

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12882 of 2019

1. Srikant Dubey Son of Late Chandrama Dubey, resident of Village- Lohadi, P.O. and P.S.- Savar, District- Kaimur, Bihar, Hawaldar No. 55 BMP-5.
2. Vijay Kumar Gupta, Son of Late Jagdish Sah, resident of Mohalla- Near Rashtriya ganj Railway Gumti, P.O. and P.S.- Phulwarisharif, District- Patna, Hawaldar No. 162 BMP-5.
3. Prem Shankar Singh, Son of Late Kedar Nath Singh, residnet of Village- Dharohi, P.O. Chausa, P.S- Buxar Muffasil, District- Buxar. Hawaldar No. 24 BMP-5.
4. Ramakant Upadhyay, Son of Late Kedar Upadhyay, resident of Village- Sakash, P.O.- Nikariya, P.S.- Darigaon, District- Rohtas, Hawaldar No.- 07, BMP-5.
5. Ashok Kumar Jha, Son of Late Shaktinath Jha, resident of Village and P.O.- Mith Bhagwanpur, P.S.- Mdhepura, District- Madhubani, Hawaldar No. 26 BMP- 5./
6. Md. Naiyar Imam Khan, Son of Md. Shamim Khan, resident of Village and P.O.- Bantara Devkund, District- Aurangabad, Hawaldar No. 28 BMP- 5.
7. Maksud Khan, Son of Late Jawad Khan, resident of Vilage- Rambal, P.O.Tarighat, P.S.- Suhwal, District- Gazipur (U.P.) Hawaldar No. 60 BMP- 5.
8. Pancham Kumar Poddar, Son of Late Jagdish Poddar, resident of Village and P.O. and P.S.- Rautara, District- Katihar, Hawaldar No.-23 BMP-5.
9. Shanaur Rahman, Son of Late Farukh Khan, resident of Village- Jakhaura, P.O.- Baghaoi, P.S.- Haspura, District- Aurangabad, Hawaldar No.- 9 BMP- 5.
10. Vijayendra Prasad, Son of Late Ramanand Sao, resident of Village and P.O. and P.S.- Parsa Bazar, District- Patna, Hawaldar No.- 98 BMP-5.
11. Ramjee Yadav, Son of Late Ramashraya Yadav, resident of Village- Nandlal Dera, P.O.- Laxmidera, P.S.- Sahnepura, District- Ara (Bhojpur), Hawaldar No.- 159 BMP-5.
12. Ashok Kumar, Son of Shri Hardev Singh, resident of Village and P.O.- Pitambarpur, P.S.- Ghoshi, District- Jehanabad, Hawaldar No.- 190 BMP-5.
13. Sohail Akhtar, Son of Late Md. Gulam Rasool Khan, resident of Village and P.O.- Dadhava, P.S.- Uphara, District- Aurangabad, Bihar, Hawaldar No.- 58 BMP-5.
14. Md. Mashih Alam, Son of Late Md. Suleman, resident of Village- Godargawa, P.O. Rampuramtihani, P.S.- Matihani, District- Begusarai, Hawaldar No.-137, BMP-5.
15. Md. Firoz Khan, Son of Late Md. Hafiz Khan, resident of Village- Pirganj, P.O.- Thakhiha, P.S.- Kishanpur, District- Supaul, Hawaldar No.- 152 BMP- 5.
16. Sahjanand Ojha, Son of Shri Kashinath Ojha, resident of Village- Kumhaila, P.O.- Sikti (Bhikham), P.S.- Esuapur, District- Chhapra, Hawaldar No.- 32 BMP-5.



17. Jaiprakash Singh, Son of Late Gudri Singh, resident of Village- Lalu Ke Dera, P.O.- Laxmi Ke Dera, P.S.- Shahpur, District- Bhojpur (Ara), Hawaldar No.- 135 BMP-5.
18. Chaturgun Rai, Son of Late Ramnaresh Rai, resident of Village- Teladh (Prema Rai Ke Tola), P.O. and P.S.- Agiyanw Bazar, District- Bhojpur, Hawaldar No.- 65 BMP-5.
19. Raj Kishore Mandal, Son of Late Brahmdev Mandal, resident of Village- Usri, P.O. and P.S.- Gogri, District- Khagariya, Hawaldar No.- 30 BMP-5.
20. Tulendra Kumar, Son of Deep Narayan Yadav, resident of Village- Jumwaha, P.O.- Korwahi, P.S.- Kumar Khand, District- Madhepura, Hawaldar No.- 198 BMP-5.
21. Umesh Prasad Singh, Son of Shri Ramchandra Singh, resident of Village- Rajpur, P.O.- Jaunapur, P.S.- Shahpur, Patori, District- Samstipur. Hawaldar No. 37 BMP-5.
22. Sudhir Kumar, Son of Late Garbhu Tiwari, resident of Village and PO. and P.S.- Pandarak, District- Patna. Hawaldar No. 103 BMP-5.
23. Kailash Das, Son of Late Liro Das, resident of Village- Kauwakoli, P.O.- Nathnagar, P.S. Madhusudanpur, District- Bhagalpur. Hawaldar No. 78 BMP-5.
24. Krishna Singh, Son of Shri Kamla Singh, resident of Village- Dauriyari, P.O.- Jamauri, P.S.- Tarari, District- Bhojpur. Hawaldar No. 187 BMP-5.
25. Baleshwar Lal Murmur, Son of Shri Chandrika Prasad, resident of Village- Sammanchak, P.O.- Jatdumri, P.S.- Punpun, District- Patna. Hawaldar No. 93 BMP-5.
26. Ashok Kumar Singh, Son of Late Raj Narayan Singh, resident of Village- Hasanpur, P.O. and P.S.- Shahjehanpur, District- Patna. Hawaldar No. 68 BMP-5.
27. Manindra Prasad Singh, Son of Late Ramji Singh, resident of Village and P.O.- Mohabbat Parsa, P.S.- Rivilganj, District- Chhapra. Hawaldar No. 08 BMP-5.
28. Ashok Rajak, Son of Late Bundel Rajak, resident of Village and P.O.- Maulanachak, P.S.- Islampur, District Nalanda. Hawaldar No. 71 BMP-5.
29. Vibhuti Sangahi, Son of Late Indrev Sangahi, resident of Village and P.O.- Nayagaon, P.S.- Parwata, District- Khagariya. Hawaldar No. 53 BMP-5.
30. Sher Mohammad Ansari, Son of Late Md. Aswash Ansari, resident of Mohalla- Barahpathar, P.O. and P.S.- Dehri-on-Sone, District- Rohtas. Hawaldar No. 101 BMP-5.
31. Upendra Prasad Yadav, Son of Shri Ramdev Prasad, resident of Village- Ubhanbiga, P.O.- Kukihar, P.S.- Bajirganj, District- Gaya, Hawaldar No.122 BMP-5.
32. Sanjay Kumar Singh, Son of Late Hridayanand Singh, resident of Village- Kakan Biga, P.O.- Maniach, P.S. Pawana, District- Bhojpur (Ara), Hawaldar No.- 200 BMP- 5.
33. Shri Krishna Dubey, Son of Late Jaglal Dubey, resident of Village- Milki, P.O.- Chunni, P.S.- Buxar Muffasil, District- Buxar. Hawaldar No. 21 BMP-



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34. Lalan Rai, Son of Late Sukhari Rai, resident of Village- Faridpur, P.O.- Bhadaura, P.S.- Dildar Nagar, District- Gazipur (U.P.). Hawaldar No. 84 BMP-5
35. Md. Ehatsam Khan, Son of Late Daud Khan, resident of Village and P.O.- Mahendra, P.S.- Karimuddinpur, District- Gazipur (U.P.). Hawaldar No.- 39 BMP-5.
36. Arvind Kumar, Son of Late Dindayal Pal, resident of Village- Rajpura, P.O.- Hridayachak, P.S. Kaler, District- Arwal, Hawaldar No.44 BMP-5.
37. Sudhakar Jha, Son of Late Modanarayan, Jha, resident of Village and P.O. Kavela, P.S- Parwatta, District- Khagariya. Hawaldar No. 35 BMP-5.
38. Shambhu Prasad, Son of Late Chandradeep Rai, resident of Village- Sabalpur, Gulamahiyachak, P.O.- Sabalpur, P.S.- Nadithana, Mojipur, District- Patna. Hawaldar No. 213 BMP-5.
39. Upendra Yadav, Son of Shri Sukhdev Yadav, resident of Village Ratanbigha, P.O.- Berikhiriyawa, P.S.- Saleya, District- Aurangabad. Hawaldar No. 123 BMP-5.
40. Kauleshwar Ram, Son of Late Parmeshwar Ram, resident of Village and P.O.- Malikpura, P.S.- Garaul, District- Vishali. Hawaldar No. 29 BMP-5.
41. Gopal Thakur, Son of Shri Badri Thakur, resident of Village- Charaun, P.O.- Nawagadhi, District- Munger, Hawaldar No. 110 BMP-5.
42. Upendra Prasad Singh, Son of Shri Nageshwar Singh, resident of Village- Kalaund, P.O.- Haspur, P.S.- Akbarpur, District- Nawada, Hawaldar No. 142 BMP-5.
43. Sanjay Kumar, Son of Late Rambalak Kunwar, resident of Village- Kaithbha, P.O.- Badalpur, District- Begusarai, Hawaldar No. 17 BMP-5.
44. Faizuddin Siddiqui, Son of Md. Anuddin Siddiqui, resident of Village- Phuli, Via- Jamaniya, District- Gajipur (U.P.) Hawaldar No. 02 BMP-5.
45. Ashok Chandra Dwivedi, Son of Late Vishwanath Tiwari, resident of Villagle- Badhuana, P.O.- Kanhaiyaganj, P.S.- Telhara, District- Nalanda, Hawaldar No. 205 BMP-5.
46. Rampukar Yadav, Son of Late Vishnudev Yadav, resident of Village- Rajwari, P.O. and P.S. and District- Aurangabad, Hawaldar No. 100 BMP-5.
47. Rambabu Chaudhari, Son of Late Prabhu Chaudhary, resident of Village and P.O. and P.S.- Koilwar, District- Bhojpur, Ara. Hawaldar No.76 BMP-5.
48. Raj Bihari Singh, Son of Shri Ganesh Singh, resident of Village- Ramobariya, P.O. Malriya, P.S. and District- Buxar. Hawaldar No. 206 BMP-5.
49. Mahesh Yadav, Son of Late Garib Yadav, resident of Village- Barahpur, P.O.- Bhor, P.S.- Mokama, District- Patna. Hawaldar No. 86 BMP-5.
50. Dineshwar Prasad Singh, Son of Ramvachan Singh, resident of Village- Patanva, P.O.- Samardiha, P.S.- Sasaram, District- Rohtas. Hawaldar No.181 BMP-5.
51. Mahesh Kumar Sharma, Son of Shri Mahendra Sharma, resident of Village-



- Bhabhan Bigha, P.O.- Sarta, P.S.- Parasbigha, District- Jehanabad, Hawaldar No. 87 BMP-5.
52. Yadunandan Manjhi, Son of Late Jalim Manjhi, resident of Village- Sabrinagar, P.O.- Dhanaut, P.S.- Rupaspur, District- Patna. Hawaldar No. 106 BMP-5.
 53. Shahnaz Khan, Son of Late Bismilah Khan, resident of Village and P.O. Rakshaha, P.S.- Dildarnagar, District- Gazipur (U.P.). Hawaldar No.-27 BMP-5.
 54. Suresh Sharma, Son of Late Palak Singh, resident of Village- Bhelawar, P.O.- Tezbiga, P.S. Kaki, District- Jehanabad. Hawaldar No. 97 BMP-5.
 55. Baijnath Singh, Son of Late Bhuwali Singh, resident of Village- Bara Basantpur, P.S- Ara Muffasil, P.O.- Daulatpur, District- Bhojpur, Ara Hawaldar No. 14 BMP-5.
 56. Kalicharan Hembram, Son of Late Sunaram Hembram, resident of Village- Rangmatiya, P.O.- Uparbare, P.S.- Rairangpur, District- Mayurganj (Odissa). Hawaldar No.- 166 BMP-5
 57. Parma Ram Harijan, Son of Shri Ganesh Ram, resident of Village and P.O.- Sarawe, P.S.- Muffasil, Siwan, District- Siwan, Hawaldar No. 64 BMP-5.
 58. Manjoor Alam, Son of Late Kadir Alam Khan, resident of Village and P.O.- Aahilwara, P.S.- Biraul, District- Darbhanga. Hawaldar No. 63 BMP-5.
 59. Ram Singh Yadav, Son of Late Sudarshan Yadav, resident of Village and P.O.- Balua Bazar, P.S.- Guthni, District- Siwan. Hawaldar No. - 189 BMP-5
 60. Ramesh Singh, Son of Late Ram Surat Singh, resident of Village- Ramval, P.O.- Tarighat, P.O.- Suhwal, District- Gazipur, U.P. Hawaldar No. 207 BMP-5.
 61. Krishna Kumar Singh, Son of Late Surendra Singh, resident of Village- Barkalohar, P.O.- Farna, P.S.- Barhara, District- Bhojpur, Ara. Hawaldar No. 191 BMP-5.
 62. Rajkapoor Mahto, Son of Shri Durlabh Mahto, resident of Village and P.O.- Sataki, P.S. Angara, District- Ranchi (Jharkhand), Hawaldar No. 83 BMP-5.
 63. Krishnandan Paswan, Son of Late Chandra Paswan, resident of Village Bela, P.O.- Chiksi, P.S.- Sigori, District- Patna. Hawaldar No. 77 BMP-5.
 64. Jitendra Kumar, Son of Shri Mani Sharma, resident of Village- Bhane Bigha, P.O. and P.S.- Makhdumpur, District- Jehanabad, Hawaldar No. 197 BMP-5.
 65. Kailash Sharma, Son of Late Haridwar Thakur, resident of Village- Chhoti Rukanpura (Mahuabag), P.O. Veterinary College, P.S.- Hawaiadda, District- Patna. Hawaldar No.211 BMP-5.
 66. Arvind Kumar Thakur, Son of Late Bijli Thakur, resident of Village- Rajshahipur Inichar, P.O.- Danauli, Phulwariya, P.S.- Muffasi, District- Begusarai. Hawaldar No. 140 BMP-5.
 67. Dhananjay Kumar, Son of Late Tejan Singh, resident of Village- Ghoratap, P.O.- Embalganj, Nisarpura, P.S.- Bihta, District- Patna. Hawaldar No. 196 BMP-5.
 68. Sumant Rai, Son of Late Manru Rai, resident of Village and P.O.- Kabilashpur, P.S.- Durgawati, District- Kaimur. Hawaldar No. 191 BMP-5.



69. Paras Ram, Son of Late Ramaji Ram, resident of Village- Kukurbhuka, P.O.- Don, P.S.- Darauli, District- Siwan. Hawaldar No. 48 BMP-5.
70. Ajay Kumar Srivastava, Son of Late Barmeshwar Lal, resident of Village and P.O. Gaighat, Via- Brahmapur, P.S.- Brahmapur, District- Buxar. Hawaldar No. 68 BMP-5.
71. Vikash Pratap Singh, Son of Late Surendra Pratap Singh, resident of Village and P.O.- Gadhbaruari, P.S. and District- Supaul, Hawaldar No. 120 BMP-5.
72. Sunil Kumar Singh, Son of Late Hardeep Singh, resident of Village and P.O.- Kobil, P.O.- Islampur, District- Nalanda. Hawaldar No. 183 BMP-5.
73. Nand Jee Singh, Son of Late Sukhdev Singh, resident of Village- Turti, P.O.- Munji, P.S.- Vikramganj, District- Rohtas, Hawaldar No. 69 BMP-5.
74. Umesh Prasad Rajak, Son of Late Munshi Rajak, resident of Village- Dharampur Rai Rai, P.O. Mamrejpur, P.S.- Desri, District- Vaishali. Hawaldar No. 10 BMP-5.
75. Ram Parvesh Kumar, Son of Late Ahkhileshwar Singh, resident of Village and P.O.- Bhano, P.S.- Suryagadh, District- Lakhisarai. Hawaldar No. 12 BMP-5.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police, Patel Bhawan, Bailey Road, Patna, Bihar.
3. The Director General, Bihar Military Police, Patel Bhawan, Bailey Road, Patna, Bihar-cum-Chairman of the Committee.
4. The Inspector General of Police, Budget/Appeal/Welfare, Bihar, Patna.
5. The Deputy General Inspector of Police, Bihar Military Police, Central Range, Patna.
6. The Principal Secretary, Finance Department, Government of Bihar, Patna.
7. Commandant, Bihar Military Police-5, Patna- 800014.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13830 of 2019

1. Hari Uraon S/o Late Madi Uraon Resident of Village Saso, PO Chandwe, P.S. Pitharia, Dist. Ranchi (Jharkhand), presently posted as Havildar, Bihar Military Police-4, Dumraon, Buxar, Dist. Buxar
2. Brij Bihari Upadhyay S/o Sri Keshav Prasad Upadhyay Resident of Village Jagilpur, PO and PS Rewatipur, Dist. Gajipur (U.P.), presently posted as Havildar, Bihar Military Police-4, Dumraon, Buxar, Dist. Buxar
3. Daya Nand Singh S/o Late Abhay Raj Yadav, Resident of Village and PO Nadi, PS Balua, Dist. Chandauli (U.P.), presently posted as Havildar, Bihar Military Police-4, Dumraon, Buxar, Dist. Buxar



4. Satya Narayan Prasad S/o of Late Sri Sant Prasad Resident of Village and PO Mahuaar,PS Nainijore,Dist.Buxar presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
5. Surendra Prasad Singh S/o Sri Ram Gahan Singh Resident of Village and PO Sakari,PS Kudra,Dist.Kaimur at Bhabhua,presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
6. Madan Prasad Yadav S/o Siya Ram Prasad Yadav Resident of Village Lakha Chak,PO and PS Beldi,Dist.Patna,presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
7. Krishnandan Singh S/o Late Badri Singh, Resident of village- Maksudpur, P.O. Basantpur (Bangala), P.S. - Amnour, District Saran at Chapra, presently posted as Havildar/14, Bihar Military Police-4, Dumraon, Buxar, Dist Buxar
8. Pradip Kumar S/o Sri Late Mohan Ram Resident of Village and PO Saryuan,PS Udwant Nagar,Dist.Bhojpur at Ara,presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
9. Mohsin Akhtar S/o Md. Sharfuddin, Resident of Village and PO Amiyawar,PS Nasriganj,Dist.Rohtas at Sasaram,presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
10. Gopalji Singh S/o Late Ram Barath Singh Resident of Village and PO Sundarpur Kuriyan,P.S. Muffasil Ara,Dist.Bhojpure at Ara,presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
11. Hari Narayan Yadav S/o Late Saini Lal Yadav Resident of Village and PO behrai,PS Singheshwar,Dist.Madhepura,presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
12. Tarkeshwar Chaudhary S/o Late Shivilal Chaudhary Resident of Village Paharpur,PO Umraoganj,PS Bihian,Dist.Bhojpur at Ara,presently posted as Havildar/41,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
13. Ramdeo Paswan S/o Late Ramcharitra Paswan Resident of Mohalla Larkaniya Tola,Ward No.18,PO and PS Katihar,Dist.Katihar,presently posted as Havildar/30 Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
14. Kanchan Singh S/o Sri Yamuna Singh Resident of Vill and PO Danwar,PS Kachhwan,Dist.Rohtas at Sasara,presently posted as Havildar/57, Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
15. Vishwanath Prasad S/o Sri Ganauri Prasad Resident of Village and PO Neura,PS Bihta,Dist.Patna,presently posted as Havildar/50,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
16. Mukund Banra S/op Late Satari Banra Resident of Village Ruidh,PO Bara Chiru,PS Muffasil Chaibasa,Dist.Singhbhum (Jharkhand),presently posted as Havildar/01, Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
17. Anirudh Prasad Singh Sri Rajendra Prasad Singh Resident of Village and PO Khanpur Pakari,PS Bidupur,Dist.Vaishali at Hajipur,presently posted as Havildar/06, Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
18. Om Prakash Ram S/o Jawahar Ram Resident of Village Nagdilpur,PO Deokipur,PS Suhwal,Dist.Gajipur (U.P.), presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
19. Prabhu Kumar S/o Late Ram Gati Singh Resident of Village Amhrauhan,PO



- Kosihar,PS Chauri,Dist.Bhojpur at Ara,presently posted as Havildar/53,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
20. Rajendra Kumar Yadav S/o Sri Shyam Sundar Yadav Resident jof Village and PO khajuria,PS Muffasil Ara,Dist.Bhojpur at Ara,presently posted as Havildar,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
21. Amar Ram S/o Late Madho Ram Resident of Village and PO Dullpur,PS Simri,Dist.Buxar,presently posted as Havildar/33, Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar
22. Brahmdutt Singh S/o Late Brij Bihari Singh Resident of Village and PO Arakh,PS Krishna Brahm,Dist.Buxar,presently posted as Havildar/138,Bihar Military Police-,Dumraon,Buxar,Dist.Buxar
23. Shashi Bhushan Chaudhary S/o Ram Prakash Chaudhary Resident of Village and PO Belaur,PS Udwant Nagar,Dist.Bhojpur at Ara, presently posted as Havildar/55,Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police,Bihar,Patna
2. The Inspector General of Police (Budget,Appeal and Welfare),Bihar,Patna
3. The Additional Director General , Military Police,Patna.
4. Thed Principal secretary, Finance Department,Govt. of Bihar,Patna
5. The Commandant, Bihar Military Police-4,Dumraon,Buxar,Dist.Buxar

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 12882 of 2019)

For the Petitioners : Mr. Y.V. Giri, Sr. Advocate
Mr. Pranav Kumar, Advocate

For the Respondent/s : Mr. Manish Kumar (GP 4)

(In Civil Writ Jurisdiction Case No. 13830 of 2019)

For the Petitioners : Ms. Anita Kumari, Advocate
Mr. S.B.K. Mangalam, Advocate

For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 12-07-2019

Heard the learned counsel for the parties.

2. In C.W.J.C. No. 12882 of 2019, the petitioners who are 75 in number seek quashing of various memos, details of which have been stated in the first paragraph of



the writ petition whereby the Commandant of BMP 5, Patna in terms of decision taken by the Committee has fixed the pay scale of petitioners at Rs. 3200-4900/- for the post of Hawaldar and has directed for recovery of excess amount which had been disbursed to the petitioners. The petitioners have further prayed for quashing the recommendation of the Committee dated 12.03.2019 whereunder the Committee had recommended that in case of such Constables who have been promoted to the post of Hawaldar or have been given the pay scale of Rs. 4000-6000/- and have been given the benefits of MACP shall be issued individual show cause notice as to why their scale be not refixed in terms of the financial rules.

3. In C.W.J.C. No. 13830 of 2019, the petitioners who are 23 in number have sought quashing of the order dated 03.05.2019 passed by the Commandant BMP-4, Dumraon, Buxar and communicated to all concerned vide Memo No. 1166 dated 03.05.2019 whereby the



conversion of the petitioners from general Constables to literate Constables and subsequent grant of pay scale of Rs. 4000-6000/- with effect from 01.01.1996 and other financial benefits granted to them was held to be contrary to the financial rules and therefore the same has been directed to be recovered as also for quashing of the order dated 12.06.2017 issued by the Commandant BMP-4 intimating the petitioners that the benefits given to them have been modified.

4. Since both the writ petitions are based on more or less similar set of facts, they are being disposed of by this composite order.

5. The case of the petitioners is that in terms of the Bihar Police Manual, the promotional avenue of a Constable of matriculate cadre is Constable: Assistant Sub-Inspector of Police: Sub-Inspector of Police. For non-matriculate cadre, the promotional posts are Constable: Hawaldar: Sub-Inspector of Police. The difference between the matriculate and non-matriculate cadre is only with



respect to the intermediate post of ASI and Hawaldar respectively for which pay scale is Rs. 4000-6000/- and Rs. 3200-4900/- respectively.

6. In the year 1987, for every BMP unit, various posts of Sub-Inspectors and Assistant Sub-Inspectors were created which had to be filled up from the cadre of matriculate Constables as per the seniority counted from the date of entry in service. Since the promotional posts were limited and not vacant, ACP scheme of 2003 was introduced and the petitioners were paid the ACP on the basis of the next promotional post of ASI in the pay scale of Rs. 4000-6000/-. The petitioners were also granted the 2nd ACP and the MACP and pay fixation was done in terms of the aforesaid schemes.

7. It is the case of the petitioners that there is no promotional post of Hawaldar in the literate cadre of Constables for which the next promotional post is ASI with which the pay scale of Rs. 4000-6000/- is attached.



8. The police department thereafter vide Order No. 1236/2017 took a decision that the petitioners were wrongly paid the first ACP on the pay scale of ASI; they ought to have been paid the ACP on the pay scale of Hawaldar and as such, it was further declared that the petitioners were wrongly paid the monetary benefit to which they were not entitled.

9. This was challenged by several such persons adversely affected by the aforesaid decision vide C.W.J.C. No. 14190 of 2016 (Jai Ram Prasad Singh Vs. State of Bihar & Ors.) which was disposed of by a Bench of this Court by remanding the cases of the petitioners therein for a fresh consideration be made and till such fresh decision was taken by the competent authority, there shall be no recovery. It was also directed that the decision shall be taken only after serving the show cause notice to such employees and in case a personal hearing was required necessary, that also be granted to them.



10. In terms of the direction in the order dated 03.12.2018 passed in C.W.J.C. No. 14190 of 2016 referred to above along with other cases, a Committee was constituted under the Chairmanship of the Director General, Military Police, Bihar, Patna and show cause notice was issued to such Constables who had been granted promotion to the post of Hawaldar but were granted first ACP in the pay scale of Rs. 4000-6000/-. The petitioners and others replied to such show cause notice and stated that there were two cadres of Constables and since the petitioners were in the cadre of literate Constables, the next higher post was that of ASI with the pay scale of Rs. 4000-6000/- and therefore the benefits of ACP was calculated on the basis of such pay scale.

11. Despite such cogent explanation, the petitioners were held to be entitled to pay scale of Rs. 3200-4900/- only which is attached to the post of Hawaldar and a further direction was issued to recover the excess amount which was paid to them. The aforesaid



order was passed on 25.04.2019 has been challenged in the present petitions.

12. It has also been submitted on behalf of the petitioners that at the time of their entry in the service, they had the certificate of matriculation which is evident from the service book of the petitioners. Once they were granted the first ACP on the pay scale of ASI, treating them as matriculate cadre Constables, notwithstanding the fact that they were made to join the post of Hawaldar, the scale of pay given to them which was in the nature of the personal pay could not have been reduced on any ground whatsoever. The principle of pay protection/personal pay was completely flouted. It has also been averred that now the decision with respect to the petitioners being promoted to the next higher post from the non-matriculate cadre is of no consequence as now the petitioners have been promoted to the next higher post of Sub-Inspector of police and have been given the benefits of MACP rules of 2010 on that pay scale.



13. As opposed to the aforesaid contentions, Mr. Manish Kumar, learned GP 5 has submitted that initially there was no post of literate Constables in Bihar Military Police and only in the year 1987 certain posts were created with limited number of seats. At that stage, two cadres were identified viz. matriculate and non-matriculate cadre. Separate criteria was fixed for filling up the post of literate Constables with separate provision for training for such literate Constables before they could have been promoted to the rank of ASI.

14. It has been argued that the cadre provision of BMP is different from the District police and the petitioners were wrongly promoted/given benefit of ACP rules of 2003 on the pay scale of ASI in place of Hawaldar.

15. From the perusal of the order impugned, it appears that the authorities have not taken into account the direction passed by this Court to consider the case of the petitioners in view of the judgment of the Supreme



Court in ***State Of Punjab & Ors vs Rafiq Masih (White Washer) & Ors. 2015 (4) SCC 334.***

16. Paragraph-18 of the aforesaid judgment reads as follows:

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.



(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

17. The order passed by the Committee as well as the individual orders with respect to the petitioners have been impugned on an additional ground that it has not at all been taken into consideration that it was not because of the fault of the petitioners that a scale to which they were not entitled was given to them. Factually this statement also has been doubted by the petitioners.

18. The aforesaid aspect of the matter has been completely ignored while passing the orders impugned in both the writ petitions.



19. Under similar circumstances, with slight difference in facts but similar to the facts of C.W.J.C. No. 13830 of 2019, this Court in *Vinod Kumar Singh and others (C.W.J.C. No. 12441 of 2019)* has set aside such order of slashing down of pay scale of such police personnel of BMP and has remitted the matter to the concerned authority viz. the Director General, BMP, Patna to write out a fresh order in accordance with law and after referring to all the grounds urged by the petitioners therein within a period of three months from the date of production of a copy of this order. It has further been clarified that in case it is found that a personal hearing is required to be given, that shall also be afforded to such affected persons. In the aforesaid case, the petitioners were given the option of converting/migrating from non-matriculate to matriculate cadre and it was urged that reverting them to the non-matriculate cadre was against the principle of irrevertability.



20. In the present case *viz.* C.W.J.C. No. 12882 of 2019, the petitioners were always treated as members of the literate Constable cadre whose next line of promotion was that of ASI with the scale of Rs. 4000-6000/-. In C.W.J.C. No. 13830 of 2019, the petitioners were made to migrate to the matriculate cadre and therefore they could not be asked to revert back to the non-matriculate cadre at such belated stage.

21. Thus, in the present case also, the orders impugned is set aside with a direction to the Director General of Police, Patel Bhawan, Bailey Road, Patna, Bihar (respondent no. 2) to write out a fresh order in accordance with law after affording proper opportunity to the petitioners to explain their cause and if need be, personal hearing be also given. The decision ought to be taken within a period of four months from the production of a copy of this order.



22. It is further directed that till such time a fresh decision is taken in case of the petitioners, there shall be no recovery from the petitioners.

23. With the aforesaid direction/observation, the writ petitions are disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.08.2019
Transmission Date	

