

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4770 of 2023

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Md. Sakur Alam @ Sakur Mansuri Son of Hira Nadaf, resident of Village -
Milki Tola, P.S. - Alinagar, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through its the Principal Secretary, Home (Special) Department, Government of Bihar, Patna.
2. The Collector, Darbhanga, District - Darbhanga.
3. The Superintendent of Police, Darbhanga, District - Darbhanga.
4. The Officer-In-Charge, Ali Nagar, District - Darbhanga.
5. The Circle Officer, Ali Nagar, District - Darbhanga.
6. Md. Chand Ali, Son of Hira Nadaf, resident of Village- Milki Tola, P.S. Alinagar, District - Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kaushal Kumar Jha, Adv
For the Respondent/s : Mr.Md. Nadim Seraj (GP 5)

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 26-09-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner's claim for selection is sought under Rule- 5 (7) of the Bihar Chowkidar Cadre (Amedment) Rules, 2014 (hereinafter referred to as 'the 2014 Rules').

3. Learned counsel for the State submits that the petitioner's claim cannot be entertained now in view of decision of this Court passed in *L.P.A. No. 508/2022* in the case of *Devmuni Paswan vs. State of Bihar & Ors.*, whereby and whereunder Rule- 5(7) of the Rules has been held to be *ultra*



vires of Article 14 & 16 of the Constitution of India and set aside.

4. Reliance is placed on paragraph No. 17-20 of the judgment, which reads as follows:-

"17. Hence, this Court is of the view that the proviso to Rule 5 (7) of '2014, Rules' which reads as under:

"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 का अपना आवेदन देना होगा।"

is contrary to the express provisions of the Constitution being violative of Articles 14 and 16 of the Constitution and, accordingly, the aforementioned provision is set aside. Hence it could not further the cause of the appellant and the appellant could not claim any benefit under Rule 5 (7) of '2014, Rules'.



18. Accordingly, this Court finds and holds that the respondents cannot be directed at this stage to reconsider the application of the father of the appellant for grant of such benefit of employment of his ward in accordance with the provisions of '2014 Rules'.

19. In the light of discussion made hereinabove and under the facts and circumstances of the case, the present Letters Patent Appeal is dismissed.

20. Let a copy of this judgment be forwarded to the concerned authority through the Registrar General for taking further steps in identical issue, if any."

5. In view of the judgment of the Division Bench, the relief claimed by the petitioner relying on Rule- 5(7), which has been declared *ultra vires*, therefore is not tenable.

6. With the aforesaid observation, writ application is dismissed.

(Madhuresh Prasad, J)

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