

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.167 of 2018

1. Hav. Janardan Singh and Ors Son of Late Tribhuwan Singh, at present posted in Havildar in BMP 10, at Patna.
2. Hav. Dineshwar Prasad Gupta, S/o Chhotelal Gupta, at present posted as Havildar in BMP- 10, at Patna.
3. Hav. Md. Mohiuddin Khan, Son of Late Hasan Raja, at present posted as Havildar in BMP 11 at Jamui.
4. Hav. Md. Mumtaz Alam, S/o Late Sheikh Khalil, at present posted as Havildar in BMP 10 at Patna.
5. Hav. Md. Jawed Khan, S/o Late Md. Zamin Ali Khan, BMP 12 IRB-2, Saharsa Camp BMP-7, at Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The DGP, Bihar Police Headquarters, old Secrariat at Patna.
3. The IG Police Budget, Appeal and Welfare, Bihar, DGP office at Police HQ, Old Secretariat at Patna
4. The Commandant, Bihar Military Police Battalion 10 at Patna.
5. The Commandant, Bihar Military Police Battalion 10 at Jamui.
6. The Secretary, Department of Finance, Government of Bihar, at Patna.
7. The District Accounts Officer, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suresh Prasad Singh
For the Respondent/s	:	Mr. Manish Kumar -Gp4
		Mr. Manoj Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

6 11-08-2022 Heard learned counsel for the petitioners and learned counsel for the State.

The learned counsel for the State has submitted that determination of benefits under ACP to the Constable, similarly situated as the petitioners, have already been decided in CWJC No. 6910 of 2020 reported in **2021 (2) PLJR 716 (Surendra**



Mandal & Ors. v. the State of Bihar & Ors.). The relevant extract of which is being reproduced:

*“10. After hearing parties and considering the rival contentions of the petitioners and the respondents, the Court finds that the benefit of ACP to a constable in terms of ACP Rules is permissible in pay scale of Havildar (first ACP) and SI (second ACP) and not ASI and SI which was wrongly granted to the petitioners and, therefore, the Court does not find any error in the decision of the respondents determining the entitlement of the petitioners for grant of first ACP in the pay scale of Havildar and ASI in second ACP. So far recovery part is concerned, writ petitioners are already in job and they have not retired. However, the Court finds substance in the submission of Mr. Giri. Equity demands that action of the respondents should be tested whereas upon action or belated action. Respondents should have taken decision within reasonable time and not after inordinate delay as highlighted by the Apex Court in the decision of **Syed Abdul Qadir & Others vs. State of Bihar & Others** (supra). The Court is of the considered view that any action of the respondents for recovery on detecting their*



mistake or after delay of approximately ten years is impermissible. In case where the order granting benefit of ACP is conditional one, there cannot be any hard and fast rule of five years for correction of the order but nonetheless the action of the respondents in rectifying mistake in absence of fraud or misrepresentation may be taken at the earliest and not at the fag end of service or after delay of approximately ten years.

11. In the peculiar facts and circumstances of the case, while upholding the decision of the respondents reducing the entitlement of the petitioners the benefit of ACP in place of ASI to Havildar and SI to ASI, the Court directs that so far as grant of first ACP is concerned, it was allowed for nearly nine long years without any demur and as such, the Court, in the facts and circumstances of the case, is inclined to accept the contention of Mr. Giri that there shall be no recovery of benefit granted to the petitioners as ACP in the pay scale of ASI instead of Havildar i.e. there shall be no recovery from the pay scale already granted from 2008 to 2010 as thereafter they have been granted second ACP in the pay scale of ASI and thus, after 2010 there was no question of



recovery of any amount for grant of first ACP.

12. So far as second ACP is concerned, the Court finds that the action was taken by the respondents within a period of five years or maximum period of seven years, in that situation, the Court is of the view that respondents may be justified in recovering that amount in easy installment so that the petitioners may not face economic hardship on account of the recovery of excess amount as benefit was extended to them in monthly pay scale and as such the respondents have to work out easy installment so that it may not cause hardship to the petitioners.

13. In the result, these writ applications are partly allowed to the extent that so far as benefit of first ACP is concerned, benefit of first ACP should be reduced but there shall not be any recovery of amount paid to the petitioners. The benefit of second ACP granted to the petitioners may be recovered by the respondents in easy installments and the respondents are directed to fix entitlement of the petitioners in the first ACP and second ACP as constable and not literate constable in the pay scale of Havildar and ASI from the respective date of



their entitlements. Corrective measures may be taken by the respondents at the earliest preferably within a period of three months from the date of receipt/production of a copy of this judgment.

14. With the aforesaid, all these writ applications are partly allowed and disposed of in the manner indicated above.”

On specific query being made by the Court, as to how the petitioner’s counsel proposes to distinguish the petitioners from the petitioners in the case cited by the State, the submission is two folds. One that benefit grant of ACP to the petitioners, was not conditional and secondly, there is no objection on the record by the Finance Department.

Grant of ACP benefits to the petitioner vide Annexure 4 series, clearly contemplates in so many words that the grant is completely provisional and subject to verification by the Finance Department and on any infirmity being found, the same shall be dealt with accordingly.

The impugned order (Annexure 7) also clearly shows that the authorities have found some infirmity in the grant of benefits to the petitioners under ACP Scheme.

The submissions advanced by the petitioner’s counsel



of distinguishing the case of the petitioner from petitioners of CWJC No. 6910/2020, noted above, is not substantiated by the records and rejected by this Court.

The petitioner's counsel also submits that the petitioners were never given option for being placed in the group of literate constable, though they are all having the eligibility criteria and discharging functions, which can only be discharged by literate constables. The said issue is not relevant to the instant case, wherein the issue of ACP and its grant/determination is pending consideration. The petitioner however would be at liberty to pursue the claim in accordance with law.

The writ petition is disposed in terms of decision passed in the case of ***Surendra Mandal & Ors. v. the State of Bihar & Ors.*** passed in **CWJC No. 6910/2020**.

(Madhuresh Prasad, J)

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