

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.778 of 2019

In
Civil Writ Jurisdiction Case No.6821 of 2019

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1. Suraj Chhetri Son of Bishnu Lal Chhetri, Resident of East Paiyoung, Chimul, Kalimpong, P.S. Algarah, District- Darjeling (West Bengal), presently residing at campus of Bihar Military Police-1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 713, Learner Driver, Bihar Military Police-1, Patna.
 2. Arun Chandra Pradhan Son of Sri Mahendra Pradhan, Resident of campus of B.M.P.- 1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 769, Learner Driver, Bihar Military Police-1, Patna.

... ... Appellant/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Principal Secretary, Home (Police) Department, Government of Bihar, Patna.
4. The Additional Secretary, Home (Police) Department, Government of Bihar, Patna.
5. The Deputy Inspector General of Police, Military Police (K.M.) Patna.
6. The Commandant, Bihar Military Police- 1, Patna.
7. Ram Kumar Shrestha Son of Man Bahadur Shrestha, Resident of campus of Bihar Military Police-1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 503, Learner Driver, Bihar Military Police-1, Patna.
8. Dev Bahadur Dura Son of Late Dambar Bahadur Dura, Resident of campus of Bihar Military Police-1, P.O. Bihar Veterinary colleges, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 776, Learner Driver, Bihar Military Police-1, Patna.
9. Rajendra Thapa Chhetri Son of Late Bal Bahadur Thapa Chhetri, Resident of campus of Bihar Military Police-1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 16, Learner Driver, Bihar Military Police- 1, Patna.
10. Manoj Thapa Son of dhurva Thapa, Resident of campus of Bihar Military Police-1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 761, Learner Driver, Bihar Military Police- 1, Patna.
11. Ashis Thakuri Son of Late Gyan Babu Thakuri, Resident of campus of B.M.P.- 1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 21, Learner Driver, Bihar Military Police - 1, Patna.



12. Sachin Kumar Thapa Son of Vijay Kumar Thapa, Resident of campus of Bihar Military Police-1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 40, Learner Driver, Bihar Military Police-1, Patna.
13. Prabal Thapa Son of Rabindra Thapa, Resident of campus of Bihar Military Police-1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 203, Learner Driver, Bihar Military Police-1, Patna.
14. Devraj Thakuri Son of Bel Bahadur Singh Thakuri, Resident of campus of Bihar Military Police-1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Learner Driver, Bihar Military Police-1, Patna.
15. Panch Lal Shrestha Son of Sri Kehar man Shrestha, Resident of campus of Bihar Military Police- 1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 822, Learner Driver, Bihar Military Police-1, Patna.
16. Ram Bahadur Sunar Son of Hari Bahadur Sunar, Resident of campus of Bihar Military Police-1, P.O. Bihar Veterinary College, P.S. Hawaii Adda, District- Patna, presently posted as Constable No. 800, Learner Driver, Bihar Military Police- 1, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vijay Kumar Singh, Advocate Mr. Abhinav Shandilya, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma, AAG 3 Mr. Saroj Kumar Sharma, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-08-2022

The appellants have assailed the order of the learned Single Judge dated 13.05.2019 passed in C.W.J.C. No. 6821 of 2019. The appellants were appointed to the post of Constable. They have a prospectus of selection and appointment to the post of Driver/Havildar Driver/Reserve Sub-Inspector (Transport) in terms of Rule 1186 of the Bihar Police Manual - 1978 (Volume 1).



The competent authority proceeded to process the recruitment to the aforesaid posts in which the appellants were candidates. Their names have not been considered in terms of Rule 1186 of the Bihar Police Manual - 1978. Thus appellants/petitioners are before this Court in C.W.J.C No. 6821 of 2019. Grievance of the appellants was not redressed by the learned Single Judge. Thus present L.P.A. has been preferred in questioning the order of the learned Single Judge dated 13.05.2019 passed in C.W.J.C. No. 6821 of 2019.

2. Learned counsel for the appellants submitted that there is non-compliance to Rule 1186 of Bihar Police Manual - 1978. If Rule 1186 of Bihar Police Manual - 1978 is given effect, in that event the appellants are eligible to be appointed to various posts indicated under Rule 1186 of the Bihar Police Manual - 1978. In this regard, learned counsel for the appellants submitted that amendment to Rule 1186 was for the first time in September, 2017 *vide* Annexure - 5 to the writ petition, therefore, they are entitled to relief sought in the writ application.

3. *Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that appellants are not entitled to in view of Rule 1186 of the Bihar Police Manual - 1978 for the post of Driver and other equivalent posts in terms of



Rule 1186 for the reasons that Rule 1186 was substituted *vide* notification dated 15.07.2011. The Substitution of Rule 1186 (a) of Bihar Police Manual - 1978 would be from the inception of introduction of Bihar Police Manual - 1978. It is also submitted that inadvertently the competent authority processed the selection and appointment to the post of Driver under Rule 1186 of the Bihar Police Manual - 1978 in the year 2015 ignoring the substitution of Rule 1186 (a) of Bihar Police Manual - 1978 on 15.07.2011. In the light of the aforesaid legal position the officer should not have resorted to proceed with the process of recruitment in terms of unamended Rule 1186 (a) of Bihar Police Manual - 1978. It is also submitted that the appellants with a tag of Constables, they are not entitled to participate in the process of recruitment to various posts under amended Rule 1186. The source cadre for the post mentioned in Rule 1186 (amended) is open competition and a maximum of 50 % of the total available vacancy in the rank of Driver Constable may be filled up by Home Guards trained and registered in Bihar. Therefore, the appellants have no *locus standi* to claim for the post of Driver Constable as in Service Constable.

4. Heard learned counsel for the respective parties.



5. The official respondent has mislead the appellants while invoking Rule 1186 (unamended Rule) in filling up of various posts including the Driver Constable post with reference to 25 % of the post earmarked for Constable with a driving knowledge (Trained Driver) or to be trained as a Driver to the Constable. As on the date of process of selection and appointment to the various Driver Constables in the year 2015, the Rule 1186 was substituted by notification dated 15.07.2011. The source cadre for the post of Driver Constable with reference to amended Rule (substitution of the Rule) do not provide source cadre from the Constable read with trained Driver or to be trained as a Driver to the Constable. On the other hand, the post of Driver Constable and other posts which are mentioned in Rule 1186 was required to be filled by open competition and maximum 50 % of the total available vacancy in the rank of Driver Constable may be filled by Home Guards trained and registered in Bihar. In the light of the aforesaid Rule, the appellants who were Constables they are entitled to claim any locus to select them to the post of Driver Constable with a tag of Constable. On the other hand, they are entitled to compete to the post of Driver Constable under open competition provided they fulfill the eligibility criteria mentioned in the amended Rule dated 15.07.2011. In the light of these facts and



circumstances, the process of selection in terms of unamended Rule 1186 is contrary to amended Rule dated 15.07.2011. Hence, the appellants have not made out a case. However, having misled the appellants by the office of the Department in processing the recruitment to the post of Driver Constable in terms of unamended Rules, the appellants are entitled to cost of the litigation and it is quantified at Rs. 10,000/- (Rupees Ten Thousand). Cost shall be paid to the appellants from the Police Department for the reasons that appellants preferred two types of litigation viz., C.W.J.C. and L.P.A.

6. With the above observation, appeal stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	27.08.2022
Transmission Date	

