

**SUPREME COURT OF INDIA**

Surender Paswan

Vs.

State of Bihar

C.A.No.3457 of 2010

(R.V.Raveendran R M Lodha JJ.)

19.04.2010

**JUDGEMENT**

**R.V.RAVEENDRAN, J.**

1. Leave granted.

2. This matter relates to the appointment of Chowkidars (village watchmen) in Madhepura District, Bihar. The appellants allege that in the pre-constitutional set-up, the practice in Bihar was to appoint village Chowkidars for lifetime who used to work without any leave or retirement.

During his illness or absence, any of his family members would assist him in performance of his duties; and when he died or became infirm, usually his family member nominated by him would take over the functions of Chowkidar, though the post was not strictly hereditary. In the post-constitutional set-up, there was a gradual change in the village administration and several lifetime or

hereditary or semi-hereditary appointments gave way to regular public service with appointments based on equal opportunity. This Court in *Yogender Pal Singh v. Union of India* [1987 (1) SCC 631] held that an opportunity to get into public service should be extended to all citizens equally; that any preference shown in the matter of public employment on the ground of descent alone was unconstitutional; and that any provision which conferred a preferential right to appointment on the descendants or other relatives of persons either in service or persons who retired from service, merely because they happened to be the children or wards of such employees, would be contrary to Article 16 of the Constitution.

3. The post of Chowkidar was included in Class IV service of the State Government vide proceedings of the State Government dated 20.3.1990. On 3.10.1994, an advertisement for appointment on the post of Chowkidars/Daffedars was published as per the order of the District Magistrate, Madhepura. Selections were made on 1.8.1995.

On 14.8.1995, the selected candidates ( respondents 4 to 27 and five others), were appointed as Chowkidars/Daffedars and sent for training in September, 1995.

4. When matters stood thus, on 20.12.1995, a Circular was issued by the State Government, after consideration of the pending demands of Bihar State Chowkidar/Daffedar Association, that on the retirement of a Chowkidar/Daffedar after 10.1.1990, his legal heir who is his nominee, that is, widow, wife, son, brother, nephew or daughter's son would be appointed in his post, as an exception to the general rule of recruitment. It was further provided that there would be no direct appointment of Daffedar but Chowkidars will be promoted to the post of Daffedar. It also provided that on the death of a Chowkidar, one of his legal heirs will be appointed on compassionate grounds.

5. The appellants, claiming to be the family members of erstwhile Chowkidars/Daffedars, filed CWJC No.7374/1995, challenging the appointments of respondents 4 to 27, contending that they ought to have been appointed in view of the Circular dated 20.12.2005. They claimed that as and when their predecessors in the family who were working as village Chowkidars ceased to function for whatsoever reason, they had stepped into the shoes as village Chowkidars between the years 1990 and 1995. The appellants also gave a representation to the concerned authorities for redressal of their grievances. As a result, respondents 4 to 27 who had been appointed in pursuance of a selection process, were terminated from service on 21.1.1997 by cancelling their appointment, without giving them even an opportunity to show-cause. Feeling aggrieved, respondents 4 to 27 filed CWJC No.1289 of 1997.

6. Both writ petitions, that is the writ petition filed by the appellants in 1995 and the writ petition filed by respondents 4 to 27 in 1997 were disposed of by a common order dated 7.4.1997 quashing the order dated 21.1.1997, holding that the cancellation of the appointment of respondents 4 to 27 herein was illegal. As a consequence, the High Court also issued the following directions :

"The Divisional Commissioner, Saharsa is directed to look in the matter afresh. He will give an opportunity of hearing to the appointees before he comes to any conclusion. He may also hear the petitioners in CWJC No.7374/1995 through their representatives. If he comes to the conclusion that there was any illegality or irregularity in making the impugned appointments, he will direct the District Magistrate, Madhepura to take steps for fresh appointment. In that event the petitioners of CWJC No.7374/95 will be given a chance of selection along with others (without giving them any advantage of their being wards of erstwhile Dafadars/chaukidars) on merits. If on the other hand, the Divisional Commissioner comes to the conclusion that the impugned appointment did not suffer from any infirmity, he shall permit the petitioners of CWJC No.1289/1997 to continue on the posts."

The said judgment attained finality as the appellants did not challenge it.

7. In pursuance of the directions issued by the High Court in the order dated 7.4.1997, the Divisional Commissioner, Kosi Division, Saharsa, after hearing the parties, made an order dated 22.12.1997 holding that there were several irregularities and violations of rules and procedures in the appointment of respondents 4 to 27. He directed the District Collector, Madhepura, to consider the claims of appellants separately by verifying whether each of them had the necessary qualification for appointment.

8. The order dated 22.12.1997 was challenged by respondents 4 to 27 in CWJC No.767/1998. The High Court allowed the said petition by order dated 17.9.1999 and set aside the order dated 22.12.1997 on the ground that it did not comply with the order dated 7.4.1997 in letter and spirit. The matter was remitted to the Divisional Commissioner to examine the issues and pass appropriate orders in terms of the earlier order of the High Court dated 7.4.1997. Thereafter the Divisional Commissioner directed the Collector, Madhepura, to make fresh appointments as per the directions of the High Court. However, the Collector, Madhepura, by order dated 31.5.2000 offered appointments to the nominees/legal heirs of retired Chowkidars and Daffedars on the ground that they were eligible as per Circular dated 20.12.1995. Respondents 4 to 27 challenged the said appointments in CWJC No.16519/2001 which was disposed of by a learned Single Judge by order dated 16.10.2008. He was of the view that the only way to resolve the ongoing dispute was to decide the issue in terms of the directions of the High Court on 7.4.1997. He therefore quashed the appointment of appellants vide order dated 31.5.2000. However considering the fact that Chowkidars were the link between the rural police and regular police, and as the said posts could not be kept vacant, the appellants who were working on those posts by virtue of the order dated 31.5.2000, were permitted to continue for a period of three months and thereafter their appointment should stand terminated and the order of appointment dated 31.5.2000 shall stand quashed. The High Court further directed that the case of appellants and respondents 4 to 27 shall be considered strictly as per the directions contained in the order dated 7.4.1997. The Letters Patent Appeal filed by the appellants against the said decision was dismissed by a Division Bench by the impugned order dated 4.3.2009. The said order is challenged in this appeal by special leave.

9. The appellants submitted that they have been working in place of their predecessors for nearly two decades. They also submitted that having regard to one-time exception as a transitional measure, made by Government Circular dated 20.12.1995 enabling the heirs/nominees of deceased/retired Chowkidars being appointed as Chowkidars, there was nothing irregular in their appointment as Chowkidars. Respondents 4 to 27 however submitted that the kinship rule having been abolished, the appointment of appellants as Chowkidars on 31.5.2000 without subjecting them to any competitive selection process, was wholly illegal. It was also submitted that the order dated 7.4.1997 having attained finality, the directions therein ought to have been followed.

10. During the pendency of the appeals before the High Court, the Government of Bihar exercising power under Article 309 of the Constitution, made the Bihar Chowkidar Gradation Rules, 2006 vide notification dated 25.8.2006. Rule 3 related to the constitution of cadre and Rule 5 related to the appointment procedure, laying down the constitution of the selection committee, the educational and other qualifications and other eligibility criteria for appointment.

11. The order of the High Court dated 7.4.1997 which has attained finality, contained the following directions to respondents 1 to 3 :

(i) Decide whether there was any illegality or irregularity in the appointments of respondents 4 to 27 on 14.8.1995.

(ii) If there were no irregularities in their appointments, respondents 4 to 27 should be permitted to be continued on the posts.

(iii) If there were any irregularities in their appointment, the District Magistrate, Madhepura, should take fresh steps for appointment and in that event, the appellants should be given an opportunity to compete with others on merits (without giving them any advantage on account of their being legal heirs/wards of erstwhile Chowkidars/Daffedars).

12. In view of the order dated 7.4.1997 having attained finality, the appellants cannot claim any right to be appointed as legal heirs/nominees of erstwhile Chowkidars/Daffedars. Therefore, the question of either examining the validity of the Circular dated 20.12.1995 or considering whether the appointment of appellants was in terms of the said Circular, does not arise.

13. In compliance with the order dated 7.4.1997, the Divisional Commissioner, Kosi, considered the validity of the appointment of respondents 4 to 27 and by his order dated 22.12.1997 found that there were several irregularities in their appointments made on 14.8.1995. But instead of thereafter following the direction of the High Court to have a fresh open selection, he directed the District Collector to consider the cases of appellants individually to find out whether they were eligible for appointment. The second part of the direction was found to be against the order dated 7.4.1997, and therefore it was set aside on 17.9.1999. Therefore the question of permitting respondents 4 to 27 to resume and continue on the posts also does not arise.

14. As a result, the only course remaining is to direct implementation of the last direction contained in the order dated 7.4.1997, that is, to have a fresh open selection process on merits. However, in view of the subsequent events, certain modifications are required in regard to the authority to conduct the fresh selections and in regard to age relaxation for appellants and respondents who were earlier appointed and whose appointments have been found to be invalid/irregular.

15. We therefore dispose of this appeal with the following directions :

(i) The direction contained in the High Court's order dated 7.4.1997 to hold fresh selection process for the posts of Chowkidars is reiterated.

(ii) Having regard to the fact that the Bihar Chowkidar Gradation Rules, 2006 have come into force, the selections will be done by the Selection Committee constituted as per the said Rules, in accordance with the said rules, instead of by the District Collector.

(iii) Appellants and respondents 4 to 27 will be entitled to apply for the post, subject to fulfilling the eligibility criteria as per the said Rules.

However, age relaxation shall be given in the case of appellants and respondents 4 to 27 and they will be entitled to apply, irrespective of their present age, subject to fulfillment of eligibility requirements.

(iv) Respondents 1 to 3 are directed to initiate the process of selection and complete the same within six months and till such selection and appointment, the present incumbents will be entitled to continue as Chowkidars purely on ad hoc basis.