

(2019) 08 JH CK 0149

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 196, 404 Of 2012, I.A. No. 941 Of 2009 & Letter Patent Appeal No.196, 404 Of 2012, Interlocutory Application No.941 Of 2009

Nandan Lohra And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 16

Citation : (2019) 08 JH CK 0149

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Harendra Kumar Mahato, Ahalya Mahato, Vinod Kumar Sahu, Nalini Jha, Himanshu Kr. Mehta, Sharad Kaushal, Deepak Kumar, Pravin Kumar Rana

Final Decision : Dismissed/ Disposed Of

Judgement

1. As the common question of law is involved in both these L.P.As., they are heard together and are being disposed of by this common order.
2. Heard learned counsel for the appellants in both the appeals and learned Additional Advocate General for the State.
3. The appellant in L.P.A. No.196 of 2012 is aggrieved by the impugned order dated 17th November 2011, passed by the Hon'ble Single Judge, in W.P.(S) No.2072 of 2007, whereas the appellant in L.P.A. No.404 of 2012 is aggrieved by the impugned order dated 8th August 2012, passed by the Hon'ble Single Judge, in W.P.(S) No. 2065 of 2010. In both these appeals, the appellants had claimed to be appointed to the post of Chaukidar, being the sons of the retired Chaukidar, in accordance with the provisions of Bihar Chaukidari Manual, then in force, and various circulars / orders issued by the State Government from time to time. Both these writ applications have been dismissed on the common ground by the Hon'ble Single Judge, that the post of Chaukidar cannot be claimed as a matter of right, on the basis of inheritance, rather any such appointment, after coming

into force of the Constitution of India, shall be violative of Article 16 of the Constitution of India. It has been held that after commencement of Constitution of India, there cannot be any appointment on the public post on the basis of inheritance, and appointments to the public post have to be made through public advertisement. The Hon'ble Single Judge has also placed reliance upon the decision of the Hon'ble Apex court in *Surender Paswan and Ors. Vs. State of Bihar and Ors.*, reported in 2010 (3) JCR 161 (SC), laying down the law as follows:-

"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."

4. It is admitted position that earlier, according to Bihar Chaukidari Manual, the appointments to the post of Chaukidar were made also on the basis of inheritance, but after the decision of the Supreme Court in *Surender Paswan's* case (*supra*), Rules have been framed in the State of Bihar, as also in the State of Jharkhand, separately, for making the appointments to the post of Chaukidar after issuing the advertisement and inviting applications from the public at large. In the State of Jharkhand, new Rules have been framed in this regard, which have been notified by the State Government in its Department of Home, as contained in Notification No.2032 dated 7.4.2015, laying down the detailed procedure of appointment to the post of Chaukidar.

5. The appellant in L.P.A. No.196 of 2012 is claiming the appointment to the post of Chaukidar, being the son of the retired Chaukidar, who retired upon attaining the age of superannuation. It has come in the counter affidavit filed on behalf of the State, that his father had two wives and he had two sons, one from each wife. The father had made recommendations in favour of both the sons for being appointed at his place. In an enquiry by the respondent authorities, it was found that this appellant is the son from the first wife, and after the death of his

mother, he was living separately. The second son was living with his father and after the retirement of his father, he was also working as Chaukidar at his place. It has also come in the counter affidavit filed on behalf of the State, that even the police report was against him, and in that view of the matter, the second son of the retired Chaukidar from his second wife was given the appointment. The petitioner had challenged the appointment of his step brother in W.P.(S) No.2072 of 2007. The said writ application was, however, dismissed on the ground that post of Chaukidar could not be claimed on the basis of inheritance. The grievance of the appellant in L.P.A. No.196 of 2012 is that the claim of the appellant has been rejected by the Hon'ble Single Judge, stating that the post could not be claimed on the basis of inheritance, but the fact remained that the step brother of the appellant, who was also appointed on the basis of inheritance only, continued in service.

6. The grievance of the appellant in L.P.A. No.404 of 2012 is that his candidature was rejected on the ground that on the date of consideration for appointment, he was found to be more than 37 years of age, which was beyond the prescribed age for appointment to the post of Chaukidar. The claim of the appellant is that he had made application much prior to the date of consideration of his application, and on that date, he was not overage. It is the case of the appellant that cut of date ought to have been taken from the date of application made by him, and not on the date of consideration, and in this connection, learned counsel for the appellant has placed reliance upon the decision of the Hon'ble Apex Court in Bhupinderpal Singh & Ors. Vs. State of Punjab & Ors., reported in (2000) 5 SCC 262.

7. Learned counsel for the appellant in both these appeals submitted that the impugned order passed by the Hon'ble Single Judge, cannot be sustained in the eyes of law, inasmuch as, these matters related to the appointment of Chaukidar in the period, when Bihar Chaukidari Manual was in force, and accordingly, it could not be held that the post of Chaukidar cannot be filled up on the recommendation of the retiring Choukidar.

8. Learned AAG, appearing for the State, on the other hand, has submitted that the Rules have now been framed in the State of Jharkhand in the year 2015, for appointment to the post of Chaukidar on the basis of advertisement, which is in consonance with Article 16 of the Constitution of India. It is also the stand of the learned AAG that all the Chaukidars, who were appointed on the basis of inheritance after 19.04.2010, have been terminated / removed in compliance of order passed by the Writ Court In W.P.(S) No. 2072 of 2007. A public interest Litigation was also filed being W.P.(PIL) No.1048 of 2016 by the affected Chaukidars, and a coordinate Bench of this Court has disposed of the aforesaid writ application by order dated 7.2.2018, taking note of the fact that new Rules of the appointment of Chaukidar have been framed by the State Government in the year 2015.

9. Having heard learned counsel for the appellants and learned AAG for the

State, we are of the considered view that no fresh appointment now can be made to the post of Chaukidar on the basis of inheritance only, on the ground that the candidate is the son of the retired / deceased Chaukidar. The law is well settled by the Hon'ble Apex Court in Surender Paswan's case (supra), laying down the law as above. The Rules have also been framed by the State Government pursuant thereto, prescribing detailed procedure to be followed for the appointment to the post of Chaukidar, which is a public post, after advertising the post, giving equal opportunity to all. In that view of the matter, the claims of the appellants in both the L.P.As., would not survive for being appointment to post of Chaukidar, only on the basis of the recommendations made in their favour by their father, the retired Choukidars. The posts can be filled up only after public advertisement and the appellants may apply pursuant to the advertisement, if they are eligible for applying for the post, as per the Rules framed in the year 2015. The State Government is hereby, directed to apply the Rule uniformly in the entire State, and fill up all the posts of Chowkidar uniformly, in accordance with the Rules framed in 2015, without any further delay.

10. An I.A. No.941 of 2019 has been filed in L.P.A. No.196 of 2012 on behalf of the Chowkidars, whose services have been terminated. In view of the foregoing discussions, they cannot be allowed to intervene in the present L.P.A.

11. There is no merit in both these appeals and the same are accordingly, dismissed. The aforesaid interlocutory application also stands disposed of.