

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18439 of 2015**

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1. Raghubir Prasad Son of Late Singhasan Sah Resident of village - Sisai Bazar, P.S. Bhorey, Distt. - Gopalganj
2. Raj Narayan Tiwary Son of Chandrika Tiwari Resident of village - Bagahan, P.S. Babu Bishunpur, P.S. Jadopur, Block - Gopalganj, District - Gopalganj
3. Yogendra Kumar Pandey Son of Sri Puja Pandey Resident of village - Bhami Tola, P.O. Kuchaikote, P.S. Kuchaikote, Block - Kuchaikote, District - Gopalganj
4. Manager Mishra Son of Late Kapil Dev Mishra resident of village - Puraina, P.O. Maheshpur, P.S. Vijaipur, District - Gopalganj
5. Gena Harijan Son of Late Sukai Harijan resident of village - Puraina, P.O. Maheshpur, P.S. Vijaipur, District - Gopalganj
6. Byas Chaudhary Son of Late Shivnandan Chaudhary Resident of village - Haradiya, P.O. Bhorey, P.S. Bhorey, District - Gopalganj
7. Lutawan Rawat Son of Bhuwali Rawat Resident of village - Sisai, P.O. Bhorey, P.S. Bhorey, District - Gopalganj
8. Phulmaan Miyan Son of Noor Miyan Resident of village - Damakiyan, P.O. Bhorey, P.S. Bhorey, District - Gopalganj
9. Sudama Singh Son of Late Janki Singh Resident of village - Dumar Narendra, P.O. Dumar Narendra, P.S. Bhorey, District - Gopalganj
10. Tribhuwan Mishra Son of Late Raghuvansh Mishra resident of village - Puraina, P.O. Maheshpur, P.S. Vijaipur, District - Gopalganj
11. Munni Lal Bhagat Son of Late Khedan Bhagat resident of village - Puraina, P.O. Maheshpur, P.S. Vijaipur, District - Gopalganj
12. Laxmi Kant Yadav Son of Late Satyadev Yadav Resident of village - Vijaipur, P.O. Vijaipur, P.S. Vijaipur, District - Gopalganj
13. Bagesh Pandey Son of Sri Ramdev Pandey Resident of village - Jyotish Tola, P.O. Dumar Narendra, P.S. Bhorey, District - Gopalganj
14. Manager Yadav Son of Ram Sagar Yadav Resident of village - Jyotish Tola, P.O. Dumar Narendra, P.S. Bhorey, District - Gopalganj
15. Babulal Ram Son of Videshi Ram P.O. Khalwa Gaon, P.S. Khalwa Gaon, P.S. Bhorey, District - Gopalganj
16. Hasmat Ansari Son of Asan Ansari Resident of village - Sitampur, P.O. Ampura, P.S. Mahmaddpur, District - Gopalganj
17. Rama Prasad Yadav Son of Late Bhangi Yadav Resident of village - Siswamiyan, P.O. Siswamiyan, District - Gopalganj
18. Devnath Rawat Son of Late Yadu Rawat resident of village - Siswaniya, P.O. Siswaniyan, P.S. Uchachakagaon, District - Gopalganj
19. Swaminath Upadhyay Son of Late Vishwanath Upadhyay Resident of village - Saheba Chak, P.O. Siswaniyan, P.S. Mirganj, District - Gopalganj
20. Hadish Miyan Son of Late Mahmadin Miyan Resident of village - Mohanpura, P.O. Kubauthi, P.S. Mirganj, District - Gopalganj



21. Ramadhar Sah Son of Late Dhanu Sah Resident of village - Gulaura, P.O. Khanpura, P.S. Gopalpur, District - Gopalganj
22. Lal Babu Manjhi Son of Late Jamuna Manjhi Resident of village - Bhit Bhaikha, P.O. Gopalganj, P.S. Gopalganj, District - Gopalganj
23. Alagu Sah Son of Late Phagu Sah Resident of village - Bari Deoria, P.O. Hathua, P.S. Hathua, District - Gopalganj
24. Paramhansh Chaubey Son of Rashideo Chaubey Resident of village - Bharatpura, P.O. Sohagpur, P.S. Hathua, District - Gopalganj
25. Dinanath Ram Son of Late Dev Dhari Ram resident of village - Siswaniya, P.O. Siswaniyan, P.S. Uchachakagaon, District - Gopalganj
26. Ram Bachan Yadav Son of Madhu Yadav resident of village - Jamakhiya, P.S. Bhorey, District - Gopalganj
27. Saheb Prasad Bhagat Son of Harihar Bhagat Resident of Moharwaliya, P.O. Musehari Bajar, P.S. Vijaipur, District - Gopalganj
28. Ramdas Bhagat Son of Late Bhirgunath Bhagat resident of village - Puraina, P.O. Maheshpur, P.S. Vijaipur, District - Gopalganj
29. Surtanand Ram Son of Late Sudarshan Ram Resident of village - Lala Ke Belwa, P.O. Museshari Bazar, P.S. Vijaipur, District - Gopalganj
30. Nathu Ram Son of Late Tapeswar Ram Resident of village - Lala Ke Belwa, P.O. Museshari Bazar, P.S. Vijaipur, District - Gopalganj
31. Sri Kishun Prasad Son of Brij Lal Prasad Resident of village - Dyara Masluhi, P.O. Kateya, P.S. Kateya, District - Gopalganj
32. Rudal Yadav Son of Inar Yadav Resident of village - Ghatata Mela, P.S. Kateya, District - Gopalganj
33. Tufani Ram Son of Late Sita Ram Das resident of Kutiyani, P.O. Chhitauna, P.S. Vijaipur, District - Gopalganj
34. Rajendra Baitha Son of Hira Baitha Resident of village - Imiliya, P.O. Dumar Narendra, P.S. Bhorey, District - Gopalganj
35. Babu Lal Ram Son of Videshi Ram resident of village - Khalwa Gaon, P.O. Khalwagaon, P.S. Bhorey, District - Gopalganj
36. Uma Nath Rawat Son of Bimal Rawat resident of village - Taranarhawa, P.S. Kuchaikote, District - Gopalganj
37. Nandlal Ram Son of Bhuneshwar Prasad resident of village - Jalalpur, P.O. Methua Jalalpur, P.S. Kuchaikote, Block - Kuchaikote, District - Gopalganj
38. Banka Singh Son of Late Nakchheb Singh resident of village - Narendra Dumar, P.O. Dumar Narendra, P.S. Bhorey, District - Gopalganj
39. Lalan Pandit Son of Late Rameshwar Pandit Resident of village - Saathi, P.O. Sathi, P.S. Uchchakagaon, District - Gopalganj
40. Harendra Singh Son of Sri Kishun Singh resident of village - Sisai, P.O. Safiyadad, P.S. Baijunthpur, District - Gopalganj
41. Prabhunath Sah Son of Late Sukhi Sah resident of village - Vanaduka, P.O. Khaitya, P.S. Mahmaddpur, District - Gopalganj
42. Khelari Kumhar Son of Prasuram Kumhar Resident of village - Jyotish Tola,



P.O. Dumar Narendra, P.S. Bhorey, District - Gopalganj

43. Rajbali Sah Son of Majrul Sah resident of village - Bhorey, P.O. Bhorey, P.S. Bhorey, District - Gopalganj
44. Ram Ashish Mishra Son of Late Kuawala Mishra resident of Damkhiya, P.S. Bhorey, District - Gopalganj
45. Ram Lakhan Singh Son of Badri Singh resident of Basudewa, P.O. Bhorey, P.S. Bhorey, District - Gopalganj
46. Devdhari Mahto Son of Late Adal Mahto resident of Khajuriya Bazartola, P.O. Khajuria, P.S. Darauli, District - Gopalganj
47. Sakal Dev Singh Son of Late Laldevo Singh resident of village - Chhota Vateya, P.O. Barauli, P.S. Barauli, District - Gopalganj
48. Ramayan Chaudhary Son of Late Ram Prasad Chaudhary resident of village - Sohanria, P.O. Sohanria, P.S. Kateya, District - Gopalganj
49. Rojid Ansari Son of Habib Ansari resident of village - Banraha Baikunthpur, P.O. Sohanria, P.S. Kateya, District - Gopalganj
50. Ramashis Prasad Son of Late Rajvansh Prasad resident of village P.O. Neuri, P.S. Katyea, District - Gopalganj
51. Suryaman Bhagat Son of Shivdayal Bhagat resident of village - Neuri, P.O. Neuri, P.S. Kateya, District - Gopalganj
52. Gauri Shankar Prasad Son of Late Nagina Sah resident of village - Sisai Bazar, P.O. Sisai Bazar, P.S. Bhorey, District - Gopalganj
53. Rama Kant Prasad Son of Late Dashai Bhagat resident of Bagahan, P.O. Babu Bishunpur, P.S. Jadopur, Block - Gopalganj, District - Gopalganj
54. Ram Prawesh Ram Son of Ranji Ram resident of village - Atwadurg, P.S. Hathua, District - Gopalganj

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Secretary, Department of Home, Government of Bihar, Patna
3. The Special Secretary, Department of Home, Government of Bihar, Patna
4. The Director General Cum Commandant General, Home Guards, Bihar, Patna
5. The Commandant Home Guards, Bihar, Patna
6. The District Commandant Home Guards, Gopalganj

... .. Respondent/s

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**Appearance :**

|                      |   |                                          |
|----------------------|---|------------------------------------------|
| For the Petitioner/s | : | Mr. Binodanand Mishra, Advocate          |
| For the Respondent/s | : | Mr. Kinkar Kumar, SC 9                   |
|                      |   | Mr. Ashutosh Kumar Upadhyaya, AC to SC 9 |

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA**  
**CAV JUDGMENT**



**Date : 08-12-2023**

Heard Mr. Binodanand Mishra, learned counsel for the petitioners and Mr. Kinkar Kumar, learned standing counsel no. 9 assisted by Mr. Ashutosh Kumar Upadhyaya, learned AC to SC 9.

2. This writ petition has been heard in detail at the stage of admission itself and is being disposed of finally with consent of the parties.

3. The present writ petition has been filed by the petitioners for direction commanding the respondents to allow the petitioners to continue in service till the age of 60 years and pay all the consequential benefits as they are entitled in accordance with law.

4. The petitioners were enrolled as Home Guard on different dates which are mentioned as follows:-

| <b>S.No.</b> | <b>Petitioners</b>    | <b>Date of Enrollment</b> |
|--------------|-----------------------|---------------------------|
| 1            | Raghubir Prasad       | 07.09.1976                |
| 2            | Raj Narayan Tiwari    | 07.09.1976                |
| 3            | Yogendra Kumar Pandey | 07.09.1976                |
| 4            | Manager Mishra        | 07.09.1976                |
| 5            | Gena Harijan          | 07.09.1976                |
| 6            | Byas Chaudhary        | 21.11.1976                |
| 7            | Lutawan Rawat         | 02.01.1977                |
| 8            | Phulmaan Miyan        | 02.01.1977                |
| 9            | Sudama Singh          | 21.11.1976                |



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| 10 | Tribhuwan Mishra    | 07.09.1976 |
| 11 | Munni Lal Bhagat    | 07.09.1976 |
| 12 | Laxmi Kant Yadav    | 10.09.1976 |
| 13 | Bagesh Pandey       | 21.11.1976 |
| 14 | Manager Yadav       | 21.11.1976 |
| 15 | Babulal Ram         | 07.09.1976 |
| 16 | Hasmat Ansari       | 07.09.1976 |
| 17 | Rama Prasad Yadav   | 07.09.1976 |
| 18 | Devnath Rawat       | 07.10.1979 |
| 19 | Swaminath Upadhyay  | 10.09.1976 |
| 20 | Hadish Miyan        | 10.09.1976 |
| 21 | Ramadhar Sah        | 07.09.1976 |
| 22 | Lal Babu Manjhi     | 21.11.1976 |
| 23 | Alagu Sah           | 10.09.1976 |
| 24 | Paramhansh Chaubey  | 07.10.1979 |
| 25 | Dinanath Ram        | 04.11.1980 |
| 26 | Ram Bachan Yadav    | 01.07.1977 |
| 27 | Saheb Prasad Bhagat | 07.09.1976 |
| 28 | Ramdas Bhagat       | 07.09.1979 |
| 29 | Surtanand Ram       | 07.19.1976 |
| 30 | Nathu Ram           | 07.09.1976 |
| 31 | Sri Kishun Prasad   | 07.09.1976 |
| 32 | Rudal Yadav         | 07.09.1976 |
| 33 | Tufani Ram          | 21.11.1976 |
| 34 | Rajendra Baitha     | 02.01.1977 |
| 35 | Babu Lal Ram        | 07.09.1976 |
| 36 | Uma Nath Rawat      | 07.09.1976 |
| 37 | Nandlal Ram         | 07.09.1976 |
| 38 | Banka Singh         | 21.11.1976 |
| 39 | Lalan Pandit        | 07.09.1976 |
| 40 | Harendra Singh      | 07.09.1976 |
| 41 | Prabhunath Sah      | 21.11.1976 |
| 42 | Khelari Kumhar      | 07.10.1976 |



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|----|----------------------|------------|
| 43 | Rajbali Sah          | 07.09.1976 |
| 44 | Ram Ashish Mishra    | 01.01.1977 |
| 45 | Ram Lakhan Singh     | 07.10.1979 |
| 46 | Devdhari Mahto       | 07.09.1976 |
| 47 | Sakal Dev Singh      | 07.09.1976 |
| 48 | Ramayan Chaudhary    | 21.11.976  |
| 49 | Rojid Ansari         | 07.09.1976 |
| 50 | Ramashish Prasad     | 21.11.1976 |
| 51 | Suryaman Bhagat      | 21.11.1976 |
| 52 | Gauri Shankar Prasad | 02.01.1977 |
| 53 | Rama Kant Prasad     | 10.09.1976 |
| 54 | Ram Prawesh Ram      | 07.09.1976 |

5. Thereafter, they have completed their training and were discharging the duties of Home Guards to the satisfaction of all concerned.

6. The State Government had issued a Resolution No. 37 of 2015 issued by Special Secretary, Department of Home where duty allowance and other benefits of the Home Guards have been enhanced. In the said resolution it has also been provided that the age limit for continuity of service as a Home Guard has been increased from 58 years to 60 years w.e.f 01.04.2015. It has further been provided that on attaining 60 years of age, the enrollment of the Home Guards would automatically come to an end. He further submits that the petitioners were enrolled on different dates on or after



07.09.1976 and on the date of enrollment their age has been said to be 19 years, as such they would attain the age of 58 years on or after 07.9.2015. In the meanwhile, the Government has taken decision with respect to enhancement of age of superannuation to 60 years w.e.f 01.04.2015 and as such the petitioners were entitled to continue as Home Guards till September, 2017. But the respondent authority debar the petitioners to continue Home Guard w.e.f 31.12.2014.

7. Learned counsel for the petitioner has relied upon the judgment / order dated 11.10.2010 passed in C.W.J.C No. 2507 of 2006 where the petitioners of the aforesaid case were validly selected for appointment on the post of Constable under Bihar Military Police and the respondent authority have illegally and arbitrarily discontinued their engagement w.e.f 31.12.2014.

8. Learned counsel for the petitioner submits that in view of the aforesaid judgments, the petitioners are entitled to continue to be enrolled as Home Guards up to the age of 60 years and they are entitled to be extended the enhancement of age and other benefits as per the resolution of the Department of Home dated 03.07.2015 and 14.07.2015.

9. Learned counsel for the State submits that the date of coming into effect of the said Regulation is wrongly



mentioned as 01.04.2014 in place of 01.04.2015. The date of birth of some of the Home Guards were found to be not matching with the date of birth as given in their Matriculation certificate and at the time of engagement of these home guards they were found to be less than 19 years of age, if their matriculation certificate were taken as evidence of age. In the circumstances some of the home guards came before this Hon'ble Court when they were denied appointment as Constables in Bihar Military Police on the ground of variance in their date of birth in the training certificate and the matriculation certificate. The Hon'ble Court in C.W.J.C No. 2507 of 2006 vide order dated 11.10.2010 directed the DG of the Home Guard to look into the matter and to communicate the outcome of the petitioners of that case. In compliance of the aforesaid order dated 11.10.2010 passed in C.W.J.C No. 2507 of 2006, the DG of Home Guard, Bihar, Patna vide memo no. 207 dated 19.01.2012 came out with an order treating the date of birth of the home guards to be the date given by them at the time of registration. It was further decided that as per Clause 4 (A) of the Home Guard Rules, 1953, the candidate shall be treated to be of 19 years of age in such cases on the first day of January of that year of registration. In view of the said order any home



guard attaining the age of 58 years in a given year shall be treated to have attained that age on the 1<sup>st</sup> day of January of that year and thus his engagement comes to an end on the first day of January of that year he attains 58 years. In view of the aforesaid resolution, the engagement of the petitioners were automatically come to an end on the first day of January of the year they attain 58 years of age. Any home guard who according to their entry at the time of registration attained 58 years of age as per the aforesaid order dated 10.01.2012 before coming into force of the resolution as their engagement came to an end on the first day of January itself.

10. Learned counsel for the State further relied upon the judgment of the Hon'ble Apex Court reported in 2023 LiveLaw (SC) 708. Referring to the paragraph 17 which is as follows;

*17. Such a decision lies exclusively within the domain of the Executive. It is for the State to take a call as to whether the circumstances demand that a decision be taken to extend the age of superannuation in respect of a set of employees or not. It must be assumed that the State would have weighed all the pros and cons before arriving at any decision to grant extension of age. As for the aspect of*



*retrospectivity of such a decision, let us not forget, whatever may be the cut-off date fixed by the State Government, some employees would always be left out in the cold. But that alone would not make the decision bad: nor would it be a ground for the Court to tread into matters of policy that are best left for the State Government to decide. The appellants herein cannot claim a vested right to apply the extended age of retirement to them retrospectively and assume that by virtue of the enhancement in age ordered by the State at a later date, they would be entitled to all the benefits including the monetary benefits flowing from G.O. dated 9th April, 2012, on the ground of legitimate expectation.*

11. And in the present case the petitioners were disengaged from service after attaining the age of 58 years w.e.f 31.12.2014 so the petitioners cannot claim for benefit of the resolution dated 01.04.2015 that has come after the disengagement of the petitioners.



12. In view of the aforesaid, the claim of the petitioners cannot be sustain and the writ petition stands dismissed.

**(Rajesh Kumar Verma, J)**

Vanisha/-

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