

IN THE HIGH COURT OF JUDICATURE AT PATNA

Randhir Paswan

vs.

The State of Bihar & Others

Civil Writ Jurisdiction Case No.3162 of 2018

27 September 2023

(Hon'ble Mr. Justice Rajiv Roy)

Issue for Consideration

Whether Petitioner is entitled to be appointed on the post of 'Chaukidar' on the ground that he was recommended for the post by his father, a serving Chaukidar, one month before to the date of his retirement?

Headnotes

Constitution of India – Article 14, 16 - Bihar Chaukidar cadre (Amendment) Rule 2014 – Rule 5(7) – writ petition for a direction upon the respondents to grant appointment letter to the petitioner on the post of 'Chaukidar' in the light of 'Department' notification/memo no. 1896 dated 05.03.2014 wherein the State Government envisaged that a 'Chaukidar' may file application for appointment of his dependent one month before to the date of his retirement.

Held: taking into account the order passed by the Division Bench of Patna High Court in the case of "Devmuni Paswan Vs. The State of Bihar and Ors." now that it has been held by Hon'ble the Apex Court in "Ahmednagar Mahanagar Palika Case" that the said request being made by the parent to nominate his ward for the post of 'Chaukidar' is contrary to the express provisions of the Constitution of India being violative of Articles 14 and 16 - no relief can be extended to the petitioner - no direction can be given to the respondents to reconsider the claim of the petitioner for his appointment on the post of 'Chaukidar' – writ dismissed.
(Para- 2, 3, 12)

Case Law Cited

Devmuni Pawan vs The State of Bihar and Ors., LPA No. **508 of 2022**; Ahmednagar Mahanagar Palika Vs. Ahmednagar Mahanagar Palika Kamgar Union, **(2022) 10 SCC 171**Followed.

List of Acts

Constitution of India; Bihar Chaukidar cadre (Amendment) Rule 2014

List of Keywords

Post of 'Chaukidar' - Voluntary Superannuation - Request by the Parent to Nominate his Ward for the Post of 'Chaukidar' – Violation of Articles 14 and 16 of Constitution of India.

Case Arising From

Order dated 28-06-2015 passed by the District Level Committee for appointment on the post of 'Chaukidar'.

Appearances for Parties

For the Petitioner/s: Mr. Pramod Kumar Sinha, Advocate

For the Respondent/s: Mr. Suman Kumar Jha, AC to AAG 3

Headnotes Prepared by Reporter: Ghanshyam, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3162 of 2018

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Randhir Paswan Son of Ramotar Paswan, Resident of Village- Faridpur, P.S.-
Sheikhpura District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Home Department, Bihar, Patna.
3. The Deputy Secretary, Home Department, Bihar, Patna.
4. The District Magistrate, Sheikhpura.
5. The Superintendent of Police Sheikhpura.
6. The Deputy Development Commissioner, Sheikhpura.
7. The S.D.O. Sheakhpura.
8. The Senior Deputy Collector Incharge General Branch Sheikhpura.
9. The Additional Selection Officer, Sheikhpura.
10. The Circle Officer, Sheikhpura.
11. The S.H.O. Sheikhpura, P.S. Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Sinha, Advocate
For the Respondent/s : Mr. Suman Kumar Jha, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
C.A.V. JUDGMENT
Date : 27-09-2023

Heard the parties.

2. The present petition has been preferred for
a direction upon the respondents to grant appointment letter to
the petitioner on the post of ‘Chaukidar’ in the light of
‘Department’ notification/memo no. 1896 dated 05.03.2014.



3. The case of the petitioner is/are as follows:-

(i) the father of the petitioner was working on the post of '*chaukidar*' at Sheikpura Police Station (Hathiyawan O.P.) and in the light of circular, he voluntary superannuated a month before his date of superannuation i.e. 30-06- 2015;

(ii) the State Government vide notification dated 05-03-2014 issued Bihar Chaukidar cadre (Amendment) Rule 2014, (henceforth for short 'the Rules') in which vide rule 5 sub rule 7, the State Government envisaged that a '*Chaukidar*' may file application for appointment of his dependent one month before to the date of his retirement;

(iii) the father of the petitioner namely, Ramavtar Paswan has submitted an application dated 30.05.2015 before the District Magistrate, Sheikhpora under 'the Rules' with recommendation to appoint his son namely, Randhir Paswan (petitioner) on his behalf on the post of '*Chaukidar*';

(iv) the further case is that his father also submitted Notary public affidavit paper dated 20-05-2015 stating therein that he is willing to appoint his elder son namely, Randhir Paswan in his behalf on the post of '*Chaukidar*' at



Sheikpura Police Station;

(v) the petitioner has submitted an application form before the In-charge of Hathiawan O.P. which was duly forwarded to the Circle Officer with recommendation in his favour for the post of '*chawkidar*' on 30.05.2015 itself;

(vi) the Circle Officer in turn forwarded the application of the petitioner along with recommendation made by the In-charge of Hathiawan O.P. vide letter No. 342 dated 04-06-2015 before the District Magistrate, Sheikhpura in which it was also mentioned that petitioner filed an application for his appointment on the post of '*Chaukidar*' on behalf of his father Ramavtar Paswan who is going to retire on 30-06-2015;

(vii) the application of the petitioner along with the recommendations were placed before the District level Committee for appointment on the post of '*Chaukidar*' and the meeting was held on 28-06-2015 under the Chairmanship of District Magistrate, Sheikhpura and five other Officers. The Committee after making due consideration of the case of petitioner (mentioned at proposal No-4) held that Ramavtar Paswan had not given application within time i.e. before one month of his retirement and accordingly application has been rejected vide Memo No.-1172\sa. Sheikhpura dated 28-08-2015.



4. Aggrieved by the said decision, the present writ petition.

5. Learned Counsel for the petitioner submits that 'the Committee' erred in holding that his father filed the application for extending appointment to him on 04.06.2015.

6. He submits that actually the application was submitted well in time before the Station House Officer, Sheikhpura Police Station on 30.05.2015 itself i.e. a month before his date of retirement, 30.06.2015.

7. The further submission is that it was actually forwarded by the Circle Officer, Sheikhpura on 04.06.2015 which was considered and on the said erroneous consideration, his claim for appointment on the post of 'Chaukidar' was negated stating that the application has not been made one month prior to his date of retirement (Annexure 6 to the writ petition).

8. A counter affidavit has been filed on behalf of the respondent nos. 4, 6, 7, 8 and 10.

9. Mr. Suman Kumar Jha, learned AC to AAG 3 submits that though in the counter affidavit that was filed in 2018, the stand was in line with the decision taken by the Committee; of late, the development that has taken place



needs attention of this Court.

10. He provided a copy of the order of the Division Bench of Patna High Court in the case of **Devmuni Pawan vs The State of Bihar and Ors. in LPA No. 508 of 2022** decided on **25.02.2023** relating to the appointment of '**Chaukidar**'.

11. A perusal of the said order would show that the Division Bench has taken note of an order of the Hon'ble Apex Court in the case of **Ahmednagar Mahanagar Palika Vs. Ahmednagar Mahanagar Palika Kamgar Union** reported in **(2022) 10 SCC 171** and accordingly held in paragraphs **17 to 20** as follows:-

*"17. Hence, this Court is of the view that the proviso to **Rule 5(7) of '2014, Rules'** which reads as under:*

परंतु—

(क) चौकीदार सवंग के कर्मचारी अपनी वार्धक्य सेवानिवृत्ति की तिथि से कम से कम एक माह पूर्व के प्रभाव से स्वैच्छिक सेवानिवृत्ति एवं चौकीदार पद पर अपने द्वारा नामित किसी आश्रित को नियोजित करने के लिए आवेदन कर सकेगा।

(ख) सामान्य प्रशासन विभाग द्वारा समय-समय पर अवधारित न्यूनतम एवं अधिकतम उम्र-सीमा संबंधी प्रावधान उन



पर लागू रहेगा।

(ग) स्वैच्छिक सेवानिवृत्ति के पश्चात् नियुक्त व्यक्ति के आश्रित को इस परन्तुक का लाभ अनुमान्य नहीं होगा।

(घ) स्वैच्छिक सेवानिवृत्ति का इच्छुक चौकीदार संवर्ग के व्यक्ति को सेवानिवृत्ति की अपनी इच्छित तिथि से कम से कम एक माह पूर्व अपने पदस्थापन जिला के जिला पदाधिकारी का अपना आवेदन देना होगा।”

*is contrary to the express provisions of the Constitution being violative of Articles 14 and 16 of the Constitution and, accordingly, the aforementioned provision is set aside. Hence it could not further the cause of the appellant and the appellant could not claim any benefit under **Rule 5(7) of ‘2014, Rules’**.*

18. Accordingly, this Court finds and holds that the respondents cannot be directed at this stage to reconsider the application of the father of the appellant for grant of such benefit of employment of his ward in accordance with the provisions of ‘2014 Rules’.

19. In the light of discussion made hereinabove and under the facts and circumstances of the case, the present Letters Patent Appeal is dismissed.

20. Let a copy of this judgment be forwarded to the concerned authority through the Registrar General for taking further steps in identical issue, if any.”

12. Having heard the parties and taking into account the order passed by the Division Bench of Patna High Court in the case of **Devmuni Paswan Vs. The State of Bihar**



and Ors. (supra) now that it has been held by Hon’ble the Apex Court in **Ahmednagar Mahanagar Palika** (supra) that the said request being made by the parent to nominate his ward for the post of ‘*Chaukidar*’ is contrary to the express provisions of the Constitution of India being violative of Articles 14 and 16; no relief can be extended to the petitioner.

13. Thus, in the considered view of the Court, no direction can be given to the respondents to reconsider the claim of the petitioner for his appointment on the post of ‘*Chaukidar*’.

14. The writ petition as such fails and is accordingly dismissed.

(Rajiv Roy, J)

Neha/-

AFR/NAFR	AFR
CAV DATE	22.09.2023
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