

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12695 of 2007

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Chulhai Rai @ Chulha Rai, son of Sarwan Rai, resident of village Menuchak, P.O.-
Bhukurwa, P.S.- Madhubani, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, East Champaran, Motihari.
3. The Sub-Divisional Officer, Chakia, East Champaran, Motihari.
4. Anchal Adhikari, Mehshi.
5. The Superintendent of Police, East Champaran, Motihari.
6. The Officer-in-Charge, Rajepur, P.S.- Motihari, District- East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Gautam

For the Respondent/s : Mr. Sanjay Prakash Verma

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 12-05-2015

Heard Mr. Gautam for the petitioner and Mr. Verma for the State. A counter affidavit has been filed on behalf of the respondents. A Rejoinder thereto has been filed by the petitioner.

The writ application has been filed for a direction upon the respondents to pay the petitioner his arrears of salary for the period 1.1.1990 to 31.1.2003. It is asserted by the petitioner that he was working as Chowkidar since 1974 and came in the government service w.e.f. 1.1.1990. He continued to work but without payment. A writ petition was filed by him vide C.W.J.C. No. 13157 of 2000 for payment of his due salary from 1990. The same was disposed of by order dated 18.12.2000 (Annexure-7) directing the authorities to examine the said grievance of the petitioner and also to find whether

he was entitled to the same or not.

A counter affidavit has been filed on behalf of the respondents in which it has been stated that the Chowkidars who were earlier retained/engaged by the Superintendent of Police on different dates until 1.1.1990 were not approved by the competent body/committee. Paragraph 8 of the counter affidavit narrates the relevant facts which are as under:

“8. That in the course of verification of service record the age of the chaukidars/dafadars was got assessed by the Medical board. As per report of S.D.O., Sikrahana dated 04.01.1991 (based on the report of the Medical Board), the date of birth of the writ petitioner was reported as 01.02.1948 but his services could not be regularized as he was not appointed by the proper authority empowered to appoint a chaukidar nor his appointment was ever approved by the appointing authority under law. As the appointment of the writ petitioner was not done by the appointing authority nor his appointment was approved nor his service could be regularized as such his salary was not allowed since 01.01.1990.”

In the light of the order passed in C.W.J.C. No. 13157 of 2000, the matter was examined by the District Magistrate who after getting a report approved the appointment of the petitioner as Chowkidar vide order dated 22.1.2003 (Annexure-C to the counter affidavit of the State). Indisputably, the petitioner is getting salary of the post since 22.1.2003. Counsel for the petitioner refers to the different orders/communications to show that he continued to discharge the duties of the Chowkidar. However, there is no assertion

that his engagement as Chowkidar was ever approved by the competent body or committee prior to 22.1.2003. The petitioner after his regularization/appointment on the post of Chowkidar vide order dated 22.1.2003 did not raise any claim with regard to the previous dues and in the year 2007, this writ petition has been filed for the said direction.

Considering the aforesaid fact as also the stand taken in the counter affidavit, it appears to the Court that although the petitioner might be working on the post but his services were not approved by the competent body/committee until he raised a claim in this regard in an earlier writ petition which was directed to be examined and pursuant thereto the services of the petitioner was approved w.e.f. 22.1.2003. There is no dispute that the petitioner is getting his salary from 22.1.2003.

Regard being had to the above, this Court is unable to direct the respondent for payment of his salary for the said period.

The writ application is dismissed.

(Kishore Kumar Mandal, J)

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