

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (S) No. 816 of 2021

Rabindra Prasad

Petitioner

Versus

1. The State of Jharkhand through the Secretary, Department of Finance,

2. The Secretary, Road Construction Department (R.C.D),

3. The Under Secretary, Road Construction Department (R.C.D),

4. The Superintending Engineer, Road Construction Department (R.C.D),

5. The Executive Engineer, Road Construction Department (R.C.D.)

Respondents

CORAM : SRI ANANDA SEN, J.

For the Petitioner : Mr. Sahadeo Choudhary, Advocate
For the Respondents: Mr. Indranil Bhaduri, SC IV

ORDER

RESERVED ON 11.03.2025

PRONOUNCED ON 09.04.2025

10/ 09.04.2025 By way of filing this writ petition, the petitioner has prayed for the following reliefs: -

(1) For quashing of Letter No. 148 dated 22.02.2020 (Annexure-8) issued by Respondent No.4 in compliance of order dated 04.02.2019 passed in W.P(S) No. 4109 of 2013 wherein the illegal recommendation has been made for fixation of ACP/MACP

to the petitioner by shifting 10 years 14 days in pursuant to the Finance Department Resolution No. 1779 dated 21.05.2014 as the said resolution is effective with immediate effect;

(2) For quashing of Memo No. 2361 (S) dated 29.09.2020 (Annexure-9) issued under the signature of Under Secretary (Respondent No.3), Road Construction Department (R.C.D), Government of Jharkhand by which the admissible date of 2nd ACP has been fixed with effect from 29.04.2014 by shifting the period for 10 years 14 days with reference to the Finance Department Resolution No. 1779 dated 21.05.2014, the same being made effective with immediate effect;

(3) For quashing Memo No. 1094 dated 29.10.2020 (Annexure-10) issued by the Executive Engineer, Road Construction Department Giridih Division (Respondent No.5) by which the petitioner's pay scale with 1st ACP of Rs. 21150/- has been sanctioned with effect from 23.08.2009 and the Pay Scale with 2nd ACP of Rs. 24950/- has been sanctioned with effect from 29.04.2014 in pursuance to letter No 2361 (S) dated 29.09.2020 of the Under secretary, Road Construction Department, Govt. of Jharkhand and the 3rd MACP was not considered which had already been granted to the petitioner with effect from 15.04.2010 along with 1st & 2nd ACP with effect from 23.08.2009 through Memo No. 2040 dated 13.10.2010 issued by Respondent no. 3, but subsequently the 2nd and 3rd ACP were illegally cancelled through Memo No. 360 dated 11.02.2013, but the same memo no. 360 dated 11.02.2013 had already been set aside/ quashed by this Hon'ble Court vide Order dated 04.02.2019 passed in W.P(S) No. 4109 of 2013.

AND/OR

Direct the respondents to grant 1st & 2nd ACP with effect from 23.08.2009 and 3rd MACP with effect from 15.04.2010 as granted to him earlier through Memo No. 2040 dated 13.10.2010 in view of order dated 09.04.2019 of this Hon'ble Court passed in W.P(S) No. 4109 of 2013 as because Memo No. 1779 of 21.05.2014 is not at all applicable to the petitioner which has been made effective from the date of its issuance, prospectively not

retrospectively and also direct the respondents authorities to make payment of consequential benefits with statutory interest there upon for delayed payment thereof.

2. The petitioner was appointed on 15.04.1980 in Road Construction Department of Bihar and had completed 30 years of service. The petitioner passed the accounts examination on 23.08.2009 and was granted the 1st and 2nd ACP (Assured Career Progression) benefits with effect from 23.08.2009 and the 3rd MACP (Modified Assured Career Progression) with effect from 15.04.2010, which was approved by the Commissioner, North Chhotanagpur, Hazaribagh vide letter No.1913 dated 26.04.2011. Vide Memo No.360 dated 11.02.2013, the benefits of the 2nd ACP and 3rd MACP granted to the petitioner were cancelled without any notice to the petitioner. Challenging the same, the petitioner had moved before this Court in W.P(S) No. 4109 of 2013. This Court by an order dated 04.02.2019 while quashing the orders vide Memo No.124 dated 21.01.2013 and Memo No.360 dated 11.02.2013, had remanded the matter to the concerned authority to take appropriate decision. There was also Memo No. 1779 in 2014 regarding shifting the effective date for ACP/MACP benefits due to delayed passing of Departmental Examination, but the said resolution was not applicable in the case of the petitioner inasmuch as the claim of the petitioner relates to the period prior to issuance of the said memo. Vide letter No.148 dated 22.02.2020, recommendation was made to shift the date of ACP/MACP of the petitioner by 10 years 14 days in the light of Resolution No.1779 dated 21.05.2014. Subsequently, vide Memo No.2361 dated 29.09.2020, the admissible date of 2nd ACP of the petitioner was fixed as 29.04.2014 by shifting the period by 10 years 14 days in light of the Memo No.1779 dated 21.05.2014. Thereafter vide Memo No.1094 dated 29.10.2020, petitioner's pay scale with 1st ACP of Rs.21,150/- was sanctioned with effect from 23.08.2009 and the pay scale with 2nd ACP of Rs.24950/- was sanctioned with effect from 29.04.2014, but the 3rd MACP was not considered which was already granted to the petitioner with effect from 15.04.2010 along with 1st and 2nd ACP with effect from 23.08.2009 through Memo No.2040 dated 13.10.2010. Petitioner had made several representations and reminders pointing out the inapplicability of Resolution No.1779 dated 21.05.2014 to the petitioner, but the authority concerned cancelled his 2nd ACP and 3rd MACP in the garb of resolution dated 21.05.2014. Accordingly, the petitioner has moved this Writ Petition claiming 1st ACP, 2nd ACP and 3rd MACP from the dates on

completion of qualifying years of service.

3. Learned counsel for the petitioner and the learned counsel for the state-respondents were heard on the issue. The counsel for the petitioner argued in support of claim of the petitioner whereas the counsel for the respondents had supported the action of the respondents in shifting the date for granting ACP/MACP by 10 years 14 days.

4. The issue, which is involved in this Writ Petition is that the petitioner was granted ACP and MACP from the date he had passed the Departmental Examination, i.e., 23.08.2009. It is the claim of the petitioner that he is entitled to get the said benefit from much anterior date, i.e., the date when he had completed his qualifying service. On the other hand, it is the case of the respondents that since the petitioner had passed the Departmental Examination in 2009, he is entitled for the benefits of ACP/MACP from August 2009 and not from 1999. The impugned orders also reflect that since the petitioner had passed the Departmental Examination on 23.08.2009, the period for purposes of extending the benefits of ACP/MACP should be counted from the aforesaid date.

5. The Hon'ble Supreme Court, very recently, in the case of **Amresh Kumar Singh & Others versus State of Bihar & Others** reported in **2023 SCC OnLine SC 496** had considered similar issue, where the sole question for consideration was whether the qualification of graduation prescribed for promotion to the next higher post of Accounts Officer from that of Accounts Clerk is necessary even for the purpose of extending the benefit of ACP. The Hon'ble Supreme Court in the said judgment, at paragraphs 12 to 20, while referring to various earlier judgments of the Hon'ble Supreme Court, has held as under: -

12. It may be worth noting that the ACP scheme was enforced on the recommendation of the Fifth Central Pay Commission in context with Group C and D employees and it provided monetary benefit to the employees on completion of 12 years and 24 years of regular service who were not able to get promotion. The scheme as such was anti-stagnation and envisages merely placement of the employees in the higher pay scale for the grant of financial upgradation only without grant of actual promotion. The benefit of the ACP as such is like granting non-functional in situ promotion.

13. At the cost of repetition, it must be borne in mind that

the object of ACP is to avoid stagnation where no promotional avenues are available. The grant of ACP is not technically 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 actually effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.

14. The object and purpose of ACP/MACP Scheme has been reiterated by this Court in Union of India v. C.R. Madhava Murthy, (2022) 6 SCC 183, as one to relieve the frustration on account of stagnation and it does not involve actual grant of promotional post but merely monetary benefits in the form of next higher grade subject to fulfillment of qualifications and eligibility criteria.

15. In sum and substance, both ACP and MACP Schemes are schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief in the form of financial benefits. Accordingly, the schemes provide for regular financial upgradation on completion of 12-24 years and 10-20-30 years of service without promotion. They are incentive schemes for the employees who complete a particular period of service but without getting promotion for lack of promotional avenues. The effect of the schemes must be judged keeping in view the object and the purport of the scheme.

16. In Union of India v. G. Ranjana reported in (2008) 14 SCC 721, the three-Judges Bench of this Court held that in situ promotions are made to remove stagnation of grade C and grade D employees by giving them certain monetary benefits.

17. It was further observed 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 purposes of promotion is not necessary for the 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.

18. In the aforesaid case, the employees were working as malis (Gardeners) and had claimed promotion in the higher pay scale. The Central Administrative Tribunal seized of the

original applications observed that the employees cannot claim the scale of the next higher post by way of in situ promotion. On the matter being taken to the High Court by way of a writ petition, the contention of the employees was accepted and it was observed that the object of in situ promotion on non-functional posts, is to ensure that the group C and D employees are not stagnated in the same cadre / pay scale and that they should be provided with certain monetary benefits. Therefore, the rejection of the claim for such nonfunctional in situ promotion on the ground that the employees do not possess the necessary minimum qualification of matriculation as per the rules is not justified and renders the order erroneous in law. The view so taken by the Division Bench of the High Court was affirmed by this Court in the above referred Civil Appeals holding that the High Court has correctly analysed the object of the in situ promotion and fixation of pay scales to Group C and D employees to avoid stagnation.

19. In view of the aforesaid legal position coupled with the fact that the qualification of graduation prescribed is for the promotion to the post of Accounts Officer rather than for the grant of in situ promotion on the non-functional post or for 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, we are of the opinion that the judgment and order of the Division Bench of the High Court impugned in the appeals cannot be sustained. It is accordingly hereby set aside and that the judgment of the writ court dated 28.11.2017 is restored. The appellants are extended the benefit of ACP, as directed by the writ court.

20. We have not considered it necessary to deal with the two cases on the basis of which the Single Judge has allowed the writ petitions and granted the benefit of the ACP to the appellants, as we have independently of those two decisions have considered and held that the appellants are entitled to financial upgradation under the ACP Scheme on completion of requisite regular service ignoring the higher qualification prescribed for the next higher post as grant of such benefit is not actually a promotion but only financial upgradation and if the higher qualification is insisted it would frustrate the purpose of the entire scheme.

6. As has been observed by the Hon'ble Supreme Court in the above case, *"appellants are entitled to financial upgradation under the ACP Scheme on completion of requisite regular service ignoring the higher qualification prescribed for the next higher post as grant of such benefit is not actually a promotion but only financial upgradation and if the higher qualification is insisted it would frustrate the purpose of the entire scheme"*, in the case in hand also, the petitioner is entitled to 1st & 2nd ACP and 3rd MACP with effect from the respective dates on which he completed the respective qualifying years of service. Thus, the letter No. 148 dated 22.02.2020 (Annexure-8) issued by Respondent No.4; Memo No. 2361 (S) dated 29.09.2020 (Annexure-9) issued under the signature of Under Secretary (Respondent No.3), Road Construction Department (R.C.D), Government of Jharkhand; and Memo No. 1094 dated 29.10.2020 (Annexure-10) issued by the Executive Engineer, Road Construction Department Giridih Division (Respondent No.5) are hereby quashed. Respondents are directed to calculate the benefits of 1st and 2nd ACP and 3rd MACP in terms of this order and extend the monetary benefits emanating from such calculation within a period of twelve weeks from the date of receipt of a copy of this order.

7. This writ petition is, accordingly, allowed. Pending interlocutory application, if any, stands disposed of.

(Ananda Sen, J.)

Kumar/Cp-02