

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17799 of 2008

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Pankaj Kumar, son of Sri Ramchandra Mahto resident of village – Mouna Bishunpur, P.O. – Goraul, P.S. – Belsar O.P. (Vaishali), District – Vaishali at Hajipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Commissioner –cum- Secretary, Home (Police) Department, Government of Bihar, Old Secretariat, Bihar, Patna
3. The Collector – cum-District Magistrate, Vaishali, District- Vaishali at Hajipur
4. The Deputy Collector In charge District General Section, Collectorate, Vaishali, District – Vaishali at Hajipur
5. The Superintendent of Police, Vaishali, District – Vaishali at Hajipur
6. The Deputy Development Commissioner , Vaishali , District Vaishali at Hajipur
7. The District Welfare Officer, Vaishali, District – Vaishali at Hajipur
8. The Sub Divisional Officer, Hajipur, District Vaishali at Hajipur
9. The Deputy Superintendent of Police, Hajipur, District Vaishali at Hajipur
10. The Circle Officer, Circle – Vaishali , Sub Division Hajipur, District Vaishali at Hajipur
11. The Officer In Charge, Belsar O.P., P.S. Vaishali, District Vaishali at Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nityanand Mishra
For the Respondent/s : AC to GP No. 11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 17-04-2017

1. Heard Sri Nityanand Mishra, learned counsel for the petitioner and learned AC to GP No. 11.

2. The petitioner, had approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India by filing the present writ petition in the month of December, 2008 with a prayer to command the respondents to appoint / engage him on the post of Chowkidar under respondent no. 11 (Officer In-Charge, Belsar O.P., P.S.- Vaishali, District – Vaishali) in place of his father, who



superannuated on 30.9.2003 as Chowkidar. A plea has been taken that earlier after superannuation of the father of the petitioner, a duly constituted Selection Committee which was presided over by the District Magistrate had considered the case for appointment of Chowkidars in similar manner and in the said list name of the petitioner was also considered for being appointed. The petitioner's name had appeared at serial no. 27 of Annexure '3' to the writ petition. It has further been argued that subsequently the District Magistrate vide its letter dated 6.11.2003 (Annexure – '4' to the writ petition) had sought some guideline from the Home (Police) Department in view of the order passed in CWJC No. 6997 of 2003 whereby the Government notification dated 20.12.1995 was quashed. He submits that the District Magistrate vide Annexure –'4' to the writ petition had sought guideline regarding appointment of Chowkidar on the recommendation of the Superintendent Of Police . He submits that once the case of petitioner was considered for appointment in place of his father by the Selection Committee presided over by the District Magistrate , one way or the other, the petitioner has been denied his appointment, which is illegal.

3.Learned counsel for the petitioner accepts that in the recommendation i.e. Annexure '3', the persons, whose name had appeared in between serial no. 24 and 30 which includes the name



of petitioner at serial no. 27 , there was no recommendation of the Superintendent of Police and it was observed that in respect of such persons after obtaining recommendation from the Superintendent Of Police decision will be taken for appointment. Meaning thereby that in absence of recommendation of the Superintendent of Police, there was no question of appointment of such persons which includes the petitioner.

4. In this case the petitioner has filed rejoinder on 6th April 2017. Along with the rejoinder, he has also brought on record a government notification dated 25.8.2006 (Annexure '5' to the rejoinder). On perusal of Annexure –'5' it is evident that in exercise of power under Article 309 of the Constitution of India the Government of Bihar had framed a Rule regarding appointment, service condition etc. of the Chowkidar. Meaning thereby that all the appointment of Chowkidar is to be done in view of the new Rule of 2006. Learned counsel for the petitioner has also referred to Annexure '6' to the rejoinder and submits that by this communication dated 7th December 2005, all the Divisional Commissioner / District Magistrate were intimated by the Home (Police) Department regarding taking action in respect of Chowkidar in view of earlier instruction. However, on perusal of Annexure '6' to the rejoinder it is evident that the said communication was made in the year 2005 itself



whereas, the Rule for appointment and service condition of Chowkidar was framed vide Annexure ‘5’ to the rejoinder which is dated 25.8.2006. It is evident that Rule for appointment of Chowkidar was framed in the year 2006 and the present writ petition was filed in the month of December, 2008. The Court is of the opinion that no order for appointment of Chowkidar can be passed contrary to the provisions made in the Rule of 2006 (Annexure ‘5’ to the rejoinder). Moreover, on perusal of Annexure ‘3’ to the writ petition it is evident that no final decision was taken for issuance of appointment letter by the Selection Committee since there was no recommendation by the Superintendent of Police.

5. Considering the fact that the present writ petition was filed after the Rule for appointment, service condition etc. in respect of Chaukidar was implemented in the year 2006, this Court is unable to pass any order for appointment of petitioner as Chowkidar, which would be contrary to the Rules and as such the writ petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21 -04-2017
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