

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.476 of 2020

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Harendra Paswan Son of Feku Paswan, Residen of Village Basaha, P.O. Madhuban Basaha, P.S. Bajapatti, District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate-Cum-Collector, Sitamarhi.
3. The Superintendent of Police, Sitamarhi.
4. The Sub-Divisional Officer, Pupari, District Sitamarhi.
5. The Circle Officer, Bajapatti, District-Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Prasad
For the Respondent/s : Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 04-07-2022 Heard learned counsel for the petitioner and learned State counsel.

Hard-copy of the petitioner's reply has been submitted today. The same be taken on the record.

The petitioner is aggrieved by rejection of his claim for appointment as Chowkidar in place of his father.

The brief background is that the Chowkidari Cadre Rules, 2006 came to be amended by an amendment, namely, Bihar Chowkidari Cadre (Amendment) Rules 2014. Rule 5 (vii) stood amended by incorporating the following proviso:

“परंतुक-

(क) चौकीदार संवर्ग के कर्मचारी अपनी वार्धक्य



सेवानिवृत्ति की तिथि से कम से कम एक माह पूर्व के प्रभाव से
स्वैच्छिक सेवानिवृत्ति एवं चौकीदार पद पर अपने द्वारा नामित किसी
आश्रित को नियोजित करने के लिए आवेदन कर सकेगा।

(ख) सामान्य प्रशासन विभाग द्वारा समय-समय पर अवधारित
न्यूनतम एवं अधिकतम उम्र सीमा संबंधी प्रावधान उन पर लागू रहेगा।

(ग) स्वैच्छिक सेवानिवृत्ति के पश्चात् नियुक्त व्यक्ति के आश्रित
को इस परन्तुक का लाभ अनुमान्य नहीं होगा।

(घ) स्वैच्छिक सेवानिवृत्ति का इच्छुक चौकीदार संवर्ग के व्यक्ति
को सेवानिवृत्ति की अपनी इच्छित तिथि से कम से कम एक माह पूर्व
अपने पदस्थापन जिला के जिला पदाधिकारी को अपना आवेदन देना
होगा।"

The admitted position, based on the said amendment,
is that an opportunity was given to the employees in the
Chowkidari cadre to nominate a dependent for appointment in
their place. Such right, however, is subject to the condition that
employee was required to make an application nominating his
dependent, while seeking voluntary retirement with effect from a
date one month prior to his due date and compulsory date of
retirement. The application for this purpose was also required to



be made at least one month before the date with effect from which the employee sought voluntary retirement.

It is not in dispute that the timeline specified has not been complied with. In fact admitted position is that though the due and compulsory date of petitioner's father's retirement was 30.04.2018, the application, nominating the petitioner and seeking voluntary retirement, was made as late as on 18.04.2018.

Petitioner's counsel, however, submits that the petitioner's claim could not have been rejected for non-compliance of the timeline specified under the Rules and a more lenient view was required to be taken. Specific reliance is placed on a communication dated 27.07.2021 under Memo No. 5034 issued by the Secretary to the Government of Bihar in the Home Department. Relevant extract of the communication reads as follows:-

"श्री नीतीश मिश्रा, माननीय सदस्य बिहार विधान सभा के पत्राक-235 / 2021. दिनांक- 13072021 द्वारा स्वैच्छिक सेवानिवृत्ति के उपरांत आश्रितों को छोटे-छोटे कारणों से नियुक्ति नहीं होने के बिन्दु को संज्ञान में लाते हुए अभियान चलाकर लम्बित आवेदनों को निष्पादित कराने का अनुरोध किया गया है। इस संबंध में विभागीय पत्राक-5444 दिनांक- 22.06.2018 द्वारा नियुक्ति में आ रही बाधाओं



को दूर करते हुए स्पष्ट दिशा-निर्देश परिचारित किया गया।

अनुरोध है कि विभाग द्वारा परिचारित वर्णित परिपत्र के आलोक में स्वैच्छिक सेवानिवृत्ति अभियान चलाकर ऐसे मामलो को निष्पादित करने का कष्ट किया जाय।"

Petitioner's counsel has also placed reliance on decision of Division Bench of this Court in the case of *Kamlanand Jha vs. the State of Bihar & others* reported in **2007 (1) PLJR 672** as well as an unreported decision of this Court in the case of *Kamleshwari Paswan vs. the State of Bihar & others* passed in **C.W.J.C. No. 59 of 2016**.

Both the decisions relied upon by the petitioner's counsel are in respect of claims made by petitioners for compassionate appointment. That is the most striking distinguishing feature. The right being claimed in the instant proceedings is based on an amendment to the Rules giving an opportunity to the employees in the cadre for nominating their dependents for appointment in their place, and not in respect of compassionate appointment, under a different scheme.

Having observed so, this Court would further observe that in the case of Kamleshwari Paswan (supra), the petitioner therein had filed his claim for compassionate appointment within



the time specified. This is evident from relevant extract of the said judgment which reads as follows:-

“In fact once the petitioner had filed his claim for compassionate appointment in the year 2012, it was for the office to have assisted the petitioner in completing the necessary formalities. In fact it is in furtherance of the affidavit so filed by the petitioner that the matter has progressed and a formal recommendation was made on 20.6.2014 which recommendation of the Circle Officer containing all the details forms part of the proceedings so produced by Mr. Amrritesh and is also a part of the counter affidavit. It is this belated action in completion of formalities, entirely attributable to the respondents, which is assigned a ground to takeaway the right vested in the petitioner for compassionate appointment. It is not a case where the petitioner has woken from a slumber and it is also not a case where the claim is beyond the stipulated period. The claim for compassionate appointment was raised by the petitioner within the stipulated period and it is the time taken by the respondents in completion of formalities which has gone beyond the period of 5 years and has given an excuse to the District Compassionate



Appointment Committee to reject the case of the petitioner.”

In the case of *Kamlanand Jha* (supra), the fact is identical as is evident from paragraph 7 of the said judgment, which clearly records that the petitioner therein had applied within the time specified. Paragraph 7 of the judgment reads as follows:-

“7. This question is already settled by now by various judgments of this Court. A Bench of this Court dealing with similar situation held in the case of Brajendra Prasad Poddar v. The State of Bihar [1990 (2) Patna Law Journal Reports 668.] , that cause of a dependent, whose father died-in-harness, should not be frustrated on technical grounds and keeping in view the benevolent legislation of the State Government, liberalised view should be taken for providing employment on compassionate ground. It is further held that the dependent on attaining the age of majority would be entitled to be considered even though he may be minor at the time of death of his father. The question of under-age would be no ground to take a decision to frustrate the cause. The facts of the case at hand is almost identical to



that of Brajendra Prasad Poddar (supra). ”

In the instant case, admittedly, the petitioner’s father did not apply within the time specified. For the above noted reasons, the case of the petitioner is not in any way covered by the decisions relied upon by the petitioner’s counsel.

In so far as the communication dated 27.07.2021 issued by the home department is concerned, it is clear from a bare perusal of the same, taken note of above, that it only talks about pending applications and for expeditious disposal of the same. The said communication has come into existence much after rejection of the petitioner’s claim, which from the records it is clear was not pending on 27.07.2021. The petitioner cannot, therefore, assert any claim based on the communication dated 27.07.2021.

No case is made out for issuance of any direction in favour of the petitioner, in view of the admitted fact that petitioner’s application is not in compliance with the Chowkidari Cadre Rules as amended in 2014.

Writ application is dismissed.

(Madhuresh Prasad, J)

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