

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1429 of 2020

=====

Rajeev Kumar Paswan Son of Upendra Paswan Resident of Village-
Rahunathpur, Police Station- Bhargama, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Government of Bihar, Home Department, Patna.
2. The District Magistrate, Araria.
3. The Sub Divisional Officer, Forbisganj, District- Araria.
4. The Superintendent of Police, Araria.
5. The Police Inspector, Raniganj Police Station, District- Araria.
6. The Officer-in- Charge, Police Station- Bhargama, District- Araria.
7. Laxman Tatma Son of Late Badri Tatma Resident of Village- Raghunathpur, South, Police Station- Bhargama, District- Araria, Presently Chaukidar of Raghunathpur Village, under Police Station- Bhargama, District- Araria.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Ms. Pravina Kumari, Advocate
For the Respondent/s : Mr. Md. Irshad, AC to SC- 1

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 27-06-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner's appointment as '*Chowkidar*' under the provisions contained in Rule- 5 (7) of the Chowkidari Cadre (Amendment) Rules, 2014 (for brevity '*2014 Rules*') has been rejected by the Sub Divisional Officer, Forbisganj (respondent No. 3), under the impugned order dated 27.06.2018, as contained in Annexure- 8 to the writ petition. The same is assailed by way of the instant writ proceedings.



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.

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.”

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.

Learned counsel for the petitioner submits that direction be issued for considering the petitioner's claim otherwise.

There is no averment that any advertisement or any application has been invited for selection. Therefore, there is no occasion for this Court to issue any such direction. The petitioner's candidature can only be considered when process is undertaken, in accordance with law.



With the aforesaid observation, writ application is dismissed.

(Madhuresh Prasad, J)

Raj kishore/-

U			
---	--	--	--

