

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1937 of 2019

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Mahendra Jha, S/o Late Mohan Jha, resident of Village- Sitapur, P.S. Birpur,
District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Main Secretary, Patna.
2. Principal Secretary, Department of Finance, Government of Bihar, Main Secretariat, Patna.
3. Principal Secretary, Social Welfare Department, Government of Bihar, Secretariat, Patna.
4. Director, Directorate of Integrated Child Development Services (ICDS for short), Ram Charitra Path, Boring Canal Road, Patna.
5. District Magistrate, Saharsa.
6. Child Development Project Officer, Korha (Katihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kishore Kumar Thakur, Advocate
For the Resp-State : Ms. Sanghmitra Ghosh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 24-10-2024

Heard Mr. Kishore Kumar Thakur, learned counsel for the petitioner and Ms. Sanghmitra Ghosh, learned counsel for the State.

2. The petitioner was initially appointed against a Class-III post of Clerk-cum-Typist in the Directorate of Adult Education on 22.08.1984 along with various other persons. While the petitioner as well as other similarly situated employees were functioning against their respective Class-III and Class-IV post in the Directorate of Adult Education, the



respondent-State came out with a common order of termination dated 28.02.1993, whereby the services of the petitioner along with other Class-III and Class-IV employees as well as supervisory employees were terminated on the ground of closure of Adult Education Project.

3. The afore-noted order of termination dated 28.02.1993 was questioned by the Bihar State Adult and Non-formal Education Office Employees Association through C.W.J.C. No. 4716 of 1993. Some other writ applications were also filed challenging the same very common order of termination being C.W.J.C. No. 5036 of 1992 and other writ applications. Finally, the C.W.J.C. No. 4716 of 1993 came to be allowed by the learned Division Bench of this Court vide order dated 01.09.1993 and the impugned order of termination of the petitioner and other came to be quashed. Consequently, the petitioner and other similarly situated persons were absorbed in the Non-formal Education wing of the Directorate of Adult Education with the same service benefits.

4. Having been so absorbed, the petitioner and other similarly situated Class-III and Class-IV employees continued functioning against their respective post, in the meantime, the respondent-State again came out with another common order



contained in Memo No. 2284 dated 12.09.2001 and once again the services of the petitioner and others were terminated on account of the decision taken by the Central Government to close the non-formal project. This Common order dated 12.09.2001 was again questioned in C.W.J.C. No. 13009 of 2001 along with other writ petitions. However, while the matter was pending before this Court, in compliance with the interim order passed in C.W.J.C. No. 13009 of 2001, the respondent-State came out with different orders absorbing the petitioner and others similarly situated Class-III and Class-IV employees. The petitioner and others were duly absorbed vide order contained in Memo No. 1512 dated 15.06.2007.

5. Mr. Thakur, learned counsel for the petitioner has taken this Court through the afore-noted order of absorption dated 15.06.2007, which is marked as Annexure-P-14 to the supplementary affidavit and submitted that the said order crystallized that absorption of the retrenched employees shall be treated to be a fresh appointment and they shall not be accorded the benefit of seniority. However, the period rendered prior to retrenchment shall be counted for the purposes of pension. It is this letter of absorption, on the basis of which the petitioner has based his relief(s) seeking a direction upon the respondents to



grant 1st, 2nd and 3rd ACP/MACP to him from due date(s) by counting the entire period of regular service rendered by him in the Directorate of Adult and Non-formal Education in terms with the provisions contained in Rule 22 of the MACP Rules, 2010 (for short 'the Rules, 2010').

6. Mr. Thakur, learned counsel for the petitioner further contended that the identical issue has come up before this Court in C.W.J.C. No. 11936 of 2011, wherein the learned Single Judge has been pleased to observe in paragraphs-10 and 11 as follows:

“10. Considering the fact that vide Annexure – 15 i.e. order dated 12-03-2012 passed by the Director, I.C.D.S., the services were regularised with effect from 20-07-2006, there is no reason to pass a different order, but to direct the respondents to grant benefit of A.C.P. taking into account the past services of the petitioner, prior to retrenchment and grant all consequential benefit forthwith.

7. The similar issue has also come up for consideration before the learned Division Bench of this Court in L.P.A. No. 438 of 2017, wherein the learned Division Bench vide its decision dated 10.01.2018, considering the scope of Rules 10 and 22 of the Rules, 2010 has observed as follows:



“10. We have considered the submissions made and we deem it appropriate to take note of the provisions of Assured Career Progression Rules, 2003 and Modified Assured Career Progression Rules, 2010. In the ACP Scheme of 2003 the provisions and eligibility conditions are contemplated under Rules 3 and 4 sub rule (3) Explanation (3) which reads as under:

(iii) किसी लोक उपक्रम या स्वशासी निकाय का कोई कर्मचारी यदि राज्य सरकार की नियमित सेवा में प्रवेश करता है तो सरकारी सेवा में उसके प्रवेश की तिथि से की गयी सेवावधि की ही गणना स्कीम के अधीन वित्तीय उन्नयन की मंजूरी के प्रयोजनार्थ की जाएगी।

11. Similarly, in the MACP Rules, 2010, Rules 10 and 22 reads as under:

10. राज्य सरकार में नियुक्ति के पूर्व राजकीयकृत विधालयों के शिक्षकों एवं राज्य सरकार द्वारा पूर्ण या आंशिक अनुदान प्रदत्त स्वायत्त संस्थाओं या लोक उपक्रमों में किसी सरकारी सेवक द्वारा की गई पिछली सेवा की गणना नियमित सेवा के रूप में नहीं की जाएगी।

22. यदि किसी कर्मचारी को अपने संगठन में अतिरेक घोषित कर दिया जाता हो और उसकी नियुक्ति नए संगठन में उसी वेतनमान या निम्नतर वेतनमान में की जाती हो तो पिछले संगठन में उसके द्वारा की गई नियमित सेवा की गणना रूपान्तरित सुनिश्चित वृत्ति उन्नयन योजना के अधीन नए संगठन में उसे वित्तीय उत्क्रमण देने के प्रयोजनार्थ नियमित सेवा के रूप में की जाएगी।

12. Rule 4 sub-rule (3) Explanation 3 thereof in the ACP Rules as reproduced hereinabove, indicates that if an employee of the Public Sector Undertaking or Autonomous Body



enters into regular service of the State Government, the period of service rendered from the date of his entry into Government Service alone shall be counted for the purpose of sanction of financial progression under the Scheme. If the explanation part of this rule is taken note of, it deals primarily with service rendered by an employee as a casual, daily wages, temporary, work charge or contingency paid establishment and these eventualities that are indicated clearly show that the provision applies in the case of an employee who enters into the regular service of the State Government meaning thereby that prior to entry into regular service of the State Government, he may not have been a regular employee in the Autonomous Body or the Corporation that seems to be and is the only intention of the Rule maker. The provision is applicable only in case where the employees were working in the Autonomous Body or the Corporation in any capacity other than regular service and their services were taken up in the regular establishment by the State Government. On the contrary, if in a case the employee was already employed by the Corporation or the Autonomous Body as a regular employee and then absorbed in Govt. service this rule will not apply. In this case all the employees of the Corporation vide notification dated 7.3.1986 (Annexure-3) were absorbed in the services of the State. It is not



a case of appointment, regularization in service or inducting the employees into the service of the State Government afresh. It is a case of absorbing the services of the employees who were already in regular service and as held in the case of **Priya Ranjan Sharma Vs. The State of Bihar and others: 2010 (2) PLJR 357**, the services rendered in the Corporation has to be counted for grant of pensionary benefits, thus treated as regular service. That being the position, we see no reason why services of the regular employee in the Corporation should not be calculated for the grant of ACP and the rule in question does not come in the way of the employees in claiming the benefits.

13. Similarly, if Rules 10 and 22 of the MACP Rule, 2010 are taken note of, it speaks about appointment in the State Government service of an employee, who had been working in a school as a teacher or in any other Public Sector Undertaking or Autonomous Body. The rule speaks about induction and appointment of the employees into the service of the State Government and does not refer to a case where the services of the employees working in the Corporation is absorbed in the State Government on winding up or closing of the Corporation. The case in hand is one where the State by its own notification dated 7.3.1986 thought it appropriate to absorb the services of the employees and after such absorption when for getting the benefit of



pension and post retiral benefits, the services rendered by them in the Corporation is counted, we are of the considered view that there should not be any impediment in counting the same services for grant of ACP or MACP. The interpretation given by the State Government in our considered view, will only apply in the case of appointment of employee in the State Government service after following the selection process or after his lien is terminated in the Corporation or Autonomous Body. The respondents were regular employees in service of Corporation and not appointed in regular cadre service of the State Government after selection or termination.”

8. Learned counsel for the petitioner also drew the attention of this Court to Annexures-P-14 and P-15 to the supplementary affidavit and submitted that other identically situated persons have been allowed the similar benefits in terms of the order of the learned Single Judge as well as the learned Division Bench of this Court as noted herein above.

9. The aforesaid facts have not been controverted by the learned counsel for the State, however, referring to the averments made in the counter affidavit, it is submitted that since the petitioner has never questioned the stipulations made in the letter, whereby his services were absorbed by treating it as



new appointment, now the petitioner cannot be allowed to claim that earlier services rendered by the petitioner before retrenchment shall be counted for the purposes of ACP/MACP in terms of Rule 22 of the Rules, 2010.

10. Before parting with the case, it would be relevant to note that though before the learned Division Bench in L.P.A. No. 438 of 2017, the persons aggrieved were the employees of Dairy Development Corporation, duly managed and controlled by the State of Bihar, subsequently on account of financial crisis, the Corporation was taken over by the Department of Animal Husbandry in the Government of Bihar. The services of the employees were duly absorbed; nonetheless their services rendered in the Corporation were not counted for grant of benefit under the ACP and MACP schemes. In the premise of this facts, the learned Division Bench, highlighting the import of Rules 10 and 22 of the Rules, 2010 affirmed the order of the learned Single Judge by holding that in case of absorption, the principle applicable in the case of appointment or fresh appointment will not apply. In the case in hand, the petitioner was admittedly a retrenched employee of Directorate of Adult Education, whose services were later on absorbed in the State of Bihar with a clear stipulation that the period rendered prior to



retrenchment shall be counted for pension. Thus, in the opinion of this Court, the ratio decided by the learned Division Bench of this Court would govern the case of the petitioner.

11. Considering the rival submissions made on behalf of the parties and taking note of the fact that the issue raised before this Court has already been set at rest by the learned coordinate Bench of this Court in C.W.J.C. No. 11936 of 2011 as well as the learned Division Bench of this Court in L.P.A. No. 438 of 2017, this Court finds substance in the submissions of the petitioner and accordingly directs the respondents no. 3, 4 and 5 to consider the claim of the petitioner for grant of 1st, 2nd and 3rd ACP/MACP with effect from the due date by counting the entire period of regular service rendered by him in the Directorate of Adult and Non-formal Education in terms of the provisions contained in Rule, 22 of the Rules, 2010 read with the observations and mandate of this Court passed in C.W.J.C. No. 11936 of 2011 and L.P.A. No. 438 of 2017.

12. The respondent authorities shall also be obliged to take note of the fact that other similarly situated persons have been accorded the similar benefit(s), the copies of which have been marked as Annexures-P-15 and 16 to the supplementary affidavit.



13. The aforesaid exercise must be completed, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

14. The writ petition stands disposed off with the aforesaid direction.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-10-2024
Transmission Date	

