

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.139 of 2021

1. RAJ KUMAR RAM LACHHAN PASWAN VILLAGE MADARPUR PS
PUNPUN DISTRICT PATNA
2. NEERAJ PANDEY MITHILESH PANDEY VILLAGE PIPARDAHAN PS
PALIGANJ DISTRICT PATNA
3. GAUTAM KUMAR BAL SUNDAR PASWAN VILLAGE TETARI PS
DHANARUA DISTRICT PATNA
4. RAJU KUMAR SHYAM BABU PASWAN VILLAGE MAHAMMADPUR
PS BAKHTIYARPUR DISTRICT PATNA
5. PREMCHANDRA KUMAR MAHENDRA PASWAN VILLAGE
DARIYAPUR MAINPURA PS PHULWARISHARIF DISTRICT PATNA

... .. Petitioner/s

Versus

THE STATE OF BIHAR THE OLD SACHIVALAYA PATNA BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Pratik Kr. Sihna, AC to GA-V

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 15-12-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioners have prayed for
following reliefs:

“1. For issuance of writ/writs, order/orders, direction/directions for quashing the Memo No. 1460 dated 28.08.2020 issued under the signature of respondent District Magistrate so far it relates to the petitioners, who are the wards of Ex-Chaukidars/Dafadars, whose name appears at Serial No. 3, 1, 6, 9 and 5 respectively, whereby and whereunder the applications of petitioners for appointment on the basis of Chaukidar after granting voluntary retirement from service have been refused on the sole ground that fathers



of petitioners were appointed after 06.11.1991 by the order of respondent Senior Superintendent of Police and accordingly, appointment letters issued to them under the signature of S.S.P. and as such their initial appointment appears not legal as the Appointing Authority of Chaukidar/Dafadar is District Magistrate but in the case of fathers of petitioners the Appointing Authority is S.S.P. and as such their applications for appointment have been rejected.

II. For issuance of writ/writs, order/orders, direction/directions for commanding the respondent authority especially respondent District Magistrate to held the appointment of fathers of petitioners as valid as they were appointed on different dates in the year 1992 and such by taking into consideration the power of delegation conferred upon District Magistrate under Clause 21 of appoint any subordinate especially Superintendent of Police of concerned district to make appointment on the post of Chaukidar and Dafadar and as such taking into consideration this clause appointment letters were issued to the fathers of the petitioners and they were held validly appointed and also may be become entitled for retiral benefit and other benefits accrued to the persons appointed and working on the post of Chaukidar.

III. For any other relief or reliefs for which petitioners are found entitled in the eyes of law and in the facts and circumstances of the present case.”

3. Petitioners, above named, have been denied appointment to the post of *Chaukidar/Dafadar* with reference to date of their father's voluntary retirement read with the scheme



of appointment on compassionate (Voluntary retirement scheme). Petitioners' father were appointed by the then Senior Superintendent of Police on 27.03.1992. The power of appointing in respect of *Chaukidar/Dafadar* post as on 27.03.1992 was vested with the District Magistrate. Therefore, order of appointment issued to father of Petitioner no. 1 on 27.03.1992, father of Petitioner no. 2 on 01.08.1992, father of Petitioner no. 3 on 26.03.1992, father of Petitioner no. 4 on 02.04.1992 and father of Petitioner no. 5 on 09.04.1992 are not in consonance with the powers vested to appoint *Chaukidar*. On this count, petitioners have been denied appointment that order of appointment of petitioners' father dated 27.03.1992, 01.08.1992, 26.03.1992, 02.04.1992 and 09.04.1992 respectively was not in consonance with the relevant power vested to the District Magistrate.

4. Learned counsel for the respondent relied on the Apex Court's decision in the case of *Union of India & Ors. V. Raghuwar Pal Singh* reported in (2018) 15 SCC 463 (para 20 and 30).

5. Per contra, learned counsel for the petitioners submitted that as long as order of appointment issued to the petitioner's father, as above, has not been



withdrawn/cancelled/modified. Order of appointment issued to the petitioner's father is intact even to this day. Even though such order of appointment was issued by incompetent authority. The same has given effect to. Therefore, on technical ground, petitioners shall not be denied appointment to the post of *Chaukidar/Dafadar* in terms of the policy decision of the State.

6. Heard learned counsels for the respective parties.

7. Undisputed facts are that each of the petitioners' father were appointed as *Chaukidar/Dafadar* by the then Superintendent of Police. As on the date of appointment the competent authority to appoint the *Chaukidar/Dafadar* was District Magistrate. The same has not been rectified either in cancelling the order of appointment issued to the petitioners' father or withdrawn. Petitioners fathers' services were continued and each of them were allowed to retire and retiral benefits have been settled.

8. State counsel has cited the aforesaid decision in which para 20 and 30 reads as under:

“20. For taking this contention forward, we may assume, for the time being, that the then Director Incharge H.S. Rathore, Agriculture Officer had the authority to issue a letter of appointment. Nevertheless, he could do so only upon



obtaining prior written approval of the competent authority. No case has been made out in the original application that due approval was granted by the competent authority before issuance of the letter of appointment to the respondent. Thus, it is indisputable that no prior approval of the competent authority was given for the appointment of the respondent. In such a case, the next logical issue that arises for consideration is: whether the appointment letter issued to the respondent, would be a case of nullity or a mere irregularity? If it is a case of nullity, affording opportunity to the incumbent would be a mere formality and non-grant of opportunity may not vitiate the final decision of termination of his services. The Tribunal has rightly held that in absence of prior approval of the competent authority, the Director Incharge could not have hastened issuance of the appointment letter. The act of commission and omission of the then Director Incharge would, therefore, suffer from the vice of lack of authority and nullity in law.

30. Even *Montreal Street Railway Company* cannot come to the rescue of the respondent. In the present case, the requirement to obtain prior approval of the competent authority has been made an essential requirement and only then would the appointing authority be competent to issue letter of appointment. For, after the proposal is submitted for approval to the competent authority through proper channel by the official duly authorised to do so, the competent authority would reckon all aspects of the matter including whether the selection process has been properly followed in all respects. That would include the question



such as whether the then Director Incharge could have constituted the Board of seven members, contrary to the established norms and more so to act as Chairman of such a Board after full knowledge that the candidate appearing for the interview was his relative.”

9. Aforesaid decision is not applicable to the case in hand for the reason that it is not the case of termination of the petitioners' fathers. In the cited decision matter relates to termination of respondent therein. That apart, it is to be noted that even if order is in nullity as contended by the respondent counsel, competent authority is required to declare that such order is in nullity as long as orders dated 27.03.1992, 01.08.1992, 26.03.1992, 02.04.1992 and 09.04.1992 are not declared illegal. Order of appointment issued to the petitioners' fathers have not been held to be in nullity by competent authority or forum, the same would be inoperative. However, from the date of appointment till they attained the age of superannuation and retired from service they were allowed to retire. Therefore, at this juncture, the official respondent cannot raise contention that order dated 27.03.1992, 01.08.1992, 26.03.1992, 02.04.1992 and 09.04.1992 issued in favour of the petitioners' fathers are in nullity. Accordingly, petitioners have made out a case.



10. The concerned respondent is hereby directed to issue order of appointment to the petitioners, if petitioners are otherwise eligible within a period of two months from the date of receipt of this order.

11. Accordingly, the instant petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2021
Transmission Date	

