

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 12090 of 2019

1. Niwai Kumar Singh, aged about 48 years, Male, Son of Late Jageshwar Singh R/o Village-Ishmela, Police Station-Dighwara, District-Chapra, at present B.M.P.-5 Family Quarter, Police Station-Hawai Adda, District-Patna
2. Pritam Singh, aged about 49 years, Male, S/o Late Kedar Nath Singh R/o Village and Post Office-Mirjapur Khurd, P.S.-Janta Bazar, District-Chapra (Saran)

... .. Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Bihar, Patna
2. The Director General of Bihar Military Police (B.M.P.) Bihar, Patna
3. The Additional Director General Bihar Military Police, Bihar, Patna
4. The Commandant Bihar Military Police (B.M.P.)-V, Post-B.V. College, Police Station-Hawai Adda, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr Gopal Govind Mishra, Advocate
For the Respondent/s : Mr Md Nadim Seraj, G P V

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 08-08-2019

Heard learned counsel for the petitioners and the respondent-State.

2 Petitioners' claim, in the instant writ petition, is that the Authority has not properly considered the petitioners' claim for being placed in the scale of Rs 4,000 – 6,000/- at the time of grant of their first Assured Career Progression (for brevity, ACP). He submits that earlier the scale was granted but subsequently it has wrongly been withdrawn and petitioners have been placed in the



scale of Rs 3,200 – 4,900/- on account of benefits under first ACP. Claim of the petitioners is on the basis of their assertion in the writ proceedings that their initial appointment was on the basis of their matriculation qualification as a literate Constable.

3 Respondents, on the other hand, contend that the petitioners were illiterate Constable and the next promotional post of the petitioners was Havildar Driver. The benefits under first ACP available to an illiterate Constable like the petitioners was the scale of Rs 3,200 – 4,900/-. Therefore, the Authorities have rightly reviewed the earlier grant which was wrongly done in the scale of Rs 4,000 – 6,000/-.

4 The records reveal that the petitioners had been promoted as Havildar Driver. The post of Havildar Driver is the next higher post in the line of promotion for Constable (illiterate). Had the petitioners been literate Constables, their promotion would have been to the post of Assistant Sub Inspector (Reserve). That, admittedly, is not so.

5 As per the records, the respondents, in the counter affidavit, have also specifically asserted that the petitioners' initial appointment was an illiterate Constable, which stands unrebutted as no rejoinder has been filed in response to the counter affidavit. The grant of the scale of Rs 3,200 – 4,900/- on account of first



ACP and consequential benefits thereof in light of the impugned order dated 24.04.2019 of the Commandant, Bihar Military Police 5 (for brevity, BMP 5), therefore, does not require any interference.

6 This Court would only observe that the order also has the consequence of effecting recoveries from the petitioner in respect of excess payments made in the meantime. Petitioners' counsel submits that on account of the said order, recoveries have already started from the petitioners.

7 In this connection, this Court would refer to the decision of the Apex Court in the case of State of Punjab & Others -Versus- Rafiq Masih (White Washer) & Others, (2015) 4 Supreme Court Cases 334. The law is well settled, in the circumstances, as existing in the instant case, where the petitioner is a Grade III equivalent employee in the Force and where the benefits have been granted on account of mistake by the Authorities, recovery would have a onerous effect on the petitioners having regard to the decision in the case of Rafiq Masih (supra).

8 This Court would direct that no recoveries shall be made in respect of the payments made on account of the order dated 24.04.2019. The petitioners' benefits, on account of fixation under the same order, however, require no interference.



9 Writ petition is disposed of with the aforesaid directions.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.08.2019
Transmission Date	NA

