

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6821 of 2019

1. Suraj Chhetri son of Bishnu Lal Chhetri resident of East Paikyoung, Chimul, Kalimpong, P.S. Algarah, District- Darjeling (West Bengal), presently residing at campus of Bihar Military Police- 1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 713, Learner Driver, Bihar Military Police- 1, Patna.
2. Ram Kumar Shrestha son of Man Bahadur Shrestha resident of Campus of Bihar Military Police- 1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 503, Learner Driver, Bihar Military Police-1, Patna.
3. Dev Bahadur Dura son of Late Dambar Bahadur Dura resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 776, Learner Driver, Bihar Military Police-1, Patna.
4. Rajendra Thapa Chhetri son of Late Bal Bahadur Thapa Chhetri resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 16, Learner Driver, Bihar Military Police-1, Patna.
5. Manoj Thapa, son of Dhurva Thapa resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 761, Learner Driver, Bihar Military Police-1, Patna.
6. Arun Chandra Pradhan son of Sri Mahendra Pradhan resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 769, Learner Driver, Bihar Military Police-1, Patna.
7. Ashis Thakuri son of Late Gyan Babu Thakuri resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 21, Learner Driver, Bihar Military Police-1, Patna.
8. Sachin Kumar Thapa son of Vijay Kumar Thapa resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 40, Learner Driver, Bihar Military Police-1, Patna.
9. Prabal Thapa son of Rabindra Thapa resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 203, Learner Driver, Bihar Military Police-1, Patna.
10. Devraj Thakuri son of Bel Bahadur Singh Thakuri resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Learner Driver, Bihar Military Police-1, Patna.
11. Panch Lal Shrestha son of Sri Kehar Man Shrestha resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 822, Learner Driver, Bihar



Military Police-1, Patna.

12. Ram Bahadur Sunar son of Hari Bahadur Sunar resident of Campus of Bihar Military Police- 1, P.O.- Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 800, Learner Driver, Bihar Military Police-1, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Home (Police) Department, Government of Bihar, Patna.
4. The Additional Secretary, Home (Police) Department, Government of Bihar, Patna.
5. The Deputy Inspector General of Police, Military Police (K.M.) Patna.
6. The Commandant, Bihar Military Police-1, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
For the Respondent/s : Mr. Anil Kumar, AC to SC 8

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 13-05-2019

Counter affidavit has been filed during the course of argument. Let it be taken on record.

2. Heard Mr. Vijay Kumar Singh, learned advocate for the petitioners and Mr. Anil Kumar, learned AC to SC 8.

3. The petitioners were selected as Constable/Drivers from amongst the Constables who were earlier appointed by a Committee. The process of selection



began on 28.08.2015 and was concluded on 16.09.2015.

The petitioners were amongst the 13 successful Constables who could make it to the selection for Driver/Constables and they have been working for the last four years.

Suddenly, the Government took a decision of reverting the Driver/Constables to their original post of Drivers.

4. It has been submitted on behalf of the petitioners that this could not have been done as the selection was after due process and only after the petitioners became successful in the test which was conducted.

5. The learned counsel for the State however has pointed out that such appointment of the petitioners was in terms of Bihar Police Manual (Rule-1186). The aforesaid rule of the Bihar Police Manual permits of only 25% of the total sanctioned strength of Drivers to be taken/inducted as Learner Drivers after conducting an examination for the said purpose. The total sanctioned strength of the Driver/Constables in BMP-1, at the relevant time, was 31



and therefore only 8 Constable/Drivers could have been selected. Despite this interdict, altogether 13 candidates were selected but without any merit list. The list of those 13 persons which includes the petitioners also were only declared to have passed. Later, it has been urged on behalf of the State that a notification dated 03.09.2015 was issued mandating that Constable/Drivers shall be selected afresh by the Central Selection Board. Rule-1186 of the Bihar Police Manual was also repealed and the new rule was gazetted vide Gazette No. 866 (dated 20.09.2017).

6. The new rule specifies the process by which examination for recruitment and appointment of Driver/Constables have to be conducted. The Police Department, therefore, in order to avoid any further controversy or litigation regarding handpicking of 8 out of those 13 earlier selected Driver/Constables, thought it prudent not to consider such appointment/selection and appointing Driver Learner Constables afresh in accordance



with the new rules. This Court was, for sometime, of the impression that only because the petitioners offered their willingness to be taken in as Learner Drivers, which decision on being upturned, the petitioners would loose their job and would not even be retained as Constables. The situation is not this. The petitioners would be reverted to the original post of Constables and all the Learner Driver/Constables shall be chosen from amongst such Constables as well as through fresh source by the Central Selection Board of Constables.

7. Learned counsel for the petitioners, as a last argument, has submitted that repeal and saving clause of the new rule permits such appointment made on the basis of earlier rules to be continued if such appointments were made under the new rules. This argument is not available to the petitioners for two reasons; (I) the petitioners do not have a claim to such post of Driver/Constables which selection process was faulty from the beginning and (II) such ground would be available to those who would have



challenged the appointment of these 13 persons who were earlier selected as Driver/Constables.

8. In that view of the matter, the petitioners cannot claim it as a matter of right that they be retained as Constable/Drivers. True it is that they were selected after passing the examination and were posted as Driver/Constables, which posting had also the approval of the Director General of Police, Bihar, Patna. Nonetheless since such examination was conducted without any merit list having been published in accordance with the respective merit of the selected candidates and when it was found out later that only 8 out of them had been appointed against the sanctioned post of Driver/Constables, then, instead of handpicking/choosing those 8 persons from amongst 13 successful candidates, the Police Department has chosen to initiate the recruitment process afresh under the new rules.

9. This Court finds nothing wrong with the aforesaid decision of the Department. However it is



observed that in the fresh process of selection by the Central Selection Board, if the petitioners participate and are successful, they be given preference over the others because they have served for four years as Driver/Constables and have acquired skills which would only be used to advantage of the Department.

10. With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2019
Transmission Date	

