

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18775 of 2019

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Md. Tahir Akhtar, son of Md. Majeed, resident of Village-Amar Chhatauni,
P.S.-Muffasil Motihari, District-East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Home, Bihar, Patna
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna
3. The Principal Secretary, Department of General Administration, Govt. of Bihar, Patna
4. The District Magistrate East Champaran at Motihari

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Singh, Advocate.
For the Respondent/s : Mr. Shailesh Kumar, A.C. to G.P. 5

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 15-10-2019

Heard learned counsel for the parties.

2. The petitioner is a *Chowkidar* whose service conditions are governed by Bihar Chowkidari Cadre Rules 2006 (hereinafter referred to as 'Rules 2006'). Chowkidar is admittedly a Group-'D' post. The cadre of Chowkidars consisted of *Chowkidars* and *Dafadars* under the Rules 2006 which have been amended by Bihar Chowkidar (Amendment) Rules, 2016 and a post of senior Dafadar has been included in the cadre after *Chokdiar* and *Dafadar*. Rule 3 of the Rules 2006 has been substituted by the following:-



“3. Constitution of Cadre-(1) Bihar Chowkidar Cadre will comprise of following posts:-

- (i) Chowkidar – It shall be post of basic category of this cadre. The post of Chowkidar shall be of Group- “D”.*
- (ii) Dafadar – It shall be promotional cadre post which will be filled up by promotion from the employee working on the post of Chowkidar. The post Dafadar shall be of Group- “C”.*
- (iii) Senior Dafadar – It shall be second hierarchical post of the cadre promotion. This post shall be filled up by promotion of the employees working on the posts of Dafadar.*
- (iv) The number of sanctioned strength of different posts of this cadre shall be as follow, which may be altered from time to time by Home Department:-*
 - (A) Chowkidar - Number of sactioned post-26000*
 - (B) Dafadar - Number of sanctioned post – 1900*
 - (C) Senior Dafadar - Number of sanctioned post – 1000*
- (v) Legally appointed and working all the Chowkidars and Dafadars shall be automatically included in this cadre.*
- (vi) This cadre shall be District level Cadre and concerned District Magistrate shall be the Appointing officer and Cadre Controlling Officer”.*



3. It is evident from the above noted Provisions, that post of *Dafadar* is a Group –“C” post.

4. There is another set of Rules, christened, Bihar Collectorate Clerical Cadre (Recruitment and Conditions of Service) Rules, 2011 (hereinafter referred to as 2011 Rules), Rule 5 (1) of which, prescribes that 85 per cent posts of Lower Division Clerk shall be filled up through direct recruitment and 15 per cent from amongst eligible Group-“D” employees having matriculation qualification. The petitioner claims that since he holds a Group-“D”, albeit under the Rules of 2006, he is eligible to be considered for appointment in clerical cadre as Lower Division Clerk under 2011 Rules. This is to be noted that few Chowkidars (not this petitioner) had approached this Court raising similar plea by filing a writ application, giving rise to CWJC No. 4873 of 2018.

5. This Court after having considered the case of the Chowkidars of their claim for being considered for appointment as Lower Division Clerk under 2011 Rules has noted the concession made on their behalf, that in the absence of any challenge to the Government notification/amendment in the cadre Rules of 2006, no interference could be made with the amendment



in the Rule and disposed of the writ application by an order dated 05.02.2019 in following terms:

“In any view of the matter, learned counsel for the petitioners fairly concedes that in the absence of any challenge to the Government notification/amendment in the cadre rules of 2006 which has been gazetted, no interference could be made with the amendment in the Rules or in the Rules. However, this Court accepts the contention of the learned counsel for the petitioners that there would be no harm in the concerned authority revisiting the aforesaid issues and take a fresh call over allowing the petitioners to participate in the induction process in the clerical cadre which is governed by the Bihar Collectorate Clerical Cadre (Recruitment and Conditions of Service) Rules, 2011.

Under the aforesaid circumstances, the petitioners are directed to make a representation before the Principal Secretary, Department of General Administration, Government of Bihar, Patna (respondent no.3) within a period of four weeks enclosing a copy of this order which shall be disposed of by the concerned respondent within a reasonable period of time”.

6. The petitioners of that case, thereafter, filed a representation before the Government which was rejected by an



order dated 23.05.2011 passed by the Additional Chief Secretary, General Administrative Department, Government of Bihar, taking into account, the fact that the *Chowkidars* had enough promotional avenue under 2006 Rules. The said order dated 23.05.2019 is being assailed in this writ application.

7. I have heard Mr. Sanjay Singh, learned counsel appearing on behalf of the petitioner and Mr. Shailesh Kumar, learned A.C. to G.P.-5 on behalf of the Respondent State of Bihar.

8. Mr. Sanjay Singh, learned counsel appearing on behalf of the petitioner has drawn my attention to the reasons assigned by the Additional Chief Secretary for rejecting the representation of the petitioners of CWJC No. 4873 of 2018 and has submitted that since the *Chowkidars* admittedly hold Group-“D” posts, they cannot be denied of their right to be considered for appointment as Lower Division Clerk under 2011 Rules. He has contended that the petitioner has skill and qualification to discharge the functions of a Lower Division Clerk, and as a matter of fact, the petitioner has discharged his duties assigned by his Controlling Officer of a Group-“C” employee, with full satisfaction to one and all.

9. I find it difficult to accept the submission made by Mr. Sanjay Singh, learned counsel for the petitioner in the



background of the order dated 05.02.2019 passed in CWJC No.4873 of 2018 wherein the Court has refused to interfere in the absence of any challenge to the Government notification/amendment in the cadre rules. The notification/cadre rules have not been put to challenge.

10. In the aforesaid background, this writ application cannot be entertained, and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17/10/2019
Transmission Date	N.A.

