

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.118 of 2017

In
Civil Writ Jurisdiction Case No.5225 of 2012

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1. Sugia Kunwar and Ors W/o Late Bhikhar Paswan,
 2. Doman Paswan,
 3. Jagdish Paswan,
- 2 & 3 both are sons of Late Bhikhar Paswan, All are resident of village - Shahpur, P.S. P.O. Aurangabad (T) , District - Aurangabad

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Secretary, Home and Police Department, Govt. of Bihar, New Secretariat, Patna
3. The Additional Home Secretary - Cum - Special Secretary, Home Department, New Secretariat, Patna
4. The District Magistrate, Aurangabad
5. The Superintendent of Police, Aurangabad
6. The Finance Secretary - Cum - Commissioner, Finance Department, Government of Bihar, New Secretariat, Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shailesh Kumar Singh
For the Respondent/s : Mr. Prabhat Kumar Verma- Aag3

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 12-12-2018

Heard the parties.

This intra-Court appeal arises from a judgment and order of a learned Single Judge dated 10.11.2016 passed in C.W.J.C. No. 5225 of 2012 whereby the prayer of the petitioner for counting the service rendered by him as Chaukidar prior to his absorption w.e.f. 01.01.1990 under the Circular dated 17.01.1990 of the State Government has been rejected and consequently the writ petition has



been dismissed.

There is no dispute on facts rather it is an admitted position that earlier the payment for discharge of duty on the post of Chaukidar/Dafadar was by way of honorarium and there was no pay scale attached to the post. The State Government taking note of the persistent demands of these Dafadar/Chaukidar for grant of regular pay scale, took a policy decision which is present in the circular dated 17.01.1990 and recognises the Dafadars/Chaukidars as government servant but only w.e.f. 01.01.1990. The circular also allows their services to be guided by other circulars relating to selection/appointment and superannuation benefits as applicable in other departments but nowhere does the circular gives accord to the benefits of the past services to these Dafadars/Chaukidars for the purpose of superannuation benefits or any other benefits. Insofar as the present case is concerned, the appellant-writ petitioner was treated as a government servant w.e.f. 01.01.1990 and he superannuated on 31.03.1995. Obviously, since the appellant-petitioner has less than 10 years of qualifying service it did not entitle him to get pensionary benefits as admissible under the Bihar Pension Rules. It is faced with such situation that feeling aggrieved, he moved the writ court through the writ petition which has been dismissed and hence this appeal.

We have heard learned counsel for the parties and we have perused the records including the circular dated 17.01.1990 which



accords the status of government servant to the Dafadars/Chaukidars.

A plea of discrimination is raised by Mr. Shailesh Kumar Sinha, learned counsel appearing for the appellant-writ petitioner as according to him similarly placed employees in other departments have been allowed to count their past services for the purpose of superannuation benefits which is being denied to the appellant-petitioner.

The plea though appears attractive and we were also persuaded to ask the State counsel to address on the issue but our attention being drawn to a Division Bench pronouncement reported in **2004(2) PLJR 454 (Charitar Paswan Vs. State of Bihar)** wherein this very issue fell for consideration and by an exhaustive expression, the Division Bench has upheld the policy decision of the State Government in according the status of a government servants to the Dafadars/Chaukidars but has refused to accept the prayer of one such similarly placed Chaukidar for counting of his past service for the purpose of superannuation benefits, the arguments cannot invite indulgence to interfere with the opinion of the learned Single Judge.

Apart from the fact that the issue raised by the appellant-writ petitioner stands concluded by the judgment of the **Charitar Paswan** (supra), another aspect of the matter which does not persuade us to grant indulgence in the matter is that even then the circular came into force on 17.01.1990 and even when the petitioner was denied superannuation benefits having superannuated on



31.03.1995, no such claim was raised by him rather he chose to raise this issue much thereafter which claim was rejected on 09.10.2009 which was challenged three years thereafter in the writ petition in question filed in the year 2012. During the writ proceeding the writ petitioner deceased and the matter was persued by his dependents. In such view of the matter and considering the Division Bench pronouncement in the case **Charitar Paswan** (supra), we find no reason to interfere with the opinion expressed by the learned Single Judge which is in tune with the legal position settled.

The appeal is dismissed.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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Uploading Date	28.01.2019
Transmission Date	

