20 years of service. He, therefore, submits that the action of the State is unjustified and contrary to Rule 22(1) (a) (1) and the decision dated 3rd February, 2020 be quashed.

Learned counsel submits that there was no occasion to have passed general order of recovery against those who were not therefore before the Government.

Per contra, learned counsel appearing for the State has taken this Court to the provisions granting MACP which specifically lays down the manner in which MACP is to be released. To understand the said aspect it would be appropriate to quote the provision.

“इस योजना के अधीन वित्तीय उन्नयन देते समय वेतन निर्धारण का वही लाभ दिया जाएगा जो नियमित प्रोन्नति के समय दिया जाता है। इसलिए, ऐसे उन्नयन के पूर्व वेतन बैंड और ग्रेड वेतन में मिलने वाले कुल वेतन में 3% की वृद्धि की जाएगी। किन्तु, यदि रूपान्तरित सुनिश्चित वृत्ति उन्नयन योजना के अधीन स्वीकृत ग्रेड वेतन वहीं हो जो नियमित प्रोन्नति के समय का ग्रेड वेतन हो तो नियमित प्रोन्नति के समय कोई वेतन निर्धारण नहीं किया जाएगा। वास्तविक प्रोन्नति के समय यदि यह उससे उच्चतर ग्रेड वेतन वाला पद हो जो रूपान्तरित सुनिश्चित वृत्ति उन्नयन योजना के समय मिला था, तब भी कोई वेतन निर्धारण नहीं होगा और मात्र ग्रेड वेतन की अन्तर राशि जोड़ी जाएगी। उदाहरणार्थ, यदि कोई सरकारी सेवक वेतन बैंड-1



के ग्रेड वेतन 1900/-रु में सीधी भर्ती के माध्यम से योगदान करता है और उसे 10 वर्ष की सेवा पूरी करने तक कोई प्रोन्नति नहीं मिलता हो तो रूपान्तरित सुनिश्चित वृत्ति उन्नयन योजना के अधीन उसे अगले उच्चतर ग्रेड वेतन 2000/-रु0 में वित्तीय उन्नयन प्रदान किया जाएगा एवं उसका वेतन निर्धारण एक वेतन वृद्धि के साथ-साथ ग्रेड-पे के अंतर (अर्थात् 100 रु0) को जोड़कर निर्धारित किया जाएगा। रूपान्तरित सुनिश्चित वृत्ति उन्नयन योजना के अधीन वित्तीय उन्नयन प्राप्त कर लेने के बाद यदि वह सरकारी सेवक अपने संवर्ग के उपरी पद सोपान में नियमित प्रोन्नति प्राप्त करता हो जिसका ग्रेड वेतन 2400/रु हो तो, नियमित प्रोन्नति मिलने पर उसे मात्र ग्रेड वेतन 2400/-रु0 और 2000/-रु0 की अन्तर राशि ही प्रदान की जाएगी। इस प्रक्रम पर उसे कोई अतिरिक्त वेतन वृद्धि नहीं दी जाएगी।”

Her submission is therefore in support of the order passed by the State Government dated 03rd February, 2020 and it is stated that as the regular promotion was not granted earlier, benefit of increment and placement in higher promotional pay scale was given on completion of ten years of service. However, once regular promotion has been granted, the benefit continues and the person cannot be allowed to take advantage twice of promotional pay.

I have considered the submission, the language of Rule 22(1) (a) (1) is unambiguous and clear. The words ‘by increasing his pay in respect of the lower post held by him regularly by increment at the stage at which such pay has accrued’ shows that it is the pay attached to the lower post which is to be taken into account and not the higher pay given on account of stagnation. Higher pay is the pay scale of the promotional post.



In lieu of the promotion MACP is granted, where after if promotion is given, the person continues in the same pay scale. Thus, if suppose the petitioners would have been granted MACP and still the pay scale is lessor than the pay scale of the higher post on which he is promoted, he would get the additional benefit. However, if the pay scale of MACP and that of promotion post is same, there is no occasion to grant him increment twice. In fact, if the MACP is granted, the concerned persons starts getting a higher pay which is admissible to the post on which he would otherwise have been promoted. If he is later on promoted, he gets the increment of the year in the said pay but does not get the additional increments. The explanation given by the Bihar Government is also inconsonance with above. In fact, it has been made very clear in the MACP scheme itself, as pointed out by learned counsel, that additional increments could not be granted on regular promotion to a person who has already been granted MACP.

In view of the above, no case for interference is warranted. The writ petition is found to be devoid of merits. The order dated 03rd February, 2020 does not call for any interference.

The writ petition is, accordingly, dismissed.



It is noted that this Court had stayed the recovery of amount paid. However, keeping in view of the nature of post which the petitioners held being above class-IV and Class-III and as the order has been upheld by this Court, this Court does not find any reason to stay the recovery. The law laid down in **State of Punjab v. Rafiq Masih. (2014) 8 SCC 883** shall have no application. However, considering the present Covid situation, it is directed that the recovery shall be made in ten equal installments so that the petitioners do not face financial crunch during the pandemic.

(Sanjeev Prakash Sharma, J)

Anand Kr.

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CAV DATE	
Uploading Date	
Transmission Date	

