

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17217 of 2008

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Ram Bilash Singh, son of Ram Lakhan Singh Yadav, resident of Village Rampurhazi, P.S. Arwal, District Arwal.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Arwal
3. Superintendent of Police, Arwal
4. Circle Officer Kaler, Atwal
5. Officer-in-charge, Arwal, District Arwal.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar,
Mr. Uday Pratap Singh.
Mr. Jyoti Ranjan Jha

For the State Mrt. S. Raza Ahmad, Sr. Advocate, AAG-5:
Mr. Vishwambhar Prasad, AC to AAG 5

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-11-2017

Heard learned counsel for the petitioner and learned counsel for the State.

In the present case, petitioner is seeking relief that he should be appointed as Chowkidar and he should be paid wages for the period of 30.9.2000 to till date.

As per claim of the petitioner his father Ram Lakhan Singh Yadav was Chowkidar who has superannuated on 30.9.2000. Petitioner applied for the post before superannuation of his father. The recommendation was made by the Officer In-charge of the police station vide recommendation dated 30.9.2000 wherein entire details have been given having qualification of intermediate but he was not appointed. It has



further been stated that from time to time he was given the work of Ewaji Chowkidar which he had carried out is apparently clear from certain letters which have been issued by the Officer In-charge of verification of records inasmuch as from time to time commands have issued to carried out the work.

In support of his contention, learned counsel for the petitioner has placed reliance on the letter dated 30.5.2013 where it has been recorded that after holding enquiry during petitioner asserted to have conducted work having not received any complaint against him, is a person of good moral and character. An enquiry was conducted by different Officer-in-charge of police station which is apparently clear from letter dated 26.4.2017 addressed to the Superintendent of Police, Arwal mentioning therein, recording that present petitioner had produced number of commands which bears the signature of the then Officer In-charge but letter dated 4.5.2017 is also of the Officer In-charge where it has been recorded that the enquiry was conducted, records and registers were examined and did not find any document indicating issuance of the command in favour of the petitioner. Different conflicting reports are there but certain reports indicates that he was working and indicates that commands were issued from time to time and on that basis he is claiming relief in terms of the Bihar and Orissa Village



Administration Act, 1922 (hereinafter mentioned as Village Administration Act). In terms of Sections 23 and 25 of the said Act he should be appointed as there is nomination in his favour whereas there is rule for appointment has been framed by the State Government. Chapter III of Village Administration Act deals with the village policy. He has further submitted that rule has been framed in 2006, amended Rule in 2014 and 2016 cannot override the Act, the Rule will remain operational if there is no conflict with the Act and in case of conflict both cannot run together then rule will have to given way to the Act. He has further submitted that there are vacancy available, Officers are taking work from him but without payment so his case should be considered and he should be appointed by the District Magistrate. Section 25 stipulates about the manner for appointment of Chaukidar.

Learned counsel for the State, in contra, submits that post of Ewaji Chowkidar is no longer in existence. The post of Chaukidar has been declared to be Class IV post. Earlier in 1990 the manner of appointment of Chaukidar to be made has been outlined by issuing the executive instruction and later on in 2006 rule has been provided, was amended by Rule 2014 and Rule 2016. The mode and method has been provided that appointment has to be made by the Committee headed by the District



Magistrate and members are Superintendent of Police , respective S.D.Os. and D.D.C.. Amendments were made in 2014 and in place of qualification of 8th it has been substituted Class X but procedure remained same. Appointments are to be made in terms of Rule. The post of Chaukidar is no longer hereditary but IV Class post. It has been stated that earlier it was a hereditary post, in the event of death of father sons were nominated and appointed . The same procedure is no longer available after framing of the new rule and appointment has to be made after following the proper procedure.

In support of his contention learned counsel for the State has placed reliance on the judgment of this Court in the case of Dinesh Chandra V. The State of Bihar through the Chief Secretary and others, reported in 2017(3) PLJR 265 where the Court has said that appointment has to be made in terms of Chaukidari Niyamabali. It is neither compassionate appointment nor by hereditary rather the appointment has to be made through the proper procedure.

Having considered the rival contentions of the parties Section 23 stipulates that the District Magistrate shall from time to time determine number of Chowkidar and after consideration of the proposal of Union Board, if any, and Chaukidari to be employed for each unit, the salaries would be paid to them. It has



been stated that Union Board shall nominate a person to be appointed Dafadar and Chaukidar under the Act, State Government on being satisfied would appoint such nominee but after rule the post of Chowkidar became class IV with specific salary with procedure to be followed for appointment which is consonance with Article 14 and 16 of the Constitution and cannot be treated hereditary post. Having examined statutory provision and provisions of Rule this Court is of view that there is no repugnancy in between two. The recommendation for appointment has to be made on satisfaction of qualification. Earlier qualification was 8th and now it was 10th. So rule now takes care in what manner the Chaukidars and Dafadars has to be been appointed. It is also a fact that Chaukidars and Dafadars are not hereditary post now it is cadre post and there is provision for appointment, is in consonance with Articles 14 and 16 of the Constitution of India and appointment should be made in fair and proper manner and any nomination or any back door appointment has been frowned upon by different judgments of the Hon'ble Supreme Court as well as High Court.

In such view of the matter, this Court is of the view that by right petitioner, son of the Chaukidar, would not get favour, though from the record, it appears that he was asked to perform the duty. It has been brought to the notice of this Court that posts



of Chaukidars are available. In such view of the matter, this Court directs the District Magistrate, Arwal and Superintendent of Police, Arwal that they should issue an advertisement if vacancies are lying vacant appoint suitable person in accordance with law. The case of the petitioner would also be considered as it appears that his name has been registered in the local employment exchange. The authority will also call the name from the employment exchange as well as by making advertisement.

For convenience, for payment of wages, petitioner is directed to file detailed representation before the Superintendent of Police, Arwal who will call for the record and examine the same and if it found that petitioner has worked then payment should be made to him. In the matter of appointment, relaxation in age should be given to the petitioner.

With the aforesaid observation and direction this writ petition is disposed of.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.11.2017
Transmission Date	NA

