

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No 5110 of 2013
IN
(CWJC No 17460/2008)

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Akhilesh Kumar S/O Ramdat Singh Resident Of Village- Mussi, P.S-
Makhdumpur, District- Jehanabad.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Md. Sohail, the District Magistrate, Jehanabad.
3. Mrs. Samti Ghunat, the Superintendent of Police, Jehanabad.
4. Sri Manoranjan Kumar, the Sub Divisional Officer, Jehanabad.
5. Sri Braj Nandan Prasad, the Deputy Commissioner, Jehanabad.
6. Sri Sanjay Kumar Ambastha, the Circle Officer, Jehanabad.
7. Sri Sudhir Kumar, the Incharge of Makhdumpur Police Station-
Jehanabad.

.... Respondent/s

WITH
Civil Review No 107 of 2014
IN
(CIVIL WRIT JURISDICTION CASE 17460/2008)

- =====
1. The State Of Bihar
 2. The District Magistrate, Jehanabad
 3. The Superintendent Of Police, Jehanabad
 4. The Sub-Divisional Officer, Jehanabad
 5. The Deputy Commissioner, Jehanabad
 6. The Circle Officer, Jehnabad
 7. The Incharge of Makhdumpur Police Station, Jehanabad

.... Petitioner/s

Versus

Akhilesh Kumar Son Of Ramdat Singh Resident Of Village - Musai,
P.S.- Makhdumpur, District - Jehanabad

.... Respondent/s

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For the petitioner : M/s Shivesh Pd & Umashankar Sharma,
Advocates

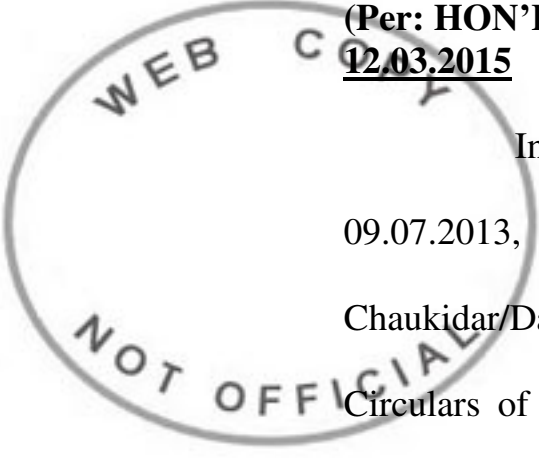
For the S t a t e : Mr Harish Kumar, GP XXXII

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)
12.03.2015

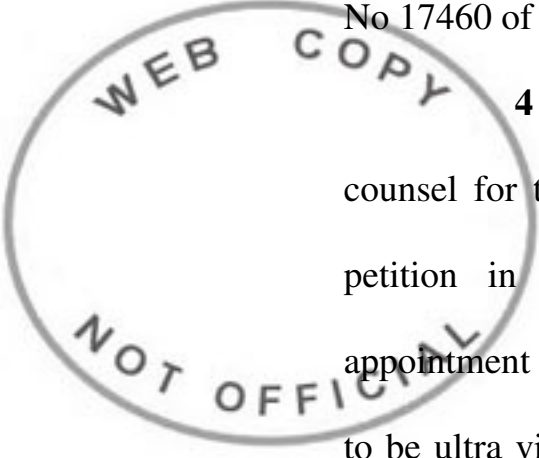


In CWJC No 17460 of 2008, by judgment and order dated 09.07.2013, this Court had held that the petitioner being son of a Chaukidar/Dafadar, had to be considered for appointment in view of the Circulars of the State Government which were in existence prior to 2004. In 2004, State Government withdrew the earlier Circulars. Petitioner's right had accrued prior to that. Accordingly, directions were issued to consider appointment of petitioner in place of his father.

2 When this order was not complied with, MJC No 5110 of 2013 was filed for taking action against the authorities for not complying with the writ order. State has filed a civil review application being Civil Review No 107 of 2014 bringing on record a judgment of this Court dated 27.08.2003 passed in CWJC No 6997 of 2003 wherein the Circular of 1995 issued by the State Government giving right to the dependent of a retired/deceased Chaukidar/Dafadar was held to be unconstitutional and had been set aside.

3 Learned counsel for the State states that the Writ Court had directed consideration of the writ petitioner in terms of the said Circular of 1995. This direction was issued in ignorance to the earlier binding judgment of this Court passed in CWJC No 6997 of 2003 being dated 27.08.2003. The Circular of 1995 having been quashed and set

aside by this Court, the Writ Court, in the present proceedings, ought not to have directed adherence to the same while disposing of CWJC No 17460 of 2008 by order dated 09.07.2013.

 4 Having considered the matter, in my view, learned counsel for the State is correct. Once this Court, in the earlier writ petition in the year 2003 itself, held the Circular, permitting appointment of the dependent of retired/deceased Chaukidar/Dafadar, to be ultra vires the Constitution and quashed, any order subsequently issued in other proceedings, in ignorance thereof, would be per incuram. The order passed in the case of writ petitioner was in ignorance to earlier binding precedent. The latter judgment cannot, thus, be enforced. That being so, in my view, it is rightly contended that the judgment of this Court in CWJC No 17460 of 2008 being dated 09.07.2013 is per incuram. I further hold that no proceedings would lie for enforcing the same.

5 Thus, the civil review application is allowed and consequently, MJC No 5110 of 2013 is dismissed.

(Navaniti Prasad Singh)

M.E.H./