

(2006) 12 PAT CK 0093
In the Patna High Court

Arun Prakash Tiwary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Citation : (2007) 1 BLJR 624 : (2007) 2 PLJR 512

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Judgement

Ramesh Kumar Datta, J.—Heard Mr. Yugal Kishore, learned counsel for the petitioner and learned J.C. to Standing Counsel No. 11, for the State.

2. The petitioner is aggrieved by and seeks quashing of the order contained in memo No. 750 dated 19.4.1991 (Annexure-4) issued by Sub-Divisional Officer. Rohtas (Sasaram) by which the appointment of the petitioner as Dafadar has been stayed till further orders and for further consequential orders.

3. The short facts of the case are that on 24.3.1991 the Selection Committee under the Chairmanship of the Sub-Divisional Officer Sasaram and Assistant Superintendent of Police, Sasaram made appointment of eight persons as Dafadar including the petitioner and on the same day appointment letter (Annexure-2) was also issued. Subsequently by order contained in memo No. 750 dated 19.4.1991 (Annexure-4) the Sub-Divisional Officer Sasaram referring to memo No. 31 dated 5.4.1991 of the Collector, Rohtas at Sasaram by which the appointments were directed to be stayed, issued the order staying the appointment of the petitioner and others until further orders. The petitioner thereafter filed his representation on which a report was called from the officer Incharge of Police Station where the petitioner had been placed and in the report it was stated that during the period of duty the petitioner had performed his work in good manner. However the said appointment had continued to remain stayed and no action has been taken either for cancelling the appointment or withdrawing the order of stay of appointment which has forced the petitioner to approach this Court.

4. A counter affidavit has been filed on Magistrate Rohtas in which stand taken is that the selection/appointment of grade IV employees like Dafadar has to be made by a Selection Committee headed by the District Magistrate and consisting of other district level officers as per the Home (Police) Department letter No. 10129 dated 6.11.1991 (Annexure-A) whereas the Selection Committee which had selected the petitioner was headed by the sub-Divisional officer Sasaram and the same is contrary to the Government letter in this regard. The further and the main ground taken in the counter affidavit is that by letter No. 711 dated 23.1.1991 the Home (Police) Department had directed not to make any further appointment of Choukidar/Dafadar since after the said posts having been declared by the State Government as class IV employees, the matter regarding the procedure for their appointment etc. is under consideration of the State Government and until a clear direction is issued by the State Government in this regard, no further appointment should be made.

5. Learned counsel for the petitioner submits that so far as Annexure-A is concerned, it is a letter dated 6.11.1991 and the same can have no effect so far as action of the Sub-Divisional Officer and the committee under him on 24.3.1991 is concerned. In this regard he refers to a document contained in Annexure-8 of the rejoinder which bears memo No. 97 dated 7.8.1990 by which the Sub-Divisional Officer, Sasaram had made appointments of as many as 15 persons as Choukidars and in the said appointment order he has referred to the District Magistrate, Rohtas at Sasaram order No. 18B dated 18.1.1988 on the basis of which, the powers have been conferred to him for making the appointments and accordingly he had made the appointments. Learned counsel for the petitioner further submits that with respect to the petitioner also whose appointment was made approximately seven months after the said Annexure-A order, the powers were exercised under the said delegation of powers by the District Magistrate, Rohtas by order dated 18.1.1988.

6. The second submission of the learned counsel for the petitioner is that. from a reference to Annexure-B, it is clear that the letter of the State Government dated 23.1.1991 was communicated to the Sub-Divisional Officer by memo No. 1069 dated 26.3.1991 and thus the said communication was after the appointments had already been made by order dated 24.3.1991 by the Sub-Divisional Officer.

7. On the basis of the aforesaid documents it is submitted that so far as the petitioner is concerned, the respondents have acted in response to the valid notifications for appointment issued by the Sub-Divisional officer against which they have applied and undergone the process of selection and after that selection has been made. The Sub-Divisional Officer had validly exercised his power on 24.3.1991 since on that date the order withdrawing the delegation of power to him by the District Magistrate from the order of the State Government to keep the further appointments in abeyance had not been communicated to him. Learned counsel submits that it cannot be expected of a person applying for a job to presume as to whether the person making the selection is empowered or

not and once he applies pursuant to a proper notification for making an application, he cannot be made to suffer on account of the power being subsequently withdrawn from the appointing authority.

8. In any case learned counsel submits that on the date of appointment since the Sub-Divisional Officer was validly empowered, any appointment made by him cannot be considered as illegal and vitiated and thus the order of stay on the said appointment made by Annexure-4 must be quashed since the said appointment had been made acting bona fide in exercise of powers earlier delegated to him by the District Magistrate.

9. Learned counsel for the State, however relying upon the fact that Annexure-B order was issued as early as on 23.1.1999 and therefore any appointment made contrary to the said direction of the State Government, which has ultimate power in this regard, stated that it cannot be held to be valid and the same had rightly been stayed by the authorities there is no occasion to either recall the said stay or quash the order of the stay.

10. On a consideration of the rival contentions of the parties, I am of the view that the order of stay as contained in Annexure-4 passed by the Sub-Divisional Officer, pursuant to the direction of the District Magistrate who in turn had acted in terms of the directions of the State Government as contained in Annexure-B cannot be said to be an invalid exercise of power. From the provisions of the Village Choukidari Act, 1970 also it is evident that the ultimate power of appointment of Choukidar/Dafadar vests in the State Government and further the District Magistrate at the moment has the power to make a recommendation for selection as well as to dismiss the Choukidar, so appointed.

11. In view of the said provisions, it is evident that it was open to the State Government, having declared the posts of Choukidar and Dafadar is that of class IV employee to have issued the letter dated 23.1.1991 directing all authorities not to make any further appointment until the process of selection and appointment is finalised by the State Government, and the said order of the State Government took effect the moment it was issued on 23.1.1991 by the Home (Police) Department. It is evident that the said order had also been communicated to the Collector much prior to the date of appointment and the mere fact that the Sub-Divisional Officer was not aware of the said order on 24.3.1991 will not make the appointments made by him as legal and valid in the face of what had been directed by the state Government two months before the said date.

12. So far as Annexure-A the letter dated 6.11.1991 is concerned, the same merely had been issued pursuant to what had been stated in the letter dated 23.1.1991 of the State Government and lays down new procedure fixed by the State Government for the appointment of Choukidar/Dafadar and it is clearly provided therein that it is the District Magistrate who will be appointing authority and appointment shall be made by a Committee under the Chairmanship of the

District Magistrate but the said circular dated 6.11.1991 cannot have any relevance so far as the present case is concerned. However, in view of the ban imposed by the State Government by letter dated 23.1.1991 it is evident that the appointment of the petitioner could not have been made in the first place and therefore, the moment it was detected by the District Magistrate when the file was sent to him he had rightly directed that the same should be stayed.

13. One of the aspects of the matter however, remains that the appointment of the petitioner has not been cancelled even after a long period of 15 years and from the report of the Officer-Incharge Sasaran dated 26.8.1991 (Annexure-6) it is evident that during the period of nearly 25 days the petitioner had worked, his services have been found to be satisfactory and it has also been stated in the said report that in the absence of the Choukidar/Dafadar problem is being faced by the Thana. It is surprising that the District Magistrate, Rohtas has sat over the matter for such a long period of time without taking any steps in the matter either to take a final decision with regard to appointment of the petitioner and others or to make fresh appointments.

14. Since nothing has been found against the petitioner, it is directed that a final decision in this regard may be taken by the Committee under the Chairmanship of the District Magistrate as constituted under the State Government's circular date 6.11.1991 and the Committee shall decide the issue in accordance with law whether the petitioner is to be continued as Dafadar or not.

15. The writ application is accordingly disposed of with the aforesaid directions.