

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12337 of 2024

Bihar Rajya Dafadar Chaukidar Panchyat at P.S. and District - Arwal through its District Vice President Mithilesh Kumar, aged about - 56 years, Gender-Male, Son of Late Jagdish Prasad Yadav, resident of Village - Ibrahimpur, P.S. - Kinjar, District - Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Home Department Government of Bihar, Patna.
3. The District Magistrate, Arwal.
4. The Additional Collector (Establishment), Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. V N Sinha, Advocate
		Mr. Ravi Shankar, Advocate
For the Respondent/s	:	Mr. Vikas Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-08-2024

The petitioner is an association of the Dafadars/Chaukidars and is represented by the Vice-President of the said association. The petitioner has filed the above public interest litigation on the ground that it is filed in a representative capacity for raising grievance of general interest to the public.

2. The grievance projected is against the advertisement dated 25.06.2024, issued as Annexure-P/2 for



appointment of 223 Chaukidars. The said advertisement is said to be in violation of Annexure-P/1 amendment made by the Bihar Chaukidari Cadre (Amendment) Rules, 2014 (hereinafter referred to as 'Rules of 2014').

3. Learned Senior Counsel Sri V.N. Singh appeared for the petitioner and learned Counsel Sri Vikas Kumar appeared for the State.

4. The specific ground taken is that by the amendment produced as Annexure-P/1, a proviso has been inserted after sub-Rule 7 of Rule 5 which enables an employee in the Chaukidaar cadre to seek appointment of a dependent named by him to the post of Chaukidar; at least one month before the superannuation. The contention taken is that the advertisement has been issued in total violation of the said rule since the direct recruitment would take away the chances for appointment of dependents of retiring employees.

5. At the outset, we have to observe that the writ petition is not at all a public interest litigation and the relief is confined to the dependent employment of Chaukidars, who are employees of the State and cannot be said to be persons who are not capable of approaching this Court. If at all a right arises from the amended rule, the same can be enforced only by a



person, who is denied of such appointment, when his turn comes. We were un-happy with the manner in which the public interest litigation was filed and we were of the opinion that it has to be dismissed.

6. Then, the learned Senior Counsel specifically informed us that there was a Special Leave Petition pending with respect to the same matter. We sought for the details of the Special Leave Petition but, however, the judgment against which the Special Leave Petition was filed, was not with the learned Senior Counsel. We kept the matter at 2:15 p.m. for further hearing in order to enable the learned Senior Counsel to produce the judgment. The Special Leave Petition is said to have been filed from L.P.A. No.508 of 2022. Therein, a person who voluntarily retired had made an application for consideration of his son for appointment. The claim was rejected by the District Compassionate Appointment Committee on the ground that the application was made after retirement. The son, who was put up for appointment had filed the above writ petition which was dismissed by the learned Single Judge and the appeal too, stood rejected.

7. In the appeal, the learned Judges, in paragraph 12 specifically found that the 'Rules of 14' which granted such



compassionate appointment to persons who retire, was in violation of Articles 14 and 16 of the Constitution of India since, the post of Chaukidar is a public post and the same has to be filled up in-consonance with Articles 14 and 16 of the Constitution. Finding that the State had violated the constitutional mandate of Articles 14 and 16, even after 77 years of independence, the writ petition was dismissed holding that the provisions in the rule granting compassionate appointment to the dependent of retiring Chaukidars is violative of Articles 14 and 16 of the Constitution of India.

8. The Special Leave Petition is filed from the aforesaid L.P.A but, admittedly, there is no order of stay. We are also dismayed by the fact that the petitioner has merely referred to the S.L.P. in the writ petition, without even pointing out that similar provision was set at naught by a Co-ordinate Bench of this Court, based on the constitutional mandate of Articles 14 and 16.

9. Finding the writ petition to be not in public interest and clearly in abuse of process of law, we impose exemplary costs of Rs.10,000/- on the person who has filed the above writ petition, as a representative of the association, payable to the Bihar State Legal Services Authority. The said



amount will have to be paid within a period of two weeks, failing which the Bihar State Legal Services Authority will be entitled to proceed for recovery by taking measures similar to recovery of arrears due on land through the District Magistrate, in which event Mithilesh Kumar, the District Vice-President of the petitioner shall also be liable for the charges incurred for making such recovery, which have to be recovered by the State.

10. Let a copy of this judgment be transmitted to the Member Secretary, Bihar State Legal Services Authority.

11. The LPA stands dismissed with costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

sharun/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.08.2024
Transmission Date	

