

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.307 of 2023

In

Civil Writ Jurisdiction Case No.10249 of 2021

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Birendra Yadav @ Birendra Kr. Singh S/o-Late Badri Yadav R/o Village-Dowal P.s.-Goh, District-Aurangabad (Bihar).

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Finance Department, Patna.
2. The Principal Secretary, Department of Personal Administration, Govt. of Bihar, Patna
3. The Director General of Police, Govt. of Bihar, Patna.
4. The Police Commissioner, Magadh Division, Gaya.
5. The District Magistrate Aurangabad.
6. The Superintendent of Police, Aurangabad.
7. The Sub-Divisional Officer Daudnagar, Aurangabad.
8. The Circle Officer, Goh, District Aurangabad.
9. The Treasury Officer, Daudnagar, Aurangabad.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arvind Kumar Singh, Advocate Mr. Ranjit Kumar, Advocate
For the Respondent/s	:	Mr. P.K. Verma (AAG-3) Mr. Sanjay Kumar Ghosarvey, AC to AAG-3

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 17-03-2025

Heard Mr. Arvind Kumar Singh, learned Advocate for the appellant and Mr. P.K. Verma, learned AAG-3.

2. The challenge in this appeal is to the



judgment dated 23.12.2022 in C.W.J.C. No. 10249 of 2021, whereby the prayer made on behalf of the appellant has been rejected.

3. The appellant had claimed the death-cum-retirement benefit *i.e.* Gratuity, Leave Encashment, Earn Leave, General Provident Fund, Insurance, arrears of salary etc. with interest, due to his father, who died on 13.12.2019 while serving as Chaukidar in Goh Police Station in the district of Aurangabad. The appellant had also claimed for difference of payment of salary with interest for the period 03.09.2012 till 31st of May, 2020 after deducting the amount of subsistence allowance which had been paid to his late father.

4. The appellant is the son of one Badri Yadav, who claims to have been recommended for being appointed as a Chaukidar in place of his father-in-law *viz.* Kardhani Yadav. According to the Rules governing such kind of an appointment, only the son of a serving Chaukidar could have been named by him a month before



his retirement and not a son-in-law. It appears that realizing this, the father of the appellant got appointed as Chaukidar in place of his father-in-law but projecting himself as son of Kardhani Yadav and not his son-in-law. Similar wrong statements were made by him in various service documents. The father of the appellant continued working for 22 years but during the period that he served, the matter was reported and FIR was lodged against him leading to his immediate suspension. The District Magistrate, Aurangabad later cancelled his appointment, which order was affirmed by the superior authority.

5. The learned Advocate for the appellant has submitted that the inquiry proceeding and the FIR against his father would have necessarily abated on his death and therefore the respondents could not have withheld the amount due to his father as he had served as Chaukidar for 22 years.

6. Though the learned Single Judge delved on the issue of the rationality and correctness of the



abatement of such proceedings against his father but decided that the claim of the appellant was not tenable for the reason that the entire appointment of his father was void *ab initio*, conferring no right to him to claim any payment under any count so far as his service as Chaukidar was concerned.

7. There is no denial of the fact that the father of the appellant was the son-in-law of the serving Chaukidar and not his son. Despite that, the father of the appellant was appointed as a Chaukidar on the recommendation of his father-in-law, showing him as his son. This was inquired into and the allegation was found to be correct. His appointment was cancelled and the prayer of the appellant for payment of the dues after the death of his father, was refused.

8. There was no other option for the respondents or the learned Single Judge to have decided it otherwise.

9. In view of the appointment of the father of the appellant being under cloud; nay *per se void*, no claim



as prayed for by the appellant could have been processed.

10. The appellant has no case.

11. The appeal is thus dismissed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

krishna/-

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