

(1997) 02 PAT CK 0001
In the Patna High Court
Case No : C.W.J.C. No. 10394 of 1996

Arun Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-02-1997

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 19
General Clauses Act, 1897 — Section 16
Village Chaukidari Act, 1870 — Section 3A

Citation : (1997) 02 PAT CK 0001

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Abhay Prakash Sahay, in C.W.J.C. No. 10394 of 1996 and Sadanand Jha, Pramod Mishra, in C.W.J.C. No. 12508 of 1996, for the Appellant; Abhay Kumar Singh in C.W.J.C. No. 10394 of 1996 and Bijoy Kumar Sinha in C.W.J.C. No. 12508 of 1996, for the Respondent

Judgement

S.N. Jha, J.—These two writ petitions have been heard together and are disposed of by this common order.

2. The dispute relates to appointment of Dafadar in Circle No. 1, Nauhatta Police Station in the district of Saharsa.

3. I will first deal with the case of Arun Kumar Singh, Petitioner in C.W.J.C. No. 10394 of 1996. He was appointed as dafadar on the post in question on 14th March, 1978. From the order of the District Magistrate in Service Appeal No. 2 of 1995-96 (corresponding to Service Appeal No. 8 of 1991-92) it appears that he worked on the post upto 16th April, 1979. A formal order of dismissal from the post was passed by the Superintendent of Police on 9th August, 1980. He, however, did not challenge the order for atleast 11 years until he filed the aforesaid Service Appeal No. 8 of 1991-92. He came to this Court making a grievance of dismissal in C.W.J.C. No. 2282 of 1994. By order dated 3rd May, 1995 this Court expressed its inability to pass any positive order but in view of

the pendency of the aforesaid appeal, directed the District Magistrate to dispose of the same by reasoned order. Accordingly, the District Magistrate passed the aforementioned impugned order on 9th September, 1996. By the said order while negating his claim, he further held that appointment of Moti Alam Khan, who is Petitioner in other writ petition i.e. C.W.J.C. No. 12508 of 1996, was also illegal. Mqtl Alarh Khan accordingly has also came up and challenged the said order.

4. The claim of Arun Kumar Singh is fit to be rejected both on the ground of delay as well as on merit.

5. In view of the Bench decision of this Court in Mahesh Jha v. The State of Bihar 1984 PLJR 34, the District Magistrate has no power to sit in appeal over the orders of the Superintendent of Police, for both of them exercise the same very powers of appointment and/or dismissal. The submission of Mr. Abhay Prakash Sahay, however, was that u/s 3A of the Village Chaukidari Act, only the power of making appointment had been delegated to the Superintendent of Police, and not the power to make orders of dismissal. The submission is wholly misconceived in view of the provisions of Section 16 of the General Clauses Act, 1897, read with Section 19 of the Bihar and Orissa General Clauses Act, 1917 which specifically provides that where a power to make appointment is conferred on the authority, unless a different intention appears, the authority having power to make the appointment shall also have the power to suspend or dismiss any person in exercise of that power. In my opinion, therefore, the filing of the so-called appeal before the District Magistrate (Appeal No. 8 of 1991-92/2 of 1995-96) was misconceived and the period during which the said appeal remained pending can not be excluded in determining the question of delay or laches.

6. Mr. Sahay submitted that this Court in its order dated 3rd May, 1995 in C.W.J.C. No. 2282 of 1994 had taken note of the pendency of the appeal and had directed the District Magistrate to dispose of the same by reasoned order. Although the order of this Court can not confer jurisdiction, which flow from the statute, even if it be assumed that the filing of the appeal was bonafide, there is no explanation for the delay of more than 11 years. As stated above, the Petitioner, that is, Arun Kumar Singh stopped working on the post after 16th April, 1979 and formal order of dismissal had also been passed on 9th August, 1980 itself.

7. As regards the claim of Moti Alam Khan, his appointment on the post has been found to be illegal on the ground that the Superintendent of Police, Saharsa had no authority to make the appointment. The ground is completely non est and therefore fit to be rejected. From the order of the then District Magistrate, Saharsa dated 21st June, 1972 contained in his memo No. 2150-2 dated 1st July, 1972, it appears that he had delegated the power of appointment of dafadars in the District of Saharsa to the Superintendent of Police, Saharsa. The Commissioner, Bhagaipur Division by his letter No. 828 dated 13th April, 1972 approved the aforesaid delegation in favour of the Superintendent of Police. The said two orders are to be found at annexures 8 and 9 to the writ petitions. It was

by virtue of the aforesaid delegated power that the then Superintendent of Police, Saharsa appointed the Petitioner namely Moti Alam Khan, initially for a period of six months on 3rd January, 1981 which was confirmed on 29th October, 1983 w.e.f. 3rd July, 1981 i.e. on expiry of the period of six months. I am satisfied in the circumstances, that the appointment of Moti Alam Khan was made in accordance with the rules and the District Magistrate has committed the error of law in holding otherwise.

8. In the result, the order of the District Magistrate dated 9th September, 1996 in Service Appeal No. 2 of 1995-96, rejecting the claim of Moti Alam Khan is rejected and his writ petition namely C.W.J.C. No. 12508 of 1996 is accordingly allowed. C.W.J.C. No. 10394 of 1996 however, is dismissed.