

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.189 of 2017

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1. Jharu Mahto Son of Late Huro Mahto Resident of Village-Bishanpur P.O. and P.S.-Chanan, District-Bank

2. Bhairo Yadav Son of Jharu Mahto Resident of Village-Bishanpur P.S. Chanan District-Banka

.... Petitioner/s

Versus

1. The State of Bihar through the District-Magistrate, Bank

2. The Officer on duty Cum Officer-in-Charge District-General Branch, Banka

3. The Circle Officer, Chanan District-Banka

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1142 of 2017

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1. Nageshwar Prasad Yadav, son of Samroo Prasad Yadav, resident of village - Satyabhaiya, P.O. - Fatehpur, P.S. - Chanan, District - Banka.

2. Sri Ganesh Lal Yadav, Son of Nageshwar Prasad Yadav, Retd. Dafadar Chanan/Anandpur, resident of village - Satyabhaiya, P.O. - Fatehpur, P.S. - Chanan, District - Banka.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary Department of Home, Govt. of Bihar.

2. The District Magistrate, Banka.

3. The Officer-on-duty Cum Officer-in-Charge of the District, General Branch-Chanan, District - Banka.

4. The Officer on duty Cum Officer-in-charge, District - Public Grievance Cell, Banka, District - Banka.

5. The Circle Officer, Chanan, Banka , District - Banka.

.... Respondent/s

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Appearance :

(In CWJC No.189 of 2017)

For the Petitioner/s : Mr. Ashok Kumar Sinha, Adv.

For the Respondent/s : Mr. Raj Kishore Roy-GP18

(In CWJC No.1142 of 2017)

For the Petitioner/s : Mr. Ashok Kumar Sinha, Adv.

For the Respondent/s : Mr. Md. Nafisuzoha A.C. to S.C.1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 05-07-2017



Heard Mr. Ashok Kumar Sinha, learned counsel for the petitioners in each of the two writ petitions, Mr. Raj Kishore Roy G.P.18 for the State in C.W.J.C.No.189 of 2017 and Mr. Md. Nafisuzoha A.C. to S.C.1 in the other writ petition.

With the consent of the parties, the writ petition has been heard with the view to final disposal at the stage of admission.

Since the issue raised and the relief claimed in each of the two writ petitions is the same hence it has been heard analogous.

Since the issue raised and contested as well as the relief claimed is the same, I would be referring to the pleading made in C.W.J.C.No.189 of 2017 unless clarified with specific reference to other writ petition.

While the petitioner in C.W.J.C.No.189 of 2017 has prayed for quashing of the order bearing Memo No. 449 dated 3.5.2016 of the Incharge Officer, District General Section, Banka impugned at Annexure-1 whereby on the failure of the petitioner no.1 to mention his date of voluntary retirement that his request for appointment of his son Bhairo Yadav as his successor to the post has been rejected, similar prayer has been made by the petitioner in C.W.J.C.No.1142 of 2017 in respect of the order No.448 dated 3.5.2016 passed by the same authority.

Although a counter affidavit is filed in C.W.J.C.No.189 of 2017



but no counter affidavit has been filed in second writ petition however counsel for the State are in agreement to submit that the stand taken by the respondents in the counter affidavit filed in C.W.J.C.No.189 of 2017 as reflected from the order dated 12.8.2015 of the Sub Divisional Officer present at Annexure-C, would cover the case of the other writ petitioner as well.

The facts are not in dispute rather it is admitted that each of the two writ petitioners held the post of Chaukidar and were due for retirement on 30.4.2015. Vide notification bearing Memo No.1896 dated 5.3.2014, the Bihar Chaukidar Cadre Rules 2006 (hereinafter referred to as 'the Rules') was amended to incorporate Sub- Rule (6) and (7) to Rule 2 of 'the Rules'. While Sub Rule (6) mandates the circumstances in which a Chaukidar/Dafadar can seek voluntary retirement, Sub Rule (7) defines the term 'Dafadar'. Rule (3) of the amendment further amends Rule 5 and adds a proviso to Sub Rule (7) whereby an option is given to a Chaukidar/Dafadar who fulfills the criteria present in the amended Sub- Rule (6), to seek voluntary retirement as well as to name his successor. A copy of the amendment is present at Annexure-2 to the writ petition. It is in view of the amendment present at Annexure-2 and the liberty provided thereunder that the petitioner in C.W.J.C.No.189 of 2017 filed his application seeking voluntary retirement as well as for appointment of his son



Bhairo Yadav on 22.6.2015 with separate application filed before the District Magistrate on 28.2.2015, copies of which are placed at Annexure-2/1 and 3 to the writ petition. His application has been acted upon by the Incharge Officer, District General Section in seeking certain details vide Annexure-4. In a similar manner, the application of the petitioner in C.W.J.C.No.1142 of 2017 has also been acted upon as manifest from the documents enclosed with the said writ petition. Unfortunately, their request has been rejected by the orders impugned at Annexure-1 of the respective writ petition inter alia on grounds that the date of voluntary retirement is not mentioned in their application and which has not been filed a month before the expressed date of voluntary retirement.

While it is the argument of Mr. Ashok Kumar Sinha, learned counsel for the petitioner that in view of the stipulations present at Rule 3(ii)(क) of the amendment notification, the two petitioners having expressed their option for voluntary retirement and having given their respective successor, there was no occasion for the respondents to reject the request merely because the date of voluntary retirement was not mentioned, the argument has been contested by learned State counsel appearing in the two writ petitions in reference to the counter affidavit filed in the proceedings. It is contended that there were certain requirements attached to such request and since it



was not fulfilled inasmuch as the request for voluntary retirement was not filed one month prior to the expressed date of voluntary retirement that it has been rejected as confirmed from the letter of the Sub divisional Officer dated 12.8.2015 addressed to the District General Section present at Annexure-C to the counter affidavit filed in C.W.J.C.No.189 of 2016.

I have heard learned counsel for the parties and I have perused the records.

The issue raised and contested herein was a subject matter of C.W.J.C.No.1109 of 2016 and this Court taking note of the stipulations present in the amendment as well as the objections raised by the respondents which were identical to the objections raised herein, has allowed the writ petition while rejecting the objections raised by the respondents in reference to Rule 3(ii)(घ) of the amendment notification.

For the sake of convenience I deem it proper to reproduce the objection raised by learned State counsel in the said writ petition which is identical to the one raised herein and the opinion expressed by this Bench which would squarely cover the case herein and runs as follows:

“The argument has been contested by Mr. Utsav Kumar, learned counsel appearing for the State, in reference to Clause (gha) of the notification at Annexure 1 and he submits that since the father of the petitioner had



sought voluntary retirement but there was no gap of a month as mandated under the amended Rules in between the date of application and the date of voluntary retirement, hence the prayer was rejected. There is no explanation as to the reasons for rejection of the request for appointment of his son i.e. the present petitioner.

I have heard learned counsel for the parties and have perused the records.

The two clauses which require a discussion in the present contest would be the proviso at paragraph 3(ii)(ka) and (gha) respectively of the amendment notification 2014, which run as follows:

"(क) चौकीदार संवर्ग के कर्मचारी अपनी वार्षिक 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।

(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 को अपना आवेदन देना होगा।"

While the proviso at paragraph 3(ii)(ka) requires an outgoing Chowkidar to file his application for voluntary retirement as well as for naming his successor at least one month before his date of retirement/ date of voluntary retirement, Clause (gha) thereof provides that a Chowkidar seeking voluntary retirement should file his application for voluntary retirement at least one month before the date on which he seeks to voluntarily retire. The two provisos are operating in different sphere and while Clause (ka) governs the issue of naming a successor by a Chowkidar seeking voluntary retirement, Clause (gha) governs the issue of voluntary retirement and in each case the application is to be filed one month prior to retirement/ voluntary retirement.

In so far as the present case is concerned, clearly it is the proviso present at paragraph 3(ii)(ka) which would govern the issue and since admittedly the application of the father of the petitioner seeking voluntary retirement as well as naming his son as his successor on the post of Chowkidar was filed more than a month before his date of retirement on 31.5.2015 i.e. on 29.4.2015, it could not have been rejected on grounds that his prayer for voluntary



retirement was not made within the prescribed time. In fact the application having been filed on 29.4.2015, the prayer of the father of the petitioner for voluntary retirement and appointment of his son was well in advance of a month of retirement and thus the request was not liable for rejection on grounds that it was not filed within the stipulated period. In my opinion, the prayer of the father of the petitioner to seek voluntary retirement and naming his successor was within time and is fully governed by the proviso at paragraph 3(ii)(ka) and not (gha). Further that the father of the petitioner was yet allowed to superannuate in the normal course of his retirement on 31.5.2015, the respondents have thoroughly confused themselves in interpreting the stipulations present in the notification to deny the request made by the father of the petitioner to appoint his son as successor on the post of Chowkidar which request of the petitioner made in the application at Annexure 2 is fully governed by the proviso at paragraph 3(ii)(ka) of the notification at Annexure 1.”

In so far as the two writ petitions in hand are concerned, there is no dispute that the respective applications seeking voluntary retirement and naming the successor, was filed by the two petitioners more than a month in advance.

In view of the legal position so discussed in the judgment of this court rendered in the case of **Sanjay Paswan** (supra) it would thus be only completion of formality by this Court to hold that the rejection of the request made by the two petitioners for voluntary retirement and for appointment of their respective son, is contrary to the stipulations present in the amendment notification.

In result, the rejection of the request made by the two petitioners impugned at Annexure-1 of the respective writ petition are



held illegal and contrary to the stipulations present at Rule 3 (ii)(क) of the amendment notification and in consequence the rejection order bearing memo no. 449 dated 30.5.2016 of the Incharge Officer District General Section impugned at Annexure-1 to C.W.J.C.No.189 of 2017 together with the order bearing Memo No.448 dated 3.5.2016 of the same authority impugned at Annexure-1 to C.W.J.C.No.1142 of 2017, are quashed and set aside. The two writ petitions are allowed.

The authority concerned is directed to take necessary steps for appointment of the son of the two writ petitioners in accordance with law in terms of the request made by them which order be passed within a maximum period of six weeks from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31-07-2017
Transmission Date	NA

