

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12441 of 2019

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1. Vinod Kumar Singh S/o Late Rajdev Singh Vill. and P.o.- Chaura, P.s.- Narhi, Distt.- Baliya, Uttar Pradesh, Pin-277502
 2. Gopal Singh son of Late Late Darbari Singh Vill.- Chandauli Khudra, P.o.- Sadalpur, P.s.- Alinagar, Distt.- Chandauli (U.P.) Pin-232101
 3. Pramod Kumar Singh S/o of Raja Ram Singh Vill. and P.o.- Kowil, P.s.- Islampur, Distt.- Nalanda, Pin-801303
 4. Mahakant Jha S/o Late Harideo Singh Vill. and P.o.- Simari Bhaya Arerhat, P.s.- Viski, distt.- Madhubani, Pin-847325
 5. Chandra Bhusan Singh S/o Late Prabhunath Singh Vill.- Bajitpur, P.o.- Gopalpur, p.s.- Nayagaon, Distt.- Saran, Pin-841217
 6. Santosh Kumar Singh S/o Late Parshuram Singh Vill.- Dewariya, P.o.- Bhatti, P.s.- Mohaniya, Distt.- Kaimur (Bhabhua), Pin-821109
 7. Rajendra Prasad Singh S/o Late Suneshwar Singh Vill.- Bagsanda, p.o.- Kumariya, P.s.- Tarari, Distt.- Bhojpur (Ara)
 8. Ghanshyam Narayan Singh S/o Late Harshit Narayan Singh Vill. and P.o.- Dachhini Chak, P.s.- Athmal Gola, Distt.- Patna, Pin-803211
 9. Arun Kumar S/o Hari Prasad Vill.- Begama Ki Hawelil, P.o.- Jhauganj, P.s.- Khaj Kela, Distt.- Patna, Pin-800008
 10. Ramashish Rai S/o Late Prashidh Rai Vill.- Hariyo, P.o. and P.s.- Akar nagar, distt.- Bhagalpur
 11. Umesh Singh S/o Late Visheshwar Singh Vill. and P.o.- Dharmapura, P.s.- Daudpur, distt.- Saran, Pin-841205
 12. Mrigunath Singh S/o Late Sabhapati Singh Vill. and P.o.- Kumna, P.s.- Kopa, Distt.- Chapra, Pin-841214
 13. Chandraketu Prasad S/o Late Karamchand Singh Vill.- Kewal Bigha Bathan (PLI), P.o.- Shamir Nakya, P.s.- Rampur, Distt.- Gaya, Pin-804403
 14. Murli Manohar S/o Late Mahavir Prasad Yadav Vill.- Porwariya-Tilwariya, P.o.- Haweli Kharagpur, P.s.- Haweli, Kharagpur, Distt.- Munger, Pin-811213
 15. Sanjay Kumar Singh S/o Sitaram Singh Resident of and P.o.- Dharhar Mela, P.s.- Kararia, Distt.- Gopalganj, Pin-841428

... .. Petitioner/s



Versus

1. The State of Bihar through the Principal Secretary, Home (Police) Department, Bihar, Patna
2. Principal Secretary Finance Department, Bihar, Patna
3. Director General of Police Bihar, Patna
4. Commandant, Bihar Military Police-5, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava
For the Respondent/s : Mr. Md.N.H.Khan (SC1)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 26-06-2019

1. Heard Mr. Abhinav Srivastava, learned Advocate for the petitioners and Mr. Md. N. H. Khan, learned SC-1 for the State.

2. The petitioners, who are constables, have challenged the order dated 18.04.2019 passed by the Director General, Bihar Military Police, Bihar, Patna contained in Memo No. 565, whereby the prayer made on behalf of the petitioners for allowing them to remain in the literate cadre has been rejected.

3. It appears that the petitioners, on their exercising option for conversion from non-matriculate cadre to literate cadre were merged with the literate cadre in the year 1999.



This Court has been informed that initially for the Bihar Police and the BMP, there were two cadres of Constables; one being literate cadre and the other, naturally, non-matriculate cadre. Some of the Constables who had been working in the non-matriculate cadre, had right from the beginning, the qualification of matriculation. Precisely and particularly for this reason and other impelling motive of building up the personnel in any department, an option was asked from such matriculate / literate Constables, who were serving in the non-matriculate cadre to exercise their option of being sent/inducted in the literate Constable cadre. It may also be noted that in the Police Act and Police Manual, the two cadres ultimately merge in one promotional post of Sub-Inspector of Police. However, the intermediate post is of ASI and Havildars. In the literate cadre, the intermediate post is of the ASI with higher pay-scale whereas in the non-matriculate cadre, the intermediate post is of Havildar, which though is equivalent to ASI, but with a lesser pay-scale.

4. The petitioners were granted the benefit of A.C.P. in the pay-scale of ASI which was the next promotional post of



literate Constables cadre. This was done because the petitioners had merged in the cadre of literate Constables. Sometimes later, the petitioners, whose services were inducted in the literate Constable cadre were wrongly given promotion to the post of Havildars. There was no challenge to the aforesaid order for the reason that the petitioners were not divested of the financial benefit which had already accrued to them because of grant of A.C.P. on the pay-scale of ASI. The petitioners were, all through, treated as Constables in the literate cadre and only after several years when some of the similarly situated persons had superannuated, a decision was taken that the petitioners and their likes were wrongly paid the A.C.P. on the pay-scale of ASI when their entitlement was only for the pay-scale of Havildars.

5. Once such a decision was taken, the Police Department directed for recovery of the excess amount which was paid to the petitioners. This led to several Constables filing writ petitions before this Court. All such writ petitions, the lead case being C.W.J.C. No. 10076 of 2017, were heard together



and a composite order was passed on 03.12.2018 by a Bench of this Court.

6. This Court took note of the fact that the financial benefits of the petitioners which was granted to them had been slashed down on a plea which was stated to be specious by the petitioners, and that also without giving them any opportunity of representing their cause.

7. This Court also took note of the fact that if any financial benefit is granted to an employee without his wrong projection of the facts, such benefits cannot be recovered from them unilaterally.

8. It may also be noted that the Bench in the aforesaid order, took note of the fact that the stand of the State was clear with respect to no notice having been given to the petitioners by that time. Hence, the matter was remitted before the Director General, BMP for writing out a fresh order in accordance with law after hearing the aggrieved Constables.

9. Pursuant to the aforesaid direction dated 03.12.2018, the Director General of BMP has passed the order impugned referred to above.



10. In the entire order, the DGP has not at all adverted to the fact that in the year 1999, the petitioners had given their option of being merged with the literate cadre and their request was acceded to by the Department. The impugned order only refers to the legal position as well as the fact that the cadres are not interchangeable from the literate to non-matriculate Constable cadre. Since the clincher was the decision with respect to the merger of the two cadres and the petitioners having been inducted in the literate cadre, without adverting to such fact, no final opinion on the decision of the Police Department to recover the amount paid to the petitioners on the plea that A.C.P. benefits were given on a higher scale than the entitlement, could not have been possible. The order ought to have indicated whether or not the assertions of the petitioners that they were inducted in the literate cadre was wrong or that decision, if at all it was taken, was earlier rectified for granting promotion to the petitioners to the post of Havildars which was the promotional post available in the cadre of non-matriculate Constables.



11. For this reason alone, the order suffers from complete non-application of mind and cannot be sustained in the eyes of law.

12. Consequently, the order is set aside. The matter is again remitted to the Director General, Bihar Military Police, Bihar, Patna (Respondent No. 3) to write out a fresh order in accordance with law and after referring to all the grounds urged by the petitioners, within a period of three months from the date of production of a copy of this order. Needless to state that if the Director General, Bihar Military Police, Bihar, Patna would require further hearing in the matter, he may ask the petitioners to advance their cause.

13. With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	27.06.2019
Transmission Date	

