

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7931 of 2021

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Anju Kumari W/o Sri Vivek Kumar Permanent Resident of Village and P.O Teghra, P.S. Babubarhi, District Madhubani, presently posted as Technical Adviser to Supdt Engineer, P.H.E.D. Muzaffarpur, District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Public Health Engineering, Govt. of Bihar, Patna.
2. The Secretary, Public Health Engineering Department, Patna.
3. The Principal Secretary, General Administration, Govt. of Bihar, Patna.
4. The Additional Secretary, Gen. Administration, deptt. Govt. of Bihar, Patna.
5. The Service Complaint Redressal Officer, P.H.E.D. Department, Patna.
6. The Departmental Appellate Authority, P.H.E.D. Department, Patna.
7. Kalika Prasad, presently posted as Superintending Engineer PHED Circle Sasram.
8. Nityanand Prasad, presently posted as Joint Secretary PHED (HQ), Patna and in-charge Supdt Engineer PHED Circle Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Narayan, Advocate
For the Respondent/s : Mr. S.Raza Ahmad, AAG 5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 19-05-2022

Heard learned counsel for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“i. Quashing order dt. 22.06.2020 (Anx.-2)
and the decision of the Departmental Screening Committee dated 28.5.20 on its agenda no.59 keeping petitioner's 3rd ACP/MACP pending in the absence of order on queries of pendency of criminal case against her, as communicated through the order dated dt.



22.06.2020 passed in service complaint no. 8110127052002965, and for an order commanding respondents to grant and extend her benefit of 3rd ACP/ MACP with interest on all consequential arrear for its delayed payments, since withholding benefit of 3rd ACP or considering petitioner for higher post (as given to respdt no. 7 & 8) on the allegation of pendency of Criminal case (Vigilance Case No. 32/12) is unjustified. The vigilance department in its letter no.132/2013 dt. 06.02 had already clarified her position in the case as error of record as also the guidelines of promotion pendency criminal case as contained in Resolution in memo no. 7979 dt. 6.11.03, the respondents cannot keep petitioner's ACP or promotion on higher post on hold

ii. Quashing order dated 04.12.2020, dt. 27.06.2020 passed in service complaint no. 8110127052002965 passed by the Complaint redressal officer (respdt no.5, the Seba Shikayat Nibaran Padadhikari) PHED, communicating the decision of the department of keeping meeting of all Departmental Promotion Committee for considering all types of promotion on hold vide memo no. 5066 dt. 11.4.2019 and further rejection of grant of 3RD ACP/MACP to the petitioner. The petitioner, who had moved before the appellate authority (respdt no. 6) also prays for setting aside the order of Appellate Authority of Employees Grievance (respdt. No. 6) dt. 4.12.2020 communicating rejection of appeal filed against order dt. 27.06.20.

iii. The petitioner prays for considering her case for promotion on higher post of Superintending Engineer or in assigning officiating charge of this post prior to considering such benefits to any person placed below her in the seniority and gradation list as has



been extended to the private respondents discriminately ignoring the petitioner.”

3. On 12.05.2022, following order was passed:

“Heard learned counsel for the parties.

Short question for consideration is whether any official can delayed promotion or any service benefit in the absence of departmental charge memo or charge-sheet in a criminal proceeding or not. Learned counsel for the petitioner submitted that as on the date of ACP and MACP due no charge-sheet in the criminal proceedings or departmental charge memo was issued, therefore, the petitioner is entitled to service benefits like ACP and MACP. On this point, counter affidavit is silent, therefore, the Deputy Secretary (MC)-cum P.H.E.D., Patna is hereby directed to appear in person also he is directed to ascertain as to whether charge-sheet is framed in the criminal case or not.

Re-list this matter on 19.05.2022.”

4. The Deputy Secretary (MC)-cum-P.H.E.D., Patna *Ms.*

Poonam is present in the Court.

5. With reference to records, the Deputy Secretary submitted that as on the date of due of A.C.P. and M.A.C.P. to the petitioner no charge memo in the disciplinary proceedings or charge sheet in the criminal proceedings was pending consideration. In the light of these facts and circumstances,



petitioner is entitled to A.C.P. and M.A.C.P. as and when it was due. The same shall be extended in passing speaking order and further arrears shall be calculated and disbursed within a period of three months from the date of receipt of this order, failing which, the petitioner is entitled to interest @ 8 % *per annum* on arrears of payment.

6. Accordingly order dated 22.06.2022, Annexure 2 stands set aside and petition is allowed.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	20.05.2022
Transmission Date	

