

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 46 of 2024

In

Civil Writ Jurisdiction Case No 2472 of 2018

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Sachidanand Sharma son of Late- Mohan Sharma, Resident of Village-
Milanpalli (ward no-2), P.S.- Kishanganj, District- Kishanganj.

... .. Appellant/s

Versus

1. The State of Bihar Through the Principal Secretary, Social welfare department, Old Secretariat, Patna.
2. Principal Secretary, General Administration department, Old Secretariat, Patna.
3. Director, Directorate of Integrated Child Development Services (ICDS), Indira Bhawan.
4. District Magistrate, Kishanganj.
5. District Programme Officer, Kishanganj.
6. Child Development Project Officer, Thakurganj, District- Kishanganj.

... .. Respondent/s

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Appearance :

For the Appellant/s : M/s Kishore Kr Thakur, Braj Kishore Singh, Amit
Kr, Advocates

For the Respondent/s : Mr Gyan Prakash Ojha, GA VII

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RANJAN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR JUSTICE RANJAN KUMAR JHA)

Date : 10-08-2026

The petitioner-appellant, being aggrieved with the judgment and order dated 19.12.2023, has preferred the present Letters Patent Appeal.

2 The case of the petitioner-appellant is that he was appointed against Class III post in the Directorate of Adult



Education in the year, 1985 and while functioning in the Department, by a common order of termination dated 28.02.1993, the petitioner and others were terminated which gave rise to first round of litigation by some individual employee as well as through an Association, namely, Bihar State Adult and Non-formal Education Office Employees Association by filing CWJC No 4716 of 1993. CWJC No 4716 of 1993 was allowed by this Court vide judgment and order dated 01.09.1993 and termination order in question was set aside with a direction to absorb the petitioner and other similarly situated employees of non-formal education wing of the Directorate of Adult Education. Accordingly, the petitioner and others were absorbed as Class III and Class IV employees.

3 While the petitioner and others were working with the respondent-State, the respondent-State once again came out with one common order vide Memo No 2284 dated 12.09.2001 terminating the services of the petitioner and others on the ground that the Central Government having communicated a decision to close the Non-formal Project and thereby stopped giving funds. This gave rise to second round of litigation and petitioner through his Association filed CWJC No 13009 of 2001. Some other writ petitions were also filed and incidentally one out of such writ petitions got allowed by this court while the writ petition filed by



the Association in which the petitioner is also a party remained pending but on account of some interim order passed in CWJC No 13009 of 2001, the respondent-State came out with different orders absorbing the petitioner and other similarly situated Class III and Class IV employees in different Departments of the respondent-State including the Integrated Child Development Project Services of the respondent-Social Welfare Department. Further case of the appellant-petitioner is that initially their absorption was ad hoc but subsequently, the same was treated to be a permanent absorption. Further case is that on account of breakage of their services, the appellant-petitioner was not given the benefit of ACP leading to filing of a writ by similarly situated absorbed employees vide CWJC No 1136 of 2011. Further case of the appellant-petitioner is that meanwhile, bifurcation of clerical cadre took place by creating cadre of Lower Division Clerk and Upper Division Clerk with two separate pay scales, i e, for Lower Division Clerk Rs 3050 – 4590 and for Upper Division Clerk, Rs 4000 – 6000. The said bifurcation is by an order dated 20.12.2000 and in this background, the grievance of the petitioner is that recall of the benefits extended to the petitioner by Annexure 11 and Annexure 11/A by order impugned is not in accordance with law and is arbitrary as well as discriminatory.



4 The State came out with counter affidavit and contended therein that the appellant's absorption under Memo No 582 (May 20, 2005) was strictly a “fresh appointment” that excluded past service benefits. They assert an inherent right to correct the erroneous May 18, 2017 pay fixation (Annexure 11), validating the subsequent October 2017 recovery order. Furthermore, they contended that under Letter No 111 (January 8, 2018), the ICDS clerical cadre is a distinct regional entity with its own promotion structure, legally justifying restricted, lower ACP pay scales to prevent administrative anomalies.

5 In this factual background, the learned Writ Court, having considered the rival submissions, has decided the issue in hand in the following terms at paragraph 7 which reads as under:

“7. Upon perusal of the documents and on the basis of the submission made by the parties, there are two provisions that are very much relevant to the petitioner's case. The first is the condition for appointment and the second is Rule 22 of the MACP Rules, 2010 by virtue of which it is clear that the petitioner is entitled for the benefit of ACP/MACP. So far as Annexure P10 is concerned, it is admitted that there were two different pay scales prior to 01.01.2006, and in the opinion of the Court, Annexure P-10 shall not help the petitioner in any manner. Annexure-P2, issued by the Director, ICDS, is completely lawful and in accordance with law. So far as the question of recovery of the excess amount from the petitioner is concerned, there are relevant dates that are important. Benefit has been granted to the petitioner vide Annexure



P-11 dated 18.05.2017 w e f 09.08.1999 but just three months after the issuance of the said letter dated 23.07.2017, the order for recovery has been made and further clarification has been made vide Letter No 111 dated 08.01.2018 by the Director, ICDS.”

6 The learned counsel for the appellant-petitioner assails the order on two grounds. Firstly, he has been discriminated and secondly that the service rendered before his absorption be also treated as in service and be counted for all purposes.

7 This Court finds that the submission before this Court has already been taken care of by the learned Single Judge and stipulation in condition for appointment has also been reproduced in the order impugned itself. Moreover, the learned Single Judge has further proceeded to consider the submission of the petitioner-appellant and concluded firstly the condition of appointment and secondly, Rule 22 of the MACP Rules which has given entitlement for benefit of ACP and MACP but in view of two different pay scales prior to 01.01.2006, Annexure P/10 shall not help the petitioner in any manner.

8 This Court does not find any error in the finding of the learned Single Judge.

9 Now, the next question which falls for consideration before this Court is as to whether the order of recovery after retirement of petitioner-appellant is sustainable. In that



connection, this Court is of the considered view that in view of law laid down by the Apex Court in the cases of *State of Punjab -Versus- Rafiq Masih (White Washer)*, reported in *(2015) 4 SCC 334* and *Jageswar Sahoo -Versus- The District Judge, Cuttack*, reported in *2025 INSC 449*, in the factual background that the respondents have not come out with any case that there is any misrepresentation on the part of the petitioner-appellant, the recovery part of the order impugned in the writ petition is not sustainable. Accordingly, the order dated 23.10.2017 to that extent is set aside.

10 With the aforesaid observations, the instant LPA stands disposed of.

11 Pending application (s), if any, shall also stand disposed of.

(Sudhir Singh, ACJ)

Sudhir Singh, ACJ : I agree

(Ranjan Kumar Jha, J)

M.E.H./-

AFR/NAFR	NAFR
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