

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1963 of 2016

In

Civil Writ Jurisdiction Case No.8275 of 2014

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Madho Tanti S/o Kamo Tanti R/o Village- Gogari Kundi, P/S Gogari, District-
Khagaria.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The District Magistrate, Khagaria.
3. Superintendent of Police, Khagaria.
4. The Sub- Divisional Officer, Gogari, District- Khagaria

... .. Respondent/s

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with

Letters Patent Appeal No. 1962 of 2016

In

Civil Writ Jurisdiction Case No.8197 of 2014

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Nand Kishore Paswan S/o Shivam Paswan @ Shivnandan Paswan, R/O
Village- Gogarilatrutola, P.S- Gogari, District- Khagaria

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Khagaria
3. Superintendent of Police, Khagaria
4. The Sub-Divisional Officer, Gogari, District- Khagaria null null

... .. Respondent/s

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with

Letters Patent Appeal No. 1966 of 2016

In

Civil Writ Jurisdiction Case No.8185 of 2014

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Niraj Paswan S/o Binod Paswan R/o village - Ratna, P.S. Gogari, District -
Khagaria.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate, Khagaria
3. Superintendent of Police, Khagaria.



4. The Sub - Divisional Officer, Gogari, District - Khagaria.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 1963 of 2016)

For the Appellant/s : Mr. Anil Kumar Choudhary, Advocate

For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 3

(In Letters Patent Appeal No. 1962 of 2016)

For the Appellant/s : Mr. Anil Kumar Choudhary, Advocate

For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 3

(In Letters Patent Appeal No. 1966 of 2016)

For the Appellant/s : Mr. Anil Kumar Choudhary, Advocate

For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 3

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-08-2022

Pursuant to earlier order dated 20.07.2022, Mr. Alok Ranjan Ghosh, District Magistrate, Khagaria is present in the Court.

2. Heard learned counsel for the respective parties. In the instant appeal, appellant has assailed the order of the learned Single Judge dated 24.08.2016 passed in C.W.J.C No. 8275 of 2014. In the writ petition, appellant has sought for the following relief/reliefs:

“i) For issuance of writ in the nature of Mandamus commanding upon the respondent authorities to take appropriate action in accordance with law in force, at the time when the petitioner became eligible for appointment on the post of Chaukidar and to appoint petitioner on the said post.



ii) For further to hold that in view of ratio led down by this Hon'ble Court in C.W.J.C. No. 33/2007, Government instruction bearing Home Police Department letter no. 4060 dated 4.5.2005, where under appointment of Chaukidar by way of "nomination" was stopped with effect from the date of issuance of instruction dated 4.5.2002 is not applicable in the case of petitioner rather case will be governed by Home Police Department' letter no. 11287 dated 20.12.95.

iii) For any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case."

3. Grievance of the appellant that he is entitled to be appointed to the post of Chaukidar on account of his uncle's retirement in the year 2003 read with the relevant policy which was existing as on the date of his application (07.06.2004) is to be considered or not?

4. Chaukidar's appointment issue was a subject matter in C.W.J.C. No. 6997 of 2003, disposed of on 27.08.2003 while quashing letter No. 11287 dated 20.12.1995 (relates to appointment of Chaukidar on hereditary basis). Thereafter, on 28.08.2006, Bihar Chaukidar Cadre Rules, 2006 was introduced. In this backdrop whether the appellant Mr. Madho Tanti - appellant is entitled to compassionate appointment with reference to his uncle's service rendered as a Chaukiddar or not?



5. The appellant's uncle who was holding the post of Chaukidaar has attained age of superannuation and retired from service in the year 2003. The appellant filed an application on 07.06.2004. There was an inaction on the part of the respondents and it was due to the quashing of 20.12.1995 policy *vide* letter 11287 in C.W.J.C. No. 6997 of 2003 decided on 27.08.2003 which is prior to submission of application by the appellant on 07.06.2004. The appellant slept over the matter for one decade and thereafter, he has approached this Court in filing C.W.J.C. No. 8275 of 2014 and it was decided against him on 24.08.2016. Thus, he has preferred the present appeal.

6. The learned counsel for the appellant vehemently contended that policy existing as on the date of his uncle's retirement in the year 2003 is required to be taken into consideration and not the Bihar Chaukidar Cadre Rules, 2006. Such a Rule would be operating prospectively.

7. *Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that nodoubt the policy relating to the appointment of Chaukidar was on hereditary basis with reference to policy letter No. 11287 dated 20.12.1995, however, it was quashed by this Court in C.W.J.C. No. 6997 of 2003 on 27.08.2003 whereas the appellant's application is dated



07.06.2004. In the interregnum period from 27.08.2003 till 28.08.2006 there was a vacuum in respect of filling up of post of Chaukidar. It is submitted that once the policy is struck down by this Court on 27.08.2003 and it will not be in vogue from 27.08.2003 till Rules of recruitment governing the post of Chaukidar was introduced and it was introduced on 28.08.2006. In terms of 28.08.2006 - Bihar Chaukidar Cadre Rules, 2006 each and every vacancy is required to be filled up in accordance with the relevant Cadre Rules. Therefore, the appellant is not entitled to have the benefit of appointment to the post of Chaukidar on the eligibility criteria that it is a hereditary post.

8. Heard learned counsel for the respective parties.

9. Undisputed facts are that the appellant's uncle was working as a Chaukidaar and he had attained age of superannuation and retired from service in the year 2003. The appellant submitted application on 07.06.2004 and preferred a writ petition in the year 2014. In the meanwhile, the policy relating to hereditary appointment to the post of Chaukidar which was in vogue in the year 1995, it was struck down by this Court on 27.08.2003. There was a vacuum created from 27.08.2003 to 28.08.2006. In other words, one has to draw inference that it is a no Rule period (no Rule zone). In this backdrop question for



consideration is whether appellant is entitled to compassionate appointment in terms of 1995 policy or not?

10. The appellant's application is dated 07.06.2004 as on that date 1995 policy was struck down by this Court on 27.08.2003. Further, from 27.08.2003 onwards the respondents were required to fill up the Chaukidar post only after due consideration of Article 14 and 16 of the Constitution. Of course on 28.08.2006, Bihar Chaukidaar Cadre Rules, 2006 have been introduced, in the result they have to follow Cadre Rules for the purpose of filling up of any Chaukidar Post. The appellant's writ petition should have been rejected at threshold on the ground of delay and laches for the reasons that Apex Court time and again held that for the purpose of selection and appointment, aggrieved person must approach within a reasonable period of six months from the date of occurrence of cause of action to such of those aggrieved person *vide* reported decision viz. ***P.S. Sadasivaswamy vs. State of T.N. reported in AIR 1974 SC 2271.*** Further it is to be noted that Apex Court in the case of ***Renu and Ors. vs. District and Sessions Judge, Tishazari, Civil Appeal No. 979 of 2014 (Arising out of SLP (c) No. 26090 of 2011)*** held that Article 14 and 16 of the Constitution is required to be adhered strictly.



11. Even in the recent decision of the Apex Court in the case of *The State of Jammu and Kashmir and Ors. vs. Shaheena Masarat and Anr., Civil Appeal No. 4991 of 2012* it is held that Article 14 and 16 which are constitutional provision were required to be followed for any public post. In the present case Chaukidaar post is a public post in the State of Bihar and filling up of the same, the competent authority is required to resort Article 14 and 16, therefore, appellant is not entitled to have the benefit of Chaukidar post in terms of 1995 policy relating to filling up of Chaukidar's post on hereditary basis.

12. Accordingly, appeal stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	07.08.2022
Transmission Date	

