

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10249 of 2021

=====

Birendra Yadav @ Birendra Kumar Singh, Son of Badri Yadav, resident of Village-Dowal, P.S.-Goh, District-Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Finance Department, Patna.
2. The Principal Secretary Department of Personnel Administration, Govt. of Bihar, Patna.
3. The Director General of Police Govt. of Bihar, Patna.
4. The Police Commissioner, Magadh Division, Gaya.
5. The District Magistrate, Aurangabad.
6. The Superintendent of Police, Aurangabad.
7. The Sub-Divisional Officer, Daudanagar, Aurangabad.
8. The Circle Officer, Goh, Distt. Aurangabad.
9. The Treasury Officer, Daudnagar, Aurangabad.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Sr. Advocate
		Mr. Ranjit Kumar, Advocate
For the Respondent/s	:	Mr. Ruchikar Jha, AC to SC-8

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 23-12-2022

Heard Mr. Ashok Kumar Choudhary, learned senior,
duly assisted by Mr. Ranjit Kumar, learned counsel for the
petitioner and Mr. Ruchikar Jha, learned AC to SC-8, for the State.

2. The present writ application has been filed for the
following reliefs:

“(i) To pay the amount of death cum retirement
benefit i.e. Gratuity, leave encashment, Earn
leave, General Provident Fund, Insurance, arrear
of salary etc with interest to the petitioner in



place of his late father who died on 13.12.2019 in his service period from the post of Chaukidar in Goh police Station Distt. Aurangabad.

(ii) To pay the differences of payment of salary with interest to the petitioner in place of Late father for his suspension period i.e. effect from 03.09.2012 till the death of his retirement i.e. 31 May 2020, after deducting the amount of subsistence's allowance which has already been paid to his late father.

And/Or for any other appropriate relief (s) to the petitioner for which he may be found entitled to in the eye of law.”

3. The short facts for appreciation of the issue involved in the present writ application is that Late Kardhani Yadav, happens to be father-in-law of the father of the petitioner, was Chaukidar of village Dowal in Goh P.S. within the District of Aurangabad. Late Kardhani Yadav, had only one daughter, namely, Siwan Devi, mother of the petitioner, and as there was no one to look after him, hence, late father and the mother of the petitioner had been living with him as the legal heirs of the Late Kardhani Yadav and in this connection, an affidavit has also been sworn on 04.06.1978 before the Civil Court, Aurangabad. It is further contended that the father of the petitioner had initially temporarily appointed as Chaukidar of Village Dowal, Gram Panchayat Bazar Barama in Goh P.S. w.e.f. 12.10.1982 in place of his father-in-law,



namely, Late Kardhani Yadav and started working, thereafter. It is also submitted that the father of the petitioner was permanently appointed on the post of Chaukidar No. 7/2 on 13.09.1990, in place of his Late father-in-law and accordingly, his service book was opened, which supports the aforesaid averments. While the father of the petitioner was working as a Chaukidar, in the meantime, some villagers, who have inimical terms, filed an application before the Chief Minister with regard to the fraudulent appointment of the petitioner's father. The said application was forwarded to the concerned District Magistrate and the Superintendent of Police, Aurangabad for proper action and investigation. On receipt of the aforesaid application, the Superintendent of Police Aurangabad vide his letter dated 10.04.2012 wrote to the Circle Officer and S.H.O., Goh for conducting enquiry and submit a report. Pursuant to the aforesaid direction, the matter was enquired and a report has been submitted that father of the petitioner Badari Yadav is son-in-law of Kardhani Yadav and is living in his father-in-law house. Further the Circle Officer, Goh also reported to the Superintendent of Police Aurangabad vide his letter no. 300 dated 27.07.2012 that as per the service book, the name of the father of the petitioner, (Badri Yadav) was Musafir Yadav and the father of the petitioner by



replacing the name of his father as Kardhani Yadav, obtained the appointment. On the basis of the aforesaid report, the Superintendent of Police, Aurangabad directed to take action against the father of the petitioner, accordingly, an FIR was lodged against the father of the petitioner vide Goh P.S. case no. 142 of 2012 on 03.09.2012 under section 420, 406 and 467 of the Indian Penal Code. The father of the petitioner was also put under suspension vide memo no. 1562 (A)/S(A) dated 29.11.2012 from the date of lodging of the FIR.

4. Learned senior counsel appearing on behalf of the petitioner vehemently submitted that the father of the petitioner was working on account of he being adopted as legal heirs of father-in-law i.e. Late Kardhani Yadav, and on the basis thereof, he was appointed as Chaukidar in place of his father-in-law and, as such, it is not a case of any misrepresentation. He next submits that while the departmental proceeding was pending, in the meantime, the father of the petitioner died on 13.12.2019, however, the proceeding remained pending for six years, but that has never been concluded with any finding. He also submits that though the FIR has been instituted, but that has also not been concluded with either of the finding of innocence or guilt and once a delinquent or an accused dies, during pending of the departmental



enquiry/judicial proceeding, departmental enquiry/judicial proceeding would certainly abate instantly.

5. In support of the aforesaid submissions, he relied upon a judgment passed by the learned co-ordinate Bench of this Court in case on **Bibha Devi Vs. The State of Bihar and Ors.** passed in **CWJC No. 8052 of 2020**. Further reliance has also been made on a judgment rendered by the learned Division Bench of this Court in **L.P.A. No. 247 of 2015**, the order/judgment of which have been brought on record by way of Annexure 16(A) and 16(B), respectively.

6. On the basis of the aforesaid orders/judgments, learned senior counsel submitted that after the death of the father of the petitioner, both the departmental enquiry/judicial proceeding instantly abated and as there is no finding suggesting the appointment of the father of the petitioner was illegally obtained on the basis of playing fraud or misrepresentation, the father of the petitioner would be entitled for all the benefits, as has been claimed for in the present application.

7. Per contra, learned counsel appearing on behalf of the State confronted the submissions made on behalf of the learned senior counsel for the petitioner and submits that the petitioner was put to departmental proceeding and during the course of



departmental proceeding, the charges levelled against the petitioner, Chaukidar, Badri Yadav were found to be true that he obtained the job in place of his father-in-law by changing his father's name and subsequently, the date of birth of the delinquent, as mentioned in the service book i.e. 04.05.1960 appears to be not genuine. He further submits that the father of the petitioner used his father-in-law's name, in place of his father fraudulently to conceal the factum of relationship, apart from the fact the petitioner's father (Badri Yadav) was examined by a medical board and his age was ascertained between 55-60 years as on 30.01.2014 and if it is taken to be true, the date on which his medical examination was done, he was aged about 60 years, which clearly suggests that he was over age. Having been found the charges proved, the District Magistrate, Aurangabad vide order contained in Memo No. 740 dated 23.05.2022 has passed the order holding the appointment of Late Badri Yadav, illegal and also held that the dependent son (petitioner) is not entitled to get any relief, as claimed by him.

8. The aforesaid impugned order passed by the respondent no. 5 as contained in Memo No. 740 dated 23.05.2022 has been assailed by the petitioner by filing IA No. 01 of 2022 and submissions has been made that the impugned punishment order



has been passed behind the back and after death of the delinquent without providing any opportunity of hearing and serving any enquiry report and, as such, the same is fully illegal and void and ab initio.

9. Having heard Sri Ashok Kumar Choudhary, learned senior counsel appearing on behalf of the petitioner as well as the learned counsel for the State at length and also minutely considered the materials available on record. Prima facie, there are certain admitted facts, which has not been controverted by either of the parties.

Firstly; the father of the petitioner was son-in-law of Late Kardhani Yadav and he has started working as a Chaukidar in place of his father-in-law without obtaining any permission by any authority under the law.

Secondly; there is no material which suggests that the father of the petitioner had ever been adopted by his father-in-law nor it is possible as per the Hindu Adoption and Maintenance Act, which clearly prohibits such kind of adoption. Furthermore, there is nothing on record, which suggests that there had ever been any formalities of adoption, which is required under the law for a valid adoption. Only an affidavit showing intention of the father-in-law



that he wanted to handover his service to his son-in-law before any Court of law, is not suffice under any law.

Thirdly; from the service book and the Voter Id card, the father of the petitioner has been shown to the son of Kardhani Yadav and not the son of Musafir Yadav.

10. From the aforesaid admitted facts, one thing, which is evident that the petitioner has never been validly appointed, as there was no provision under the Bihar Chaukidar Manual that a son-in-law could be appointed as Chaukidar, in place of his father-in-law, nor any circular/letters have been brought on record to substantiate the appointment of the petitioner's father as Chaukidar in place of his father-in-law. There is no piece of evidence, which also suggests that the petitioner has ever been temporarily appointed prior to the issuance of letter no. 4/ch-101/90, Gri. Aa 359 dated 17.01.1990 whereby, Chaukidar/ Dafadars were treated as Government employees since 01.01.1990.

11. Nothing has been produced on behalf of the petitioner that there had any procedure for appointment of son-in-law on compassion nor there is any valid adoption, which justified the claim of the father of the petitioner, as he was validly adopted by his father-in-law nor the law permits as such.



12. From the materials available on record, this Court, prima facie, comes to the conclusion that at no point of time, the petitioner was validly appointed nor the law permits any son-in-law to be appointed as Chaukidar, in place of his father-in-law, who was working as Chaukidar. There is no iota of doubt if the death of a delinquent occurs in the midst of disciplinary proceeding, the proceeding would abate instantly. However, the learned Division Bench of this Court while considering this issue in the case of **State of Bihar and others Vs. Shanti Kumari and Ors.** (LPA No. 247 of 2015) has been pleased to hold as follows:

“Before we would proceed to consider the issues raised by the deceased Government employee in his appeal, we would definitely examine the opinion of the learned Single Judge which is the foundation for the present appeal and even though there is no infirmity on the principles followed by the learned Single Judge to hold the appellate order unsustainable having been passed by the Disciplinary Authority himself while discharging appellate functions, his opinion as to the abatement of the disciplinary proceeding by virtue of death of the delinquent is strictly not in tune with the legal position nor is supported by the judgment rendered in the case of **Ashok Kumar Singh** (supra), on which he has chosen to rely.



A death of the delinquent at the stage of disciplinary proceeding and at the stage of appellate proceeding is vastly different. In fact if the death of a delinquent occurs in the midst of the disciplinary proceeding there can be no confusion that the proceeding would abate instantly. But the situation would be vastly different if the death takes place after the proceeding has concluded and the matter is resting with the Disciplinary Authority for final orders or after orders are passed or where the death takes place at the appellate stage.

In our opinion while there would be no contest with the legal position in case where the death of a delinquent takes place in the midst of the disciplinary proceeding which would abate the disciplinary proceeding, but if the death takes place after the enquiry is concluded in the disciplinary proceeding and the matter is posted for orders or at the appellate stage, then the situation is different and there cannot be an abatement of disciplinary proceedings which has already attained finality. In such cases the right to sue survives and the legal heirs who wish to contest the finding of guilt in the punishment order passed by the Disciplinary Authority can pursue the appeal if already filed by the deceased delinquent or file appeal, in case he has deceased after passing of the order of penalty. In case while pursuing the appellate remedy the legal heirs are able to show that the matter would require



reconsideration at the original stage of the disciplinary authority by remand, then the proceedings can be held abated, otherwise not.

The provisions of Order 22 rule 1 of the Code of Civil Procedure read with rule 11 thereof as well as section 394 of the Code of Criminal Procedure, are self eloquent of the right to sue, subsisting in the legal heirs who are fully entitled to pursue the cause at the appellate stage for testing the legality and validity of the order passed by the original authority i.e. the Disciplinary Authority, in the present context.”

13. The learned Division Bench while holding the aforesaid proposition of law has been pleased to hold that if the death takes place after the enquiry is concluded in the disciplinary proceeding and the matter is posted for orders, or at the appellate stage, then the situation is different and there cannot be an abatement on disciplinary proceeding, which has already attained finality. In such cases, the right to survives and the legal heirs who wish to contest the finding of guilt in the punishment order passed by the Disciplinary Authority can pursue the appeal, if already filed by the deceased delinquent or file appeal, in case he has died after passing of the order of penalty. From the aforesaid materials available on record, it is also clear that even if the departmental proceeding/judicial enquiry abate, the fact would not be altered that the petitioner was appointed on the basis of the



misrepresentation and there was no valid appointment per se. The highest Court of the law in various cases held that those who come through back door must go through that door and the person, whose very appointment is void, ab-initio, they cannot claim for compliance of the principles of natural justice.

14. The reliance may be taken note of the **State of U.P. vs. U.P. State Law Officers Association**, (1994) 2 SCC 204.

15. The Supreme Court in the case of **Ashok Kumar Sonkar Vs. Union of India and others**, reported in (2007) 4 SCC 54 held that there cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. It is also, however, well settled that it cannot put any straitjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences.

16. This Court is tempted to observe that the Hon'ble Supreme Court in the case of **State of Bihar and Ors. Vs. Kirti**



Narayan Prasad passed in **Civil Appeal No. 8649 of 2018** [arising out of **SLP (Civil) No. 24742 of 2012 and other analogous cases**] wherein the Hon’ble Supreme Court while dealing with the matter with regard to fake and forged appointment letter, has been pleased to hold that since the appointment of the petitioners’ is, ab initio, void they cannot be said to be Civil Servants of the State, therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any other disciplinary Rules, shall not arise

17. In view of the aforesaid facts and the settled propositions of law that as the very appointment of the petitioner is per se, void, ab initio, he confers no right and, as such, this Court does not find any merit in the present writ petition and accordingly, the present writ petition stands dismissed, having no merit.

(Harish Kumar, J)

uday/-

AFR/NAFR	AFR
CAV DATE	28.11.2022
Uploading Date	24.12.2022
Transmission Date	NA

