(1999) 04 PAT CK 0034

In the Patna High Court

Case No : C.W.J.C. No. 4086 of 1996

Karoo Paswan APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1999) 2 BLJR 1146

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—In this writ application under Article 226 of the Constitution of India, the petitioner has challenged Clause-1 of the Government policy decision as contained in Memo No. 359 dated 17.1.1990 (Annexure-1) and also communication from the Accountant-General, Bihar, dated 11.12.1995 (Annexure-5). The petitioner is a retired Chawkidar and has challenged the aforesaid policy decision and letter because they stand in his way in claiming pension as a Government servant under the State of Bihar.

2. The facts of the case are not in dispute and they may be noticed only in brief. Admittedly, the petitioner was appointed as a Chawkidar in 1954 for a Rural Police Station beat under Rupauli Police station in the district of Purnea as per the provision in the Bihar Chawkidari Manual which consists of the Village Chawkidari Act, 1970 and the Rules framed thereunder. His service condition continued to be governed by the said Bihar Chawkidari Manual and were admittedly without benefit of any pension. But on 17.1.1990, a Government policy decision was issued vide Annexure-1 whereby and whereunder all the Chawkidars and Dafadars, upon their demand, were declared Class IV employees of the State Government and were granted status of such Government employees with effect from 1.1.1990. Thereafter the petitioner started getting pay-scale, etc. admissible to Class IV Government employees and ultimately

retired from service with effect from 30th September, 1994. After his retirement from service, details of the petitioner''s service were conveyed to the Accountant General, Bihar through Annexure-4 dated 16.9.1995 and upon that the impugned order contained in Annexure-5 was issued from the Accountant-General, Bihar, holding that the petitioner is not entitled to any pension under the Bihar Pension Rules.

3. The instant writ application was thereafter filed in 1996 and as noticed above, the petitioner has challenged Clause-1 of Annexure-1, the policy decision as well as Annexure-5 with a view to obtain an order from this Court to the effect that he be declared entitled for pension under the Bihar Pension Rules by directing the Respondents to count his service prior to 1.1.1990 as pensionable service under the Government of Bihar. If the aforesaid submission of the learned Counsel for the petitioner is accepted then he will definitely complete more than qualifying service of 10 (ten) years for the purpose of pension under the Bihar Pension Rules.

4. In support of the aforesaid pleas, learned Counsel for the petitioner submitted that by applying the test as indicated for finding out whether the service is a service under the State or not, in the judgment of the Apex Court in the case of State of Gujarat and Anr. v. Ram Lal Keshav Lal Soni and Ors. reported in 1983 (1) All ISLJ 268, the Chawkidars appointed and serving as per the provision of Bihar Chawkidari Manual will be found to be holding a Civil post under the Government. In support of this proposition, learned Counsel for the petitioner further relied upon a Division Bench decision of this Court in the case of Rajpati Dubey v. State of Bihar reported in 1992 BLJR 558.

5. The principle laid down by the Apex Court in the case of State of Gujarat and Anr. v. Ram Lal Keshav Lal Soni (supra), is no doubt, a valuable guide for deciding, in case of dispute, whether a person holds a Civil post under the Government or not. However, so far as a Chaukidar under the Bihar Chawkidari Manual is concerned, he is on the same footing as a Dafadar appointed under the said manual. This Court as per judgment in the case of Rajpati Dubey v. State of Bihar (supra), held, long back, that the Chawkidar or Dafadar holds a civil post and hence in the matter of his dismissal, Article 311 of the Constitution of India will be attracted. The said conclusion was arrived at after examining the provisions of Chawkidari Manual in great details. Hence, there is no difficulty in holding that a Chawkidar appointed and serving under the provisions of Bihar Chawkidari Manual holds a civil post under the Government.

6. However, that finding alone cannot give any benefit to the petitioner unless it can be held that under the Bihar Pension Rules, he has completed more than ten years of qualifying service in an establishment or service which was pensionable. An employer, even if it is State, can have different establishments and can provide for different service Rules as well as terms and conditions of employment. Service under the Government may not be always pensionable. For deciding the aforesaid point, i.e. whether the petitioner''s earlier service as per

Bihar Chawkidari Manual will be counted towards service for the purpose of pension under the Bihar Pension Rules, learned Counsel for the petitioner submitted that the policy decision contained in Annexure-1 by which Chawkidar/ Dafadars were granted the status of Class IV employees of the State Government and their pay-scale and other benefits, has unnecessarily curtailed their status as a Government servant only with effect from 1.1.1990 by incorporating such a provision in Clause 1 which is irrational and requires interference. A perusal of Annexure-1 shows that upon the consistent demands by Chawkidars and Dafadars, the State Government held a Cabinet meeting on 30.12.1989 and decided to accept the demand to declare them Class IV Govt. employees but subject to certain conditions. Clause 1 is in fact one of such conditions which mentions that Chawkidars/Dafadars shall be treated as Government employees with effect from 1.1.1990. The petitioner has challenged this clause on the ground that particular date, i.e., 1.1.1990 has no relevance or basis. The other contention is that since Chawkidars already held a civil post under the Govt. hence, no declaration was required that they will now be on the same footing as Class IV Govt. employees.

7. So far as relevancy of date, i.e., 1.1.1990 is concerned it is apparent that since Cabinet took the decision on 31st December, 1989, it had to fix a date from which its decision would be effective. In such a situation accepting 1.1.1990, a date one day thereafter and marking the beginning of a new month cannot be held to be unnatural or unjustified. In normal course of events, for grant of such benefits, particular date has to be determined and no fault can be found with the date fixed by the Govt. in this case more so when it is not with retrospective effect.

8. So far as the other contention is concerned, the same has to be noticed only for rejection because such a declaration was made only on the basis of persistent demand made by the Chawkidars. Such policy decision of the State Government accepting the post of Chawkidars/Dafadars as equivalent to regular Govt. employees gave immense benefits to the Chawkidars and Dafadars in service conditions as well as pay scales. The Chawkidars/Dafadars who were earlier in a non-pensionable service came to a pensionable establishment like the Class IV employees of the State Government with effect from the appointed date i.e., 1.1.1990.

9. In fact as the various circulars contained in Bihar Chawkidari Manual reveal, the State Government has been conceding the demands of the Chawkidars in a phased manner and gradually. They got higher pay scale in 1977 and some amount of gratuity was also fixed. Retirement age was fixed in 1982. Earlier to such concession and reforms Chawkidars/Dafadars were being paid very meagre salary because they are required to serve only in the village to which they belong, they were free to follow their own occupation of livelihood and as indicated in another circular, they were only in part-time employment as Chawkidars. Thus, by the policy decision contained in Annexure-1 the State

Government granted a favour, may be rightly deserved by accepting their long pending demands, upon certain terms and conditions. Thus, the terms ant1 conditions contained in Annexure-1 are almost like terms of a solemn agreement between the parties, and on the basis of such decision Dafadars/Chawkidars were provided considerable advantage by way of better pay scale and service conditions. In view of the aforesaid facts and discussions, in my view, the petitioner cannot be allowed now to challenge one of the conditions contained in Annexure-1 after he received all monetary and other benefits accrued to him from Annexure-1 and then retired from service on 30.9.1994.

10. So far as the demand of pension is concerned, it has been turned down by Annexure-5. Learned Counsel for the State submitted on the basis of audit note in the service book of the petitioner (Annexure-A) to the counter-affidavit that the petitioner is not entitled to get pension because he has not rendered service for more than ten years which is the minimum qualifying service for earning pension under the Bihar Pension Rules.

11. The aforesaid submission will hold good, if it is held that the petitioner rendered service for the purpose of pension only from 1.1.1990 as is the stand of the Respondent. On the other hand, learned Counsel for the petitioner has submitted that the petitioner''s service even prior to 1.1.1990 rendered under the provision of Bihar Chawkidari Manual should be counted for computing qualifying service for the purpose of pension. For deciding this issue, Rule 2 of the Bihar Pension Rules appears to be relevant which is as follows:

Except where otherwise provided, there rules apply to all Government servants to whom the rules in the Bihar and Orissa Service Code apply.

A bare perusal of the aforesaid Rule 2 shows that Pension Rules, except where otherwise provided, apply only to those Government servants to whom Rules in the Bihar and Orissa Service Code are applicable. In this case, there is no difficulty in holding that the petitioner came to be governed by Bihar Service Code only from 1.1.1990 and prior to that he was governed only under the provision of Bihar Chawkidari Manual and was not entitled to any pension. Hence, the Bihar Pension Rules will be applicable to the petitioner only from the date he came to be governed by Bihar Service Code being declared to be a Regular Class IV Govt. employees. Thus, the petitioner has rendered service in a pensionable establishment only with effect from 1.1.1990 and he does not have requisite qualifying service to get the benefit of pension under the Bihar Pension Rules.

12. Hence, I do not find any merit in this writ application and the same is dismissed but there shall be no order as to costs.

