

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.458 of 2021**  
**In**  
**Civil Writ Jurisdiction Case No.1744 of 2020**

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1. Srikant Dubey @ Shri Kant Dubey Son of Late Chandrama Dubey Resident of Village-Lohadi, Police Station-Savar, District-Kaimur, Hawaldar No. 55, BSAP-5.
2. Prem Shankar Singh Son of Late Kedar Nath Singh Resident of Village-Dharohi, Police Station-Buxar Muffasil, District-Buxar, Hawaldar No.24, BSAP-5/BSAP-13.
3. Vijay Kumar Gupta Son of Late Jagdish Sah Resident of Mohalla -New Railway Gumti, P.O. and Police Station-Phulwari Sharif, District-Patna, Hawaldar No. 162, BSAP-5.
4. Kaleshwar Ram Son of Late Parmeshwar Ram Resident of Village -Malikpura, Police Station-Garaul, District-Vaishali, Hawaldar No. 29, BSAP-5.
5. Maksud Khan Son of Late Jawad Khan Resident of Village- Rambal, Police Station-Suhwal, District-Gazipur, Hawaldar No. 60, BSAP-5.
6. Sher Mohammad Ansari Son of Late Md. Abbas Ansari Resident of Village-Barahpathar, Police Station-Dehri-in-Sone, District-Rohtas, Hawaldar No. 101, BSAP-5.
7. Krishnandan Paswan Son of Late Chandra Paswan Resident of Village-Bela, P.O.-Chiksi, Police Station-Sigori, District-Patna, Hawaldar No. 77, BSAP-5.
8. Kailash Das Son of Late Liro Das, Resident of Village-Kauwakoli, P.O.-Nathnagar, Police Station-Madhusudanpur, District-Bhagalpur, Hawaldar No. 78, BSAP-5
9. Ramjee Yadav Son of Late Ramashraya Yadav Resident of Village-Nandlal Dera, P.O.-Laxmidera, Police Station-Sahpura, District-Ara (Bhojpur, Hawaldar No. 159, BSAP-5.
10. Umesh Prasad Singh Son of Shri Ramchandra Singh Resident of Village-Rajpur, P.O.-Jaunapur Police Station-Shahpur, Patori, District-Samastipur, Hawaldar No. 37, BSAP-5.
11. Md. Naiyar Imam Khan Son of Md. Shamim Khan Resident of Village and P.O.-Bantara, Police Station-Devkund, District-Aurangabad, Hawaldar No. 28, BSAP-5.
12. Ram Singh Yadav Son of Late Sudarshan Yadav Resident of Village and P.O.-Balua Bazar, Police Station-Guthni, District-Siwan, Hawaldar No.189, BSAP-5.
13. Sahjanand Ojha, Son of Shri Kashinath Ojha, Resident of Village-Kumhaila, P.O.-Sikti (Bhikham), Police Station-Esuapur, District-Chhapra, Hawaldar No. 32, BSAP-5.
14. Ram Parvesh Kumar Son of Late Akhileshwar Singh Resident of Village and P.O. -Bhano, Police Station-Suryagadha, District-Lakhisarai, Hawaldar No.-12, BSAP-5.
15. Kailash Sharma Son of Late Haridwar Thakur, Resident of Village-Chhoti Rukanpura (Mahuabag), P.O.-Veterinary College, Police Station-Hawaiadda



District-Patna, Hawaldar No. 211, BSAP-5.

16. Baijnath Singh Son of Late Bhuwali Singh Resident of Village-Bara Basantpur, Police Station-Ara Muffasil, Police Station Daudpur, District-Bhojpur Ara, Hawaldar No.14, BSAP-5.
17. Shahnawaz Khan Son of Late Bismilah Khan Resident of Village and P.O.-Rakshaha, Police Station-Dildarnagar, District-Gazipur (U.P.), Hawaldar No.-27, BSAP-5.
18. Md. Ehtasham Khan Son of Late Daud Khan Resident of Village and P.O.-Mahendra, Police Station-Karimuddinpur, District-Gazipur (U.P.), Hawaldar No. 39, BSAP-5.
19. Lalan Rai Son of Late Sukhari Rai Resident of Village-Faridpur, P.O.-Bhadaura, Police Station-Dildar Nagar, District-Gazipur (U.P.), Hawaldar No. 84, BSAP-5.
20. Md. Sohail Akhatar, Son of Late Md. Gulam Rasool Khan, Resident of Village and P.O.-Dadhava, Police Station-Uphara, District-Aurangabad, Hawaldar No. 58, BSAP-5.
21. Upendra Singh Son of Shri Nageshwar Singh, Resident of Village-Kalaund, P.O.- Haspur, Police Station-Akbarpur, District-Nawada, Hawaldar No. 142, BSAP-5.
22. Ramesh Singh Son of Late Ram Surat Singh Resident of Village Ramval, P.O.-Tarighat, Police Station-Suhwal, District-Gazipur (U.P.), Hawaldar No. 207, BSAP-5.
23. Ashok Kumar Jha Son of Late Shaktinath Jha, Resident of Village and P.O.-Bhith Bhawanpur, Police Station-Madhepur, District-Madhubani, Hawaldar No. 26, BSAP-5.
24. Md. Shanaur Rahman Son of Late Farukh Khan Resident of Village-Jakhaura, P.O.-Baghaoi, Police Station-Haspura, District-Aurangabad, Hawaldar No. 9, BSAP-5.
25. Ashok Kumar Singh Son of Late Raj Narayan Singh Resident of Village-Hasanpur, P.O.-and Police Station-Shahjehanapur, District-Patna, Hawaldar No. 68, BSAP-5.
26. Pancham Kumar Poddar Son of Late Jagdish Poddar Resident of Village and P.O.-Khatara, Police Station-Khatara, District-Katihar, Hawaldar No. 23, BSAP-5.
27. Ramakant Upadhyay Son of Late Kedar Upadhyay, Resident of Village-Sakash, P.O.-Sikaria, Police Station-Darigaon, District-Rohtas, Hawaldar No. 07, BSAP-5.
28. Paras Ram Son of Late Ramaji Ram Resident of Village Kukurbhuka, P.O.-Don, Police Station-Darauli, District-Siwan, Hawaldar No. 48, BSAP-5.
29. Suresh Sharma Son of Late Palak Singh Resident of Village Bhelawar, P.O.-Tezbigha, Police Station-Kako, District-Jehanabad, Hawaldar No. 97, BSAP-5.
30. Krishna Singh Son of Shri Kamla Singh Resident of Village-Dauriyari P.O.-Jamauri, Police Station-Tarari, District-Bhojpur, Hawaldar No. 187, BSAP-5.
31. Upendra Prasad Yadav Son of Shri Ramdev Prasad, Resident of Village-



- Ubhanbigaha,P.O.-Kukihar, Police Station-Bajirganj, District-Gaya, Hawaldar No. 122, BSAP-5.
32. Arvind Kumar Thakur Son of Late Dindayal Pal, Resident of Village-Rajpura, P.O.-Hrdiyachak, Police Station-Kaler, District-Arwal, Hawaldar No. 44, BSAP-5.
33. Gopal Thakur Son of Shri Badri Thakur Resident of Village-Charaun, P.O.-Nawagadhi, Police Station-Muffasil, District-Munger, Hawaldar No. 110, BSAP-5.
34. Rambabu Chaudhari Son of Late Prabhu Chaudhary Resident of Village and P.O.-Koilarwar, Police Station-Koilarwar, District-Bhojpur at Ara, Hawaldar No. 76, BSAP-5.
35. Vibhuti Sangahi, Son of Late Indradev Sangahi, Resident of Village and P.O.-Nayagaon, Police Station-Parwata, District-Khagariya, Hawaldar No.53, BSAP-5.
36. Rampukar Yadav Son of Vishnu Dev Yadav Resident of Village-Rajwari, Ward No.-32, P.O. and Police Station-Aurangabad, District-Aurangabad, Hawaldar No. 100, BSAP-5. Incorrectly Mentioned in the Writ Application as Resident of Village and P.O.-Balua Bazar, P.S.-Guthani, District-Siwan.
37. Md. Firoz Khan Son of Late Md. Hafiz Resident of Village -Pirganj, P.O.-Thakhiha, Police Station-Kishanpur , District-Supaul, Hawaldar No. 152, BSAP-5.
38. Nand Jee Singh Son of Late Sukhdev Singh Resident of Village-Turti, P.O.-Munji, Police Station-Vikramganj, District-Rohtas, Hawaldar No. 69, BSAP-5.
39. Manjoor Alam Son of Late Kadir Alam, Resident of Village and P.O.-Aahilwara, Police Station-Biraul, District-Darbhangha, Hawaldar No.63, BSAP-5.
40. Dineshwar Prasad Singh Son of Ramvachan Singh Resident of Village Patanva, P.O.-Samardiha, Police Station-Sasaram, District-Rohtas, Hawaldar No. 181, BSAP-5.
41. Tulendra Kumar Son of Deep Narayan Tadav Resident of Village Jumwaha,P.O.-Korwahi, Police Station-Kumar Khand, District-Madhepura, Hawaldar No. 198, BSAP-5.
42. Sudhakar Jha Son of Late Modanarayan Jha, Resident of Village and P.O.-Kavela Police Station-Parwatta, District-Khagariya, Hawaldar No. 35, BSAP-5.
43. Jaiprakash Singh Son of Late Gudri Singh Resident of Village-Lalu ke Dera, P.O.-Laxmi Ke Dera, Police Station-Shahpur, District-Bhojpur (Ara), Hawaldar No.135, BSAP-5.
44. Manindra Prasad Singh Son of Late Ramji Singh Resident of Village and P.O.-Mohabbat Parsa, Police Station-Rivilganj, District-Chapra, Hawaldar No. 08, BSAP-5.
45. Md. Faizudin Siddiqui Son of Md. Ainuddin Siddiqui, Resident of Village-Phuli, P.O.-Jamaniya, Police Station-Dildar Nagar,, District-Gajipur (U.P.), Hawaldar No.02, BSAP-5.



46. Chaturgun Rai Son of Late Ramnaresh Rai Resident of Village-Teladh (Prema Rai ke Tola), P.O.-Agiyanw Bazar, Police Station-Agiyanw Bazar, District-Bhojpur, Hawaldar No. 65, BSAP-5.
47. Shri Krishna Dubey Son of Late Jaglal Dubey Resident of Village -Milki, P.O.-Chunni, Police Station-Buxar Muffasil, District-Buxar, Hawaldar No. 21, BSAP-5.
48. Ashok Kumar Son of Shri Hardev Singh Resident of Village-Pitambarpur,P.O.-Pitambarpur, Police Station-Ghoshi, District-Jehanabad, Hawaldar No.190, BSAP-5.
49. Arvind Kumar Thakur Son of Late Bijli Thakur, Resident of Village-Rajshahipur Inichar, P.O.-Danauli, Phulwariya, Police Station-Muffasil, District-Begusarai, Hawaldar No. 140, BSAP-5.

... .. Appellants.

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.
4. The Inspector General of Police, Budge/Appeal.Welfare, Bihar, Patna.
5. The Inspector General of Police (Head Quarter), Patel Bhawan, Bailey Road, Patna, Bihar.
6. The Deputy General Inspector of Police, Bihar Military Police, Central Range, Patna.
7. The Principal Secretary, Finance Department, Government of Bihar, Patna.
8. Commandant, Bihar Military Police-5, Patna-800014.
9. Md. Mashih Alam, Son of Late Md. Suleman Resident of Village-Godargawa, P.O.- Rampur Amtihani, P.S.- Matihani, District- Begusarai, Hawaldar No.- 137, BMP-5.
10. Sumant Rai, Son of Manru Ram Resident of Village and P.O.- Kavilaspur, Police Station- Durgawati, District- Kaimur at Bhabhua, Hawaldar No.- 151, BMP-5.
11. Raj Bihari Singh, Son of Sri Ganesh Singh Resident of Village- Ramobariya, P.O.- Mariya, P.S.- Buxar, District- Buxar, Hawaldar No.- 206, BMP-5.
12. Vijendra Prasad, Son of Late Ramanand Sao Resident of Village and P.O.- Parsa Bazar, P.S.- Parsa Bazar, District- Patna, Hawaldar No.- 98, BMP-5.
13. Ashok Rajak, Son of Bundel Rajak Resident of Village and P.O.- Maulanachak, P.S.- Islampur, District- Nalanda, Hawaldar No.- 71, BMP-5.
14. Vikash Pratap Singh, Son of Late Surendra Pratap Singh Resident of Village and P.O.- Gadh Baruari, P.S.- Supaul, District- Supaul, Hawaldar No.- 120, BMP-5.
15. Jitendra Kumar, Son of Sri Mani Sharma Resident of Village- Bhane Bigha, P.O. and P.S.- Makhdumpur, District- Jehanabad, Hawaldar No.- 197, BMP-5.



16. Mahesh Kumar Sharma, Son of Sri Mahendra Sharma Resident of Village- Bhan Bigha, P.O.- Sarta, P.S.- Paras Bigha, District- Jehanabad, Hawaldar No.- 87, BMP-5.
17. Sudhir Kumar, Son of Late Garbhu Tiwari Resident of Village and P.O.- Pandarakh, P.S.- Pandarakh, District- Patna, Hawaldar No.- 103, BMP-5.
18. Ajay Kumar Srivastava, Son of Late Brahameshwar Lal Resident of Village and P.O.- Gaighat, P.S.- Brahampur, District- Buxar, Hawaldar No.- 67, BMP-5.
19. Raj Kishor Mandal, Son of Late Brahamdev Mandal Resident of Village- Usri, P.O. and P.S.- Gogri, District- Khagaria, Hawaldar No.- 30, BMP-5.
20. Sanjay Kumar, Son of Late Ram Balak Kunwar, Resident of Village- Kaithbha, P.O.- Badalpur, District- Begusarai, Hawaldar No.- 17, BMP-5.
21. Ashok Chandra Dwivedi, Son of Vishwanath Tiwari Resident of Village- Badhuana, P.O.- Kanhaiya Ganj, P.S.- Telhara, District- Nalanda, Hawaldar No.- 205, BMP-5.
22. Parma Ram Harijan, Son of Sri Ganesh Ram Resident of Village and P.O.- Sarawe, P.S.- Siwan Muffasil, District- Siwan, Hawaldar No.- 64, BMP-5.
23. Sanjay Kumar Singh, Son of Late Hridayanand Singh Resident of Villlage- Kakan Bigha, P.O.- Maniach, P.S.- Pawana, District- Bhojpur (Ara), Hawaldar no.- 200, BMP-5.
24. Raj Kapoor Mahto, Son of Sri Durlabh Mahto Resident of Village and P.O.- Sataki, P.S.- Angara, District- Ranchi (Jharkhand), Hawaldar No.- 83, BMP-5.
25. Shambhu Prasad, Son of Late Chandradeep Rai Resident of Village- Sabalpur, Gulamahiyachak, P.O.- Sabalpur, P.S.- Nadi Thana, Maujipur, District- Patna, Hawaldar no.- 213, BMP-5.
26. Mahesh Yadav, Son of Late Garib Yadav Resident of Village- Barahpur, P.O.- Bhor, P.S.- Mokama, District- Patna, Hawaldar no.- 86, BMP-5.

... .. Respondents.

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**Appearance :**

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|--------------------|---|------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellants | : | Mr. Bindhyancnal Singh, Senior Advocate.<br>Mr. Ram Binod Singh, Advocate.<br>Ms. Smriti Singh, Advocate.<br>Mr. Vipin Kumar Singh |
| For the State      | : | Mr. Prabhat Kumar Verma, AAG-3.<br>Mr. Suman Kumar Jha, AC to AAG-3.                                                               |

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

**and**

**HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**

**ORAL JUDGMENT**

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

**Date : 26-04-2024**

The appellants have assailed the order of the learned



Single Judge dated 16.04.2021 passed in C.W.J.C. No.6910 of 2020 and analogous cases.

2. The appellants were appointed as Constables during the intervening period from the year 1986-1993. They have been extended benefit of 1<sup>st</sup> ACP in the year 2002-2003 with reference to promotional post, namely, Assistant Sub Inspector, that was sought to be withdrawn on the score that they are not entitled to 1<sup>st</sup> A.C.P. and on the score that they are not Writer Constables and they are only Ordinary Constable and further for non-passing of certain examination attached to the post of Assistant Sub Inspector or Hawaldar. Withdrawing of ACP and ordering recovery has been affirmed by the learned Single Judge.

3. Learned counsel for the appellants submitted that the learned Single Judge has committed error in not noticing certain factual aspects of the matter to the extent that in the Bihar Police Manual 1978, Item No.661 is relating to Classes of Constables. In terms of Paragraph No.661 read with the appellants' appointment and having regard to the fact that they had Matriculation qualification, they are entitled to be treated as Writer Constable. For Assistant Sub Inspector, Feeder cadre is a Writer Constable. Therefore, there is no infirmity insofar as



extending 1<sup>st</sup> ACP in the year 2002-2003. The learned Single Judge has not appreciated the aforementioned material information. It is also submitted that the official respondents have not prepared and published seniority list of Writer Constables and Ordinary Constables so as to operate such seniority list for the purpose of promotion to the post of Assistant Sub Inspector or in the alternative for want of vacancies. Such of those Writer Constables fulfill the criteria for grant of ACP and extending ACP benefit. In the absence of seniority list of Writer Constables and Ordinary Constables, the appellants have been treated as Writer Constable and have been extended the benefit of 1<sup>st</sup> ACP in the year 2002-2003 with reference to Assistant Sub Inspector Post.

4. Learned counsel for the State-respondents submitted that there is no illegality insofar as withdrawing the 1<sup>st</sup> ACP granted to the appellants and so also ordering recovery and its affirmation by the learned Single Judge. It is submitted that in the year 2004, an option was sought insofar as retaining their status in the Writer Constables or Ordinary Constables. The appellants have not exercised option, resultantly, their status would be Ordinary Constables in view of the clause mentioned in the option in the year 2004 to the extent that such of those



Constables who failed to exercise option in that event he/she would be deemed to be in the Ordinary Constables category. Resultantly, the appellants are not entitled to have the benefit of 1<sup>st</sup> ACP with reference to Assistant Sub Inspector post. On the other hand, they are entitled to ACP benefit only against the Hawaldar post with reference to the status that they are Ordinary Constables with effect from the year 2004. Hence, no interference is called for.

5. Heard the learned counsel for the respective parties.

6. The appellants were appointed as Writer Constables during the period from 1986-1993. Pursuant to ACP Scheme, they have been extended 1<sup>st</sup> ACP benefit in the year 2002-2003 with reference to Assistant Sub Inspector cadre, which is promotional cadre to the Writer Constables. Thereafter, policy decision of the department was introduced insofar as seeking option from the Writer Constables and Ordinary Constables to the extent whether Writer Constable intends to opt for Ordinary Constable or Ordinary Constable intends to opt Writer Constable subject to the fulfillment of qualification of Matriculation. The appellants have not exercised their option, resultantly, they would be treated as Ordinary Constables.

7. It is to be noted that the aforementioned policy



decision of asking the Writer Constable and Ordinary Constable to opt for a particular category in the year 2004 was subsequent to the grant of 1<sup>st</sup> ACP in the year 2002-2003. In other words, with reference to status of the appellants that they were in the cadre of Writer Constable, their names have been considered for the purpose of granting 1<sup>st</sup> ACP with reference to Assistant Sub Inspector cadre (promotional cadre) from the post of Writer Constable. At this stage, it is necessary to reproduce paragraph-661 of the Bihar Police Manual 1978 and it reads as under:

“661. (a) Classes of Constables.- Constables shall be distinguished as (i) Writer Constables, and (ii) Ordinary Constables. Those constables who are at least matriculates and have qualified at the competitive examination for promotion to the rank of Assistant Sub-Inspector as per rule 685 shall be known as Writer Constables whose duties will solely be those of a station writer at police-stations and will not be given out door work. He will perform office duties and conduct routine business of the police-station in the absence of the Sub-Inspectors and Assistant Sub- Inspectors for which he shall get an allowance of at least Rs.7 per month.

The strength of such posts in a district for allowance shall be equal to the number of police-stations in a district plus leave and training reserve. Certain number of posts are sanctioned for Criminal Investigation Department and Intelligence Department also for office duties.

(b) By whom appointed- Constables shall be appointed by district Superintendent



of Police for which a list will be prepared by the selection Board duly constituted for the purpose.

(c) No direct recruitment shall be made in Railways, Criminal Investigation Department, Intelligence Department and in the ranks of experts such as motor drivers and armourers (For the period of probation, see Rule 668).”

8. Reading of the aforementioned paragraph-661 read with the fact that the appellants were appointed in the year 1986-1993 with Matriculation qualification and they deemed to be Writer Constable in the light of the aforementioned provisions. Therefore, it is not appropriate for the official respondents to withdraw the 1<sup>st</sup> ACP granted in the year 2002-2003 in the light of later policy decision in the year 2004 insofar as seeking option to Writer Constable or Ordinary Constable. In other words as on 2002-2003, the appellants have fulfilled relevant criteria for the purpose of claiming ACP benefit and it was already granted. Therefore, irrespective of exercising option by the appellants either to Writer or Ordinary Constable and they may be retained in the Ordinary Constable in not exercising option with reference to the year 2004 that would not be hurdle insofar as extending 1<sup>st</sup> ACP benefit in the year 2002-2003. These material information have not been taken note of by the learned Single Judge while deciding the



appellants' writ petition.

9. In the light of the decision of the Hon'ble Supreme Court in the case of **Amresh Kumar Singh & Ors. vs. The State of Bihar & Ors.**, reported in **2023(2) PLJR (SC) 423**, for claiming ACP benefit, employee need not fulfill the eligibility criteria for promotion to the next higher cadre. In other words, if an employee is stagnated in a particular cadre for 12 and 24 years. Therefore, the official respondents insisting that appellants have not passed certain prescribed examination for promotion would not be a hurdle. Further, we have noticed that from the year 1993 to 2003, the official respondents have not undertaken to conduct departmental examination so as to enable the appellants and similarly situated persons to participate in the process of departmental examination and get eligibility. Therefore, there is fault on the part of the official respondents in not conducting departmental examination timely. Acquisition of qualification like pass in departmental examination by the Appellants was beyond their control. This issue would not be hurdle for the purpose of extending 1<sup>st</sup> ACP to the appellants in the light of the cited decision.

10. In view of the above circumstances, the appellants have made out a case. Accordingly, the present L.P.A. stands



allowed. The orders of the learned Single Judge dated 16.04.2021 passed in C.W.J.C. No.6910 of 2020 and analogous cases stands set aside and C.W.J.C. No.1744 of 2020 filed by the appellants are allowed.

11. The concerned respondents are hereby directed to refund the recovered amounts, if any, to the respective appellants within a period of three months from the date of receipt of copy of this order and so also restore the pay-fixation in the light of the fact that the appellants are entitled to 1<sup>st</sup> ACP in the year 2002-2003. Thereafter, proceed to re-fix their pay/pension and difference of amount shall be calculated and disbursed within a period of four months.

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

**( Alok Kumar Pandey, J)**

P.S./-

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| AFR/NAFR          | NAFR        |
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