

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.288 of 2023

In
Civil Writ Jurisdiction Case No.8065 of 2020

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1. Ashok Kumar Yadav Son of Upendra Prasad Yadav, Resident of Shivpuri Hakpara, Ward No.- 14, P.S. and District- Saharsa.
 2. Bhuvneshwar Mandal Son of Nakchhedi Mandal, Resident of Village- Narpatganj, P.S.- Narpatganj, District- Araria.

... .. Appellant/s

Versus

1. The State of Bihar Through the Principal Secretary, Home Department, Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, having office at police Headquarter Patel Bhawan, Baily, Road, Patna.
3. The Director General, Bihar Military Police, Bihar-cum- Chairman of the Committee, Bihar, having office at police Headquarter Patel Bhawan, Baily, Road, Patna.
4. The Inspector General of Police, Budget/Appeal/Welfare, Bihar, Patna, Bihar, having office at police Headquarter Patel Bhawan, Baily, Road, Patna.
5. The Inspector General Of Police (Head Quarter), Bihar, Bihar, having office at police Headquarter Patel Bhawan, Baily, Road, Patna.
6. The Deputy Inspector General of Police, Bihar Military Police, Central Range, Patna.
7. The Principal Secretary, Finance Department, Govt. of Bihar, Patna.
8. The Commandant, Bihar Military Police-12, Saharsa, IRB-2, Battalion Headquarter at Bhimnagar, Birpur, District- Supaul.
9. Rajendra Prasad Yadav Son of Mulhay Yadav, Resident of Village- Mamlakha, P.S.- Sabaur, District- Bhagalpur.
10. Jitendra Kumar Singh Son of Ram Prakash Singh, Resident of Village- Jagdishpur, P.S.- Konch, District- Gaya.
11. Dinesh Paswan Son of Late Dudh Raj Paswan, Resident of Village- Vishanupur Parwa, P.S.- Murliganj, District- Madhepura.
12. Ajay Kumar Son of Late Dwarika Prasad Singh, Resident of Village- Katra, P.S.- Bhagwan Bazar, District- Chapra.
13. Awadhesh Kumar Pandey Son of Paras Nath Pandey, Resident of Village- Thakraha, P.S.- Thakraha, District- West Champaran.
14. Bir Bahadur Ram Son of Dinesh Singh, Resident of Village- Chhota Sasaram, P.S. and District- Bhojpur.



15. Rabindra Nath Singh Son of Dinesh Singh, Resident of Village- Chhota Sasaram, P.S. and District- Bhojpur.
16. Ram Balak Sah Son of Bhagwat Sah, Resident of Village- Sidhap Kalan, P.S. and District- Madhubani.
17. Krishnadeo Paswan Son of Chhedi Paswan, Resident of Village- Bishnupur Navtol, P.S.- Murliganj, District- Madhepura.
18. Maksud Khan Son of Makbul Ahmad Khan, Resident of Ward No.-2 Maura, P.S.- Karimuddinpur, District- Ghazipur, U.P.
19. Sheikh Salimuddin Son of Sheikh Sagir, Resident of Village- Babhanaul, P.S.- Dawath, District- Rohtas.
20. Alok Paswan Son of Sukhu Paswan, Resident of Village and P.S.- Nagarnausa Korari, District- Nalanda.
21. Rajesh Bhengra Son of Junas Bhengra, Resident of Sundari, Pakar Toli, P.S.- Torpa, District- Khunti, Jharkhand.
22. Bharat Prasad Singh Son of Late Indradeo Singh, Resident of Village- Chero, P.S.- Chero, District- Nalanda.
23. Arun Paswan Son of Shivdani Paswan, Resident of Village- Itawan, P.S.- Barh, District- Patna.
24. Ganesh Jha Son of Gauri Kant Jha, Resident of Village- Mahishi, Ward No. -16, P.S.- Mahishi, District- Saharsa.
25. Parmanand Chaudhary Son of Late Raghunath Chaudhary, Resident of Village- Matiyaria, P.S.- Turkaulia, District- East Champaran.

... .. Respondent/s

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with

Letters Patent Appeal No. 290 of 2023

In

Civil Writ Jurisdiction Case No.7255 of 2020

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Anandi Rajak Son of Kulo Rajak Resident of Tetarhar Nongarh, Ramgarh Chowk, P.S. and District- Lakhisarai.

... .. Appellant/s

Versus

1. The State of Bihar Through the Principal Secretary, Home Department, Govt. 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-cum- Chairman of the Committee.



4. The Inspector General of Police Budget/Appeal/ Welfare, Bihar, Patna.
5. The Inspector General of Police (Head Quarter) Patel Bhawan, Bailey Road, Patna, Bihar.
6. The Deputy Inspector General of Police Bihar Military Police, Central Range, Patna.
7. The Principal Secretary Finance Department, Govt. of Bihar, Patna.
8. Finance Department, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 288 of 2023)

For the Appellant/s : Mr. Abhay Shankar Singh, Advocate
Mr. Barun Kumar Singh, Advocate

For the Respondent/s : Mr. P.K. Verma, AAG 3
Mr. Mankeshwar Tiwari, AC to AAG 3

(In Letters Patent Appeal No. 290 of 2023)

For the Appellant/s : Mr. Abhay Shankar Singh, Advocate

For the Respondent/s : Mr. P.K. Verma, AAG 3

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 06-02-2025

Heard Sri Ravi Shankar Singh, learned counsel for the appellants in both the appeals and Mr P.K. Verma, learned Additional Advocate General no.3 for the respondents.

2. CWJC no.8065 of 2020 and CWJC no. 7255 of 2020 from which the instant appeals arise as also a batch of other writ applications were disposed of by the learned Single Judge by a common judgment dated 16.4.2021 and as such both the appeals have been taken up and are being decided together.

3. The facts in brief are that the writ petitioners-appellants



were granted 1st ACP in the year 2008 and 2nd ACP between 2010-13. They were given the benefit of 1st ACP in the pay scale of ASI and the 2nd ACP in the pay scale of SI. Subsequently the respondents holding that the appellants were not entitled for the same recalled the benefit of ACP granted and also passed orders to recover the amount paid in excess to the appellants consequent to the said grants. The same was challenged by the appellants in CWJC no. 8065 of 2020 and CWJC no. 7255 of 2020 from which the instant two appeals arise as also other writ applications. All the writ applications were disposed of by a common judgment dated 16.4.2021 wherein the learned Single Judge held the appellants to be entitled for the benefit of the 1st ACP on the post of Hawaldar in place of ASI and the benefit of 2nd ACP on the post of ASI in place of SI. The learned Single Judge further held that so far as the benefit of 1st ACP is concerned, the same shall be reduced but there shall be no recovery of any amount paid to the appellants. With respect to the benefit of 2nd ACP it was held that the benefit may be recovered by the respondents in easy instalments.

4. Learned counsel for the appellants submitted that besides the instant appeals a number of other appeals including LPA no. 431 of 2021 (Surendra Mandal and others versus the



State of Bihar and others) have been filed arising out of the common judgment dated 16.4.2021.

5. Both Shri Abhay Shankar Singh, learned counsel for the appellants and Shri P.K. Verma, learned Additional Advocate General no. 3 for the State submit that the instant two appeals may be disposed of in terms of the judgment dated 18.10.2022 passed in LPA no. 431 of 2021.

6. It may be stated here that LPA no. 431 of 2021 was allowed by order dated 18.10.2022 in the following terms:-

“5.Question for consideration is whether recovery could be ordered by the learned Single Judge in respect of illegally granted second A.C.P. to the appellants or not? Extract of the order of learned Single Judge reads as under:

"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.

With the aforesaid, all these writ applications are partly allowed and



disposed of in the manner indicated above."

Underline Supplied

6. *The appellants' contention is that illegal benefit extended to the appellants cannot be ordered to be recovered in the light of the Apex Court's decisions in **State of Panjab and Others vs. Rafiq Masih (White Washer) and Others** reported in 2015 (1) PLJR (SC) 261 and **Thomas Daniel vs. State of Kerala and Others**, 2022 Live Law (SC) 438. Paragraph No. 12 of the **State of Panjab and Others vs. Rafiq Masih (White Washer) and Others** reported in 2015 (1) PLJR (SC) 261 reads as under:*

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid



accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

7. Even, the latest decision in the case of **Thomas Daniel vs. State of Kerala and Others, 2022 Live Law (SC) 438**, Apex Court has held that recovery cannot be ordered. Learned counsel for the respondents cited decisions namely **High Court of Punjab and Haryana vs. Jagdev Singh reported in (2016) 4 PLJR (SC) 78** and **Syed Abdul Qadir and others vs. State of Bihar and others reported in (2009) 3 SCC 475**, the same are not attracted in the present case. In the light of decision passed in L.P.A. No. 270 of 2021 wherein we have considered: (1) **High Court of Punjab & Haryana Vs. Jagdev Singh reported in 2016 (4) PLJR (SC) 78** (ii) **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others reported in 2012(8) SCC417** (iii) **Union of India Vs. Sri Bijoy Kumar reported in 2022 (1) PLJR (182)** with reference to **Thomas Daniel's** case cited supra. In view of these facts and circumstances, the learned Single Judge has committed error in ordering recovery in easy installments while re-assigning first and second A.C.P. to the appellant. If any amount is already recovered from the appellant during the pendency of the litigation, same shall be refunded to the concerned appellant within a period of two months from the date of receipt of this order.

8. Accordingly, L.P.A. is allowed in part. "

7. In view of the facts and circumstances of the case, the instant two appeals are also allowed in terms of the judgment



dated 18.10.2022 passed in LPA no. 431 or 2021.

8. The appeals stands disposed of in the above terms.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Bibhash

AFR/NAFR	
CAV DATE	
Uploading Date	10.2.2025
Transmission Date	

