

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 448 of 2020

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Amit Kumar Singh, aged about 29 years, Gender – Male, son of Sri Ram Pukar Singh, resident of Mohalla – Nawadih at Achal, PS and District - Aurangabad

... .. Petitioner/s

Versus

1 The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna
2 The District Officer -cum- District Magistrate -cum- Chairman, Appointment Committee, Aurangabad
3 The Superintending of Police, Aurangabad
4 The Deputy Development Commissioner, Aurangabad
5 The Deputy Collector (Establishment), Aurangabad
6 The In charge Officer, General Administration Section, Collectorate, District – Aurangabad
7 The Sub-Divisional Officer, Aurangabad
8 The Sub-Divisional Officer, Daudnagar, District – Aurangabad
9 The Executive Engineer, PHED, Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Alok Kumar Sinha, Sr Advocate with M/s Bhola Kr, Vivek Gaurav, Advocates
For the Respondent/s	:	Mr Dhurendra Kr, AC to GP V

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 31-08-2022

Heard learned counsel for the petitioner and the respondents.

2 The petitioner is aggrieved by the rejection of his father's nomination for his appointment in terms of the Bihar Chaukidari Cadre (Amendment) Rules, 2014 (for brevity, *2014 Rules*) which permits a Chaukidar, on the verge of retirement, to make an application for nominating a dependent, as specified



under the 2014 Rules, for being appointed by allowing the superannuating Chaukidar to avail voluntary retirement.

3 In terms of the 2014 Rules, the application for voluntary retirement has to be made two months prior to the date of retirement. The date, with effect from which voluntary retirement is sought, must be at least one month prior to the date of due and compulsory retirement of the outgoing Chaukidar.

4 As per the pleadings, it is obvious that in the Meeting for considering the request, the Committee considered the fact that petitioner's father had made application for nominating the petitioner on 07.04.2015 whereas his due and compulsory date of retirement was 31.07.2015. It is noted that since the petitioner's father has continued to serve till the last date of his due and compulsory retirement, petitioner's case was not considered.

5 Such conclusion obviously is based on the fact that while making his nomination, petitioner's father has not indicated the date with effect from which voluntary retirement is to take effect. It is, however, not in dispute that the application nominating the petitioner was well within time. It is under identical circumstance that this Court, in the case of *Sanjay Paswan -Versus- State of Bihar & Others* (CWJC No 1109 of 2016) as well as in the case of *Nand Kishore Prasad & Others*



-Versus- State of Bihar & Others (CWJC No 7743 of 2015), has granted relief to the persons, desirous of exercising option under Clause 5 (3) of the 2014 Rules. This Court, in the case of *Sanjay Paswan (supra)* has taken note of the same objection which is being raised in the instant proceeding that the father was allowed to superannuate on the normal course of his retirement. This Court has not considered this fact to be of any relevance because the application for nomination was filed within time.

6 The judgment in the case of *Nand Kishore Prasad & Others (supra)* has been delivered keeping in view the fact that date with effect from which the voluntary retirement is to take effect has not been mentioned by the applicant. In paragraphs 11, 12 and 13 of the order passed in the case of *Nand Kishore Prasad & Others (supra)*, this aspect has been considered as follows:

“11. One cannot lose sight of the fact that these Chaukidars were appointed between year 1981 to 1984. At the relevant time, no educational qualification was prescribed for such post. They were supposed to be physically fit and to be knowing cycling and the people of the areas.

12. Taking into consideration the background in which they were appointed and their illiteracy, none mentioning of the dates from which they sought voluntary retirement, ought not to have been the ground for rejecting their applications, when there is substantive compliance of the conditions laid down in sub-rule 3 (ii) of 2006 Rules as amended in the year 2014.



13. As such, order, dated 01.04.2015 contained in Memo No 413 passed by the District Magistrate, Nawada, by which their applications for appointing their sons as Chaukidars pursuant to notification contained in Memo No 1896, dated 05.02.2014 (Annexure 5) have been rejected, is quashed. Their applications be considered afresh.”

7 Relying upon these two decisions, the petitioner claims parity in the matter of consideration of his nomination for appointment as Chaukidar.

8 The learned senior counsel for the petitioner has submitted that rejection on the ground of petitioner's father continued till his date of superannuation based on the fact that the date with effect from which the voluntary retirement is to be considered has not been mentioned is clearly unsustainable. The two judgments, which have been relied upon, has been annexed as Annexures 10 and 11 of the supplementary affidavit. The counter affidavit, which has been filed subsequently, however, does not deny or dispute the fact that others have been allowed relief in the two writ petitions, taken note of above.

9 In view of the fact that parity has been claimed by the petitioner and since the judgment, noted above, have not been denied or disputed, this Court would observe that the petitioner's case is also entitled to be considered on the same parameters, also in view of the provisions contained in the Bihar State Litigation



Policy 2011, specifically Clause 4.C (1) thereof which governs “covered matters”.

10 The authorities, therefore, are directed to take decision afresh on the nomination made in favour of the petitioner within three months from the date of receipt/production of a copy of this order in light of the settled legal position, without raising an objection regarding non-mentioning of the date with effect from which the voluntary retirement has been opted for as also the fact that petitioner’s father continued to his due and compulsory date of superannuation while making such fresh consideration. This Court makes it clear that the decision contained in the Minutes of the Committee dated 16.09.2019 shall not stand in the way of fresh consideration.

11 The writ petition stands allowed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.09.2022
Transmission Date	NA

