

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5876 of 2018

1. Jaldhar Paswan and Anr S/o of Late Baldeo Paswan,
2. Anuplal Paswan Son of Jaldhar Paswan, Both Resident of Village-Porai, P.O.-Bhurna Bousi, P.S.-Bousi, Anchal-Bousi, District-Banka.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Officer, Banka.
3. Deputy Development Commissioner, D.D.C. banka.
4. Superintendent of Police, Banka.
5. District Fishry Officer, Banka.
6. S.D.O., Banka.
7. The Acting Officer. Officer-on-Duty, District General Section District Selection Committee, Collect

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar Sinha, Adv. Mr.Shyam Sunder Pandey, Adv.
For the Respondent/s	:	Mr.Md. N.H. Khan- SC1 Mr. Md. Irshad, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 07-08-2025

Heard learned counsel for the petitioners and

learned counsel for the State.

2. The present writ petition has been filed seeking relief for quashing the order contained in Memo No.291 dated 31.03.2017 by which proposal No.24 of the proceeding of the District Selection Committee held on 30.03.2017 under the Chairmanship of Respondent No.2 so far as it affects the petitioners for appointment to the post of Chaukidar for which petitioner No.2 was an unsuccessful candidate.



3. Counsel for the petitioners submits that the petitioner No.1 was appointed on the post of Chaukidar on 01.01.1990 and he worked successfully in all police stations where ever he was assigned the work of Chaukidar and in the fag end of his career, he was transferred to Bounshi police station, Banka and was allotted 3/12 number by the said police station. He further submits that petitioner No.1 did not earn any adverse remark from any police station and superannuation was due on 31.12.2016 on completion of 60 years of his age.

4. Counsel further submits that the petitioner No.1 considering future of his son (petitioner No.2), has filed an application on 29.10.2016 to the District Officer/ respondent No.2 narrating therein that he wants to voluntarily retire from the post of Chaukidar on 30.11.2016 and request has been made to accept the application of petitioner No.2 and he may be appointed on the said post. He further submits that the qualification for appointment was Matriculation pass and result of his son (petitioner No.2) was announced, but published later on.

5. Counsel further submits that the petitioner No.2 has filed an application for appointment on the post of Chaukidar earlier, but certificate from the concerned Board



became available to the petitioner later and as soon as it became available to the petitioners, he has produced before the Authority concerned, but his matter has been rejected. He specifically submits that petitioner No.2 has filed his first application for appointment on 29.10.2016 and provided the matriculation certificate (Madhyama Certificate) dated 16.01.2017, but his case has not been considered, thereafter the petitioners have filed the present writ petition.

6. Counsel further submits that in this regard, Annexures-6 and 7 are annexed in the writ petition, which are most relevant documents by which all documents were demanded and it has been provided to the Respondent Authorities.

7. Counsel further submits that in the light of facts and circumstances, the petitioners seek relief from this Hon'ble Court that the order in favour of the petitioners considering their case to be appointed on the post of Chaukidar be made in the light of relevant rule framed under बिहार चौकीदार संवर्ग नियमावली, 2006, (संशोधित नियमावली, 2014) (hereinafter referred as 'Rules of 2014').

8. Counsel for the State on the other hand submits that the petitioners are seeking relief for the appointment on the



post of Chaukidar according to latest Rule of 2014 framed by the State Government. He further submits that under Rule 5, there is a provision made under which a person who is working on the post of Chaukidar, may take voluntary retirement and from one month earlier, he may request that at his place, any nominated person from him, may apply for working on the said post.

9. Counsel further submits that the said rule has been a subject matter of test in CWJC No.6471 of 2021 and subsequently, challenged in LPA No.508 of 2022 and finally tested before the Hon'ble Supreme Court of India in SLP No.18983 of 2023. He further submits that the said rule 5(7) and its proviso under which the provision of appointment of a nominated person by the Chaukidar seeking voluntary retirement, has been declared *ultra vires* and violative to Articles 14 and 16 of the Constitution of India. He further submits that in the light of the said decision made by the Hon'ble LPA Bench in LPA No.508 of 2022 in case of **Devmuni Paswan Vs. the State of Bihar & Ors**, the petitioners have no case at all, particularly when the order passed by the LPA has been tested by the Hon'ble Supreme Court of India in SLP(C) No.18983 of 2023 and the Hon'ble Supreme Court has not inclined to interfere



with the impugned judgment and order of the Hon'ble High Court.

10. Counsel further submits that for the purpose of deciding this case, it is necessary to quote the relevant paragraphs *i.e.*, 17, 18, 19 and 20 of the order passed by Hon'ble LPA Bench in LPA No.508 of 2022 in case of **Devmuni Paswan Vs. the State of Bihar & Ors** states 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.”

11. The decision of Hon'ble Supreme Court of India in SLP(C) No.18983 of 2023 (arising out of order dated 25.02.2023 passed in LPA No.508 of 2022) states as follows:-

1. We are not inclined to interfere with the impugned judgment and order of the High Court; hence, the special leave petition is dismissed.

2. Pending application(s), if any, shall



stand disposed of.

12. In the light of the view taken, the decision of Hon'ble Division Bench of this Hon'ble Court in case of Devmuni Paswan (supra) has been approved by the Hon'ble Supreme Court of India in SLP(C) No.18983 of 2023. As such, this court finds that the basic provision of law under which the petitioners are seeking relief is under Rule 5(7) of Rules of 2014 & its proviso, according to which providing the service of chaukidari to a nominated person by the Chaukidar at the time of taking voluntary retirement has been declared *ultra vires* and violative to Articles 14 & 16 of the Constitution of India. As such, this Court has no option but to dismiss the present writ petition.

13. It transpires to this Court that the Hon'ble Division Bench in paragraph 20 of the LPA No.508 of 2022 has specifically directed as follows:-

“let a copy of this judgment be forwarded to the concerned authority to the Registrar General for taking further steps in identical issue, if any.”

14. Accordingly, this Court hereby further directs to the Registrar General of this Hon'ble Court to communicate this order before the Bihar State Law Commission as well as to



Law Department, Secretary-cum- L.R. Court of Bihar and the Bihar State Law Commission is hereby requested to communicate the proposed amendment of the relevant rule to the State Government through Law Department and Law Department is hereby directed to pursue the matter for proper amendment in the respective law, namely, *Rule 5 (7) of बिहार चौकीदार संवर्ग (संशोधन) नियमावली, 2014* and to be placed before the appropriate forum so that a law which has been declared *ultra vires* and affirmed by Hon’ble Supreme Court of India, may come in the legislation at the earliest. The Law Secretary-cum- L.R. Court of Bihar is further directed to request the Legislative wing to make aware about such change.

15. With the aforesaid observations, the present writ petition stands dismissed.

(Dr. Anshuman, J.)

Prakashmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

