

(2024) 07 JH CK 0108

Jharkhand High Court

Case No: Writ Petition (S) No. 6006 Of 2023

Adhir Kumar Sinha

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: July 30, 2024

Hon'ble Judges: Deepak Roshan, J

Bench: Single Bench

Advocate: V. N. Jha, Ravi Kerketta, Piyush Anand

Final Decision: Disposed Of

Judgement

Deepak Roshan, J

1. The instant writ application has been preferred by the petitioner for quashing of the Office Order No. 380 dated 02.04.2022 (Annexure-3); whereby

in the last column it has been mentioned that monetary benefit will be given to the petitioner after passing the final Accounts Examination i.e., on

25.08.2010 since the petitioner had passed final Accounts Examination on that very day.

The petitioner has further prayed for a direction upon the concerned respondents to upgrade the pay-scale of the petitioner under the ACP scheme in

pursuance of the Circular dated 14.08.2002 (Annexure-2), issued by the Finance Department of Jharkhand which is due to be paid to the petitioner

with effect from 01.12.2004 as he has completed 12 years of service from the date of joining and also the 2nd MACP in the pay-scale PB-II Rs.

9300-34800 under grade-pay of Rs.4600/- along with statutory interest as the petitioner had retired on 31.01.2022.

2. The brief facts which are necessary for disposal of the instant writ application are that the petitioner passed Noting and Drafting Examination on 20.11.1994 and the second and third paper of the Departmental Accounts Examination on 29.01.1996; however, he finally passed the first paper of the Accounts Examination on 25.08.2010.

The case of the petitioner is that he has not been granted any regular promotion during his entire service tenure hence he is entitled for ACP benefits in view of Circular dated 14.08.2002.

3. Learned counsel for the petitioner submits that the petitioner has completed 12 years of service on 01.12.2004 and he was entitled to get the benefit of 1st ACP since 01.12.2004 in place of 25.08.2010. Learned counsel further submits that according to the decision of Screening Committee the pay-scale of this petitioner has been fixed from 25.08.2010 in Rs.5200-20200 with grade-pay of Rs.2800/-. As a matter of fact, the petitioner has been granted 1st ACP from the date of appearing in the final Departmental Accounts Examination on 25.08.2010 though the petitioner has completed 12 years of service on 01.12.2004 itself; as such, the office order dated 02.04.2022 passed by the Screening Committee is wholly arbitrary and illegal and also violative of the Circular.

Learned counsel contended that from bare perusal of the aforesaid decision of Screening Committee dated 17.02.2022, it is clear from the last column that as petitioner had passed the final Accounts Examination with 5 years 6 months and 24 days delay, so he is entitled to get all the benefits of 1st ACP and 2nd MACP after such delay. Learned counsel submits that the scheme of ACP/MACP is very clear, inasmuch as, the person who has not been granted regular promotion is entitled for ACP/MACP benefits which is actually financial upgradation and there is nothing in any Circular to pass the Departmental Examination.

Learned counsel also referred to cases of other similarly situated employees who have finally passed Departmental Examination with much delay but they are getting the ACP benefits after completion of 12 years/24 years and MACP benefit after completion 30 years; as such the respondents, be directed to modify the office order and grant 1st ACP benefit after completion of 12 years and so on and so forth.

4. Learned counsel for the respondents submits that the petitioner was appointed on compassionate ground and he has finally passed the Departmental Accounts Examination on 25.08.2010. Learned counsel contended that for fixation of pay of the petitioner, the matter was put up before the Screening Committee and the said Committee has recommended that the 1st ACP which was granted to him from 01.12.2004 was against the rules and subsequently cancelled the 1st ACP benefit.

5. The ground taken by the Screening Committee was plain and simple that the petitioner passed the final Departmental Examination only on 25.08.2010 and not before 01.12.2004 when the 1st ACP was granted to him. Learned counsel for the respondents also referred to a departmental proceeding which was initiated against this petitioner for the charge of deceitful practices by submitting false documents with intention of securing unwarranted financial benefits associated with his promotion. The petitioner was also alleged to have procured forged document from the District Administration. Learned counsel contended that subsequent to the departmental enquiry he was punished and the matter was disposed of with imposition of a stern admonition.

Learned counsel contended that the 1st ACP of the petitioner was delayed by 5 years 8 months and 24 days from the due date of 01.12.2004 due to late passing of Departmental Examination. Further, in view of recommendation of the Screening Committee, the DFO, Giridih issued order for sanction of 1st ACP to the petitioner in the pay-scale of Rs.5200-20200 with grade-pay of Rs. 2800/- with effect from 25.08.2010 vide office order dated 02.04.2022 and as per the 7th Pay Commission with effect from 01.01.2016. The District Accounts Officer verified the same and communicated to the DFO, Giridih and finally the DFO, Giridih issued the order of sanction and fixation of pay in the 2nd MACP. Thereafter the petitioner has been paid the entire post retiral benefit. As such, in view of the settled proposition, the petitioner is entitled for 1st ACP only from the date when he passed the final Accounts Examination.

6. Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective

affidavit it appears that the petitioner was appointed on compassionate ground on 01.12.1992 in the pay-scale of Rs.1200-1800. From the record it

further transpires that the petitioner had passed Noting and Drafting Examination on 20.11.1994 and second and third paper of the Departmental

Accounts Examination; he passed on 29.01.1996 and finally he passed the first paper of Departmental Accounts Examination on 25.08.2010.

Initially, ACP of the petitioner was recommended with effect from 01.12.2004; however, the same was cancelled by the Screening Committee in its

meeting dated 18.06.2012 for the sole reason that the petitioner passed the first paper of Departmental Examination finally on 25.08.2010.

7. At this stage, it is relevant to mention here that the law with regard to payment of financial upgradation has been laid down in para 3 (vii) of Memo

No. 3/S-6 (Pro)-02/2002/5207/V dated 14.08.2002 of the Finance Department, Government of Jharkhand. A minimum criteria for financial

upgradation like passing of Departmental Examination, obtaining of higher qualification etc. has been prescribed and it has been stated that the criteria

which has been fixed in the recruitment and promotion rules will be same for the purpose of financial upgradation. Thus, passing of Departmental

Examination is compulsory for Assistant for promotion and since the petitioner had passed the compulsory Departmental Examination only on

25.08.2010; hence this Court is having no hesitation in holding that petitioner was rightly given the 1st ACP benefit with effect from 25.08.2010. As

aforesaid the 1st ACP of the petitioner was delayed by 5 years 8 months and 24 days from the due date i.e. 01.12.2004 due to late passing of

Departmental Examination.

At the cost of repetition, according to the Resolution dated 21.05.2014 of the Finance Department the date of 2nd ACP was also delayed by the same

time period. From record it further transpires that from 01.09.2008 provision of MACP was started. Since 2nd MACP is due to an employee after

completion of 20 years of service; taking the delayed period of 1st ACP into account the 2nd MACP was due to the petitioner from 25.08.2018.

Hence the Screening Committee rightly decided to grant the 2nd MACP to the petitioner from 25.08.2018 in the pay-scale of Rs. 9300-3400 with

grade-pay of Rs. 4200/-.

8. The stand of the petitioner that initially the petitioner was rightly given the 1st ACP in the year 2004 from the date of completion of 12 years and the subsequent cancellation is against the law in view of the fact that passing of Departmental Examination is not necessary, is misconceived and against the settled proposition of law laid down by this Court in L.P.A No. 297 of 2016 titled "State of Jharkhand and Others v. Dhananjay Kumar" wherein this Court has categorically held in para nos. 8 to 12 that the Resolution of the State Government giving the benefit of ACP scheme is that the 1st ACP is to be granted upon completion of regular service of 12 years and thereafter on completion of another 12 years of regular service an employee is entitled to 2nd MACP, if he fulfills the condition therefore. The Division Bench of this Court has further held that if for any disqualification of the employee the 1st ACP is delayed, 2nd ACP has to be delayed accordingly. For brevity para nos. 8 to 12 of L.P.A No. 297 of 2016 is quoted hereinbelow;-

"8. Having heard learned counsels for both the sides and upon going through the record, we find that the resolution of the State Government dated 14th August 2002, giving the benefits of the Assured Career Progression Scheme to its employees is absolutely clear in its terms. It provides that the 1st ACP is to be granted upon the completion of regular service of 12 years of service, and thereafter on completion of another 12 years of regular service, an employee is entitled to the 2nd ACP, if he fulfills the conditions therefor. It is further made clear that if for any disqualification of the employee, the 1st ACP is delayed, the 2nd ACP has also to be delayed accordingly.

9. It is also stated that subject to the conditions for granting the ACPs, if an employee completes 24 years of regular service without getting any promotion or the benefit of ACP to him, he would be directly given the benefit of 2nd ACP. It was in view of this provision that the writ petitioner had been given the benefit of 2nd ACP w.e.f. the date he was exempted from passing the departmental examination. This clearly shows that the 2nd ACP was given to the writ petitioner, after removing his disqualification. It was not the case that the writ petitioner was otherwise entitled for getting the 1st and the 2nd ACPs on their due dates, and he

could not be given both the benefits due to no fault of his, even after completion of 24 years of his service, rather this is a clear case in which the writ petitioner was not fulfilling the conditions for those benefits. On completion of 50 years of service, he was given the exemption from the condition precedent, i.e., passing the departmental examination, in accordance with to the Government circular, and though by that time, he had completed 24 years of service, but he could only be given the 1st ACP, and not the 2nd ACP directly. It is well settled that if an employee is not getting any benefit due to some of his disqualification and if that disqualification is removed, he would get that benefit only which was denied due to the disqualification, and not any higher benefit. As such, on 16.10.2004, when his disqualification was exempted, he would be entitled to the 1st ACP only, and only after completion of 12 years of regular service thereafter, he would be entitled to the 2nd ACP, and this is what was squarely done by the respondent No.2, the Principal Secretary to the State Government, in the Department of Personnel, Administrative Reforms and Rajbhasa, by the impugned order as contained in Memo No.10005 dated 29 th August 2012. It was also clarified that since the petitioner had superannuated prior to the date of his entitlement to the MACP, the same could not be given to him. As such, we do not find any illegality in the aforesaid order passed by the appellant No.2.

10. We accordingly, find that the Honâ€™ble Single Judge has misguided himself in quashing the aforesaid order, without taking into consideration the aforesaid facts discussed above. As such, the impugned order dated 08.02.2016, passed by the Writ Court in WP(S) No.5558 of 2012, cannot be sustained in the eyes of law, which we hereby, set-aside.

11. At the same time, we would like to clarify that there was an order dated 4.7.2014, whereby the petitioner was directed to deposit Rs.1,58,073/- in the Treasury, which was paid in access to the petitioner. This order has been passed after the retirement of the petitioner, and we also find that the impugned action of the State Government in fixing the pay scale of the petitioner directly in the 2nd ACP directly w.e.f. 16.10.2004, was neither due to any misrepresentation made by the writ petitioner, nor he can be held responsible for the same. We accordingly, direct that no recovery of the aforesaid amount can now be made from the respondent writ petitioner.

12. The retiral benefits of the respondents writ petitioner shall be re-fixed by the State Government in accordance with the order contained in memo No.10005 dated 29.08.2012 issued by the Appellant No.2, and till that time, there shall not be any stoppage of the payment of pension to the writ petitioner. The delay in re-fixing the pension, shall not be to any detriment to the respondent, and no recovery of the differential amount shall be made from his pension, due to any delay made by the appellant State in this exercise.â€

9. As a matter of fact, it is well settled that if an employee is not getting any benefit due to some of his disqualification and if that disqualification is removed, he would get that benefit only which was denied due to such disqualification and not any higher benefit. In the instant case, the disqualification with regard to non-passing of Departmental Examination was completely removed in the year 2010. When the petitioner actually passed the final Departmental Examination, he became entitled to 1st ACP and only after completion of 12 years of regular service thereafter he would be entitled to 2nd MACP and this is what was squarely done by the respondents.

10. As such, this Court holds that there is no infirmity in the impugned order and the same requires no interference. However, it is made clear that if any order of recovery has been made against him after his retirement, the same is not tenable in the eye of law and also in view of the judgment referred to hereinabove.

11. Having regard to the aforesaid discussion, the instant writ application does not require any interference and the same is rejected.