

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17238 of 2021

1. Gopalji Singh, S/o Late Ram Barath Singh, Resident of Village and PO Sundarpur Kuriyan, P.S. - Muffasil Ara, Dist. - Bhojpur at Ara, presently posted as Havildar, Bihar Military Police-4, Dumraon, Buxar, Dist. - Buxar.
2. Brahmduitt 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.
3. Satya Narayan Prasad, S/o 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.
4. 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.
5. Satyanand Upadhyay, Son of Gokhulanand Upadhyay, Resident of Village - Manika, PO Chaitma, P.S. Patan, District - Palamu (Jharkhand) presently posted as Havildar, Bihar Military Police -4, Dumraon, Buxar, District - Patna.
6. Hari Oraon, 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.
7. Rajendra Kumar Yadav, S/o Sri Shyam Sundar Yadav, Resident of Village and PO Khajuria, PS Muffasil Ara, Dist. Bhojpur at Ara, presently posted as Havildar, Bihar Military Police-4, Dumraon, Buxar, Dist. - Buxar.
8. 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.
9. 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.
10. Tarkeshwar Chaudhary, S/o Late Shivlal 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.
11. 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.

12. Prabhu Kumar, S/o Late Ram Gati Singh, Resident of Village Amhrauhan, PO Kosihar, PS Chauri, Dist. Bhojpur at Ara, presently posted as Havildar, Bihar Military Police-4, Dumraon, Buxar, Dist. - Buxar.
13. 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.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Director General of Police, Bihar, Patna.
2. The Inspector General of Police (Headquarters) Bihar, Patna.
3. The Additional Director General, Bihar Military Police, Patna.
4. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
5. The Commandant, Bihar Military Police-4, Dumraon, Buxar, Dist. - Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kumar Ravish, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

3 07-12-2023 1. The present writ petition has been filed seeking the following reliefs:-

“i.To issue an appropriate writ/order/orders, direction/ directions in the nature of certiorari for quashing the Memo no.318/P-5 dated 24.12.2019 (Annexure-P/1) issued by the Respondent No. 2 under the orders of the Director General of Police, Bihar, Patna-Respondent No. 1, whereby and whereunder the pay scale of the petitioners as well as various others similarly situated employees who



had been promoted or granted First Assured Career Progression benefits in the pay scale of Rs. 4000-6000, has been re-fixed in the pay scale of Hawaldar at Rs. 3200-4900/- with further direction to recover excess payment made to the petitioners for last many years which is in teeth of the Hon'ble Apex Court judgment in the case of State of Punjab & Others. vs. Rafiq Masih.

II. To call for the consequential orders of recovery passed by the Commandant of B.M.P. 4, Dumraon, Buxar, if any, and set aside the same as a consequence of grant of relief no. 1.

III. To stay the recovery pursuant to the impugned order.

IV. To issue an appropriate writ/s order/s direction in the nature of mandamus commanding the respondents to re-fix the pay scale of the petitioners in the scale of Rs. 4000-6000 as a first ACP in the scale of ASI (Assistant Sub Inspector) and to grant them the benefits which was being paid to the petitioners since long in the scale of Rs. 4000-6000 prior to the issuance of impugned order, in place of pay scale of Rs. 3200-4900/-.

V. To declare and hold that the petitioners are entitled to get first ACP in the pay scale of Rs. 4000-6000 against the post of ASI and the second ACP in the scale of Rs. 5500-9000 against the post of SI (Sub Inspector of Police).

VI. To direct for payment of cost.”



2. At the outset, the learned counsel for the petitioners has referred to a judgment dated 18.10.2022, passed by the learned Division Bench of this Court in LPA No.431 of 2021 (**Surendra Mandal & Ors. vs. the State of Bihar & Ors**) to submit that the issue involved in the present case has already stood decided, hence the present writ petition be also disposed off in similar terms. It is further submitted that not only the learned Division Bench of this Court, but the Hon'ble Apex Court has also, in a catena of judgments, as referred to in the aforesaid judgment rendered by the learned Division Bench of this Court in the case of **Surendra Mandal & Ors** (supra) has held that no recovery can be made from the employees, in case there is no misrepresentation on their part, and as far as the present case is concerned, the petitioners have been granted the pay-scale to which they were not entitled, not on account of their misrepresentation, but on account of the fault of the State authorities, hence no recovery can be made from them.

3. *Per contra*, the learned counsel appearing for the respondent-State has not denied the fact that the case of the petitioners is similar to those, whose appeal has been allowed by the learned Division Bench of this Court, by the aforesaid judgment dated 18.10.2022, hence it is submitted that the



present case be also disposed off in terms of the aforesaid judgment.

4. Having regard to the facts and circumstances of the case, I deem it fit and proper to dispose off the present writ petition in terms of the aforesaid judgment dated 18.10.2022 rendered in the case of **Surendra Mandal & Ors** (supra) and direct the respondent-authorities to grant similar benefits to the petitioners.

5. The writ petition stands disposed off.

(Mohit Kumar Shah, J)

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