

(2021) 04 CK 0002

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 1744, 6910, 7117, 7255, 8050, 8065 Of 2020

Surendra Mandal And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: April 16, 2021**Hon'ble Judges:** Anil Kumar Upadhyay, J**Bench:** Single Bench**Advocate:** Abhay Shankar Singh, Manjo Kumar Sinha, Y.V. Giri, Pranav Kumar, Manish Kumar, Ajay Kumar, Lalit Kishore, P.K.Verma, Sanjay Kumar Ghosarvey, Abhay Shankar Singh**Final Decision:** Partly Allowed/Disposed Of

Judgement

Since all these writ applications involve an identical issue, they have been heard together and are being disposed of by this common judgment.

Mr. Abhay Shankar Singh, learned counsel appearing on behalf of the petitioners of all these writ applications, except CWJC No. 1744 of 2020, would

submit that the petitioners were granted the benefit of ACP with an open eye by the respondents and after long duration of granting such benefit of

ACP, they have become wise and took decision to not only nullify the benefit granted to the petitioners recalling the benefit of ACP but also decided

to recover the amount allegedly paid in excess to the entitlement of the petitioners notwithstanding the fact that there was no misrepresentation or

fraud practiced by these petitioners.

Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioners of CWJC No. 1744 of 2020, has made exhaustive submissions. He

referred to Annexure-16, the chart prepared by the petitioners, to demonstrate that the petitioners were granted first ACP in 2008 and thereafter

second ACP was granted to them in 2010 to 2013. Mr. Giri with reference to the chart submitted that the petitioners were treated as literate

constables and as such they were granted benefit of first ACP in the pay scale of ASI and in the pay-scale of SI at the time of grant of second ACP.

He submits that the pay scale of literate constable with other Sepoy was the same and the petitioners were holding qualification of matriculate which

was equivalent to qualification of the literate constable and the respondents have treated the petitioners as literate constables in the matter of grant of

the benefit of ACP as literate constable and there was no misrepresentation or fraud committed by the petitioners. He submits with reference to the

decisions of this Court contained in Annexures 7 and 12 to contend that twice the matter was considered by this Court and the respondents were

directed to take fresh decision particularly on the issue of recovery part. Mr. Giri learned senior counsel submits that the impugned orders as contained

in Annexures 14 and 15 in CWJC No.1744 of 2020 are bad in law as the direction issued by this Court in Annexure-12 was not considered in proper

perspective particularly the recovery part.

The Court has perused the impugned orders. The promotional post of constable is Havildar and ASI is further promotional post of Havildar. In the

instant case, the petitioners, who were appointed as constables, were entitled to first ACP in the pay scale of Havildar i.e. Rs. 3200-4900 and second

ACP for the post of ASI in the pay scale of Rs.4000-6000 but the petitioners were granted first ACP in the pay scale of Rs.4000-6000 and Rs.5500-

9000, the respective pay scale of ASI and SI.

Mr. Giri Submits that since the respondents have treated these petitioners who were qualified for grant of ACP and as such they have been granted

the benefit of first ACP in the pay scale of ASI and second ACP in the pay scale of SI and the action of the respondents in downgrading the pay

scale is unwarranted. He submits that the petitioners have been paid the pay-scale in terms of grant of first ACP and second ACP and as such they

are entitled to pay protection and any decision of the respondents to reduce the pay scale is impermissible and unsustainable.

Per contra, learned counsel appearing on behalf of the respondents submits that the order granting first ACP and second ACP to the petitioners was

very specific and payment of pay-scale is provisional, is open to correction if it is found impermissible.

Mr. Giri in the last limb of arguments submits that the action of the respondents in directing the recovery of the amount is impermissible. He relied

upon the decision of the Apex Court in the case of Syed Abdul Qadir & others Vs. State of Bihar & others reported in [(2009)3 Supreme Court

Cases 475]. For ready reference, paragraphs 57 and 58 of the judgment are quoted hereinbelow:-

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the

excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was

made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of

rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to

relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had

knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected

within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any

particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu

Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Director, [1997] 6

SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar,

[2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board Vs.

Bijay Bahadur & [2000] 10 SCC 99.

Mr. Giri submits that in the case of absence of misrepresentation or fraud, recovery is impermissible. He also referred to the judgment of the Apex

Court in the case of State of Punjab Bank & others Vs. Rafiq Masih (White Washer) and others reported in [(2015) 4 SCC 334] to contend that any

decision to recover the amount paid to any employee after five years is impermissible. He with reference to the case of State of Punjab Bank &

others Vs. Rafiq Masih (White Washer) (supra) submits that first ACP was granted to the petitioners way back in 2008 and as such after five long

years, any recovery of the amount paid to the petitioners in terms of first ACP is unsustainable particularly when in 2010 onwards they have been

granted second ACP in the pay scale of SI if it is corrected as ASI and then from 2010 onwards petitioners were entitled to pay scale of ASI i.e.

4000-6000 and as such, no recovery is permissible after 2010. The issue thereafter remains only with regard to grant of excess pay scale of Rs.5500-

9000 instead of Rs.4000-6000.

Learned counsel appearing on behalf of the respondents referred to a decision of the Apex Court in the case of High Court of Punjab & Haryana &

others Vs. Jagdev Singh reported [2016(4) PLJR (SC) 78] to contend that recovery is permissible because ACP was conditional one and if it found

that there is any error in granting such benefit, the same is open to correction. In view of the conditional order granting ACP, the action of the

respondents in recovering the excess amount is quite justified and lawful. He submits that so far second ACP is concerned, the same was granted in

2010 to 2013 and action for recovery was taken on 04.07.2017. As per the standard of the Apex Court indicated in the decision reported in [(2009)3

Supreme Court Cases 475], recovery, so far as excess payment made to the petitioners in terms of second ACP is concerned, is permissible and

justified.

After hearing parties and considering the rival contentions of the petitioners and the respondents, the Court finds that the benefit of ACP to a

constable in terms of ACP Rules is permissible in pay scale of Havildar (first ACP) and SI (second ACP) and not ASI and SI which was wrongly

granted to the petitioners and, therefore, the Court does not find any error in the decision of the respondents determining the entitlement of the

petitioners for grant of first ACP in the pay scale of Havildar and ASI in second ACP. So far recovery part is concerned, writ petitioners are already

in job and they have not retired. However, the Court finds substance in the submission of Mr. Giri. Equity demands that action of the respondents should be tested whereas upon action or belated action. Respondents should have taken decision within reasonable time and not after inordinate delay as highlighted by the Apex Court in the decision of Syed Abdul Qadir & others Vs. State of Bihar & others (supra). The Court is of the considered view that any action of the respondents for recovery on detecting their mistake or after delay of approximately ten years is impermissible. In case where the order granting benefit of ACP is conditional one, there cannot be any hard and fast rule of five years for correction of the order but nonetheless the action of the respondents in rectifying mistake in absence of fraud or misrepresentation may be taken at the earliest and not at the fag end of service or after delay of approximately ten years.

In the peculiar facts and circumstances of the case, while upholding the decision of the respondents reducing the entitlement of the petitioners the benefit of ACP in place of ASI to Havildar and SI to ASI, the Court directs that so far as grant of first ACP is concerned, it was allowed for nearly nine long years without any demur and as such, the Court, in the facts and circumstances of the case, is inclined to accept the contention of Mr. Giri that there shall be no recovery of benefit granted to the petitioners as ACP in the pay scale of ASI instead of Havildar i.e. there shall be no recovery from the pay scale already granted from 2008 to 2010 as thereafter they have been granted second ACP in the pay scale of ASI and thus, after 2010 there was no question of recovery of any amount for grant of first ACP.

So far as second ACP is concerned, the Court finds that the action was taken by the respondents within a period of five years or maximum period of seven years, in that situation, the Court is of the view that respondents may be justified in recovering that amount in easy installment so that the petitioners may not face economic hardship on account of the recovery of excess amount as benefit was extended to them in monthly pay scale and as such the respondents have to work out easy installment so that it may not cause hardship to the petitioners.

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.