

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.963 of 2021**

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1. Anil Kumar Das @ Anil Kr. Das Son of Late Ramdeo Das Resident of Village- Udaypur, Police Station- Parwata, District- Khagaria.
2. Ramphal Das Son of Paro Das Resident of Village- Rampur, Police Station- Nathnagar, District- Bhagalpur.
3. Rakesh Ranjan Son of Girdhari Ram Resident of Village- Khoridih, Police Station- Meral, District- Gadwa (Jharkhand).
4. Krishna Bahadur Thapa Son of Late Padam Bahadue Thapa Resident of Bhetnary Collage Colony, Police Station- Hawai Adda, District- Patna..
5. Ram Prasad Jaishi Son of Late Tara Prasad Jaishi Resident of Village- J.A.P.-1, Doranda, Police Station- Doranda, District- Ranchi (Jharkhand).
6. Hira Lal Lohara Son of Late Raghu Lohara Resident of Village- Eane, Police Station- Lohardagga, District- Lohardagga (Jharkhand).
7. Manoj Kumar -III Son of Late Lakhan Lal Sharma Resident of Village- Rajghat, Police Station- Barhara Kothi, District- Purnea (Bihar).
8. Manejar Singh Son of Late Devanand Singh Resident of Village- Bhadeha, Police Station- Muffasil, District- Bhojpur at Ara.
9. Shiv Shankar Ram Son of Sudarshan Ram Resident of Village- Jhauwa Ka English, Police Station- Bihia, District- Bhojpur at Ara.
10. Ram Gulam Ram Son of Balkeshwar Ram Resident of Village- Raji, Police Station- Kharodhi, District- Gadhwa (Jharkhand).
11. Jagdish Paswan Son of Sri Shiv Dayal Paswan Resident of Village- Anandpur, Police Station- Bihara, District- Patna.
12. Kamal Kumar Son of Late Prem Bahadur Resident of Village- Nepali Tola, Police Station- Sahayak Thana, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Director General of Police, Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The Inspector General of Police (Budget/Appeal/Welfare), Bihar, Patna.
4. The Under Secretary to the Government Department of Home (Police), Bihar, Patna.



5. The Commandant Bihar Military Police-7, Katihar.
6. The Principal Secretary Department of Finance, Government of Bihar, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Niranjana Kumar  
For the Respondent/s : Mr. Lalit Kishore (AG)

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**ORAL JUDGMENT**

**Date : 21-02-2022**

Heard learned counsel for the parties.

In the instant petition, petitioners have prayed for the following relief/reliefs:

“This is an application for issuance of appropriate writ(s)/order(s)/direction(s) for following relief(s):-

*“i. For quashing of the different force order Nos. 743 of 2019 contained in memo no. 1438 dated 19.06.2019 and force order No. 173 of 2020 contained in memo no. 180 dated 27.01.2020, (Annexure-5 and 5/1) passed and issued by the Commandant, Bihar Military Police 7, Katihar, whereby and where under the pay scale earlier granted to the petitioners and other similarly*



*situated persons have been modified/reduced to the lower scale of pay and for adjustment of the excess amount taken/recovered by them from their salary/pension. And also to quash the impugned notifications/orders vide letter/Memo No. 5301 dated 15.07.2011 and Memo No. 4377/P-3 dated 07.04.2017 and Memo No. 6784/P-3 dated 08.06.2017 respectively upon which, the aforesaid impugned force order has arbitrarily and illegally been issued by the respondents and further to quash the letter dated 09.08.2017 passed by the Inspector General of Police, Bihar, Patna contained in Memo no. 9545, whereby and where under it has been mentioned that the interim order dated 25.07.2017 passed in CWJC No. 1007 of 2017 shall be applicable only to the petitioners only.*



*ii. And further respondent be directed to make payment of the petitioners and other similarly situated persons as they were getting their salary prior to issuance of the aforesaid impugned force orders passed and issued by the respondents.*

*iii. And also further respondents be directed to make payment to the petitioners and similar situated persons in accordance with the provisions laid down in the A.C.P. Rule, 2003 as well as M.A.C.P. Rule, 2010 after completion of ten years, twenty years and thirty years of their services.*

*iv. And for stay of the operation of the aforesaid Force orders (Annexure-5 and 5/1) passed and issued by the respondents as well as the other orders and letters on the basis of which the impugned orders*



*(Annexure-5 and 5/1) have been passed during pendency of the present writ application.*

*v. For issuance of other order/orders which may deem fit and proper in the fact and circumstances of this case.”*

Short question for consideration is whether the petitioners have been notified before re-fixation of their pay with reference to grant of MACP and ordering recovery or not. Undisputedly, petitioners have not been provided notice before altering their pay and recovery. That apart, petitioners are holders of the post of constable and constable post is Group C. Thus, question of recovery of any excess payment made to the petitioners on account of grant of MACP is not warranted, therefore, the respondents are not entitled to recover excess amount from the petitioners in the light of Apex Court decision in the case of ***State of Punjab v. Rafiq Masih reported in (2015) 4 SCC 334***. Identical matter was decided in CWJC No. 10076 of 2017, the same is taken note of.

Accordingly, the present writ petition stands allowed in terms of order passed in CWJC No. 10076 of 2017.



Annexure-5 and Annexure-5/1 stands quashed only to the extent of recovery. Insofar as re-fixation of pay is concerned, it is confirmed.

**(P. B. Bajanthri, J)**

Ankit/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 23.02.2022 |
| Transmission Date | NA         |

